YURIDIKA
FAKULTAS HUKUM UNIVERSITAS AIRLANGGA
Volume 36 No 3, September 2021
DOI: 10.20473/ydk.v36i3.26826
Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id
Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

Article history: Submitted 14 May 2021; Accepted 19 August 2021; Available Online 1 September 2021.

Re-regulating Indonesian Stock Buybacks: Lessons from the United States' Tax Cuts

Didik Farkhan Alisyahdi and Diffaryza Zaki Rahman
didikfarkhan31@gmail.com
The Office of the General Attorney and Universitas Indonesia

Abstract
This article compares the corporate income tax cuts enacted by the Indonesian COVID-19 Relief Law and the US Tax Cuts and Jobs Act. Further, it investigates the correlations among the tax cuts in the Tax Cuts and Jobs Act, economic development, and share repurchases in the US and seeks to identify appropriate limitations on share repurchases in Indonesia following the enactment of the COVID-19 Relief Law. This research was carried out using the juridical normative method by tracing the laws and literature concerning share repurchase arrangements in Indonesia and the US. The results show that there is a slight positive correlation between the reduction of corporate income tax and economic development in the US and that the US income tax cuts have caused significant growth in share repurchases. Due to the enactment of the Indonesian COVID-19 Relief Law, which also reduced corporate income taxes, Indonesia may be on the verge of extensive share repurchase activity, as was observed in the US. To tackle this problem, we recommend amending Law No. 40, enacted in 2007 concerning limited liability companies, to re-regulate the restriction on share repurchases.
Keywords: Income Tax Cuts; Share Repurchases; Economic Growth.

Introduction

In early 2020, the COVID-19 pandemic broke out around the world, including in Indonesia. The Indonesian President, Joko Widodo, declared the pandemic both a public health emergency and a national non-natural disaster. It has impacted both the health sector and the national economy, which recorded a contraction of up to 2.07% in 2020. Indonesia's economy is now in a recession, which has not occurred since the monetary crisis in 1998. The Indonesia government responded to this economic downturn by creating a judicial instrument equivalent to the law (*undang-undang*) to manage the state's financial losses. This instrument, proposed in 2020, is called the Government Regulation in Lieu of Law (*Perppu*) No. 1 and concerns state financial policies and financial system stability for handling the COVID-19 pandemic and/or in the context of facing threats that endanger the national economy and/or financial system stability. This Perppu was later enacted into law through Law No. 2 (the COVID-19 Relief Law) in 2020. It was introduced in response to a compelling situation, as required by Art. 22(1) of the 1945 Constitution of the Republic of Indonesia, based on the COVID-19 pandemic's direct impact on the national economy, the welfare of the Indonesian people, and the state's finances.

Given the ongoing economic recession and low public awareness concerning taxes, it was difficult for the government to fulfil its target for tax realization in 2020. Despite this deficit, the government lowered the income tax rate for domestic corporate taxpayers and permanent establishments under the country's income tax law. This decrease in corporate income tax was implemented under the rationale that the business world had been negatively affected by the pandemic and that a reduced income tax burden would help businesses recover more quickly.

A few years earlier, in 2017, the administration of US President Donald Trump had implemented a significant corporate income tax cut to stimulate the US economy. This was enacted through amendments to the Internal Revenue Code of 1986 (full name: An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, also known as the Tax Cuts and Jobs Act or TCJA). The TCJA was intended to support economic growth, create more jobs, and improve the welfare of people living in the US. However, the implementation of the TCJA led to a drastic increase in share buybacks by issuers. This was criticised by various groups as contrary to the TCJA's goals.

During the COVID-19 pandemic, the Indonesian Financial Services Authority (OJK) relaxed several rules concerning share buybacks by issuers on the capital market, as stipulated in the Financial Services Authority Regulation No. 2/POJK.04/2013 concerning the buyback of shares issued by issuers or public companies in significantly fluctuating market conditions. This included eliminating the requirement for a general meeting of shareholders to approve a share buyback.

This change enabled an increase in share buybacks, which is unlikely to support national economic recovery during the COVID-19 pandemic,[1] as can be seen from the example of the US after the implementation of the TCJA.[2]

Further research is needed to compare the corporate income tax withholding rates in the Indonesian COVID-19 Relief Law with the TCJA. Such a comparison will provide insights into the relationship between the US tax cuts and the growth rate of share re-purchases and provide guidance on how best to restrict share repurchases in Indonesia.

Based on this analysis, this paper investigates the following research questions:

1) What is the correlation between corporate income tax cuts, economic development, and share repurchases in the US?
2) What are the similarities and differences between the share repurchase regulations in Indonesia and the US?
3) How should share repurchases be regulated in Indonesia following the enactment of corporate income tax cuts in the COVID-19 Relief Law?

This research adopts a juridical-normative approach, drawing on a database of statutory regulations and library data.[3] In this study, we compare the corporate income tax cuts in the COVID-19 Relief Law and the TVCA and consider the correlations between corporate tax cuts, the rate of economic growth, and share repurchases in the US. We also analyse the regulation of share repurchases in Indonesia and the US and offer recommendations on the most appropriate share repurchase restrictions in Indonesia in light of the COVID-19 Relief Law.

---

[1] According to Government Regulations Nos. 23 and 43 of 2020 regarding the Implementation of National Economic Recovery, the Indonesian government has focused on reviving the country's primary economic sectors through incentives and credits. Share buybacks do not directly affect such sectors (see also the research of Lazonick, Sakinck, and Hopkins cited on page 13 of this article).

[2] The Financial Services Authority's Circular Letter Number 3/SEOJK.04/2020 concerning other conditions as market conditions that fluctuate significantly in the implementation of share buybacks issued by issuers or public companies.

[3] Sri Mamudji [et. al], *Metode Penelitian Hukum Dan Penulisan Hukum* (Badan Penerbit FH UI 2005).[9-10].

Definition of Tax and Corporate Income Tax Rate Before the COVID-19 Relief Law

In life, 'nothing is certain but death and taxes',[4] meaning that all taxable subjects must pay their taxes as required by law. According to Brotodihardjo and Soemitro, taxes represent the contributions of citizens to the state treasury based on enforceable law. Taxes are not exchanged for services (i.e. counter-achievement), can be directly demonstrated, and are used to pay for public and government expenditures.[5]

Taxes have both a budgetary function (i.e. they are used as a tool to gather as much money as possible for the state treasury and a regulatory function.[6] Concerning the budgetary function, the planned percentage of state revenue from taxation to the 2021 Indonesian State Budget (APBN) is IDR1,444 trillion or 82.84% of the total planned 2021 APBN revenue, which amounts to IDR1,743 trillion. This includes IDR683 trillion in income tax revenue, amounting to 47.33% of the total planned revenue.

The income tax rate for permanent corporate business entities in Indonesia was set at 28% in 2008 before being lowered to 25% in the 2010 fiscal year. Through the COVID-19 Relief Law, the Indonesian government further lowered corporate tax rates to attract foreign investors. If it is accepted that foreign direct investment is positively correlated with economic growth, corporate income tax cuts may be expected to lead to economic growth. This is particularly true during the COVID-19 pandemic, in which nationwide consumption has fallen. Following the cuts, money that would have been paid as income tax could be used to increase public consumption.

Table 1.[7] Comparison of Corporate Income Tax Rates in ASEAN Countries

ASEAN Countries	Corporate Income Tax Rate
Singapore	17%
Brunei Darussalam	18.5%

[4] Safri Nurmantu, *Pengantar Perpajakan* (Granit Publishing 2003).[7].
[5] Tony Marsyahrul, *Pengantar Perpajakan* (Sikal Sakti 2007).[2].
[6] *ibid*.[2-3].
[7] The Business Time, 'At Glance: Tax Rates Across ASEAN' (*The Business Times*, 2018) <https://www.businesstimes.com.sg/asean-business/at-a-glance-tax-rates-across-asean> accessed 2 May 2021.

Thailand	20%
Vietnam	20%
Cambodia	20%
Malaysia	24%
Laos	24%
Indonesia	25%
Myanmar	25%
The Philippines	30%

As shown in Table 1, the corporate income tax rate in Indonesia is relatively high compared to other ASEAN countries. This is a key reason for the government to reduce its tariffs. Egger and Raff confirmed that there is competition between countries to mutually reduce their corporate tax rates. Governments tend to reduce their corporate tax rates if rates are lowered by surrounding countries, particularly countries with which they compete to attract investment from abroad.[8]

Comparison of Reductions in Corporate Income Tax in the Indonesian COVID-19 Relief Law and the US TCJA

The COVID-19 Relief Law amended the income tax rate for permanent and business entities, which was previously regulated by Art. 17(1) of Law No. 7 of 1983 concerning income tax, as amended by Law No. 36 of 2008. This rate change will take place gradually, beginning from the 2021 fiscal year, in which the corporate income tax rate drops to 22%.[9] The tariff will then be further reduced to 20% in the 2022 fiscal year.[10]

The COVID-19 Relief Law also enables some domestic corporations to obtain a further 3% cut in the rate. This extra reduction applies to taxpayers that are formal public companies whose shares are sold on the Indonesian stock exchange,

[8] Peter Egger and Horst Raff, 'Tax Rate and Tax Base Competition for Foreign Direct Investment' (2015) 1 International Tax and Public Finance.[21].

[9] Article 5 Paragraph (1) of *the Law No 2 Year 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and / or in the Context of Facing Threats that Enda*.

[10] *ibid*.

provided that the total number of shares traded is at least as much as 40%.[11] Thus, domestic corporate taxpayers that meet these requirements will be subject to an income tax rate of 17% from 2022.

Meanwhile, the TCJA amended Art. 11(b) of the 1986 Internal Revenue Code, which regulates the income tax rate that US corporations must pay to the Internal Revenue Service (IRS).[12] The corporate income tax rate, which was previously set at 35% of taxable income, was reduced to only 21%.[13]

The Trump administration claimed that this tax cut would bring many benefits to the US, including:[14]

1) an increase in foreign direct investment, production output, and reinvestment of profits;
2) an increase in workers' salaries;
3) the repatriation of the income of US companies that operate abroad in the form of dividends for shareholders of such companies;
4) a reduction in the movement of US factories and corporate headquarters abroad; and
5) an increase in the gross domestic product (GDP) of the US.

Table 2.
Comparison of Tax Cuts in the COVID-19 Relief Law and the Tax Cuts and Jobs Act

Country	Previous Corporate Income Tax Rate	New Corporate Income Tax Rate	Fiscal Year of Enactment
Indonesia	25%	22%	2021
		20%	2022
		17% (subject to further requirements)	2022
United States	35%	21%	2018

[11] Attachment Article Number 5 Paragraph (2), *ibid*.

[12] The Internal Revenue Service is the competent authority to enforce tax collection on tax-payers in the United States.

[13] Sec. 11, Subsec. (b) of An Act to Provide Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018.

[14] Jane G. Gravelle and Donald J. Marples, 'The Economic Effects of the 2017 Tax Revision: Preliminary Observations' (*Congressional Research Service*, 2019) <https://fas.org/sgp/crs/misc/R45736.pdf> accessed 25 April 2021.

Effect of Corporate Income Tax Cuts on Foreign Direct Investment and Economic Growth

Legislators believe that the corporate tax rate has an important impact on the level of foreign direct investment. However, Tavares-Lehmann, Coelho, and Lehmann found that the majority of multinational companies do not consider corporate income tax an essential factor in determining the countries in which they invest or do business.[15] Other factors, such as consumer purchasing power, consumption level, ease of licensing, and market competition, are considered more relevant.

Baccini, Li, and Mirkina concluded that corporate tax cuts have a positive correlation with an increase in foreign direct investment, with several caveats.[16] They found that the tax cuts must be consistent, comprehensive, and accompanied by the simplification of bureaucratic and licensing requirements. The benefits of the tax cuts must be available to multinational companies equally, across all sectors and industries, meaning that tax cuts may not be applied selectively. An uneven application of tax cuts must be avoided because it results in ambiguity and uncertainty and encourages rent-seeking.[17] Similarly, Lawless noted that the effect of tax reductions on foreign direct investment is complex (i.e. cutting taxes does not necessarily lead to a rapid flow of foreign direct investment).[18] Lawless added that in addition to the effect of tax cuts, reducing the complexity[19] of a tax system by 10% leads to a further 6% increase in foreign direct investment flows.[20]

Lee and Gordon found that corporate income tax cuts have a significant negative correlation with economic growth.[21] In contrast, reductions in personal

[15] Leonardo Baccini,[*et.,al*.], 'Corporate Tax Cuts and Foreign Direct Investment' (2014) 33 Journal of Policy Analysis and Management.[978].

[16] *ibid*.[1003]. Baccini, Li, and Mirkina examined the development of foreign direct investment in each Russian oblast from 2002 to 2008 in the context of tax cuts imposed by the Russian Federal Government and by regional oblasts.

[17] *ibid*.

[18] Martina Lawless, 'Do Complicated Tax Systems Prevent Foreign Direct Investment?' (2012) 80 Economica.[20].

[19] These complexities may include onerous bureaucratic requirements, opaque tax calculation methods, unsatisfactory taxation advice, and minimal tax office staffing.

[20] Martina Lawless (n 18).[20].

[21] Young Lee and Roger H. Gordon, 'Tax Structure and Economic Growth' (2005) 1 Journal of Public Economics.[1041].

income tax are not significantly associated with economic growth.[22] However, Lee and Gordon maintained that there is a relationship between corporate tax cuts and economic growth, although it is not significant. Their research on 70 countries between 1970 and 1997 found that countries' average annual economic growth increases by 1.1% for every corporate tax cut of 10 percentage points.[23]

Existing research indicates that corporate income tax cuts do not have a significant effect on foreign direct investment or economic growth, although the existence of a connection between these factors has not been definitively disproven. Nevertheless, legislators should not cut corporate income taxes in the absence of other measures as economic growth and foreign direct investment also depend on many other factors. For example, lawmakers should also reduce licensing bureaucracy, increase market freedom, and maintain the levels of personal income taxes as state revenues from personal income are significantly greater than those from corporate sources. Thus, corporate income tax cuts alone do not effectively increase foreign direct investment inflows and stimulate economic growth. There is also a risk that such tax cuts will lead to a failure to meet tax revenue targets due to a decrease in tax revenues, as illustrated by the Tax Policy Centre's report on the TCJA's direct effect on the federal budget. That report found that the TCJA's corporate income tax cuts had caused a severe tax shortfall, deepening the deficit in the federal budget and forcing the government to add USD1–2 trillion to the federal debt.[24]

Meanwhile, the corporate income tax cuts in Indonesia are only due to come into force in 2021, with the rate expected to fall from 25% to 22%. Indonesia already experienced a significant budget deficit in 2020 due to the huge expenditures required to combat the COVID-19 pandemic. The Indonesian Minister of Finance, Sri Mulyani, reported that state budget income in 2020 fell by as much as 16.7%

[22] *ibid.*
[23] *ibid.*
[24] Tax Policy Center, 'How Did the TCJA Affect the Federal Budget Outlook?' (*Tax Policy Center*, 2020) <https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-federal-budget-outlook> accessed 12 May 2021.

compared to 2019, a decrease of around IDR327 trillion.[25] Given this reduction in state income, state expenses rose by 12.2% when compared to 2019—from IDR2,309.3 trillion to IDR2,589.9 trillion.[26] The deficit was so great that the Widodo administration relaxed the limits of the state budget deficit, allowing it to pass the previously legislated limit of 3% of Indonesia's nominal GDP.[27] Given this relaxation in the deficit limit, introducing corporate tax cuts during the ongoing COVID-19 pandemic may lead to a further increase in the state budget deficit, surpassing the losses experienced by the US in 2017–2018.

Correlation of Corporate Income Tax Cuts and Growth in Share Repurchases

The Congressional Research Service and the Budget Office analysed the GDP growth of the US in 2018 and noted that the annual GDP growth rate in the US grew by 2.2% in 2017 (i.e. before the TCJA) and 2.9% in 2018 (i.e. following the TCJA).[28] The institutions concluded that this data did not support claims that growth had occurred as a result of the tax cuts. Moreover, even if it is accepted that the GDP growth was due to the corporate tax cuts, the growth was not proportional to the budgetary losses caused by the cuts. As stated by Gravelle and Marples, 'the data appear to indicate that not enough growth occurred in the first year to cause the tax cuts to pay for [themselves]'.[29]

Gravelle and Marples also noted that after the TCJA took effect, there was an increase in the provision of bonuses and other income to workers, representing only 2–3% of the value of the corporate tax cuts. This was not proportionate to the size of the reduction in tax rates, i.e. from 35% to 21%.[30]

---

[25] Direktorat Jenderal Anggaran Kementerian Keuangan, 'Kilas Balik Kinerja APBN 2020' (*Direktorat Jenderal Angagran Kementerian Keuangan*, 2020) <https://anggaran.kemenkeu.go.id/in/post/kilas-balik-kinerja-apbn-2020> accessed 28 August 2021.

[26] *ibid*.

[27] The original 3% budget deficit limit was established under art 12(3) of the State Financial Law (*UU Keuangan Negara*). This limit was temporarily suspended under art 2(1a) of *Perppu No. 1 Year 2020*, allowing the state budget deficit to exceed 3%.

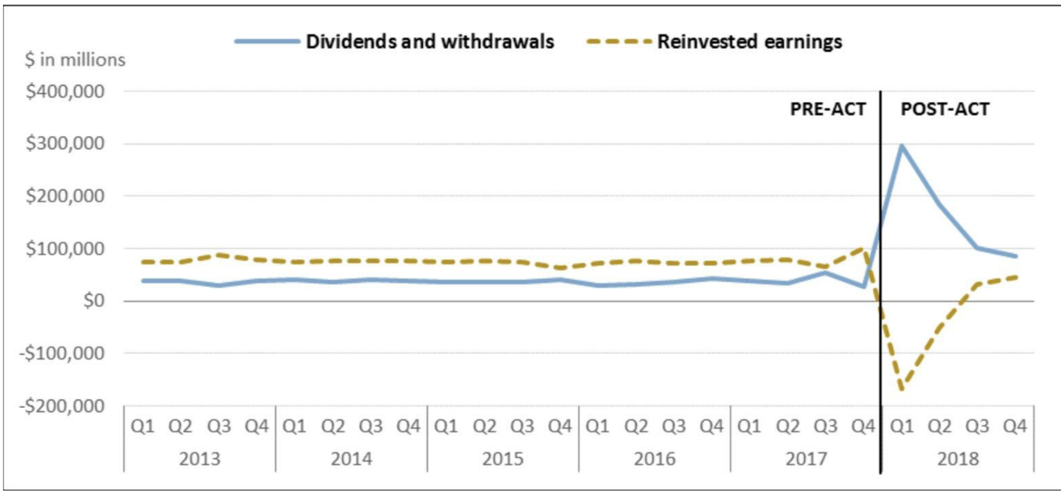
[28] Jane G. Gravelle and Donald J. Marples (n 14).

[29] *ibid*.

[30] *ibid*.

The most noteworthy effect of the TCJA was a significant increase in dividend payments, from approximately USD50 billion in the fourth quarter of 2017 to USD300 billion in the first quarter of 2018. The annual value of dividends rose from USD144 billion per year between 2013 and 2017 to USD 664billion in 2018.[31] However, this effect lasted only until the third quarter of 2018, with the annual value eventually flattening out in the fourth quarter of that year and almost returning to its previous level, as shown in Figure 1.[32]

Figure 1.[33] US Companies' Dividend Payouts and Reinvested Income



Although the data concerning dividend payouts appear to be positive, the amount of reinvested income dropped significantly in the same period, reaching -USD160 billion in the first quarter of 2018.[34] In response, in 2019, the Secretary of the US Treasury, Steven Mnuchin, announced a state budget deficit of USD984 billion, an increase of 26%.[35] This deficit was the direct result of the decline in state revenue from taxation under the TCJA. In contradiction to the targets and predictions of the Trump administration, the expected increase in company revenue due to the TCJA did not benefit the US budget.

---

[31] *ibid.*; Michael Smolyansky, [*et.,al.*], 'U.S Corporations' Repatriation of Offshore Profits' (*9The Federal Reserve*, 2018) <https://www.federalreserve.gov/encores/notes/feds-notes/us-corporations-repatriation-of-offshore-profits-20180904.html> accessed 2 May 2021.

[32] Jane G. Gravelle and Donald J. Marples (n 14).

[33] *ibid.*

[34] *ibid.*

[35] Thomas Franck, 'Federal Deficit Increases 26% to $984 Billion for Fiscal 2019, Highest in 7 Years' (*CNBC*, 2019) <https://www.cnbc.com/2019/10/25/federal-deficit-increases-26percent-to-984-billion-for-fiscal-2019.html> accessed 2 May 2021.

At the same time, there was an increase of USD1 trillion in share buybacks in 2018, the largest since 2004.[36] Liu and Swanson concluded that repurchases are made simultaneously to ensure the capital market is overloaded with demands in a short period, leading to a sharp increase in share prices[37] and the 'maximiz[ation of] shareholder value'.[38] With some exceptions that are discussed later in the paper, no US law prohibits such behaviour. However, these actions are contrary to market law, which states that the share price of a company flows from its performance and profits. In other words, share repurchases enable companies with poor performance and low or no profits to increase their share prices. The tax cuts implemented by the Trump administration thus enable this practice to be carried out more frequently as companies have access to additional income.

Meanwhile, following the enactment of the COVID-19 Relief Law and SE OJK No. 3/SEOJK.04/2020, the Indonesian Stock Exchange (IDX) noted that issuers in Indonesia were planning to buy back IDR19.6 trillion in shares.[39] As of 9 November 2020, 74 issuers had carried out share repurchases totalling IDR 4.21 trillion without the need for any general meeting of shareholders (GMS).[40] Furthermore, on 12 November 2020, the OJK publicly announced that a further 60 issuers were planning to buy back shares, with 33 issuers planning to repurchase the shares by the end of December 2020 with a total share repurchase value of IDR 17.28 trillion.

The positive correlation of share repurchases with an increase in share prices in the Indonesian market was confirmed by Rumapea and Astri, who examined

---

[36] Jane G. Gravelle and Donald J. Marples (n 14).

[37] Harrison Liu and Edward P. Swanson, 'Is Price Support a Motive for Increasing Share Repurchases?' (2016) 38 Journal of Corporate Finance.[25-26].

[38] William Lazonick, 'The Quest for Shareholder Value: Stock Repurchases in the US Economy' (2008) 74 Dans Recherches Economiques de Louvain.[489].

[39] Citro Atmoko, 'BEI: Realisasi Buyback Saham Tanpa RUPS Capai Rp1,72 Trilyun' (*Antara News*, 2020) <https://www.antaranews.com/berita/1557312/bei-realisasi-buyback-saham-tanpa-rups-capai-rp172-triliun> accessed 2 May 2021.

[40] Retno Wulandhari, 'Realisasi Buyback Saham Capai Rp4,21 Trilyun' (*Republika*, 2020) <https://www.republika.co.id/berita/qjm0b1383/realisasi-embuybackem-saham-capai-rp-421-triliun> accessed 2 May 2021.

share repurchases from 2014 to 2017.[41] They concluded that share repurchases have a significant positive effect on both stock prices and stock returns.[42]

In summary, following the enactment of the COVID-19 Relief Law and SE OJK No. 3/SEOJK.04/2020, issuers performed a series of share buybacks with significant nominal values. However, after the 12 November announcement, neither the OJK nor the IDX disclosed any further data regarding either planned or realised share buybacks. The IDX and OJK also failed to disclose data on the total value of share buybacks by issuers in 2019 and 2020, making comparisons impossible.[43]

Share Repurchase Restrictions in the US and Indonesia

Share repurchases are regulated in the US. The US capital market regulatory authority, the Securities and Exchange Commission (SEC), stipulates four conditions for share repurchases, particularly those that occur through stock exchange trading.[44] These restrictions of share repurchase are designed to hinder the manipulation of share prices while still allowing issuers to buy back their shares.

First, the repurchase of shares must be made through one brokerage entity or securities broker per day. This enables market supervisors to effectively oversee buybacks, limiting firms' ability to mask transactions by spreading them across many brokers.

Second, the repurchase of shares may not be carried out during the opening of the US stock exchange nor in the last 30 minutes before the close of trading. This prevents directional trading that may manipulate the share price.

---

[41] Melanthon Rumapea and Astri, 'Analisis Pengaruh Stock Buyback Terhadap Harga Saham Dan Return Saham Pada Perusahaan Yang Terdaftar Di Bursa Efek Indonesia' (2019) 2 Jurnal Akuntansi dan Keuangan Methodist.[173].

[42] *ibid*.

[43] As of 2 May 2021, the OJK has not published statistics regarding share buybacks carried out by issuers during 2019-2020: 'https://www.ojk.go.id/id/kanal/pasar-modal/data-dan-statistik/statistik-pasar-modal/Pages/Statistik-Mingguan-Pasar-Modal---April-2021.aspx'. The IDX has also not published a history of share purchases during 2019-2020: 'https://www.idx.co.id/perusahaan-tercatat/aksi-korporasi/'.

[44] Securities and Exchange Commission, 17 CFR Parts 240, *Purchases of Certain Equity Securities by the Issuer and Others*, 10b-18(b)(1)(1)–(4).

Third, there are limits on the maximum price for which an issuer can bid or buy its shares. These limits depend on the type of shares being repurchased (e.g. reported shares, exchange-traded, or NASDAQ). Under these restrictions, issuers may not place a bid greater than the highest independent published bid or the last independent transaction price. This effectively prevents issuers from artificially increasing share prices through buybacks.

Finally, issuers may only repurchase a maximum of 25% of the average volume of shares traded per day. This restriction is important because the SEC does not regulate the maximum or minimum prices of the shares traded in the market but rather regulates prices indirectly through this type of restriction. It also prevents major share buyback plans from being carried out in a single day, effectively preventing unstable price spikes in day-to-day trading.

In contrast, Indonesia has relatively loose regulations concerning share repurchases. The main regulation in this area is Law No. 40 of 2007 concerning limited liability companies (LLC Law), as well as OJK Regulation No. 30/POJK.04/2017 concerning the buyback of shares issued by public companies. The LLC Law stipulates that companies can buy back issued shares, subject to restrictions concerning their net assets, the amount of issued capital, and a meeting of shareholders, as described in more detail below.

Share repurchases may not cause the net assets owned by a company to be less than the total issued capital of the company plus the mandatory reserve that it has set aside.[45] The LLC Law also stipulates that the nominal value of the repurchased shares must not exceed 10% of the total issued capital in the company.[46] Finally, the share buyback activity must also be approved by the GMS.[47] However, on 9 March 2020, the OJK determined that the fall in CSPI due to the COVID-19 pandemic represented a significant fluctuation in market conditions. Thus, the regulator

[45] Article 37 Paragraph (1) a of *the Law No 40 Year 2007 concerning Limited Liability Companies*.
[46] *ibid*.
[47] Article 39 Paragraph (1), *ibid*.

authorised issuers to buy back their shares without first going through the GMS mechanism.

Insufficiency of Indonesian Share Repurchase Restrictions

The enactment of the COVID-19 Relief Law and SE OJK No. 3/SEOJK.04/2020 means that the Indonesian share buyback regulations are insufficient. Any reduction in the corporate income tax rate reduces the financial obligations that companies owe to the state. As a result, they may retain greater profits, part of which can be reserved for buying back shares. The removal of the GMS requirement may also encourage companies to carry out more share repurchases.

This, in turn, may reduce the volume of shares circulating in the public market, thus potentially increasing share prices.[48] This share repurchase policy may slow the rate of the fall in CSPI, which experienced a sharp decline in the first half of 2020. However, the authorisation of excessive share buybacks is an ineffective strategy. This is confirmed by Hossain and Ahmad, who found that share buybacks can cause issuers' equity to decrease to the point that they are forced to borrow long-term funds to carry out such repurchases.[49]

When an issuer repurchases shares, there is a risk that its level of liquidity will decrease. Liquidity helps issuers survive when their sales and profits decline.[50] Further, Lazonick, Sakinc, and Hopkins noted that share buybacks do not contribute anything to a company's production capability. Share repurchases can also undermine a company's innovation capabilities,[51] reduce the dividend payout ratio, and disrupt the dynamics of company growth that link productivity to the income of

---

[48] William Lazonick and Matt Hopkins, 'How "Maximizing Shareholder Value" Minimized the Strategic National Stockpile: The $5.3 Trillion Question for Pandemic Preparedness Raised by the Ventilator Fiasco' (2020) 127 Working Papers of Institue for New Economic Thinking.[18].

[49] Md. Musharof Mossain and Afzal Ahmad, 'Is Buying Back of Shares a Dangerous Financial Strategy?' (2015) 15 Global Journal of Management and Business Research: B Economics and Commerce.[35].

[50] William Lazonick,[*et.,al.*], '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> accessed 4 May 2021.

[51] William Lazonick, 'Stock Buybacks: From Retain-and-Reinvest to Downsize-and-Distribute' (2015) 1 Effective Public Management.[18].

employees, leading to injustice, employee instability, and decreased productivity.[52] Ultimately, the authors concluded that the buyback of shares on the open market should be banned entirely because it undermines the achievement of stable and equitable economic growth.[53]

Appropriate Share Repurchase Regulations in Indonesia following the COVID-19 Relief Law

As discussed in the previous section, even before the COVID-19 Relief Law and SE OJK No. 3/SEOJK.04/2020, Indonesia had relatively lax restrictions on share buybacks. Therefore, the government must tighten restrictions on share repurchases to prevent a large-scale increase, as seen in the US following the introduction of the TCJA, as well as to promote stable and equitable economic growth under the principles of family economy in the 1945 Constitution of the Republic of Indonesia. The new regulatory approach should impose restrictions on the conditions of repurchase, time of repurchase, price, and volume, as these matters are not presently regulated. The new regulation should also impose an obligation for companies that receive income tax cuts to allocate a certain percentage of their income to increase their employees' salaries, the dividend payout rate, or the budget for their social responsibility programs. These restrictions should be enacted in the form of an amendment to the LLC Law based on Rule 10b-18 of the US Securities Exchange Act of 1934.

This amendment should include the following measures:

1. Shares should not be able to be repurchased immediately after the opening of trading or immediately before the close of trading. This is because the purchase of a large volume of shares at such times is a significant indicator of the direction of stock trading, meaning that it can have a significant impact on the volume and price of shares. Given the current opening and closing times of the Indonesian market,[54] we recommend that share repurchases be prohibited

[52] *ibid*.
[53] *ibid*.
[54] Indonesia Stock Exchange, 'Jam Perdagangan' (*Indonesia Stock Exchange*, 2021) <https://www.idx.co.id/investor/jam-perdagangan/> accessed 28 August 2021.

from 9:00 to 10:00 WIB (i.e. the first hour of trading) and from 13:49 to 14:49 WIB (i.e. the final hour of trading).

2. Share repurchases should be restricted to one broker or securities firm per buying activity per day. Requiring issuers to use one broker each day will simplify the supervisory task of regulators, including the Indonesian Financial Services Authority and the IDX. Allowing share repurchases to be conducted via several brokers in a single day would enable trading activity to be masked or disguised, compromising the integrity of the market.
3. Lawmakers should limit the share volume that can be bought back by the issuer based on the average number of shares traded per day. The current regulations on share repurchase in the LLC Law already include limitations regarding net assets and issued capital. However, the LLC Law does not limit share repurchase volume (i.e. the average number of shares traded per day), making the Indonesian securities market prone to manipulation and volatility and creating less stable market conditions for investors. A share repurchase volume limit would prevent these consequences. The limit adopted in Indonesia may be lower than the 25% restriction adopted in the US because the Indonesian market already has price ceilings and floors for traded shares.[55]
4. Issuers' bids for their shares should not exceed the current highest independent published bid. This restriction prevents issuers from artificially raising their share prices by making higher price bids, thus ensuring greater independence and enabling prices to be determined by the market.
5. Companies that receive corporate income tax cuts should be obliged to allocate part of their profits to increasing incomes or bonuses for their workers. Increasing wages supports the workers' welfare, thus avoiding unnecessary strikes that may damage companies' productivity. Higher salaries are also beneficial for the broader economy, as shown by Strom and Nasstepad, who found a strong correlation between productivity growth and wage growth based on a fair distribution of the gains of labour productivity growth and technological progress between a company and its workers.[56] Thus, we recommend that the government mandates that companies receiving tax cuts allocate a portion of the resulting profits to increase their employees' wages.
6. Companies that receive corporate income tax cuts should also allocate a portion of their profits to increasing dividends for their shareholders. While distributing dividends may not be as tax-efficient as share buybacks, the former is better for the economy. Distributing dividends is equivalent to giving cash to the investors, which they then spend in the real economy. This is confirmed by Dackehag and Hansson, who concluded that the more dividends are given

[55] The Indonesia Stock Exchange has adopted the concepts of *angka reject atas* (i.e. maximum price) and *angka reject bawah* (i.e. minimum price), which limit the fluctuations in share price that can occur in a single day of trade.

[56] Servaas Storm and C.W.M. Nasstepad, 'The Productivity and Investment Effects of Wage-Led Growth' (2011) 3 International Journal of Labour Research.[213].

to shareholders, the more the economy will grow.[57] While share buybacks can be used to incentivise short-term capital gains for the shareholders, they are unsustainable and do not contribute anything to the real economy.[58] Based on these arguments, and considering the large sums of cash that may be hoarded by Indonesian companies when the tax cuts under the COVID-19 Relief Law come into effect, lawmakers should require companies that receive tax cuts to allocate a portion of their profits to increasing dividends.

Conclusion

This research suggests that corporate income tax cuts are ineffective at increasing foreign direct investment inflows and stimulating economic growth. In the US, the TCJA directly contributed to the country's massive budget deficit in the 2018 fiscal year. It also directly contributed to companies having an unprecedented amount of cash, resulting in a sharp increase in share buybacks of up to USD1 trillion in 2018. Since the implementation of the TCJA, there has been limited economic growth in the US.

Indonesia's regulations regarding share repurchases are relatively loose when compared to those of the US. Therefore, Indonesia's laws may be insufficient to limit the potential increase in share repurchases by issuers following the enactment of the COVID-19 Relief Law and SE OJK No. 3/SEOJK.04/2020. This endangers the government's plan for national economic recovery. For this reason, the Indonesian LLC Law should be amended to add the following provisions:

1) a prohibition of share repurchases just after the opening and just before the closure of trading;
2) a requirement that share repurchases be conducted through one security broker per day;
3) a limitation on the maximum volume of share repurchases based on the average volume of shares traded per day;
4) a limitation on the highest price for which issuers may bid on their shares; and
5) an obligation on entities that receive income tax cuts to allocate part of their profits to increasing workers' income or bonuses and shareholders' dividends.

[57] Margareta Dackehag and Asa Hansson, 'Taxation of Dividend Income and Economic Growth' (2016) 4 Knut Wicksell Working Paper.[16].

[58] William Lazonick and Matt Hopkins (n 48).

Bibliography

Citro Atmoko, 'BEI: Realisasi Buyback Saham Tanpa RUPS Capai Rp1,72 Trilyun' (*Antara News*, 2020) <https://www.antaranews.com/berita/1557312/bei-realisasi-buyback-saham-tanpa-rups-capai-rp172-triliun> accessed 2 May 2021.

Direktorat Jenderal Anggaran Kementerian Keuangan, 'Kilas Balik Kinerja APBN 2020' (*Direktorat Jenderal Angagran Kementerian Keuangan*, 2020) <https://anggaran.kemenkeu.go.id/in/post/kilas-balik-kinerja-apbn-2020> accessed 28 August 2021.

Harrison Liu and Edward P. Swanson, 'Is Price Support a Motive for Increasing Share Repurchases?' (2016) 38 Journal of Corporate Finance.

Indonesia Stock Exchange, 'Jam Perdagangan' (*Indonesia Stock Exchange*, 2021) <https://www.idx.co.id/investor/jam-perdagangan/> accessed 28 August 2021.

Jane G. Gravelle and Donald J. Marples, 'The Economic Effects of the 2017 Tax Revision: Preliminary Observations' (*Congressional Research Service*, 2019) <https://fas.org/sgp/crs/misc/R45736.pdf> accessed 25 April 2021.

Law No 2 Year 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and / or in the Context of Facing Threats that Enda.

Law No 40 Year 2007 concerning Limited Liability Companies.

Leonardo Baccini, [*et.,al.*], 'Corporate Tax Cuts and Foreign Direct Investment' (2014) 33 Journal of Policy Analysis and Management.

Margareta Dackehag and Asa Hansson, 'Taxation of Dividend Income and Economic Growth' (2016) 4 Knut Wicksell Working Paper.

Martina Lawless, 'Do Complicated Tax Systems Prevent Foreign Direct Investment?' (2012) 80 Economica.

Md. Musharof Mossain and Afzal Ahmad, 'Is Buying Back of Shares a Dangerous Financial Strategy?' (2015) 15 Global Journal of Management and Business Research: B Economics and Commerce.

Melanthon Rumapea and Astri, 'Analisis Pengaruh Stock Buyback Terhadap Harga Saham Dan Return Saham Pada Perusahaan Yang Terdaftar Di Bursa Efek

Indonesia' (2019) 2 Jurnal Akuntansi dan Keuangan Methodist.

Michael Smolyansky, [*et. al.*], 'U.S Corporations' Repatriation of Offshore Profits' (*9The Federal Reserve*, 2018) <https://www.federalreserve.gov/encores/notes/feds-notes/us-corporations-repatriation-of-offshore-profits-20180904.html> accessed 2 May 2021.

Peter Egger and Horst Raff, 'Tax Rate and Tax Base Competition for Foreign Direct Investment' (2015) 1 International Tax and Public Finance.

Retno Wulandhari, 'Realisasi Buyback Saham Capai Rp4,21 Trilyun' (*Republika*, 2020) <https://www.republika.co.id/berita/qjm0b1383/realisasi-embuybackem-saham-capai-rp-421-triliun> accessed 2 May 2021.

Safri Nurmantu, *Pengantar Perpajakan* (Granit Publishing 2003).

Servaas Storm and C.W.M. Nasstepad, 'The Productivity and Investment Effects of Wage-Led Growth' (2011) 3 International Journal of Labour Research.

Sri Mamudji, [*et. al.*], *Metode Penelitian Hukum Dan Penulisan Hukum* (Badan Penerbit FH UI 2005).

Tax Policy Center, 'How Did the TCJA Affect the Federal Budget Outlook?' (*Tax Policy Center*, 2020) <https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-federal-budget-outlook> accessed 12 May 2021.

The Business Time, 'At Glance: Tax Rates Across ASEAN' (*The Business Times*, 2018) <https://www.businesstimes.com.sg/asean-business/at-a-glance-tax-rates-across-asean> accessed 2 May 2021.

Thomas Franck, 'Federal Deficit Increases 26% to $984 Billion for Fiscal 2019, Highest in 7 Years' (*CNBC*, 2019) <https://www.cnbc.com/2019/10/25/federal-deficit-increases-26percent-to-984-billion-for-fiscal-2019.html> accessed 2 May 2021.

Tony Marsyahrul, *Pengantar Perpajakan* (Sikal Sakti 2007).

William Lazonick, 'The Quest for Shareholder Value: Stock Repurchases in the US Economy' (2008) 74 Dans Recherches Economiques de Louvain.

——, 'Stock Buybacks: From Retain-and-Reinvest to Downsize-and-Distribute' (2015) 1 Effective Public Management.

William Lazonick and Matt Hopkins, 'How "Maximizing Shareholder Value" Minimized the Strategic National Stockpile: The $5.3 Trillion Question for

Pandemic Preparedness Raised by the Ventilator Fiasco' (2020) 127 Working Papers of Institue for New Economic Thinking.

William Lazonick, [*et. al.*], '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> accessed 4 May 2021.

Young Lee and Roger H. Gordon, 'Tax Structure and Economic Growth' (2005) 1 Journal of Public Economics.

HOW TO CITE: Didik Farkhan Alisyahdi and Diffaryza Zaki Rahman, 'Re-regulating Indonesian Stock Buybacks: Lessons from the United States' Tax Cuts' (2021) 36 Yuridika.