

Share Buybacks Without General Meeting Approval: Ratio Legis and Shareholder Protection

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Abstract

This study aims to analyze the ratio legis underlying the criteria for significantly fluctuating market conditions in Financial Services Authority Regulation No. 13 of 2023 and to evaluate the adequacy of legal protection for shareholders in share buybacks conducted without prior approval from the General Meeting of Shareholders (GMS). The regulation was introduced as a capital market stabilization instrument during periods of extreme market volatility; however, the exclusion of the GMS mechanism raises fundamental issues concerning legal certainty, regulatory discretion, corporate governance, and shareholder rights protection. This research employs a normative juridical method using statutory and conceptual approaches, supported by grammatical, systematic, and teleological legal interpretation. The findings indicate that the criteria for determining significantly fluctuating market conditions remain vague and lack objective and measurable indicators, thereby granting excessively broad discretionary authority to the Financial Services Authority (OJK). Furthermore, preventive and repressive legal protections are predominantly procedural and insufficient to ensure substantive shareholder participation, particularly for minority shareholders affected by information asymmetry and limited legal remedies. The study demonstrates that the absence of GMS approval weakens the principles of transparency, accountability, and fairness as essential elements of good corporate governance. The novelty of this research lies in its critical normative examination of discretionary regulatory authority in share buyback policies and in the formulation of a shareholder-oriented regulatory reconstruction model through measurable market fluctuation parameters, participatory disclosure mechanisms, and an ex post GMS approval framework. This study contributes theoretically to the development of shareholder protection and corporate governance discourse in capital market law and practically to the formulation of a more balanced regulatory framework between market stabilization and investor protection in Indonesia.

Keywords: Capital Market; Corporate Governance; Legal Protection; Share Buyback

1. INTRODUCTION

The capital market plays a strategic role in supporting national economic growth by facilitating the accumulation and allocation of capital for business activities.¹ Through the capital market, companies can obtain funding without relying solely on bank financing.² Financing through the capital market can be used to support productive activities such as infrastructure development and business expansion.³ One of the main advantages of capital market financing lies in the absence of collateral requirements and fixed interest rates.⁴ However, it requires a high level of transparency to maintain investor confidence.⁵

¹ Umar Bello, Umaru Zubairu, and Umar Abbas Ibrahim, "Impact of Capital Market Performance on Economic Growth in Developing Nations : A Qualitative Approach," *Journal of Service Science and Management* 15, no. 3 (2022): 340–49, <https://doi.org/10.4236/jssm.2022.153020>.

² Pandji Anoraga and Piji Pakarti, *Pengantar Pasar Modal* (Jakarta: PT Rineka Cipta, 2006).

³ Putri Kemala et al., "Pasar Modal Dan Pengaruhnya Terhadap Perekonomian Di Indonesia," *JAKA (Jurnal Akuntansi, Keuangan, Dan Auditing)* 5, no. 1 (2024): 196–214, <https://doi.org/10.56696/jaka.v5i1.10755>.

⁴ Sentosa Sembiring, *Hukum Pasar Modal* (Bandung: Nuansa Aulia, 2019).

⁵ Nurfitri Desliniati and Sari Atul Hilaliyah, "Perspektif Nilai Perusahaan: Kebijakan Dividen Dan Quality of Earning," *E-Jurnal Manajemen* 10, no. 11 (2021): 1243–62, <https://doi.org/10.24843/EJMUNUD.2021.v10.i11.p10>.

The capital market functions as an investment platform that relies on information transparency.⁶ Issuers are consequently required to disclose all material information to support informed investment decisions.⁷ Fundraising typically occurs through an Initial Public Offering (IPO) in the primary market, a process that generally involves underwriters.⁸ After listing on the stock exchange, shares become tradable in the secondary market,⁹ where prices are influenced by market dynamics¹⁰ and company performance.¹¹

As a public entity, the company is subject to stricter corporate governance principles, which require approval from the General Meeting of Shareholders (“GMS”) for specific corporate actions, including share buybacks as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (“Company Law”).¹² Share buybacks are intended not only to stabilize share prices but also to demonstrate management's confidence in the company's fundamental value and to maintain shareholders' strategic control.¹³

The capital market is susceptible to extreme volatility, which can undermine market stability.¹⁴ In these situations, regulatory intervention is essential to prevent systemic risk and sustain investor confidence. The Financial Services Authority (“OJK”) fulfils this supervisory role in the capital market sector. Following recent volatility in Indonesia, OJK issued Financial Services Authority Regulation Number 13 of 2023 on Policies to Maintain Capital Market Performance and Stability in Conditions of Significant Market Fluctuations (“OJK Regulation 13/2023”) on March 19, 2025. This regulation permits issuers to conduct share buybacks without prior approval from the GMS during periods of extreme market volatility, as indicated by a sharp decline in the Jakarta Composite Index (JCI).¹⁵

The implementation of OJK Regulation 13/2023 has received a response from issuers, as evidenced by 43 companies planning share buybacks totalling an estimated IDR 22.54

⁶ Damos Wiratua Tampubolon, Elisatris Gultom, and Sudaryat, “Perlindungan Hukum Investor Trading Saham Online Ditinjau Dari Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal,” *Jurnal Mercatoria* 15, no. 1 (2022): 52–59, <https://doi.org/10.31289/mercatoria.v15i1.6865>.

⁷ Pandu Adi Cakranegara and Bastanta Prawira Tarigan, “Indonesia Capital Market Recovery: An Analysis,” in *Proceedings of the 4th Asia Pacific Management Research Conference (APMRC 2022)*, vol. 1 (Atlantis Press International BV, 2022), 129–39, <https://doi.org/10.2991/978-94-6463-076-3>.

⁸ Niken Previanti, “Aspek Hukum Penawaran Umum Efek Secara Elektronik,” *Veritas et Justitia* 7, no. 1 (2021): 162–87, <https://doi.org/10.25123/vej.v7i1.4248>.

⁹ Giancarlo Giudici and Silvio Vismara, “IPOs and Entrepreneurial Firms,” *Foundations and Trends® in Entrepreneurship* 17, no. 8 (2021): 766–852, <https://doi.org/10.1561/03000000067>.

¹⁰ Sudirman Sudirman et al., “Sharia Stocks and Muslim Millennials Investors in Indonesia: Between Religious and Economic Motives,” *International Journal of Professional Business Review* 8, no. 5 (2023): 1–17, <https://doi.org/10.26668/businessreview/2023.v8i5.1826>.

¹¹ Nahara Eriyanti, “Perdagangan Saham Di Pasar Modal Perspektif Hukum Ekonomi Syariah (Studi Transaksi Di Pasar Perdana Dan Pasar Sekunder Pada Pasar Modal),” *TAWAZUN: Journal of Sharia Economic Law* 2, no. 2 (2019): 195, <https://doi.org/10.21043/tawazun.v2i2.6284>.

¹² Muhammad Vikri Setiawan, Lastuti Abubakar, and Ema Rahmawati, “Peran Pengendali Dalam Melindungi Kepentingan Investor Melalui Pelaksanaan Prinsip Tata Kelola Perusahaan Yang Baik,” *Jurnal USM Law Review* 6, no. 2 (2023): 724–40, <https://doi.org/10.26623/julr.v6i2.6829>.

¹³ Joerg Osterrieder and Michael Seigne, “Examining Share Repurchase Executions: Insights and Synthesis from the Existing Literature,” *Frontiers Applied Mathematics Statistics* 9 (2023), <https://doi.org/10.3389/fams.2023.1265254>.

¹⁴ Fitri Rorizki et al., “Perkembangan Dan Tantangan Pasar Modal Indonesia,” *Economic Reviews Journal* 1, no. 2 (2022): 147–57, <https://doi.org/10.56709/mrj.v1i2.24>.

¹⁵ Mentari Puspadini, “Resmi! OJK Bolehkan Emiten Buyback Tanpa RUPS,” *CNBC Indonesia*, 2025, <https://www.cnbcindonesia.com/market/20250319102655-17-619870/resmi-ijk-bolehkan-emiten-buyback-tanpa-rups>.

trillion.¹⁶ However, this corporate action raises concerns that allocating funds to boost share prices in the short term may reduce the company's liquidity. In addition, the absence of GMS significantly weakens shareholder oversight of the use of company funds, potentially impeding future innovation and business expansion initiatives.¹⁷

The Company Law establishes the GMS as the highest corporate body, granting it exclusive authority to approve corporate actions, including share buybacks.¹⁸ This framework reflects the principles of shareholder protection and corporate governance, ensuring that control over company assets resides with the capital owners.¹⁹ The introduction of share buybacks policies without GMS approval under OJK Regulation 13/2023, however, generates normative tensions. While regulatory discretion may be necessary to address rapidly changing market conditions, such discretion may conflict with the foundational principle of shareholder approval in good corporate governance. This legal development prompts critical questions regarding whether expanded regulatory discretion aligns with shareholder protection or risks undermining it.

Studies on share buybacks during market fluctuations in Indonesia show a consistent trend. Most studies view share buybacks as a market stabilization tool and focus on policy effectiveness or market response to buyback announcements, as in Wibhawa (2022).²⁰ This research is oriented towards an economic-regulatory perspective, prioritizing market stability without critically examining its normative implications for good corporate governance. Siregar's (2022) study compares OJK regulations and the Company Law on share buybacks, but remains descriptive and focuses on explaining the OJK's role.²¹ Hakim (2025) analyzes legal protection of shareholders under share buyback policies without GMS approval during market fluctuations, based on OJK Circular Letter No. 3/SEOJK.04/2020 and Financial Services Authority Regulation Number 2 of 2013 concerning the Buyback of Shares of Issuers or Public Companies in Market Conditions that Fluctuate Significantly ("OJK Regulation 2/2013"). The article's strength is uncovering legal loopholes related to neglecting information disclosure obligations to shareholders. However, it does not explore specific legal avenues or remedies for shareholders who suffer actual losses.²²

These trends reveal clear research gaps. First, there is no normative analysis of the ratio legis behind using significantly fluctuating market conditions as a basis for granting discretion to

¹⁶ Desi Angriani, "Tren Buyback 2025, Respons Kolektif Emiten Hadapi Gejolak Pasar," *IDX Channel*, December 23, 2025, <https://www.idxchannel.com/playlists/tren-buyback-2025-respons-kolektif-emiten-hadapi-gejolak-pasar>.

¹⁷ William Lazonick, Mustafa Erdem Sakinç, and Matt Hopkins, "Why Stocks Buybacks Are Dangerous for the Economy," *Harvard Business Review*, 2020, <https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy>.

¹⁸ Andhes Tan Satrisna, "Legality of The Implementation of Extraordinary General Meeting of Shareholders by Shareholders," *Indonesia Private Law Review* 4, no. 1 (2023): 29–38, <https://doi.org/10.2504/iplr.v4i1.2930>.

¹⁹ Rudhi Prasetya, *Teori & Praktik Perseroan Terbatas* (Jakarta: Sinar Grafika, 2011).

²⁰ Zaky Baswendra Wibhawa and Darminto Hartono Paulus, "Juridic Review of Share Buyback by Issuer in Market Fluctuation Conditions Due To Covid-19 Pandemic," *International Journal of Social Science and Human Research* 05, no. 06 (2022): 2497–2502, <https://doi.org/10.47191/ijsshr/v5-i6-76>.

²¹ Putri Habibah Siregar, "Perlindungan Hukum Terhadap Investor Publik Melalui Pembelian Kembali Saham (Buy Back) Dalam Keadaan Pasar Yang Berpotensi Krisis Menurut Peraturan Otoritas Jasa Keuangan Nomor 3/SEOJK.04/202," *Jurnal Kajian Hukum* 3, no. 2 (2022): 234–41, <https://doi.org/10.55357/is.v3i2.260>.

²² Azizul Hakim, Alfi Arian Patiaraja, and Alana Christy Putriguena, "Perlindungan Hukum Pemegang Saham Yang Tidak Setuju Terhadap Keputusan Buyback Saham Tanpa RUPS," *Lex Prospicit* 3, no. 2 (2025): 89–107, <https://doi.org/10.19166/lp.v3i2.8028>.

the OJK. Second, there is no comprehensive evaluation of whether the share buyback policy without a GMS aligns with the principle of legal protection. Without this analysis, fundamental questions remain about the legitimacy of the regulator's discretionary policy in overriding the GMS mechanism and its impact on shareholder legal protection.

Based on the description above, the research questions are: (1) What is the ratio legis behind the criteria for significantly fluctuating market conditions in OJK Regulation 13/2023? (2) What legal protection is available to shareholders regarding share buybacks conducted without a General Meeting of Shareholders in significantly fluctuating market conditions, as outlined in OJK Regulation Number 13 of 2023 and Financial Services Authority Regulation Number 29 of 2023 concerning The Buyback of Shares Issued By Public Companies (“OJK Regulation 29/2023”), in relation to the theory of legal protection?

This study adopts a distinct perspective by analyzing share buyback policies without a GMS as a reflection of the tension between regulatory discretion and legal protection, rather than solely as a market stabilization tool. It examines the legality of this discretionary authority and evaluates whether current legal protections for shareholders are sufficient. The study’s novelty lies in its critical assessment of the new criteria for significantly fluctuating market conditions in recent capital market regulations, an area that has received limited academic attention. Additionally, it contributes theoretically by applying shareholder protection theory to determine whether share buybacks conducted without a GMS offer adequate preventive and repressive legal safeguards for shareholders.

2. METHOD

This study employs normative legal research to analyze shareholder protection in share buyback policies conducted without a GMS during fluctuating market conditions. Normative legal research is a form of legal research that focuses on positive legal norms as its main object of analysis.²³ The research uses two main approaches: the statutory approach, which reviews relevant laws and regulations, and the conceptual approach, which considers applicable doctrines and legal principles related to the issue.²⁴ The statutory approach identifies and interprets the legal norms governing share buybacks. The conceptual approach constructs an analytical framework using legal doctrine, principles, and theory, especially legal protection theory, to assess the legitimacy and effectiveness of the policy. The statutory approach clarifies applicable norms, while the conceptual approach critically evaluates them.

This study applies legal reasoning using grammatical, systematic, and teleological interpretation methods. Grammatical interpretation clarifies the textual meaning of laws and regulations on share buybacks. Systematic interpretation examines the relationship between norms, focusing on Company Law provisions requiring GMS approval and OJK regulations that allow exceptions in specific cases. Teleological interpretation addresses the ratio legis for granting OJK discretion in assessing significantly fluctuating market conditions.

²³ Saefullah Wiradipradja, *Penuntun Praktis Metode Penelitian Dan Penulisan Karya Ilmiah Hukum* (Bandung: Keni Media, 2015).

²⁴ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007).

Legal sources for this research include primary, secondary, and tertiary legal materials. Primary materials consist of relevant laws and regulations, such as the Company Law, the Law Number 8 of 1995 concerning Capital Markets (“Capital Market Law”), OJK Regulation 13/2023 and OJK Regulation 29/2023, which are central to the analysis. Secondary materials comprise books, journal articles, and reputable online sources related to the topic. Tertiary materials help clarify legal terms and concepts. All materials were gathered through desk research and a thorough review of academic literature.

Legal materials were analyzed using qualitative normative analysis in several stages. First, the norms governing share buybacks were identified. Second, these norms were interpreted using grammatical, systematic, and teleological methods to determine the underlying legal ratio. Third, the theory of legal protection, including preventive and repressive measures, was used to assess the adequacy of shareholder protection.

3. RESULTS AND DISCUSSION

3.1 Ratio Legis Criteria for Significantly Fluctuating Market Conditions

A Limited Liability Company is distinguished by its status as a capital association, formed through an agreement among shareholders to pursue defined business goals.²⁵ Ownership and influence are determined by the number of shares held.²⁶ While the “one share, one vote” principle generally applies, the law allows for shares with multiple voting rights. As a result, approval from the GMS is legally required for the Board of Directors to proceed with corporate actions taken in good faith.

A limited liability company may reduce its capital as provided in Articles 44-47 of the Company Law. Capital reduction can be carried out through share buybacks or by reducing the nominal value of shares.²⁷ Share buybacks decrease the number of shares outstanding to help stabilize the share price, improve financial ratios, and strengthen capital reserves.²⁸ Reducing the nominal value of shares increases the number of shares outstanding and lowers the price per share, which can stimulate trading activity. However, share buybacks only reduce capital if the share buybacks are cancelled.²⁹

Share buybacks may be initiated either by the company itself or at the request of a shareholder. Pursuant to Article 37 paragraph (1) of the Company Law, a buyback or transfer of shares may only be conducted with the approval of the GMS, unless capital market laws and regulations provide otherwise. The GMS decision approving a buyback is valid only if it satisfies the quorum requirements for amendments to the articles of association, as specified in Article 88

²⁵ Dhifa Nadhira Syadzwinia and Esti Setyowati, “Peran Notaris, Restrukturisasi, Perusahaan Non Badan Hukum,” *Jurnal Ilmu Kenotariatan* 1, no. 2 (2020): 1, <https://doi.org/10.19184/jik.v1i2.23330>.

²⁶ Rahmat Setiawan and Risno Mina, “Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dikaitkan Dengan Penerapan Good Corporate Governance (Gcg),” *Jurnal Yustisiabel* 3, no. 2 (2019): 135, <https://doi.org/10.32529/yustisiabel.v3i2.388>.

²⁷ Dimas Pasha Hafidz and Mohammad Rafi Al Farizy, “Perlindungan Hukum Pemegang Saham Terhadap Tindakan Penarikan Kembali Saham Ditinjau Dari Undang-Undang Perseroan Terbatas,” *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 65, <https://doi.org/10.19184/jik.v4i1.39032>.

²⁸ Yuliana, Susi, and Usep Syaipudin, “Faktor Determinan Stock Buyback (Studi Perusahaan Di Pasar Modal Indonesia Periode 2012-2020),” *E-Jurnal Akuntansi* 32, no. 4 (2022): 1057–68, <https://doi.org/10.24843/EJA.2022.v32.i04.p17>.

²⁹ Jamin Ginting, *Hukum Perseoran Terbatas* (Bandung: PT Citra Aditya Bakti, 2007).

of the Company Law. Therefore, a limited liability company must obtain GMS approval prior to executing share buybacks.

Shares buybacks by a company acquire a distinct legal status. Such shares are excluded from quorum calculations at subsequent GMS and are not included in voting tallies.³⁰ Additionally, pursuant to Article 40 of the Company Law, these treasury shares forfeit the right to receive dividends.

Share buyback regulations for public companies differ significantly from those applicable to private companies. Rudy Prasetya defines a public company as an entity that offers its shares to the public through a stock exchange to raise capital.³¹ The term "Public Company" is interpreted differently under the Company Law and the Capital Market Law. Article 1 point 7 of the Company Law defines "*Perseroan Publik*" as one that meets specific criteria regarding the number of shareholders and paid-up capital, as stipulated by capital market regulations. In contrast, Article 1, point 22 of the Capital Market Law defines a "*Perusahaan Publik*" as an entity with at least 300 shareholders and a minimum paid-up capital of IDR 3,000,000,000, or as otherwise determined by Government Regulation. OJK Regulation 29/2023, which governs the buyback of shares by public companies, also uses the term "*Perusahaan Publik*". However, Article 1, point 2 of OJK Regulation 29/2023 defines it as an issuer that has conducted a public offering of shares or is a public company. Thus, despite variations in terminology, all these definitions refer to a Limited Liability Company that has conducted a public offering and listed its shares on a stock exchange.

According to OJK Regulation 29/2023 Article 2 paragraph (3), public companies must obtain approval through the GMS before share buybacks. These share buybacks may take place either through the Stock Exchange or outside it. Prior to initiating share buybacks, a public company must ensure that the funding source adheres to all relevant regulations, with particular reference to Article 5 of OJK Regulation 29/2023. The use of these funds must not materially affect the company's financial stability or its capacity to fulfil maturing obligations. Additionally, the funding must be sourced exclusively from the company's internal cash reserves, reflecting the principle that internal financing is generally more cost-effective and less risky.³² Notably, the funds utilized must not originate from public offering proceeds or from any form of loans or debt.

Following share buybacks, public companies must transfer the repurchased shares within three years of completion, as stipulated in Article 16 of OJK Regulation 29/2023. This deadline may be extended if the company has sold at least 10% of the total repurchased shares or if, during the three-year period, the share price has not exceeded the average repurchase price. In the latter scenario, the company must provide historical share price data as supporting evidence.

³⁰ Septiana Septiana, "Efektifitas Kebijakan OJK Terkait Buyback Saham Terhadap Perubahan IHSG Di Masa Pandemi Covid-19," *AGHNIYA Jurnal Ekonomi Islam* 2, no. 2 (2020): 241–56, <https://doi.org/10.30596/aghniya.v2i2.4841>.

³¹ Rudhi Prasetya, *Teori & Praktik Perseroan Terbatas*.

³² Kania Luvita Sari and Dadan Soekardana, "Pengaruh Investment Opportunity Set, Cash Conversion Cycle Dan Corporate Governance Structure Terhadap Cash Holding," *Brainy* 3, no. 2 (2022): 10–17, <https://doi.org/10.23969/brainy.v3i2.63>.

Public companies may transfer repurchased shares in several ways, as stipulated in Article 21 of OJK Regulation 29/2023. These methods include reselling shares through trading mechanisms on or off the stock exchange, permanently withdrawing shares from circulation via a capital reduction, or allocating shares for internal purposes such as stock ownership programs for employees, directors, and commissioners. Repurchased shares may also be used as payment or settlement for specific transactions, to fulfill conversion obligations, or to satisfy equity instruments issued by the company.³³ Additionally, companies may redistribute repurchased shares to existing shareholders on a proportional basis. Other innovative transfer methods are permitted if prior approval is obtained from the OJK.

Stock market investment involves substantial risk due to the potential for significant price fluctuations. The OJK possesses the authority to implement policies that address market volatility, provide stimulus, and offer regulatory relaxation for capital market participants.³⁴ These interventions are designed to mitigate the adverse effects of major market fluctuations, which may threaten market stability and the performance of stakeholders. One such OJK policy permits public companies to repurchase shares without convening a GMS during periods of pronounced market volatility. This measure is governed by OJK Regulation 13/2023.

Article 2 of OJK Regulation 13/2023 outlines several indicators for identifying significant market fluctuations. First indicator is a material and sudden price decline affecting most or all securities listed on the stock exchange or over-the-counter market, commonly referred to as a market crash. The explanation of Article 2, letter a, provides an example of such a crash, as observed in 2020 when the Jakarta Composite Index (JCI) declined by more than 5% in a single trading day. This downward trend persisted, with the index decreasing by 5.63% for six consecutive days. In total, the JCI experienced a cumulative decline of more than 15% when comparing the level on March 9, 2020, to the closing position at the end of the previous year. These events exemplify the characteristics of extreme capital market fluctuations that are not attributable to the performance of a single stock.

This reasoning is supported by three primary negative impacts of a stock market crash: effects on shareholders, consequences for retail investors, and repercussions for companies.³⁵ Large-scale stock sell-offs can significantly affect the emotional and psychological well-being of shareholders. Retail investors may also experience psychological distress. For companies, such events can disrupt corporate governance and social responsibility, which may ultimately result in layoffs.

Second, this condition also involves significant pressure on the capital market. According to the Explanation of Article 2, letter b, of OJK Regulation 13/2023, such pressure is marked by severe disruptions in stock trading, resulting from declining performance in the financial

³³ Mario Vaupel et al., "The Role of Share Repurchases for Firms' Social and Environmental Sustainability," *Journal of Business Ethics* 183, no. 2 (2023): 401–28, <https://doi.org/10.1007/s10551-022-05076-3>.

³⁴ Agustinus Prajaka Wahyu Baskara, "Peran Negara Dalam Perlindungan Investor Melalui Trading Halt Di Bursa Efek Indonesia," *Jurnal Gloria Justitia* 5, no. 1 (2025): 91–115, <https://doi.org/10.25170/gloriajustitia.v5i1.6806>.

³⁵ Hanwen Cui and Jose Sunyer Luo B, "The Review of Stock Price Crash Risk's Driving Forces: Based on the Perspective of External, Internal and Meso-Level Factors," in *Proceedings of the 3rd International Conference on Economic Development and Business Culture (ICEDBC 2023)*, vol. 2 (Atlantis Press International BV, 2023), 432–37, <https://doi.org/10.2991/978-94-6463-246-0>.

services sector both domestically and internationally. This pressure is systemic, reflecting a crisis of confidence or fundamental issues affecting the entire financial sector, rather than isolated issuers.

Other indicators include declining assets under management and large-scale withdrawals, which signal reduced investor confidence and capital outflows. If not addressed, these trends can trigger a liquidity crisis and increase selling pressure on the stock exchange.³⁶ A significant widening of the bid-ask spread also indicates severe market stress. The bid-ask spread is the difference between the highest price a buyer will pay and the lowest price a seller will accept for a stock at the same time.³⁷ However, it remains unclear what specific threshold constitutes a significant widening of the bid-ask spread.

Regional and global economic pressures and slowdowns can significantly affect capital market stability. Capital markets remain highly sensitive to global economic conditions, including the Fed's interest rate hikes and tariffs imposed by US President Donald Trump.³⁸ However, OJK Regulation 13/2023 does not specify indicators or data sources for identifying these economic pressures.

Fourth, natural and non-natural disasters can affect capital market stability. According to Article 2, letter d of OJK Regulation 13/2023, a disaster is any event or series of events that threatens and disrupts public order. Disasters may be natural, non-natural, or human-caused, and their impacts are wide-ranging. These include loss of life, environmental damage, property loss, psychological trauma, disruption to financial services operations, and threats to economic stability.

Fifth, the phenomenon of massive and sudden withdrawals of shares or investment product participation units, as well as the suspension of securities trading in a large portion of investment product securities portfolios. Massive withdrawals indicate investor panic. This massive sale of shares and participation units has put pressure on the overall Composite Stock Price Index.

Sixth, Failures in the trading system or transaction settlement, such as technical disruptions that prevent normal processing, can cause significant market fluctuations. Capital markets require reliable trading systems to function effectively.³⁹ Technical failures may erode trust and prompt panic selling. The Financial Services Authority (OJK) also has the authority to establish additional conditions, as determined by the Chief Executive of the Capital Market, Derivatives, and Carbon Exchange Supervision.

³⁶ A Winarti and Ainun Arizah, "Dampak Penarikan Dana Massal Oleh Muhammadiyah Terhadap Kinerja Dan Reputasi Bank Syariah Indonesia (BSI)," *Jurnal Ekonomi, Manajemen, Akuntansi, Dan Keuangan* 6, no. 3 (2025): 1–9, <https://doi.org/10.53697/emak.v6i3.2825>.

³⁷ Deniz Ozenbas et al., "Liquidity, Trading, and Price Determination in Equity Markets: A Finance Course Application," in *Liquidity, Markets, and Trading in Action: An Interdisciplinary Perspective* (Cham: Springer, 2022), 21–49, https://doi.org/10.1007/978-3-030-74817-3_2.

³⁸ Shuhua Zhang, "The Driving Factors of Stock Price Crash Risk," in *Proceedings of the 3rd International Conference on Economic Development and Business Culture (ICEDBC 2023)* (Atlantis Press International BV, 2023), 718–23, <https://doi.org/10.2991/978-94-6463-246-0>.

³⁹ Previanti, "Aspek Hukum Penawaran Umum Efek Secara Elektronik."

The criteria for a significantly fluctuating market indicate that the OJK's legal framework is intended to provide flexibility in responding to market conditions. Rapid changes require prompt action to maintain stability. However, because the OJK's application of these criteria lacks clear and measurable formulation, it may reduce legal certainty in determining significantly fluctuating market conditions.

According to Gustav Radbruch, legal certainty relies on four factors: positive legislation, factual basis, accurate explanation of facts to prevent misunderstanding, and laws that are not easily changed.⁴⁰ In relation to legal certainty, OJK Regulation 13/2023 does not explicitly define the criteria for significantly fluctuating market conditions. The OJK does not specify clear thresholds for the bid-ask spread or detail the indicators and data sources for determining economic slowdown. As a result, the OJK has not established explicit regulations regarding the facts used to identify significantly fluctuating market conditions. This lack of clarity allows for broad interpretation by the OJK, which may undermine legal certainty.

The OJK's discretionary authority to determine significantly fluctuating market conditions, without defined quantitative or qualitative parameters, may lead to moral hazard and potential abuse of power. Abuse of power occurs when officials act beyond their authority, misuse their position, or make arbitrary decisions.⁴¹ According to Schwartz, a government official abuses its authority if it: (1) acts within its authority and follows procedures, but uses its power for purposes other than those intended; (2) uses its authority for prohibited purposes that deviate from legislative intent; or (3) acts for personal or private interests rather than the public interest.⁴² The broad discretion given to the OJK in defining sharply fluctuating market conditions increases the risk of abuse of authority, particularly if accountability mechanisms are insufficient. Additionally, share buybacks conducted under these conditions may proceed without a GMS mechanism.

From a corporate governance standpoint, allowing share buybacks without a GMS raises significant concerns. Effective oversight by shareholders is essential due to the separation of ownership and management.⁴³ Excluding GMSs during market fluctuations undermines this oversight, potentially weakening accountability and transparency and increasing the risk of decisions that do not fully reflect shareholder interests.

Companies typically conduct share buybacks to reduce capital or increase share prices.⁴⁴ Capital reduction through buybacks usually occurs due to decreased business activity or company losses that require capital adjustments. For creditors, buybacks pose significant risks, as reduced company assets lower the security for meeting obligations.

⁴⁰ E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (2022), <https://doi.org/10.22437/ujh.5.2.453-480>.

⁴¹ Amelia Putri Rizkyta and Bunga Restu Ningsih, "Penyalahgunaan Wewenang Berdasarkan Pengadilan Tata Usaha Negara Dan Pengadilan Tindak Pidana Korupsi," *Jurnal Esensi* 4, no. 2 (2022), <https://doi.org/10.35586/esensihukum.v4i2.161>.

⁴² Rena Yulia and Duke Arie Widagdo, "Penyalahgunaan Wewenang: Perspektif Hukum Administrasi Dan Viktimologi," *KNAPHTN* 2, no. 1 (2024), <https://doi.org/10.55292/jvs1v935>.

⁴³ Tasman and Ulfanora, "Tata Kelola Perusahaan (Good Corporate Governance) Sebagai Budaya Hukum Perbankan Di Indonesia," *Jurnal Ilmu Hukum, Humaniora, Dan Politik* 4, no. 3 (2024), <https://doi.org/10.38035/jihhp.v4i3>.

⁴⁴ Hukumonline, "Fenomena Stock Buy Back Demi Ilusi Atau Manipulasi," *Hukumonline*, 2001, <https://www.hukumonline.com/berita/a/fenomena-istock-buy-backi-demi-ilusi-atau-manipulasi--hol3336/?page=1>.

The impact of share buybacks on share prices remains uncertain. Over time, share prices are driven mainly by a company's fundamental performance rather than market interventions. Attempts to increase share prices without genuine improvements in management or operations may be artificial and risk misleading the public if not conducted transparently.⁴⁵ Additionally, share buybacks can alter the company's asset structure by reducing third-party capital participation, which may affect the interests of shareholders and creditors.

Although the share buyback policy without GMS approval may be justified during a market crisis, the provisions in OJK Regulation 13/2023 do not fully uphold legal certainty or good corporate governance. More objective and measurable indicators, along with stronger accountability mechanisms, are needed to prevent potential abuse of authority by regulators or company organs. The share buyback mechanism should remain strictly limited to ensure alignment with sound economic objectives and the protection of public shareholders and creditors.

3.2 Legal Protection for Shareholders of Public Company in the Events of a Buyback Without GMS Conducted Under Conditions of Significant Market Fluctuation

Legal protection combines the concepts of protection and law. According to the Big Indonesian Dictionary (KBBI), protection refers to efforts to safeguard, while law is a set of binding rules established by an authorized body.⁴⁶ One key function of law is to harmonize and regulate conflicting interests in society by both limiting and protecting these interests to minimize conflict.⁴⁷

Legal protection refers to granting individuals the authority to pursue their interests, which may require limiting conflicting interests. Satjipto Rahardjo states that legal protection safeguards human rights when they are violated by others, ensuring individuals can exercise rights guaranteed by law.⁴⁸ Soerjono Soekanto describes legal protection as fulfilling rights and providing security for witnesses and victims through restitution, compensation, legal aid, or medical services.⁴⁹ Soetiono views legal protection as protecting society from unlawful actions by authorities, maintaining order, and upholding human dignity.⁵⁰ Legal protection refers to guarantees or measures provided by the state through applicable regulations, both preventive and repressive. Its core function is to ensure security and protection, grounded in the recognition of the supremacy of law.⁵¹

⁴⁵ Joerg Osterrieder and Michael Seigne, "Implementation of Share Buybacks and Their Impact on Corporate Governance," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.5019696>.

⁴⁶ Hukumonline, "Perlindungan Hukum Pengertian, Unsur, Dan Contohnya," Hukumonline, 2023, <https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/?page=3>.

⁴⁷ Satjipto Raharjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2014).

⁴⁸ Raharjo.

⁴⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986).

⁵⁰ Soetiono, *Rule of Law (Supremasi Hukum)* (Surakarta: Universitas Sebelas Maret, 2004).

⁵¹ Fadli Andi Natsif, "Perlindungan Hak Asasi Manusia Dalam Perspektif Negara Hukum Indonesia (Human Rights Protection in Perspective Indonesian State Law)," *Al-Risalah* 19, no. 1 (2019): 148–58, <https://doi.org/10.24252/al-risalah.v19i1.9975>.

According to Philipus M. Hadjon, legal protection consists of two types.⁵² First, preventive legal protection allows the public to express objections or opinions before a government decision is finalized, aiming to prevent future disputes. This form of protection is especially important in discretionary government policies, as it encourages careful and thorough decision-making. Second, repressive legal protection addresses disputes that have already occurred, with court proceedings in Indonesia serving as an example.

Legal protection involves not only laws that define rights and obligations as preventive measures, but also legal procedures to address violations. This repressive legal protection ensures legal proceedings for human rights violations. Article 7 of OJK Regulation 13/2023 allows a public company to repurchase shares during significant market fluctuations without a GMS. However, OJK Regulation 29/2023 and the Company Law require share repurchases to be approved through a GMS.

Share buybacks offer several advantages.⁵³ They signal management's confidence that the stock is undervalued and can increase earnings per share by reducing the number of shares outstanding. Announcing a buyback plan often leads to a higher share price, which may continue to rise after the buyback is completed. This is mainly due to the reduced share count, which increases the intrinsic value per share. In these volatile market conditions, share buybacks are not carried out through a GMS. Corporate liquidity remains essential for managing economic uncertainty.⁵⁴ Allocating cash to support short-term share prices may reduce liquidity and limit opportunities for long-term innovation and business growth.

The GMS is a cornerstone of corporate governance and serves as the company's highest authority. It provides shareholders with a platform to express their views, vote, and shape strategic policies that affect the company's operations and long-term viability.⁵⁵ The GMS ensures transparency, accountability, and effective representation of shareholder interests, supporting the company's sustainability as a legal entity. This oversight is evident in the share repurchase policies of public companies operating in volatile markets, where shareholders lack influence over key decisions. Since share repurchases directly affect the company's cash flow, excluding the GMS from this process places full responsibility on the board of directors' judgment and expertise.

Excluding the GMS from the share buyback process removes its essential role as the company's highest authority. The GMS is not only a formal forum but also the main oversight body for good corporate governance principles, especially transparency, accountability, and participation. Without GMS involvement, share buyback decisions rest solely with the board

⁵² Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia : Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: Bina Ilmu, 1987).

⁵³ William Santoso, "Pembelian Saham Kembali: Apakah Strategi Yang Baik?," *Moneter Jurnal Akuntansi Dan Keuangan* 9, no. 2 (2022): 117–22, <https://doi.org/10.31294/moneter.v9i2.13512>.

⁵⁴ Anna Ludwiczak and Maciej Czarnecki, "Financial Liquidity Management During Crisis," *European Research Studies Journal* XXV, no. Special Issue B (2022): 232–44, <https://doi.org/10.35808/ersj/3033>.

⁵⁵ Anak Agung Gde Ramanda Bradjawangsa Djelantik and Putu Devi Yustisia Utami, "Kedudukan Hukum Terhadap Keputusan Umum Rapat Pemegang Saham Dengan Kepemilikan Saham Berimbang Pada Perseroan Terbatas," *Jurnal Media Akademik* 2, no. 12 (2024): 1–19, <https://doi.org/10.62281/v2i12.1177>.

of directors, which may risk breaching fiduciary duties.⁵⁶ As a result, strong legal protection for shareholders is necessary.

Legal protection is generally categorized as either preventive or repressive. Preventive legal protection for shareholders, particularly regarding share buybacks conducted without a GMS during periods of market volatility, is regulated under OJK Regulation 13/2023 on information disclosure. According to Article 9 of this regulation, a public company may proceed with a share buyback after disclosing relevant information to the OJK and the stock exchange, and after making a public announcement. For companies with securities listed on the stock exchange, announcements must be made via both the stock exchange website and the public company website. In contrast, public companies whose securities are not listed must announce through a national Indonesian-language daily newspaper or via the OJK-provided website and the public company website. Such information disclosure is permitted once the OJK has determined the presence of significant market fluctuations.

Preventive protection is evident in the regulation of funding sources for share buybacks. According to Article 6 of OJK Regulation 29/2023, these requirements also extend to share buybacks conducted under market conditions, as detailed in Article 5 of the same regulation. The funds utilized must not compromise the public company's ability to fulfill its maturing obligations, must be sourced from the public company's internal cash, and cannot be derived from initial public offering (IPO) proceeds or any form of loans or debt.

The provisions concerning information disclosure serve to implement the principle of transparency. Article 1 point 25 of the Capital Market Law states that the principle of transparency is a general guideline that requires issuers, public companies, and other parties subject to this law (the Capital Market Law) to inform the public promptly all Material Information regarding their business or securities that may influence investor decisions regarding the securities concerned and/or the price of those securities. Material information or facts, as defined in Article 1 paragraph (7), refer to important and relevant information or facts about events or incidents that may affect the price of securities on the stock exchange or the decisions of investors, potential investors, or other interested parties. In accordance with the principle of transparency, public companies must disclose all information related to their business conditions, including financial status, production management, and other aspects of their business activities.⁵⁷ Such disclosure enables the public to make informed investment decisions.

At least three key categories of information should be considered.⁵⁸ The first is fundamental information, which pertains to a company's condition and enables shareholders to make informed decisions. The second is technical information, which offers a general overview of

⁵⁶ Deiya Pernas, "Buybacks Gone Wrong: A Case for More Disciplines Capital Allocation in Corporate Finance," *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.4952496>.

⁵⁷ Yudho Taruno Murwanto and Anisa Dwi Wulandari, "Implementation of The Good Corporate Governance at The Backdoor Listing Procedure as Means of Buisness Development in The Indonesia Stock Market," *Yustisia Jurnal Hukum* 5, no. 3 (2016): 607–21, <https://doi.org/10.20961/yustisia.v5i3.8800>.

⁵⁸ Sembiring, *Hukum Pasar Modal*.

the market for individual or groups of securities. The third category encompasses information about the social, economic, and political environment.

In the context of share buybacks during fluctuating market conditions, disclosures must, at a minimum, comply with Article 9 paragraph 5 of OJK Regulation 13/2023. Fundamental disclosures should address: (1) estimates of the decline in public company revenue resulting from share repurchases and the corresponding impact on financing costs; (2) the performance of earnings per share following the implementation of the share repurchase plan, with consideration of revenue decline; and (3) management's discussion and analysis of the effects of share repurchases on business activities and future growth. Technical disclosures should include: (1) estimates of the schedule, costs, and nominal value of all shares to be repurchased; (2) share price restrictions applicable to repurchases; (3) limitations on the repurchase period; and (4) the method to be employed for share repurchases. Additionally, information regarding the social, economic, and political environment may encompass determinations by the OJK concerning fluctuating market conditions that could influence the public company's business activities and future growth.

Under OJK Regulation 13/2023, information disclosure is limited to the OJK, the stock exchange, and public announcements, without direct communication to shareholders. This approach may disadvantage shareholders, as they might not receive timely or direct information, potentially resulting in unrecognized losses. Consequently, transparency remains unilateral rather than participatory.

These conditions contribute to information asymmetry between the board of directors and shareholders. The board of directors possesses comprehensive access to internal company information, whereas shareholders depend exclusively on post-decision disclosures. This dynamic exemplifies information inequality within the capital market. The separation between ownership and management further exacerbates information asymmetry, potentially enabling directors to prioritize personal interests over those of shareholders. Additionally, directors may selectively disclose information that serves their own interests.⁵⁹

Consequently, this form of preventive protection remains comprehensive; however, it fails to address the ongoing imbalance between management and shareholders. This challenge is especially significant for minority shareholders, who lack the structural authority to influence corporate decisions or to access information on equal terms. This scenario underscores a fundamental disparity in the legal framework between the objectives of market stability and the protection of shareholders.

With respect to repressive legal protection in dispute scenarios, OJK Regulation 13/2023 and OJK Regulation 29/2023 do not provide explicit regulation. However, in terms of information disclosure as an application of the transparency principle, Article 90(c) of the Capital Markets Law prohibits making false statements about material facts or omitting material facts that result in misleading statements about the actual condition, with the intent to benefit oneself or another party by influencing another party's investment decision to buy or sell securities.

⁵⁹ Abudulateif A. Almuhim, "Effect of Board Characteristics on Information Asymmetry: Evidence from the Alternative Investment Market," *Heliyon* 9, no. 6 (2023), <https://doi.org/10.1016/j.heliyon.2023.e16510>.

Article 111 of the Capital Markets Law stipulates that parties who incur losses as a result of violations of the Capital Markets Law or its implementing regulations may pursue damages, either individually or collectively with others holding similar claims, against the responsible party. Consequently, shareholders may seek compensation from directors responsible for decisions related to the disclosure of information about share repurchases during periods of significant market volatility.

However, this form of legal protection is subject to several limitations. While Article 90 of the Capital Markets Law prohibits the misrepresentation of information and Article 111 grants the right to compensation, practical implementation remains challenging, particularly for minority shareholders. Barriers include restricted access to information, high litigation costs, and the evidentiary burden required to substantiate claims.

4. CONCLUSION

The regulation of share buybacks without prior GMS approval under Financial Services Authority Regulation No. 13 of 2023 reflects the state's attempt to preserve capital market stability during periods of significant market fluctuation; however, its implementation simultaneously creates substantial challenges to legal certainty, corporate governance, and shareholder protection. This study demonstrates that the absence of objective and measurable indicators for determining significantly fluctuating market conditions grants excessively broad discretionary authority to the OJK, thereby increasing the potential for regulatory arbitrariness and weakening accountability mechanisms within public companies. Furthermore, although preventive and repressive legal protections formally exist through disclosure obligations and compensation mechanisms under capital market law, these protections remain procedurally oriented and insufficient to ensure meaningful shareholder participation, particularly for minority shareholders facing information asymmetry and limited access to effective legal remedies. The exclusion of GMS approval in buyback decisions also diminishes the principles of transparency, accountability, and fairness as core elements of good corporate governance. The novelty of this research lies in its critical normative analysis of the ratio legis underlying the discretionary buyback policy and its formulation of a shareholder-oriented regulatory reconstruction model through measurable market fluctuation parameters, participatory disclosure mechanisms, and the introduction of an ex post GMS approval framework. This study contributes theoretically to the development of legal protection and corporate governance discourse in capital market law and practically offers a more balanced regulatory framework between market stabilization objectives and shareholder rights protection in Indonesia's capital market system.

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