

Legal Protection of Investors Scriptless Trading Share Transactions in The Capital Market

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Abstract. Trade system without documents (scriptless trading) constitutes a new trade system applied in the Indonesia Stock Exchange. Trade without documents is done by computerization. This system not only deals with trade but also with the resolution of the trade itself. In this system, the stocks are changed to electronic data which are saved in computer. Scriptless trading or trade without documents is a trade system which has the mechanism of resolution and storage of stocks electronically. The problems which arise in the implementation of using scriptless trading in the Indonesia Stock Exchange is how about the validity of the transaction of stocks without any documents (scriptless trading) in the Indonesia Stock Exchange and how about the legal protection for investors in scriptless trading in the Indonesian Capital Market.

Keywords: Legal Protection, Investors, Scriptless Trading

Introduction

The stock exchange now uses an automatic trading system which was named Jakarta automatic trading system (JATS) to replace manual system. This is due to previous trades that using a manual system really has many weaknesses and drawbacks include:

1. The floor of the exchange is full of blackboards on which brokers write
2. transaction;
3. The maximum number of transactions that can be handled per day by the stock exchange only about 5,000 transactions;
4. The opening of unequal opportunities for brokers;
5. The cost per unit transaction is relatively high;
6. Allows for collusion between brokers in setting the price of securities
7. Market information cannot be disseminated to investors in a timely manner with a high degree of accuracy;
8. Time-consuming transaction processing
9. Transactions cannot be carried out remotely and in real time

To overcome the weaknesses and shortcomings mentioned above, then we need a trading system that is computerized, fast, efficient, and provide the same service to all capital market investors both foreign investors and domestic investors in the country.

Scriptless trading system (scriptless trading) is a system new trades implemented on the Indonesia Stock Exchange. Trade without paperwork is done computerized. This system does not only concern only about trade but also concerns the settlement of the trade. In this system, shares have been converted into data electronically stored on the computer.

Scriptless trading or scripless trading is a system trading that has a share settlement and depository mechanism electronically. One of the goals why scripless trading has become so It is important to immediately implement it in the capital market, because it involves a mechanism that can create efficiency and security in conducting transaction.

The development of the capital market is inseparable from the needs and influences investors. The capital market itself is based on three things, namely income, liquidity and investment security. Capital market authorities and the parties involved must in the capital market industry must work together to realize these three things in the Indonesian capital market so that investors are interested in investing in the Indonesian capital market.

Capital market has a strategic role in development as a source of financing for the business world and a vehicle for investment for the community. The capital market can develop, it is necessary strong legal basis to further guarantee the legal certainty of the parties who carry out activities in the Capital Market and protect interests investors (investors) from harmful practices.

Based on the description above, it can be formulated the problem as following :

1. How is the implementation of scriptless trading in Indonesia stock exchange?

2. What is the Legitimacy of Scripless Securities Transactions (Scriptless trading) Done Electronically in the Capital Market?
3. What is Legal Protection for Investors in Securities Transactions Electronically in the Capital Market?

Based on the problems that have been described, what becomes the purpose of this research are:

1. To find out the Implementation of Scripless Securities Transactions (Scriptless Trading) on the Indonesia Stock Exchange.
2. To determine the Legitimacy of Scripless Securities Transactions (Scriptless trading) Conducted Electronically in the Capital Market.
3. To find out Legal Protection for Investors in Transactions Securities Electronically in the Capital Market

Research Methods

The method applied in a study is the main key to judge whether a study is good or bad. That's the scientific method determine the flow of activities, from data hunting to inference a truth obtained in the research

This study uses a normative juridical approach, namely a study conducted by examining library materials or data secondary such as laws and regulations, legal theory and opinions of leading legal scholars. Normative juridical research or legal research normative research can also be called doctrinal law. Legal research doctrinal is conceptualized as what is written in laws and regulations (law in the books) or law which is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.

There are stages to analyze existing legal materials In simple terms, it can be described in several stages, as follows explained below:

1. Stages of data collection, for example statutory provisions that directly related to the problem being researched, the article or Journals or other written works will be collected as such likeness as reference material;
2. The stage of data sorting, where in this stage all the data has been collected previously collected will be sorted based on context being studied, so that it will be easier to do further study of the problems in this thesis research.
3. Stages of analysis and writing of research results, as the climax stage where all the data that has been obtained and sorted will be analyzed carefully by making interpretations or interpretations that are necessary, as far as possible endeavored to be guided by the concept, legal principles and rules that are considered relevant and in accordance with the objectives the main focus of this research. The results of the research will then be presented in written form which is expected to be used as a reference in addition to the existing literature.

The research material in this thesis is taken from the data as shown referred to below:

1. Primary legal materials, namely various national regulatory documents written, binding in nature and determined by the competent authority sorted by hierarchy, namely the Constitution of the Republic of Indonesia Indonesia 1945, Act (UU) / Government Regulation substitute for Laws (Perpu), Government Regulations (PP), Regulations President (Pepres), Regional Regulation (Perda).
2. Secondary legal materials, namely materials that are closely related to language primary law, and can be used to analyze, study and understand the existing primary legal material. All documents of an informative nature or the results of market studies Capital in general, and in particular in relation to legal protection for investors in electronic securities transactions in the capital market, which can be in the form of seminars or papers, newspapers, magazines, as well as sources from closely related cyberspace websites with the problem that is the object of research.
3. Tertiary/tertiary or supporting legal materials, which are used for provide instructions and explanations of primary legal materials and secondary legal material, which includes legal dictionaries and especially is language dictionary, to improve Indonesian grammar and terms better law, and also as a tool for some translations articles or foreign literary sources.

In connection with this research, namely library research which done by doing a literature study, then the thesis research material (both primary legal materials, secondary legal materials and tertiary legal materials) will be studied further in order to find things related to the problem researched. Thus, the study of materials or documents in form written form becomes the main instrument in the framework of collection data for conducting studies in this study.

Data collection used in this writing is done by Library Research Techniques (library reseach) namely by tracing library materials or secondary data above by carrying out an inventory of regulations legislation and other relevant legal materials legal protection issues for investors in securities transactions online electronics in capital marke.

Primary legal materials, secondary legal materials, and tertiary legal materials which have previously been arranged systematically will then be analyzed with using scientific logic procedures, which are qualitative in nature. Qualitative means data analysis will be carried out starting from research on the principle or principles as stipulated in the primary legal materials, and then will be discussed further using secondary legal materials, which of course Enrichment will be sought as far as possible with the support of legal materials tertiary / tertiary.

Thus, it is expected from the results of the systematic analysis will be able to draw a conclusion that can explain the relationship between various types of existing materials, for the preparation of answers and suggestions for input on research problems described descriptively, especially explain how and to what extent the legal protection of investors in electronic securities transactions in the capital market

Research results and Discussion

The legal basis for implementing scripless trading is collective custody as regulated in Article 55 paragraph (1) of Law No. 8 of 1995 concerning the Capital Market which states "Settlement of stock exchange transactions can carried out by accounting settlement, physical settlement or other means stipulated by Government Regulation" while in Explanation The Capital Market Law provides a more detailed understanding that referred to as "book entry settlement" in this paragraph is the fulfillment of rights and obligations that arise as a result of their existence Exchange Transactions carried out by deducting Securities from the account one Securities and adding the intended Securities to another Securities account at the Custodian, which in this case can be done electronically. Transition rights over Securities occur when the Securities are delivered or at the time the Securities are referred to deducted from one Securities account and then added on other Securities accounts.

The implementation of scriptless trading is a form of technological progress increasingly sophisticated and modern. The purpose of implementing scriptless trading is:

- a. Creating fair, orderly and efficient securities trading.
- b. Increase the liquidity and frequency of trading transactions on the stock exchange, improve the quality of clearing services and settlement of securities transactions (avoiding failure to deliver securities and default to pay securities).
- c. Increase efficiency, effectiveness and security in securities transactions (including securities that can be damaged, lost/burned/fake).
- d. Increase trust and provide protection for investors in capital market.
- e. Save energy and costs such as stamp duty, printing securities, costs administration.
- f. Related parties to support the implementation of the scriptless system trading in capital market securities trading, namely among others:

Custodian

Is a party that provides securities depository services and other services including receive dividends, interest and other rights, complete securities transactions and represent account holders who become customers.

Clearing and guarantee institutions.

The Clearing Guarantee Institution is one of the supporting institutions implementation of complete capital market system activities, apart from institutions storage and settlement. this institution that provides services clearing and exchange transaction settlement guarantee.

Depository and settlement institution (LPP)

Depository and settlement institutions are institutions or companies which organizes central custodial activities (place of storage centralized) for custodian banks, securities companies, and other parties.

Securities companies

Based on article 1 number (21) law number 8 of 1995 concerning capital market, what is meant by a securities company is a party that does business activities as underwriter, securities broker, and investment manager. This means that a securities company can carry out one, two or all three of these business activities, however Securities companies can run their business after obtaining permission from BAPEPAM first. Securities companies are also often referred to as securities company.

Stock exchanges

Based on article 1 point (4) law number 8 of 1995 concerning capital market, stock exchange is the party that organizes the system and/or a means to bring together offers of buying and selling securities of other parties for the purpose of trading securities between them. Securities trading lawful law is on the stock exchange. Exchange organizer securities must be a company that has obtained a business license from BAPEPAM (as stipulated in article 6 paragraph (1) law number 8 of 1995 about the capital market)

Transparency is a very important principle and a principle that fundamentals in the capital market. If you pay attention to the provisions regulated in the law of the capital market, then the regulations are very numerous regarding the provision of disclosure obligations for issuers or public companies. Therefore there is an opinion that the central focus of capital market law is the principle of openness.

In Article 1 number 25 of Law Number 8 of 1995 concerning The Capital Market states that, "The principle of openness is a general guideline which requires issuers, public companies, and other parties subject to this law to inform the public in a timely manner correct all material information about its business or its effects influence the investor's decision on the said securities, and or price and effect. "

The definition of material information mentioned above is regulated in article 1 point 7 Law Number 8 of 1995 concerning Capital Market which stated "Material information or facts are important information or facts and relevant regarding events, incidents, or facts that can influence Securities prices on the Stock Exchange and or decisions of investors, prospective investors, or Other parties who have an interest in the information or facts.

In connection with corporate governance issues, the problem openness is the main element of management principles good company (good corporate governance). Organization for Economics Cooperation and Development (OECD), for example, formulates at least 4 (four) important elements in the principles of corporate management (corporate governance), all of which lead to the principle of openness (disclosure).

The four principles are :

Fairness (justice).

Guarantee the protection of the rights of shareholders, including rights minority shareholders and foreign shareholders, as well as guarantees implementation of commitments with investors.

Transparency (transparency).

Requires information that is open, timely and clear, and can be compared with regard to the state of finance, management company, and company ownership.

Accountability (accountability).

Clarify roles and responsibilities, and support efforts to guarantee balancing the interests of management and shareholders, as which is supervised by the Board of Commissioners.

Responsibility (accountability).

Ensure compliance with applicable rules and regulations as a reflection adherence to social values.

Legal protection for investors in scriptless trading can seen from the following regulations:
Law No. 8 of 1995 concerning Capital Markets

Provisions regarding the code of conduct in the Capital Market:

Article 36 UUPM regulates that securities companies and investment advisers

must:

1. know the background, financial situation, and investment objectives its customers; And
2. Make and keep good records of orders, transactions and financial condition.

Article 37 UUPM stipulates that securities companies that receive securities from the customer must:

1. Keep the Securities in an account separate from the account Securities Company;
2. Maintain separate bookkeeping for each customer and provide a safe depository for the assets of its customers;

Provisions regarding scriptless shares deposited:

Article 44 regulates the following provisions:

1. A custodian that organizes custodial activities is responsible to store Securities belonging to account holders and fulfill other obligations in accordance with the contract between the Custodian and the holder said account.
2. Deposited securities must be recorded and recorded separately.
3. Securities stored or recorded in a Securities Custodian account are not is part of the Custodian property.

Article 45 states that "A Custodian can only issue Securities or funds recorded in the Securities account based on a written order from the holder accounts or Parties authorized to act on its behalf"

Article 46 also stipulates that "The Custodian is obligated to provide compensation to the account holder for any losses arising as a result his mistake".

Article 111 states that "Each Party who suffers losses as as a result of violation of this Law and or regulations its implementation may claim compensation, either individually or collectively together with other Parties who have similar demands. Against the Party or Parties responsible for the violation the".

Law No. 11 of 2008 concerning Information and Transactions electronic

Written confirmation given by KSEI to each customer or the investor holding the securities account is valid evidence as a sign of ownership of a scripless securities owned by the customers or investors concerned. Proof of the letter issued by those authorized in the capital market in accordance with applicable laws and regulations even though what is held by the investor is not physical the stock. In Article 5 paragraph (1) of Law No. 11 of 2008 concerning information and Electronic Transactions stated that Electronic Information and/or Electronic Documents and/or printouts are evidence valid law.

Failure to deliver is non-fulfillment of part or all of the obligations Exchange Member to deliver certain securities in order exchange transaction settlement. Meanwhile, default is defined as no fulfillment of part or all of the Exchange Member's obligations to perform payment of an amount of money in the context of settlement of exchange transactions.

If you look at the definition above, it is clear that the perpetrator failed to surrender and default is the Exchange Member, not the investor. Because it's a Member It is the exchange that will be sanctioned by KPEI and KSEI. Because of that, Exchange members need to pay close attention and ensure that their investors are transacting in accordance with the existing conditions where buying investors have money and selling investors have stock. If this principle is adhered to, the so-called by failing to deliver and or failing to pay.

Like other industries, the capital market has characteristics and special business mechanisms and different from other industries. Completion disputes and disputes that quickly became the understanding of all parties who invest in the capital market. Therefore in order to bridge the interests With that, since August 9, 2002, all capital market players are being driven Bapepam together with BEJ, BES, KPEI and KSEI, as well as a number of legal experts and the association forms an arbitration institution called the Arbitration Board Indonesian Capital Market (BAPMI). Practically since then BAPMI has started to play a role in resolving business disputes that occur in the capital market.

Because BAPMI is an institutional arbitration in the capital market formed because of the mechanism and characteristics of the business in the capital market, then this agency only handles civil disputes related to activities in capital market sector, and only when requested by the parties to the dispute. The letter of request must also be based on a written agreement of the parties that disputes will be resolved through BAPMI. Without that agreement BAPMI does not have the

authority to resolve the said dispute. BAPMI also does not have the authority to settle cases that fall into the scope of criminal and administrative.

Closing

Conclusions and Recommendations

Conclusion

Execution of Scriptless Securities Transactions (Scriptless trading) on the Stock Exchange Indonesia uses modern technology where transactions can be made quickly and on time where buyers and sellers do not have to face to face. Scriptless Securities transactions (Scriptless trading) no longer use physical share certificates as evidence share ownership, but only using a written confirmation letter issued by the Indonesian Central Securities Depository (KSEI). Process Settlement in scriptless trading is carried out by way of book entry settlement which is the transfer of securities or funds only through a debit and/or credit mechanism for an account securities account. This transfer is regulated in Article 55 paragraph 1 of Law No. 8 of 1995 concerning the Capital Market.

Securities transactions without scripts (Scriptless trading) in the Indonesian Capital Market is legal because of Law No. 8 of 1995 concerning Capital Markets accommodate the transfer of rights over securities electronically, namely through the book entry settlement which is a way to transfer rights in a scriptless manner trading. Even though the submission method in scriptless trading is contradictory with the provisions of the Civil Code but scriptless trading is regulated in separate regulations that specifically regulate about it so disregarding the provisions of the Civil Code (*lex specialis derogate lex generalist*).

Legal protection for investors in scriptless trading on the market capital in accordance with the laws and regulations in force in the market capital is done through the implementation of the principle of openness. With The existence of the principle of openness can prevent or at least incidents that may result in adverse consequences and material losses for public investors, because the implementation of the obligation of disclosure makes investors able to gain access to correct and timely information. In implement legal protection in the capital market, the Financial Services Authority appointed as the authorized institution to oversee the way implementation of laws and regulations in the capital market sector. Settlement of disputes in the capital market also serves to protect investors because if there are investors who feel aggrieved they can ask legal protection of their rights

Suggestion

Relating to arrangements for the implementation of scripless securities transactions (Scriptless trading) on the Indonesia Stock Exchange where at the time of manufacture Law No. 8 of 1995 concerning the current technology capital market this is not very advanced, it is necessary to update the regulations in capital market sector that can accommodate current technological advances. For example, in the past, proof of share ownership was still in the form of physical shares, however now only in the form of written confirmation.

Relating to the validity of scripless securities transactions (scriptless trading) in the capital market, where proof of ownership is not in the form of physical share certificates but only in the form of a written confirmation letter, it will be very important and need to be held socialization that is directed and focused on the problem This can provide a more in-depth understanding to investors in Indonesia regarding the equality of legal status between physical share certificates and a written confirmation letter issued by KSEI.

Due to the rapid development of time and technology, then scripless securities transactions (scriptless trading) are also growing rapidly quickly so that the government and all authorities in the capital market must remain adapt in providing legal protection for investors who carry out scripless securities transactions in the capital market, so that legal protection for investors will run smoothly and will not causing losses to investors

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