

Prudential Principles in Issuing Medium-Term Debt Securities

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Abstract

Medium Term Notes (hereinafter MTN) is a form of investment activity for MTN holders and alternative financing for companies based on a sale and purchase agreement between the issuing company and the MTN holder company as the capital provider, where there is a promise of giving interest every month by the issuer. Problem Formulation: 1. What is the Position of MTN as a Medium-Term Debt Securities? 2. How is the Application of Legal Certainty and Protection in the Issuance and Payment of MTN as Medium-Term Debt Securities? Conclusion: 1. MTN is a debt capital market instrument which is evidence of debt recognition from the company and ownership securities as evidence of capital participation in the company. MTN is a security that contains a statement of debt from the issuer to the MTN holder and undertakes to pay or return the principal amount with interest. OJK stipulates OJK Regulation Number 30 of 2019 concerning the Issuance of Debt Securities and / or Sukuk Conducted Without a Public Offering as a legal umbrella. 2. MTN is a form of securities traded without a public offering on the Indonesia Stock Exchange. The Indonesia Stock Exchange is an institution that organizes market system facilities to bring together securities buying and selling offers between various companies involved in the purpose of trading the securities of companies that have been listed on the Indonesia Stock Exchange.

Keywords: Principles, Issurance, Medium Term Debt Securities, Lawsuits

INTRODUCTION

The development of the economy has caused securities to become one of the instruments that can be utilized to increase capital for a company and a means to invest for investors. The issuance of debt securities by a company, such as bonds and Medium Term Notes (hereinafter MTN), allows a company to obtain capital in an easy way. In addition to that, there are many more benefits that can be obtained by capital seekers if they issue such debt instruments such as easy and flexible issuance compared to bank loan procedures. Interest rates are usually made more favorable for companies compared to bank lending rates which tend to increase.

MTN is one of the debt securities that investors are starting to look at and are interested in. The prospect of issuing MTN or debt securities with medium tenors is getting better amid the instability of the bond market conditions. MTN is one of the financing alternatives for companies because the procedures are easier and cheaper than issuing bonds, the interest that must be paid is also relatively cheaper than loans from banks and more flexible, where the issuing company can design the MTN term according to the company's funding needs.

The implementation of this issuance activity itself is not without problems. There are several fundamental problems in the implementation of this issuance activity, namely the lack of supervisory function from the regulator and also the lack of application of the precautionary principle by the parties in the implementation of the issuance activity, especially carried out by the Issuer and also the monitoring agent or known as the arranger. As a result, many legal problems have arisen in the implementation of MTN issuance activities, such as the filing of many legal proceedings for Penundaan Kewajiban Pembayaran Utang (PKPU) at the Commercial Court and also many criminal reports of alleged fraud and embezzlement which were all committed by MTN holders or Creditors of the MTN Issuer.

The lack of application of the prudential principle and weaknesses in the procedures for implementing this issuance activity are also increasingly evident with the encouragement of external factors that have an impact

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on the global economy, namely Covid-19. The existence of a physical distancing program implemented by WHO has caused many business sectors to switch to online in order to continue carrying out activities according to applicable protocols. This has a huge impact on the financial condition of the community in general, with different cases, ranging from cutting work wages to layoffs. This situation forces them to look for new livelihoods for the sake of survival.

Public statistics released by PT Kustodian Sentral Efek Indonesia (KSEI) in January 2021 show a significant increase in the number of capital market investors. Data from the end of 2018 to the end of 2019 shows an increase in the number of investors from 1,619,372 to 2,484,354. This increase of 53.41% is still lower than the data from the end of 2019 to 2020. By the end of 2020, the number of investors had reached 3,880,753 despite the ongoing pandemic. This indicates that business in the capital market is more of a public choice than the real business which is in a slump during this pandemic due to Large-Scale Social Restrictions (PSBB).

Based on the background description above, the author is interested in raising this issue in the final thesis entitled "PRINCIPLES OF CAUTION IN THE ISSUANCE OF MEDIUM TERM NOTE (MTN)". The author is very interested in analyzing and examining the form of the principle of prudence in the issuance of Medium Term Notes MTN that can be given to holders of medium-term debt securities or medium term notes for defaults experienced in terms of Indonesian Covenant Law, considering the applicable legal provisions governing MTN and that basically the legal relationship between the issuer and the holder of MTN notes is based on an agreement.

LITERATURE REVIEW

This research puts forward various aspects of the theoretical framework, namely the theory of legal protection, the theory of the precautionary principle, and the theory of legal certainty. legal protection theory. The theory of legal protection is the concept of where the law can provide justice, order, certainty, benefit and peace. According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two characteristics, namely prevention (prohibited) can make regulations and punishment (sanction), namely enforcing regulations.

Book III of the Civil Code is one of the products of preventive legal protection. The Civil Code adheres to an open system, so that the parties have the freedom to make agreements, enter into contracts with anyone, determine the contents of the agreement, its implementation and requirements, and determine the form of the agreement. This reflects the principle of freedom of contract contained in Article 1338 of the Civil Code, which reads: "All agreements made legally shall apply as laws for those who make them."

The theory of the Precautionary Principle can be defined as a principle or principles stating that in carrying out its functions and business activities it is obliged to be careful in order to protect public funds that have been entrusted to it. The implementation of the prudential principle is very important to maintain the integrity and survival of financial institutions, as well as to mitigate risks that can harm both the institution itself and the parties related to it.

Some aspects of the prudential principle include Risk Management, Regulatory Compliance, Transparency, Good Corporate Governance, Capital Adequacy, and Liquidity Management. In addition to the aspects already mentioned, there are some additional elements of the prudential principle that are also important in practice, namely Due Diligence, Risk Diversification, Internal Supervision, Audit and Control, Consumer Protection, Stress Testing, Environmental, Social, and Governance (ESG)-related Risk Policies, Conservative Approach in Decision Making, and HR Training and Development.

By integrating all these elements, financial institutions can enhance their ability to withstand various economic conditions, maintain stability, and make a positive contribution to the overall economy. The precautionary principle is an important cornerstone to ensure that business decisions are taken with due consideration and taking into account the various risks that may arise.

Legal Certainty Theory is a matter (state) that is certain, provisions or provisions. Legal certainty is one of the objectives of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who is doing it.

The primary legal materials used in this research are the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Commercial Code, Law Number 8 of 1995 concerning Capital Markets, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 40 of 2007 concerning PT, Law Number 21 of 2011 concerning the Financial Services Authority, Financial Services Authority Regulation Number 3 / PJOK.05 / 2015 concerning Pension Fund Investments. /2015 on Pension Fund Investments, and Financial Services Authority Regulation Number 30/POJK.04/2019 on the Issuance of Debt Securities and/or sukuk conducted without a public offering.

METHODOLOGY

The approach to the problem is to use a normative legal research approach or doctrinal legal research, namely research that is focused on examining the application of positive legal principles or norms. This research is descriptive analytical, namely by revealing laws and regulations relating to relevant legal theories and their implementation to be further linked to the legal problems or issues studied. Legal materials reviewed and analyzed in normative legal research include primary, secondary and tertiary legal materials. Techniques for reviewing and collecting the three legal materials, namely using documentary studies. Processing of legal materials is carried out by grouping legal materials, editing, analyzing legal materials, and drawing conclusions.

RESEARCH RESULTS AND DISCUSSION

The Position of Medium Term Notes As Medium-Term Debt Securities

In POJK No. 3/POJK.05/2015 concerning Pension Fund Investments, MTN is defined as debt securities issued by companies and has a period of one to five years and is registered at the Indonesian Central Securities Depository (KSEI). MTN is a security that shows that the MTN issuer borrows a number of funds from the public and has the obligation to pay interest periodically and the obligation to pay off the principal at a predetermined time to the buyer of the MTN.

MTN issuance based on POJK Number 30 of 2019 can be done in stages, based on Article 33, namely: In the event that the Issuer conducts a Phased Issuance, the Phased Issuance must fulfill the provisions: The issuance can be carried out within a period of 2 (two) years provided that the notification of the implementation of the last Phased Issuance is submitted to the Financial Services Authority no later than the second anniversary of the submission of the issuance documents of EBUS Without Public Offering in the first phase to the Financial Services Authority; and In the event of a rating, EBUS Without Public Offering must obtain a rating that covers the entire value of the Phased Issuance.

The characteristics of bonds and MTNs are actually almost the same, but MTNs have a relatively shorter term than bonds and are offered with greater interest than bonds. MTN is also more flexible in its issuance process than bonds because the issuer does not need to obtain prior permission from the OJK. This product is deliberately issued by companies that need quick funds with a shorter period than bonds. As one of the investment products in the capital market, many companies are interested in issuing MTN because the nature of MTN itself is considered quite attractive, including flexible interest rates and relatively lower than bank lending rates.

Some of the advantages and considerations for issuing MTN are that there is no controlling interest or interference from the owner of the funds or investors buying MTN to the Issuer's company; The Issuer's access to loans or credit to banks has exceeded the credit limit of the banks that are the Issuer's creditors, so that the Issuer can no longer obtain additional credit from the Bank while the Issuer really needs investment funds for its business expansion; MTN interest rates are usually below bank lending rates, so that the Issuer can minimize its operations; and The MTN period can be adjusted to the cash flow of the Issuer, for example for funding needs of around one or two years or even longer up to five years.

These medium-term bonds or MTNs are fixed income securities that are similar to time deposits, but differ in the timing of interest payments and maturity. The time period in Deposits that banks usually offer to their customers is divided into one month, three months, six months and one year, while MTNs usually have a term of one to five years. In MTN, the interest rate payment is known as a coupon which is usually applied and announced at the beginning of the offering period which is paid regularly every three months or six months.

MTN are securities that contain a statement of debt from the issuer to the MTN holder and undertakes to pay or return a certain amount of principal with interest as stated in the debt letter. MTN in principle is proof of a performance from the issuer to the holder, so that between the issuer and the MTN holder an agreement is born. The engagement results in an obligation to perform a performance on the part of the issuer and a right on the part of the MTN holder. The issuance of MTN by the MTN holder is a form of money lending agreement, where the MTN holder is a creditor for the amount of money it lends to the MTN issuer as a debtor.

APPLICATION OF LEGAL CERTAINTY AND PROTECTION IN THE ISSUANCE AND PAYMENT OF MTN AS MEDIUM-TERM DEBT SECURITIES

Although POJK No.30/2019 was issued as a legal umbrella for MTN issuance, the flexibility of MTN issuance tends to decrease and the issuance becomes more complicated so that it has no difference with bond issuance. Based on this, it can be stated that the difference between MTN and bonds lies only in the time period. According to OJK, the issuance of POJK No.30 of 2019 aims to provide protection for investors as MTN holders, consumers and the community, but this POJK regulation does not rule out the risk of default on MTN by securities issuers. Defaults occur due to several factors, such as the activities of issuing companies affected by the Covid-19 pandemic in 2020, so that issuing companies must rack their brains to continue to be able to run a business and pay their obligations if they have debt securities such as MTN.

With the implementation of a more complex process than before, the MTN issuance process becomes not much different from the bond issuance process, potentially making it difficult for prospective MTN issuers to distinguish the MTN issuance process from the bond issuance process. In addition, if the MTN issuance process is not much different from the bond issuance process, companies tend to prefer bonds because they can get a longer maturity period so that in the end MTN becomes less attractive.

Since the issuance of POJK No.30 of 2019, the impact has begun to be seen. The number of MTN issuers in 2020, amounted to 7 (seven MTNs with a total value of Rp.1.20 trillion which is smaller than the MTN issuance only in January 2019 alone reaching Rp.1.90 trillion. The issuance of other debt securities, namely securities in 2023 showed an increasing trend, but the issuance of MTNs in the third quarter of 2023 showed a decrease, reaching Rp.1.7 trillion compared to Rp.4.7 trillion in the third quarter of 2022.

MTN should be regulated and supervised by OJK, because of the need to screen as well as possible the MTN issuers and the MTN issued. The more 'filters' that are applied, the more minimized the risk of MTN default. However, it is also important to note that the 'filters' should not make the MTN issuance process more complex, thus reducing the attractiveness of MTN. POJK NO.30 of 2019 has appropriately regulated the MTN issuance procedure, but it would also be nice if it is accompanied by strengthening other factors that can affect the risk of MTN default such as supervision of related supporting institutions and professions.

Legal protection for investors or MTN holders is something that did not exist before the enactment of POJK No.30 of 2019 because the regulations on MTN issuance are limited to the general regulations applicable in the KUHD and KUH.Perdata. The absence of regulations that specifically regulate the issuance of MTN makes protection from cases of default cannot be realized and minimized. The protection of MTN holders prior to POJK No.30 of 2019 was based on the agreement between the issuer and the MTN holder as outlined in the "MTN Agreement". The guarantor of MTN is generally pledged to the assets of the MTN issuing company, thus making the position of MTN holders only as basic creditors who do not have special rights in repayment, in the event of a default by the issuer as the MTN issuer.

CONCLUSION

OJK stipulates OJK Regulation Number 30 of 2019 concerning the Issuance of Debt Securities and/or Sukuk Conducted Without a Public Offering as a legal umbrella in order to obtain a form of legal protection and legal certainty for MTN. However, in practice POJK Number 30 of 2019 can be said to be a form of OJK's inability to protect consumers, which in this case are investors in the capital market sector. Therefore, OJK as the supervisor in the capital market sector, through the stipulation of POJK Number 30 of 2019, decided to make regulations and tighten the issuance of debt securities and/or sukuk (EBUS).

As many defaults have occurred, it is necessary to be careful for all parties in the issuance of Medium Term Notes (MTN). Prudence is not only for potential investors but also for the Intermediary Company (arranger) in terms of carrying out financial and administrative checks on prospective issuers, then also to the Financial Services Authority (OJK) as a state institution that functions in supervising and even taking action against business actors in this Medium Term Notes (MTN) Issuance.

to the form of securities traded without a public offering on the Indonesia Stock Exchange. The Indonesia Stock Exchange is an institution or company that organizes or provides market system facilities to bring together securities buying and selling offers between various companies or individuals involved in the purpose of trading the securities of companies that have been listed on the Indonesia Stock Exchange. The Indonesia Stock Exchange has duties and functions as written in Article 7 Paragraph (1) of Law No. 8 of 1985 concerning the Capital Market has the task of organizing regular, fair and efficient Securities trading is a process of trading transactions carried out based on clear rules and carried out consistently.

The issuance of Medium Term Notes (MTN) is also vulnerable to default events that can result in problems for related parties due to the lack of application of the precautionary principle by all parties so that legal problems often occur such as civil cases in the form of default lawsuits and special civil cases such as bankruptcy. It is also not new that there are allegations of criminal acts caused by the default of Medium Term Notes (MTN) as evidenced by the many police reports that have arisen in this regard.

While the legal problems that arise will ultimately provide legal certainty for these parties, the main question is whether the legal certainty of these cases provides justice for the parties. So that the aspect of legal protection for the parties is needed in the issuance of Medium Term Notes (MTN) so that there is mitigation by the parties before the issuance of Medium Term Notes (MTN) not after Medium Term Notes (MTN) is issued.

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