

Legal Liability for Issuance of Promissory Note

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Abstract

Promissory notes/promissory notes at the beginning of their development were only recognized as a means of acknowledging debt, but later the promissory notes turned into promissory notes which have the power as securities/negotiable instruments, so that they can function as a medium of exchange for trade in goods and services in the community. The purpose of this study was to analyze legal liability for the issuance of promissory notes. The research method used is normative juridical research. The legal materials used are primary and secondary legal materials. The data collection technique used is literature study related to promissory notes from primary and secondary legal materials. Then the data will be analyzed using qualitative analysis, namely by observing the data and then taking things that can be related to the promissory note from the data that has been collected. The results of this study are promissory notes or acceptance letters are letters of willingness or agreement to pay a certain amount of money to the holder or his successor on a certain day. In Indonesia, the provisions regarding promissory notes or promissory notes are regulated in articles 174 – 177 of the KUHD, where according to the KUHD, this instrument carries a high risk, because in its implementation it does not require a guarantee, therefore for parties who use this instrument as a business activity must be careful heart.

Keywords

Legal liability; promissory note;
promissory note



I. Introduction

The term letter can come from the original term in Dutch orderbrieffe, in French billet an order, in English promissory note. In law, it is also known as promissory and order. A promissory note is also called an acceptance letter. The word accept comes from the French "accept", which means to agree. The word willing or agreed contains a promise to pay, namely the willingness of the signatory to pay a certain amount of money to the holder or his successor at a certain time. So a promissory note or acceptance letter is a promissory note or agreement to pay a sum of money to the holder or his successor on a certain day (Muhammad, 2003:155).

Promissory notes or promissory notes, as a form of negotiable instrument, were already known by the Romans but this aspect could be negotiated with a new promissory note that was formed in the modern era, which began in England, as stated by James M. Ogden (1938:20). As the period when promissory notes were known in England, it was approximately 30 years before the fall of Queen Anne. The promissory notes had been used in practice for some time before eventually becoming the subject of litigation and being regulated in British positive law.

Meanwhile, according to Anglo Saxon law, the definition of a promissory note is: "an unconditional written promise made by one person to another, and signed by the publisher, containing a promise to pay, at the time shown or at a certain time and at a

predetermined date in the future will come, a sum of money, by order or to a designated person or to a carrier, in full (Nickles, Matheson, Adams 1994: 17).

Promissory note/promissory note at the beginning of its development was only recognized as a means of acknowledging debt, but later the letter turned into a promissory note which has the power as a negotiable instrument, so that it can function as a medium of exchange in the trade of goods and services in the community.

As a debt, the receipt of a promissory note will be based on the character and credit position of the issuer of the letter stating the ability to pay the debt (notes). So it can be said that promissory notes can be used to request payment of a sum of money from the publisher, or it can also be said that promissory notes have a value as valuable as money (Kutyn, 2005: 6). Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

In the law there is no formulation or definition of a promissory note. However, Article 174 of the KUHD contains the formal requirements of a promissory note. These formal requirements can be formulated from the meaning or definition of a promissory note "as a letter containing a promissory note or promissory note, which is signed on a certain date and place, with which the signer undertakes unconditionally to pay a certain amount of money to the holder or his successor at a certain date specific date and place"

II. Research Method

The research method used is normative juridical research. The legal materials used are primary and secondary legal materials. The data collection technique used is literature study related to promissory notes from primary and secondary legal materials. Then the data will be analyzed using qualitative analysis, namely by observing the data and then taking things that can be connected with promissory notes from the data that has been collected.

III. Result and Discussion

3.1 Legal Basis Letter Of Promise (Let Of Promise/Askep)

According to the results of the 1930 Geneva conference on uniform arrangements for promissory notes and promissory notes, there are two ways of arranging promissory notes that may be followed and used by participating countries, namely:

- a. detailed settings
- b. arrangement by means of reference to the provisions on money orders

The participating countries may follow one of these methods, which means they may regulate the promissory note separately in detail, or may regulate it by referring to the provisions applicable to the bill of exchange according to the nature of the promissory note.

Indonesian KUHD adheres to the method of appointment. As for the provisions of the promissory note that are in accordance with the nature of the promissory note, it can therefore be applied to promissory notes. According to the provisions of Article 176 of the KUHD, as follows:

1. Provisions regarding endorsements (Articles 110 – 119 KUHD)
2. Provisions regarding payment days (Article 132 – 136 KUHD)
3. Provisions regarding the right of regress in terms of non-payment (Articles 142 – 149, 151 – 153 of the KUHD)
4. Provisions on payments by intervention (Articles 154, 158, 162 of the KUHD)
5. Provisions regarding the issuance of money orders (Articles 166 and 167 of the KUHD)
6. Provisions regarding lost money orders (article 167 a KUHD)
7. Provisions regarding amendments (Article 168 of the KUHD)
8. Provisions regarding expiration (Article 168a, 169 – 170 KUHD)
9. Provisions regarding holidays, calculating grace periods and prohibition of suspension of days (Article 171.171a, 172 and 173 of the KUHD)
10. Provisions regarding money orders that must be paid at the place of residence of a third person in a place other than the place where the person concerned is domiciled (Articles 103 and 126 of the KUHD)
11. Provisions on interest clauses (Article 104 of the KUHD)
12. Provisions regarding differences in the mention of the amount of money to be paid (Article 105 of the KUHD)
13. Provisions regarding the consequences of placing a signature in the absence of the conditions as referred to in Article 106 of the KUHD
14. Provisions regarding the consequences of placing a signature by a person who acts without rights or who exceeds the limits of his rights (Article 107 of the KUHD)
15. Provisions regarding bill of lading in the form (Article 109 of the KUHD)
16. Provisions on aval (Article 129 – 131 KUHD)

Provisions that are not specified in Article 176 of the KUHD do not apply to promissory notes, because such provisions are deemed inconsistent with the nature of the promissory note. All provisions of the promissory note relating to acceptance do not apply to promissory notes. This is due to the different nature of a promissory note with a promissory note. A promissory note is an order to pay, while a promissory note is a letter of promise to pay (Muhammad, 2003: 161 – 163).

In Indonesia, the provisions regarding promissory notes or promissory notes are regulated in articles 174 – 177 of the KUHD, according to the KUHD, a promissory note is an unconditional commitment to pay a certain amount of money on the due date and at a specified place of payment by including the name of the person to whom the payment must be made or to which payment is indicated must be signed by the 20 persons who issued the promissory note. If the promissory note or promissory note does not include a payment due date, it is deemed to have been paid upon appointment.

Promissory note is a promissory note that does not include a payment due date, where payment must be made at any time if requested by the lender. Usually the lender will send a notification with a grace period of several days before the desired payment date. In the case of lending and borrowing money between individuals, the signing of this promissory note is the best way for tax purposes and proof. A promissory note is different from an acknowledgment of debt, usually in an acknowledgment of debt it is only evidence of a person's debt but in the promissory note there is an agreement to make payment for the amount stated on the promissory note. Another use of the promissory note is to finance the funding needs of a company, namely through the issuance or transfer of securities.

3.2 Terms of Attention

In order for a promissory note to be considered a promissory note, it must contain the following :

- a. The mention of "approval letter" is contained in the text itself.
- b. Unconditional ability to pay a certain amount of money.
- c. Determination of the day of payment.
- d. Determination of the place where the payment must be made.
- e. The name of the person to whom the payment is to be made.
- f. The date and place where the promissory note was signed.
- g. The signature of the person who issued the promissory note.

If one of the above is not present, then the letter cannot be said to be a promissory note, unless:

- a. If it does not mention the day of payment, it is considered paid at the time it is shown.
- b. If it does not mention the place of payment, the place of payment then the place of signing is considered as the place of payment, and
- c. If it does not mention the place where it was signed, it is considered signed at the place indicated beside where the signer is.

A promissory note can be issued by a legal subject, either an individual legal subject or a legal entity. Specifically for promissory notes issued by legal entities that are financial institutions as regulated in the Decree of the Minister of Finance No.606/KMK/1995, dated December 19, 1995, in essence, finance companies in issuing promissory notes apply several provisions, namely :

- a. Finance companies are prohibited from issuing promissory notes except as collateral for debts to banks that are creditors.
- b. Finance companies are prohibited from providing guarantees in any form to other parties, and
- c. Promissory notes issued as referred to in letter a above cannot be transferred and authorized to any party (non-negotiable).

Based on letter b above, the finance company is not allowed to be a guarantor of the debt of another party, including in the form of a corporate guarantee. According to article 174 of the Commercial Code, a deed that can be considered a promissory note is as follows;

1. The clause "to a substitute" (order) or the term "promissory note" or "promise to a substitute" must be written in the promissory note.
2. Unconditional ability to pay a certain amount of money.
3. Determination of pay days
4. Determination of place of payment
5. Name of person or successor to whom payment will be made
6. The date and place where the promissory note was signed
7. Signature of the person who issued the promissory note.

If the provisions in Article 174 of the Commercial Code mentioned above are not fulfilled then it cannot be considered as a promissory note as stipulated in Article 175 of the Commercial Code, except;

1. If the day of payment is not specified, the day of payment will be determined at the time the promissory note is presented.
2. If the place of payment is not specifically determined, then the place where the promissory note is signed is considered as the place of payment and also the domicile of the promissory note.

The arrangement of this promissory note is regulated in the Commercial Code, indicating that this instrument is common in the (civil) world of trade. The characteristics of this promissory note in the world of commerce (Adler Haymans, 2010) include;

- a. Not a bank product.

The difficulty of getting a loan from a bank, is one of the causes of this promissory note, obtaining funds through the capital market, the maturity is not long at most one year so it is considered a short-term investment instrument. The basis for the issuance of this promissory note is an agreement between the promissory note issuer and the investor. The issuer must pay at maturity without any reason in accordance with the value stated on the promissory note.

b. No guarantee;

The issuance of promissory notes is basically a good faith from the issuer to be able to pay at maturity, so there is no need for collateral. Trust in the issuer by investors is a guide for investors to want to buy the promissory note.

c. Can be traded;

On the basis of an agreement, promissory notes can be traded without the knowledge of the publisher, but the buyer must confirm with the publisher about the validity of the promissory note so that at maturity it can be billed to the publisher. If the promissory note does not include a name, then whoever brings the promissory note is the owner and has the power to collect it when it is due. At maturity, the promissory note holder must submit to the issuer, the issuer cannot refuse the obligation to pay that must be paid, the promissory note must be billed at maturity if it is not billed there is no obligation to pay immediately, as well as if the bill is late, the issuer cannot charged interest.

d. Risk.

There are many risks faced by promissory notes, such as the risk of no interest, the risk of low purchasing power, and the risk of not being able to pay. If the promissory note is unable to be paid by the issuer, the promissory note holder may take legal action, for example filing for bankruptcy to the promissory note issuer, if the promissory note is recorded in the issuer's financial statements.

Promissory notes can be traded in accordance with the agreement between the buyer and seller without the knowledge of the promissory note issuer, but the buyer must confirm to the issuer the validity of the promissory note in order to increase confidence that the promissory note can be collected.

If the promissory note does not have the name of ownership on the promissory note, then whoever brings the promissory note has the power to charge the issuer, but there is no guarantee that the promissory note will be paid at maturity. When promissory notes are traded, the issuer must have proof that a sale and purchase has been made in the form of proof of transfer of the promissory note price to the seller to see that a sale and purchase has taken place.

At maturity, the promissory note holder must apply to collect money from the issuer, the issuer must be able to pay it must not refuse because of its obligation to pay.

3.3 Formal Requirements Letter of Ability

Regarding the formal requirements for a promissory note, it is regulated in Article 174 of the KUHD. According to the provisions of the article, each promissory note must contain the following conditions:

- 1) Either the order clause, the mention of promissory note or promissory note on a substitute, must be contained in its own text and stated in the language the letter is written in
- 2) Unconditional ability to pay a certain amount of money
- 3) Determination of pay day
- 4) Determination of the place where payment is to be made
- 5) The name of the person to whom or his successor payment must be made

- 6) The date and place the promissory note was signed
- 7) Signature of the person who issued the promissory note.

The formal requirements mentioned above absolutely must be fulfilled by a promissory note. This is stipulated in article 175 of the KUHD which states that if one of these conditions is not present, the letter is not valid as a promissory note.

3.4 Letter of Promise Is Not a Bank Product

Regarding Bank products, refer to the Financial Services Authority Regulation Number: 13/ POJK.03/2021 concerning the operation of commercial bank products. The types of conventional commercial bank products are; fundraising, distribution of funds and other simple activities. In collecting funds from the public the instruments are; Current Accounts, Time Deposits, Savings. In the field of disbursement of banking funds, the instruments are known as; Credit, Factoring, Providing guarantees and trade financing. Therefore, the issue of promissory notes is not a banking product, so the regulations are regulated separately, namely the Trade Law.

As a result this promissory note is not a banking product, then all banking regulations cannot regulate it, while the regulation is Civil Law (KUH Perdata) which also includes Commercial Law, because the principle of the emergence of this promissory note is based on an agreement, as regulated in Article 1338 of the Civil Code of Agreement. is to become Law for the parties who do it.

3.5 Failure to Pay and Pay Responsibility

Problems will arise if the issuer is unable to pay, or also known as the issuer failing to pay, how will the money given by the investor to the issuer be, whether it is lost or can be sued for compensation and how to get the investor's funds back. If there are more than one investor and a large amount of money will be returned, how is it returned, or if there is marketing to get investors, can it also be demanded to return the money? This needs to be ensured so that investors' money is not wasted. As happened recently, the company Indosterling Optima Investa (IOI) failed to pay Rp. 1.9 Trillion due to default, IOI took legal action for Postponement of Debt Payment Obligations (PKPU) at the Central Jakarta Commercial Court. Because it has failed to pay Rp. 1.9 Trillion with a total of 1,200 – 2,000 customers. <http://bit.ly/AppsBisniscomIOS>

If the issuer fails to pay the promissory note, of course it is possible because the risk of this instrument is very large, but the principle of the promissory note is being able to pay without reason, then there is no reason for the issuer not to pay. The problem will arise if the funds received by the publisher that have been invested in the original plan fail, then what is the issuer with to return it? Because profits and losses can only be estimated in business, the certainty cannot be ascertained. However, legally the publisher must be responsible.

Promissory note issued by a Limited Liability Company (PT) and then a default occurs, then based on Article 1 point (5) of the Limited Liability Company Law above, the Board of Directors must be responsible. In connection with this responsibility, it is borne by the company, but if there is negligence of the Board of Directors, it becomes personal responsibility in accordance with article 92 paragraph (2) of the Limited Liability Company Law and Article 97 paragraph (3) of the Limited Liability Company Law;

“Each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties, in accordance with the provisions in paragraph (2)...”

Then it is emphasized again in Article 104 paragraph (2) of the Company Law;

“If the bankruptcy occurs due to the fault or negligence of the board of directors and the assets of the bankrupt are not sufficient to pay all of the company's obligations in the bankruptcy, each member of the board of directors is jointly and severally responsible for all outstanding obligations of the bankruptcy estate.”

The responsibility to pay this Promissory Note is the responsibility of the issuer (PT), so based on Law no. 40 of 2007 concerning Limited Liability Companies (PT) in Article 1 point (5) of the PT Law. The Board of Directors is a company organ that is authorized and fully responsible for managing the company for the benefit of the company, in accordance with the aims and objectives of the company and representing the company, both inside and outside the company. out of court in accordance with the company's AD.

Therefore, the Board of Directors has the task of:

1. The Board of Directors must in good faith and full responsibility carry out the duties of managing the company while still paying attention to the balance of interests of all parties with an interest in the activities of the company;
2. Representing the company, both out of court (agreements, agreements, etc.) or in court. No other party may act on behalf of the company unless authorized by the authorized board of directors;
3. The Board of Directors must comply with the provisions of the applicable laws and regulations, AD and GMS decisions and ensure that all company activities are in accordance with the provisions of the applicable laws and regulations, AD, GMS decisions and the regulations stipulated by the company;
4. The Board of Directors in leading and managing the company is solely for the interests and objectives of the company and always strives to improve the efficiency and effectiveness of the company;
5. The Board of Directors always maintains and manages the company's assets in a trustworthy and transparent manner, if necessary the Board of Directors requires the approval of the commissioners or the GMS in every decision making. To that end, the board of directors develops a structured and comprehensive internal control system and risk management system;
6. The Board of Directors will avoid conditions where the duties and interests of the company conflict with personal interests.

The Board of Directors has the following responsibilities:

1. The Board of Directors is required to be fully responsible for the management of the company for the interests and objectives of the company and to represent the company both inside and outside the court. As the responsible organ, the board of directors is responsible for the management to the GMS;
2. The Board of Directors is required to prepare and maintain a register of shareholders, minutes of the GMS and minutes of the board of directors meeting, to maintain the company's books of account; report their share ownership and their family owned in another company or company;
3. The Board of Directors is required to prepare an annual report (including annual accountability) for the GMS;
4. The Board of Directors is required to provide information to the GMS regarding everything related to the interests of the company;
5. The Board of Directors holds an annual GMS or other GMS deemed necessary (including summons and others);
6. The Board of Directors is required to seek approval from the GMS to transfer or guarantee most or all of the company's assets;

7. The Board of Directors is required to prepare a plan for merger, consolidation or takeover to be submitted to the GMS.

The purpose of the duties and responsibilities of the board of directors is that the board of directors in good faith and full responsibility carry out their duties for the benefit of the company. The Board of Directors can be sued personally in court if the company suffers a loss caused by its fault or negligence. Likewise, if bankruptcy occurs, if the company's assets are not sufficient to cover losses due to bankruptcy, each member of the board of directors who makes a mistake or negligence must be jointly and severally responsible for the company's losses.

The Fiduciary duty principle imposes responsibilities on the board of directors in carrying out their duties so that; carried out in good faith, carried out with corporate objectives, carried out with responsibility and freedom, without conflict of interest. Companies represented by the board of directors are required to act prudently in making all decisions and policies (duty of care) and be able to prioritize the interests of the company above their personal interests (duty of loyalty).

Regarding employees who carry out the task of marketing the company's products, namely the Promissory Note, according to article 1 number (14) of Law no. 13 of 2003 concerning Manpower, a work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the terms of work, rights and obligations of the parties. Rights arising from the employment agreement. With this work agreement, civil legal liability arises, including in the field of contracts, unlawful acts committed by the company and unlawful acts committed by employees.

A Limited Liability Company as an independent legal subject can perform legal actions in accordance with the purposes and objectives of the Limited Liability Company, among others, enter into an engagement or contract with other legal subjects. In the Civil Code Article 1320 jo 1338 stipulates that if a Limited Liability Company enters into an engagement or contract with another legal subject, the Limited Liability Company determines the terms agreed in the engagement or contract and is obliged to comply with it.

If the Limited Liability Company is injured or in default, the Limited Liability Company can fulfill the requirements if it violates the contract and can fulfill its obligations and pay costs including losses incurred along with interest if it is in accordance with 1243 of the Civil Code. The opposite also applies to other parties who enter into an engagement or contract with the Limited Liability Company.

Liability against the law is regulated under article 1365 of the Civil Code which stipulates that every act that violates the law and causes harm to others, obliges the person who caused the loss because of his mistake to compensate for the loss.

The unlawful act committed by the Company is an act committed by the Board of Directors as the alter ego of the Limited Liability Company in accordance with the Company Law. If the act does not contain ultra vires and is carried out for and on behalf of the Company, then the act of the Board of Directors is the act of the Company. If the act is found to be detrimental to the law and detrimental to another person or legal entity, the Company is obliged to compensate for the loss and not personally the Board of Directors.

Liability in unlawful acts can be divided into 3 (three) forms, the first is responsibility not only for unlawful acts committed by oneself but also with regard to unlawful acts of other people and goods under their supervision, the second is responsibility for unlawful acts against the human body and soul, and third is the responsibility for unlawful acts against the good name. (Rosa; 2003)

Based on article 1367 of the Civil Code which stipulates that employers and those who appoint other people for their affairs, are responsible for losses caused by their servants or subordinates in carrying out the work assigned to them those people.

The provisions in the article above apply the principle of superior responsiveness, which means that superiors are responsible for the actions of subordinates, as long as they are carried out within the specified scope of work and cause harm to other parties. These losses can arise due to the negligence of the subordinate. This principle is also known as the doctrine of vicarious liability, which means indirect responsibility or responsibility for the actions of others.

The main thing to note about the principle of superior responsiveness is "within the agreed scope of work". This applies to employees or when making assignments to other parties such as consultants, outsourcing, subcontractors, and others, so that it can be determined more clearly the extent to which things are still the responsibility of the employer/Limited Company and which are the responsibility again the employer/Limited company answer.

There is no standard for assigning responsibilities between the company and its employees, but in general the benchmark is using the benefits and characteristics approach. For example, if an employee leaves working hours to carry out social activities with the permission of the board of directors, normatively it violates the law but with the benefits and permits, the activity does not violate the law. The characteristic approach explains that if an employee's actions are well known, then the action is the responsibility of the board of directors (Wolter, 2002).

3.7 Dispute Settlement Letter of Ability

Because the basis for the emergence of this promissory note is the existence of an agreement between the issuer and the investor, the law governing the return of the investor's (creditor) loss is the Bankruptcy Law. Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations or abbreviated as UUK 2004. Prior to the enactment of the 2004 UUK, the issue of bankruptcy was regulated in Staatsblad 1905:217 jo. Staatsblad 1906:348 concerning Faillissement Verordening (Law on Bankruptcy) which was later updated through Government Regulation in Lieu of Law Number 1 of 1998 and later ratified into Law Number 4 of 1998.

According to article 1 number 1 of the 2004 UUK, Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. Based on the formulation of this understanding, it can be concluded that the essence of bankruptcy is general confiscation (beslaag) of the assets of the bankrupt debtor. Then what are the requirements so that a debtor can be proposed as a bankrupt debtor? In submitting an application for a declaration of bankruptcy, there are several conditions that must be met first. The requirements for filing an application for a declaration of bankruptcy are explained in Article 2 paragraph (1) of the 2004 UUK which reads:

“A debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors”

IV. Conclusion

A promissory note or acceptance letter is a promissory note or agreement to pay a sum of money to the holder or his successor on a certain day. In Indonesia, the provisions regarding promissory notes or promissory notes are regulated in articles 174 – 177 of the KUHD, which according to the KUHD. This instrument has a high risk, because in its implementation it does not require a guarantee, therefore for the parties who use this instrument as a business activity must be careful. Article 1365 of the Civil Code has accommodated Article 1365 of the Civil Code, so that the issuer of this promissory note is required to pay, for those who assist this activity and cause losses to investors as long as the tasks assigned by the board of directors cannot be prosecuted because based on Article 1367 of the Civil Code he is an employee who is subject to Law no. 40 of 2007 concerning Limited Liability Companies is the responsibility of the board of directors. If the implementation of this instrument is running and related to unlawful acts and proceeding in court, then according to Law no. 37 of 2004 concerning Bankruptcy and PKPU, the court that will settle it is the Commercial Court.

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