

LEGAL RELATIONS IN THE USAGE OF LETTER OF VALUE AND BANKING INSTRUMENTS AS A MEANS OF PAYMENT

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Abstract

In order to facilitate transactions, the banking sector determines several forms of payments, such as in real money, paper based and e-money. As a form of payment and receivable account, paper money holds function equivalent to real money, which are authenticated in negotiable instruments. The usage of negotiable instruments and the cashing are regulated in several agreements between the two parties, which are also involve another party like Bank Indonesia or the affiliates. This research is conducted with the intention of observing the forms and systems of payment using Securities and Banking Notes, as well as how the legal relationship between the issuer of securities and the holder of securities. Normative legal research methods is used to find the basis, principles and doctrines of law as an effort to overcome the legal issues that are the focus of research. Although, in such a contract, the legal basis of law is needed since negotiable instruments are often used as a payable form in several transactions which affects in ownership changes. Thus, for these cases, there are four theories that can be used: Creatief Theories, Vertoning Theories, Overeenkomst Theories, and Redelijkheidsdist Theories. The issuance of SBPU is done to regulate the rate of demand deposits that replace the function of money, SB also holds a function as a letter that guarantees the receivables and obligations of the party who has a debt.

Keywords: Banking Sector, Paper money, Letter of Value, Banking Instruments

INTRODUCTION

In the world of trade, payment traffic is one of the most important, and banks play a major role in it. Banks are one of the economic drivers that also have several objectives, including strengthening national development that has an impact on economic growth, economic equity to national stabilization that allows the welfare of the people (Hermansyah, 2011). In addition to playing a role in cash payments, banks also play a role in non-cash payments. In this case, Bank Indonesia as the payment system authority vigorously promotes the use of demand deposits in financial turnover and payments. This is done to maintain the growth of quarterly money, as well as to educate the public to become more familiar with banking practices, one of which is with payment instruments (Mahameru, et.al., 2022).

Giral money is another term to refer to non-cash money, or a payment system without direct cash. Some examples of this money include checks or bilyet giro issued by banks in order to regulate payment traffic. Checks or bilyet giro use the format of paper based (script). Notes are securities issued by a bank so that a person/institution can withdraw funds from customers who have a current account or checking account at the bank that allows facilities such as Credit Notes, Bilyet Giro, Debit Notes and Cheques. In addition to paper based payments, banks also provide card-based services or card based (APMK) such as credit cards, ATM/Debit cards, and prepaid cards. Electronic based services are now available such as e-money (electronic money) and mobile banking (mobile based) (Prezy, 2022).

The banking products included in this money are referred to as Surat-Surat Berharga, whose regulatory system is under the Indonesian commercial law system, which is contained in the Kitab Undang-Undang Hukum Dagang (KUHD) and some outside the KUHD. Securities regulated by the KUHD are certainly different from those regulated outside the KUHD. This is because KUHD is formally tasked with collecting provisions governing the function of means of payment. In its development, Securities regulated outside the KUHD are more dynamic, because technological advances and the business world have a significant impact on the development of the legal system, especially those related to payment systems.

To look further into the chiral payment system, this research is conducted with the intention of observing the forms and systems of payment using Securities and Banking Notes, as well as how the legal relationship between the issuer of securities and the holder of securities.

RESEARCH METHOD

This research uses normative legal research methods, where library materials become a reference in legal research. This method is used to find the basis, principles and doctrines of law as an effort to overcome the legal issues that are the focus of research. The data collected and processed is secondary data from existing literature. In this research method, data is processed to find information as well as theoretical and legal foundations.

Secondary legal materials in this research are literatures that are consistent with the research problem. Additional materials (tertiary) come from legal dictionaries, the internet and KBBI (Big Indonesian Dictionary). To process the data above, a conceptual approach and a statutory approach were used. Furthermore, the data is also processed to provide descriptive research results, so that the descriptive analysis method is used to observe what forms and payment systems using Securities and Banking Notes and how the legal relationship between the issuer of securities and the holder of securities.

RESULTS AND DISCUSSION

Forms of Banking Securities and Notes

There is no definition of securities in the KUHD, but it is stated in Article 469 of the KUHD, namely:

For the theft or disappearance of valuable goods such as gold, silver, gems and other valuable goods, money and valuable letters, or perishable goods....

In foreign languages, Waarda Papier is the Dutch term for securities. In other languages (USA and UK), securities are known as negotiable instruments. Another term used is Papier van Waarda which can be freely translated as Letter of Value. These are the terms used to define letters that are capable of replacing payment functions other than cash. Given their cash-equivalent function, these securities can undoubtedly be traded and exchanged for cash (equivalent to negotiable instruments) (Prodjodikoro, 1966). Given their function to be traded and exchanged for cash as negotiable instruments (Prodjodikoro, 1966), these paper-based payment instruments can be said to be valuable when they have a value equivalent to the underlying bond. This is because such instruments are made to be transferable or tradable (Simanjuntak, 1981).

Based on the definition above, it can be concluded that one of the main characteristics of Securities is that they are negotiable (transferable, transferable, tradable and tradable) as a means of payment. This is also regulated in Law No. 7 of 1992 on Banking which has been amended into Law

No. 10 of 1998 (Banking Law). This law defines securities as debt recognition letters, bonds, shares, bills of exchange, credit securities, any derivatives, other interests or obligations of the issuer that are commonly traded in the money market or capital market.

There are several types of Banking Securities and Notes that are used and considered valid in banking payments, including:

a. Wessel

This type of Securities involves several parties, such as related parties (trekker), related or involved parties (bertokenne), recipient (nemer), holder (houder), and endorser (endossant). Formally, it is issued with the date and place of issue, and the issuer gives an unconditional mandate to the bertokenne to pay a certain amount to the holder or his nominee at the stated place and date (Rahman, 2013). In a money order, there are also several formats such as the date and place of issue that must be listed, the payment order and the parties involved in the payment.

b. Check

According to Banking Law Number 10 of 1998, a check is a payment method by making a withdrawal from a deposit (giro) that can be made at any time. This payment method itself is taken from the English term, cheque, which means to match, show or see. KBI also defines a check as "a written order from an account holder to a designated bank to pay the holder a sum of money" (Hermansyah, 2011). In everyday language, this check can be understood as a warrant, which contains an order from the issuer to the interested party (bank) to make a payment of a certain amount to the recipient (name/party) according to the place and time it must be paid.

c. Bilyet Giro

Bank Indonesia Circular Letter Number 4/570/HPPB/PbB dated January 24, 1972, defines bilyet giro as a payment in the form of a customer order letter in a standardized form to the bank as a depositor of funds to transfer the nominal amount of money originally in the owner's account to the party ordered to receive (and listed by name), either at the same bank or through cross-bank (Muhammad, 2007). The term Surat Berharga comes from the Dutch language, where bilyet means letter, and giro means customer deposit. In this payment system, as also discussed above, the transfer of funds can be done through several securities, be it bilyet giro, checks, or other payment methods such as book-entry (Hermansyah, 2011).

d. Promissory Note

In the Commercial Code, the contents of promissory notes are listed in Article 229e, Article 229i, Article 229j and Article 229k. The term promissory note, or promesse in Dutch, refers to a trade agreement that contains an acknowledgment of debt and its amount from the debtor. Because it contains the amount owed by the debtor, it can be traded. Essentially, promesse aam toonder or which means promissory note for bearer, contains the ability to pay like an acceptance letter, which is valid without the element of demand (Simanjuntak, 1981).

e. Bank Indonesia Certificate

Through the Decree of the Board of Directors of Bank Indonesia No. 31/67/KEP/DIR, Bank Indonesia certificates are defined as securities on show in rupiah issued by Bank Indonesia as an acknowledgment of short-term debt with a discount system. These securities are regulated in Presidential Decree No. 5 of 1984 concerning the Issuance of Bank Indonesia Certificates. The implementing regulation is the Decree of the Board of Directors of Bank Indonesia No.28/84/KRP/DIR on the Issuance and Trading of Bank Indonesia Certificates which is further amended by the Decree of the Board of Directors of Bank Indonesia No. 31/67/KEP/DIR on the Issuance and Trading of Bank Indonesia Certificates and Rupiah Investment, dated July 23, 1998 (Hermansyah, 2011).

f. Money Market Securities

Simply put, Money Market Securities are short-term securities that can be traded at a discount with financial institutions approved by Bank Indonesia or directly with Bank Indonesia itself (BI) (Hermansyah, 2011). According to its type, this type of securities is divided into two types: promissory notes (acceptance) and bills of exchange. The first type of promissory note (acceptance note) is a note that includes the date and place of issuance, which serves as evidence of the ability (unconditional) issued by the issuer as an acknowledgment of debt to pay to the holder or bearer, which payment will be made within a time determined by the issuer itself. This letter is issued in the form of acceptance of credit from banks or non-bank financial institutions for financing one type of activity or for interbank loans themselves.

g. Commercial Paper

Commercial paper (CP) is one of the securities that serves as a short-term debt recognition, which is within two (2) to two hundred seventy (270) days issued by a company, in order to borrow fresh money to other parties to buy a bond without providing anything as debt collateral. Although

unsecured, these securities are sometimes accompanied by discounts and interest (Hermansyah, 2011). In these securities, there are several related parties such as issuer (issuer), arranger (arranger), issuing agent (issuing agent), investor (investor), paying agent (paying agent), securities dealer (dealer) and rating company (rating agency).

In contrast to the Conventional Banking system, Islamic Banking (which is regulated in the Islamic Banking Law and listed in Law No. 21 of 2008) does not provide an explanation of Securities, but in practice still uses terms such as deposits (funds managed by Islamic Banks and entrusted by customers with Wadi'ah contracts or other Akad in accordance with Sharia principles) in the form of Demand Deposits, Savings, or other appropriate forms. In addition to deposits, there are also current accounts that have functions such as withdrawals, and are in the form of checks and Bilyet Giro which have the same function as conventional banking (Suhaidi, 2022).

Payment system of securities and bank notes in payment activities

In payment activities, securities have a specific payment system in the cross-payment banking system which system is discussed as follows:

- a. Wessel

The regulation of wessel is contained in Articles 137-141 of the KUHD. In this SB, payment is made by submitting a certain nominal stated in the draft by the acceptor, which is addressed to the holder of the draft in order to fulfill the presentation. So, if we take a step back, the purpose of issuing SB is for payment and currency (letter de change). This provision is also discussed in Article 137 Paragraph (1) of KUHD "to obtain payment, the holder of a bill of exchange must show the bill of exchange to the bearer or acceptor at his place of residence or where the bill of exchange is domiciled on the day of payment or on the next two business days".
- b. Check

In payment, a cheque can be used as a payment system according to the time listed in the cheque presented to the bank, even if the cheque is actually presented for payment before the day listed as the day of issue. In short, this SB is issued on the day of its presentation (Prodjodikoro, 1966). Then, the funds that come out must match the amount of funds in it, otherwise, the banker / party concerned can only wait until the amount of funds is sufficient or pay part of it.
- c. Bilyet Giro

In the issuance of SB, there must be a transaction value because of the trade between the two parties concerned and agree on payment by bilyet giro, and means that the name listed in the bilyet giro must make payment for the trade carried out by the issuer of the bilyet giro and the recipient (Prodjodikoro, 1966). According to its function, bilyet giro is used as a cashless book-entry order. In this SB, the date of issuance and effective date are also listed. Before the effective date, bilyet giro can already be circulated, but its function is only as a credit payment instrument. Then, although this SB does not have a special clause, it is not transferable through endorsement.
- d. Promissory Note

In trade traffic, promissory notes on bearer/designate are actually not widely practiced. The regulation of this promissory note is contained in Article 229i of the KUHD which stipulates that payment of this bill must be made no later than six days after receipt of the promissory note as payment. If it is realized that the promissory note is not paid within this timeframe, the holder must demand the revocation of the promissory note, and is threatened with penalties or loss of the right to demand payment, although not losing the right as a signatory to the promissory note.
- e. Bank Indonesia Certificate

These are issued by the government, and contain short-term debt.
- f. Money Market Securities

SBPU are traded by BI and other licensed financial institutions at a discount.
- g. Commercial Paper

Without any collateral, commercial paper is issued by certain companies to investors as a debt instrument.

Legal Relationship between the issuer and holder of Securities and banking instruments

In the issuance of SB, it must be followed by the legal basis behind the relationship between the issuer and the SB holder (Mochtar, 2021). The background of the relationship can occur as a result of sale and purchase transactions or debts and receivables which in the agreement will be paid through Securities. Only, if there is no engagement between the two parties, due to several things such as the fall of SB into the hands of a second party who is not involved in a direct engagement with the issuer, then there must be a legal basis that regulates it. To overcome problems like this, there are four (4) theories related to SB: Creation Theory (Creatief Theorie), Appointment Theory (Vertoning Theorie),

Agreement Theory (Overeenkomst Theorie) and Appropriateness Theory (Redelijkheidst Theorie) (Muhammad, 2007) which will be explained as follows:

a. Creation Theory (Creatief Theorie):

This theory was coined by a German jurist named Einert, who said that the legal element in the binding of the SB between the issuer and the holder is the signature on the SB, which can be referred to as the form of the binding (Aprita, 2021). However, there are doubts in this theory that question whether the statement of one party alone with a signature can give rise to an engagement. In its enforcement, the SB issuer must continue to perform its obligations regardless of whether the SB holder is honest or not. In the case of SB theft, the Civil Code states that the original owner has the right to demand the SB from the thief/collector for a period of three years. Unfortunately, this does not apply if the SB holder obtained it from the public market.

b. Appointment Theory (Vertoning Theorie)

This theory was proposed by a Dutch jurist named Land, who stated that the binding of the SB between the issuer and the holder is through the legal basis of the appointment of the letter to the debtor. Then, after the binding, the debtor (issuer) must pay according to the date that is bound, or with compensation for the bills listed. When examined with the statutory provisions, the realization of this theory is very contrary to the real conditions.

c. Covenant Theory (Overeenkomst Theorie)

The nature of this agreement was expressed by a German legal scholar, Thol, who revealed that the basis of an SB is an agreement and this can be categorized as a legal act involving both parties.

d. Appropriateness Theory (Redelijkheidst Theorie)

This theory was expressed by a German legal scholar named Grunhut who revealed that the responsibility of the issuer or drawer of a check will apply as long as the holder receives or obtains this SB honestly. However, again, this theory is still questionable because it claims whether or not it is valid through unilateral actions from the side of the SB issuer alone.

CONCLUSION

In its use, the issuance of SBPU is done to regulate the rate of demand deposits that replace the function of money for the fulfillment or execution of achievements. Thus, SB holds a function as a letter that guarantees the receivables and obligations of the party who has a debt. So, in practice, creditors must utilize their bills before maturity, or sell their rights to other rights with agreement with the debtor. In addition to fulfilling the function of debt or obligation, there is also a basic bond that becomes a legal relationship on certain agreements or transactions. In addition to functioning as a substitute for cash, demand deposits can be considered equivalent to cash, where funds collected in one particular instrument can be used as financing funds to support productivity. In its implementation, SB can also be transferred from one party to another before the maturity period and can be used as a means of payment, rights to bills and evidence thereof.

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