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Legal Aspects of Regional Development Financing Through Issuance of Local Bonds

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Abstract

This study focuses on financing regional development through the issuance of regional bonds. By analyzing regional bonds as a source of financing for infrastructure development in the region, thus encouraging researchers to conduct in-depth studies of the legal regulation of regional bonds as a source of regional financing and things that have the potential to become obstacles in the issuance and trading of regional bonds as a source of development financing. area. This research is an empirical juridical research. Sources of research data are primary and secondary data. Data analysis used descriptive qualitative analysis method. The results of this study indicate that the legal and policy arrangements related to Regional Financing through the Issuance of Regional Bonds are contained in the PERMENKEU RI Number 180/PMK.07/2015 concerning Amendments to the PERMENKEU RI Number 111/PMK.07/2012 concerning Issuance Procedures and Accountability Regional Bonds. Things that have the potential to become obstacles in the issuance and trading of regional bonds, namely: normative factors and empirical factors. First, the normative factor is caused by disharmony between laws and regulations. Second, empirical factors related to the institutional relationship between the central and local governments related to the existence of administrative requirements before the issuance of regional bonds that must be fulfilled and; 2) related to the availability of Human Resources who still have limited understanding in the management of regional bonds.

Keywords
financing; regional bonds; development; local government

I. Introduction

The importance of sustainable national development for a country, as an effort to improve the welfare of the community, nation and state. Sustainable national development is intended to be a series of activities as part of efforts to develop the state administration system in achieving the goals of the State of Indonesia as stated in the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

To achieve the country's goals, sustainable national development is carried out in a structured and systematic manner from the central government to the regions based on the guidelines for the National Medium-Term Development Plan (RPJMN) within a five-year period, becoming the basis for budgeting development funds that have been planned by the government.

In the era of regional autonomy, the regional government in carrying out its function, namely the development function, is expected to be able to develop its territory and finance the development of regional infrastructure to create community welfare. On the one hand, between development demands and needs, the high cost of development is increasing,

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while on the other hand, there are still limited regional financial funds in the form of Regional Original Income (PAD), profit sharing funds, and development funds so that creativity and innovation are needed by the government. regions in finding sources of funding/financing.

One source of funding outside the Regional Budget (APBD) in the perspective of Law Number 33 of 2004 concerning Regional Financial Balance is Regional Bonds. Issuance of regional bonds through the capital market and can be issued in rupiah currency on the domestic capital market. Regional bonds are included in the type of long-term regional loans and are executed within a period of more than 1 (one) fiscal year.

Regional Bonds can be used by the government as an alternative funding for infrastructure development in the regions. It's just that in terms of issuing regional bonds, not all regions take advantage of them and there are still problems in terms of issuance and trading. For example, DKI Jakarta and West Java, as regions that have met the administrative requirements to issue regional bonds, did not continue to issue regional bonds (Tempo.co.id, 2021).

Based on the description above, the author will analyze the extent to which the rules and legal policies for regional financing through the issuance of regional bonds and analyze the obstacles in the issuance and trade of regional bonds as a source of development financing.

II. Research Method

This research is an empirical legal research, with a qualitative method. Collecting data/information in this research with primary data (field study) and secondary data (library study). This primary data was obtained through interviews with related parties. While secondary data obtained by conducting a literature study related to the object of research. Data analysis used descriptive-qualitative method, namely analyzing data/information obtained through interviews and supporting literature and then arranged systematically and described qualitatively.

III. Results and Discussion

3.1 Legal Regulations and Policies on Regional Financing through Issuance of Regional Bonds

In order to improve the welfare of the people, the right effort to do is sustainable national development. The development in question is physical and non-physical development which is a series of development activities in the state administration system to realize state goals as mandated by the constitution, which is stated in the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

National development is carried out in a structured and sustainable manner to realize the country's goals, starting from the center to the regions based on the reference to the five-year National Medium-Term Development Plan (RPJMN). The RPJMN is the basis for budgeting development funds for the central government and local governments.

Currently, local governments exercise their authority based on regional autonomy. Regional governments in carrying out their duties are expected to be able to build and finance infrastructure development to create community welfare. The demands of development and the needs of the community are getting higher, plus the costs of development are increasing. This condition is not commensurate with the limited financial capacity of the region, both the source of which comes from Regional Original Income (PAD), profit sharing, and development funds. This has prompted the government to seek alternative sources of financing through creativity and innovation.

Financing is funding provided by one party to another third party to support the planned investment, either by itself or by an institution. In other words, financing is funding issued to support planned investments (Muhammad, 2005:17). One of these financing is through Regional Bonds.

The main basis governing financing in the Islamic perspective are: First, Surah Al-Baqarah (Qur'an, 2:275), which among other things states, "...but Allah has permitted trade and forbade usury". Second, Surah Al-Ma'idah (Qur’an, 5:2) which reads, "And cooperate in goodness and piety, but do not cooperate in sin and aggression. And fear Allah; Indeed, Allah is very severe in punishment." In Islam, fulfilling obligations is obligatory and keeping promises must be done with sincerity, full of honesty and sincerity. (Nawawi, 2009: 51), because it is not only a provision of positive law, but also a commandment of Allah (QS., 5: 1) (AA Ilmih, 2021:176).

One source of funding outside of the Regional Budget (APBD) according to Law Number 33 of 2004 concerning Regional Financial Balance, can be sourced from Regional Bonds issued through the capital market and can be issued in rupiah currency in the domestic capital market. Regional bonds are long-term loans, with provisions for more than 1 (one) fiscal year.

In essence, regional bonds are long-term loan securities issued by regional governments and or regionally owned business entities, where the holders of these securities are entitled to repay the principal and interest debt according to the agreed terms and conditions” (Bahrul Elmi, 2005:45). In addition, Freddy R. Saragih means that, Regional Bonds are debt securities issued by the Regional Government (province/district/city) or their agencies, which contain an interest payment agreement or other promise as well as repayment of the principal loan made on the maturity date." (Saragih in Hamim Mustofa, 2004:5).

The legal basis for regional bonds is based on the Pancasila values as a source of law in Indonesia. The values of Pancasila as outlined in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) are a manifestation of the state's efforts to create a welfare state through the issuance of regional bonds as an alternative source of development financing.

The regulation of Regional Bonds is specifically contained in the PERMENKEU RI Number 180/PMK.07/2015 concerning Amendments to PERMENKEU RI Number 111/PMK.07/2012 concerning Procedures for Issuance and Accountability for Regional Bonds. The existence of bonds provides an opportunity for local governments to carry out regional development without being constrained by nominal development financing.

The issuance of regional bonds is carried out based on the principle of regional autonomy. Where the existence of regional bonds is the result of coordination and cooperation between the Regional Head and the DPRD before obtaining approval from the Ministry of Finance. The existence of regional bonds will certainly be able to support the development of regional infrastructure facilities outside of funding from regional revenues. Although regional bonds are considered to have a positive impact, there are still obstacles so that regional bonds have not been issued by regional governments.

With regard to regional autonomy, regional heads, in this case the governor and/or regents/mayors, are given the authority to manage their regions autonomously. The regional government has a great opportunity to attract potential investors to enter the region. On the other hand, for investors themselves, the existence of regional autonomy policies can compare which regions have the most opportunity to invest (Sembiring, 2010: 115).

Increasing regional financial capacity in financing development cannot be separated from the role of regional heads. The importance of the role of regional heads through their authority, among others, is by granting approval and licensing for the implementation of investment for applications for investment in the context of domestic investment, issuing regional regulations in order to facilitate investment in their regions, withdrawal of regional taxes and levies, regional loans, assets that separated, and issued a regional head decision. Thus, this can support the creation of a system that is able to increase regional finances, as well as oversee the running of the wheels of government in terms of regional finances where the regional head is the holder of regional financial management power (Sanjaya, 2015). For investors, political factors greatly influence the decision to invest or discontinue investment in regional bonds (Vijayakumar, 1995). Research Choi et al. (2015) show that the profile of elected regional heads and investors' access to information on local politics is related to the regional bond market.

Based on the provisions of Article 2 paragraph (1) PERMENKEU No.111/PMK.07/2012 regarding the issuance of regional bonds, it is stated that only regional governments are entitled to issue regional bonds by auditing the final financial statements of regional governments by obtaining a fair opinion, with exceptions or fair without exception. This is certainly different when viewed from Law Number 8 of 1995 concerning the Capital Market. In the Capital Market provisions, it is stated that in order to issue bonds, previous financial statements must be made by a public accountant registered with the OJK.

In the official website of the Ministry of Finance, regarding the issuance of Regional Bonds, there are several stages that must be passed by the Regional Government as the Issuer, including:

1. Planning stage
2. Submission of proposals and approvals
3. Public offering registration statement
4. Regional regulations regarding the issuance of Regional Bonds
5. Procurement of goods and services -- (https://djpk.kemenkeu.go.id).

The stages mentioned above are the stages that must be taken in order to issue Regional Bonds, as regulated in the Regulation of the Minister of Finance Number 111/PMK.07/2012 of 2012 concerning Procedures for Issuance and Accountability of Regional Bonds. These stages must be carried out sequentially.

The issue of the issuance of regional bonds is caused by the existence of a legal gap due to disharmony of laws and regulations. The problem that often occurs is that Bapepam Regulation Number VI.C/4 concerning General Provisions and Debt Securities Trust Contracts only provides an informative description of the information related to the substance that must be fulfilled in the preparation of a trustee contract, so that it often causes differences in the format and material regulated (Elvira F.Pakpahan, 2017:340-341).

In relation to the trusteeship contract, it must be included in the registration of regional bonds as referred to in Article 6 letter I of the Financial Services Authority (POJK) Regulation Number 61/POJK.04/2017 concerning Registration Statement Documents in the Context of Public Offering of Regional Bonds and/or Regional Sukuk.

As for regional bond coupons, based on Article 4 paragraph (2) letter a of Law Number 36 of 2008 concerning Income Tax, income tax is imposed on the payment of bond coupons which are paid in total at the end of the year. Furthermore, based on Article 39 of Government Regulation Number 30 of 2011 concerning Regional Loans, the issuance of regional bonds can only be carried out in the domestic capital market and in the rupiah currency. This implies that only domestic investors can buy these regional bonds.

3.2 The Causes of Obstacles in the Issuance and Trading of Regional Bonds as an Alternative to Financing Regional Development

a. Normative Factor

The main problem with the normative factor is the issue of disharmony between regulations governing the practice of issuing regional bonds. First, the disharmony of substances referred to is related to the implementation of the principle of equality of position to investors in investment activities, both domestic investors and foreign investors as referred to in Article 3 paragraph (1) letter d of the 2007 Investment Law. However, in accordance with Article 3 paragraph (1) letter d of the 2007 Investment Law. 39 Government Regulation No. 30 of 2011 concerning Regional Loans, the Government has set a limit that regional bonds are only intended for domestic investors. Regional bonds are issued by local governments for the domestic capital market and must be transacted in rupiah. Therefore, the two regulations show inconsistent investment principles.

The second problem is that the government only focuses on regulating preventive measures by strengthening the fulfillment of administrative requirements needed to meet the requirements submitted to regional governments that intend to issue regional bonds. These preventive measures are aimed at preventing defaults due to the inability of local governments to pay their debts and interest. Although preventive measures have been arranged in such a way, these steps require repressive measures (anticipation) to create a conducive situation by regulating the occurrence of defaults as the government regulates preventive measures. The absence of regulation regarding default conditions results in a legal vacuum which means legal uncertainty.

Therefore, regulations regarding default conditions must be regulated in the due diligence contact between the Trustee and the issuer (Local Government). Currently, the due diligence contract between the Trustee and the Regional Government has been regulated in Article 4 letter r paragraph (2) Attachment to the Decree of the Head of BAPEPAM No.Kep.412/BL/2010 concerning General Provisions and Debt Securities Trust Contracts). In this case, the regulation regarding default conditions must be stated in the provisions based on the Decree of the Head of BAPEPAM above.

b. Empirical Factor

The empirical factor, namely the first, relates to administrative requirements as the main requirement in submitting regional bond issuance which basically connects several state ministries/agencies. This means that local governments must obtain approval from state ministries/agencies before issuing regional bonds.

The need for quality communication between ministries/state institutions is the key to success in the process of issuing regional bonds. When examining the opinions of Chamblis and Seidman through the theory of Work of Law in Society, the role of political entities and cultural relations has a strong role in determining whether or not the relationship and coordination between ministries/state institutions is in line with existing regulations. , is nothing but a political product compiled by the government. legislative.

The establishment of communication between the parties as referred to in the paragraph above, among others:

a) Financial relations and coordination between the Government and Regional Governments are characterized by unilateral actions by the Government. In this case, the government continues to encourage local governments to issue regional bonds without providing assistance in the form of socialization to bond management workshops. Based on Article 9 in conjunction with Article 9A PERMENKEU RI No.180/PMK.07/2015, the government will only delay the provision of general allocation funds for regional governments that do not report the use of regional bond funds;

b) Political relations between regional heads and DPRD. This can be seen from the ability of regional heads to convince DPRD that local government ranks are able to manage regional bonds so that DPRD can approve the plan to issue regional bonds. In the above conditions, political and economic interests are often offered. Where political interests are shown from the power relationship between the regional head and the DPRD regarding which party politically has a strong position, especially in the discussion of the RAPBD; and

c) The relationship between the local government and the community. This can be seen from the data transparency model of both programs and finances distributed by the government to the public through a local government website. In this case, the intensity of community involvement to oversee financial management through financial transparency and community involvement in drafting regional regulations (aspirational facilities) will affect the proximity of local governments to the community. This problem cannot be separated from the widespread practice of KKN that thrives among local governments. Therefore, the closer the community shows the level of public confidence in the performance of the local government.

The second empirical factor relates to the availability of Human Resources who understand the management of regional bonds. The procedures that must be met before the issuance of regional bonds, namely the regional head must prepare a regional bond agency that is responsible for preparing all requirements in terms of issuing regional bonds to reporting. In this case, local governments need professional teams in the fields of law, economics, regional bonds and capital markets. In addition, local governments must be able to map out infrastructure potentials to be financed through regional bonds to increase the supply of regional bonds.

IV. Conclusion

From the discussion above, conclusions can be drawn as follows:

1) Legal regulations and policies on Regional Financing through Issuance of Regional Bonds are regulated in the PERMENKEU RI Number 180/PMK.07/2015 concerning Amendments to the PERMENKEU RI Number 111/PMK.07/2012 concerning Procedures for Issuance and Accountability for Regional Bonds.
2) Things that have the potential to become obstacles in the issuance and trading of regional bonds, namely: normative factors and empirical factors. The normative factor is caused by disharmony between laws and regulations. Second, empirical factors, related to the institutional relationship between the central and regional governments regarding the existence of administrative requirements before the issuance of regional bonds that must be fulfilled and; 2) related to the availability of Human Resources who still have limited understanding in the management of regional bonds.

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