

LEGAL ANALYSIS ON BOND ISSUANCE OF THE RETAIL (ORI)

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ABSTRACT

Governmental policy of President Susilo Bambang Yudhoyono and Vice President Jusuf Kalla to publish the retail state bonds in July 2006 and continued in 2008 represented one of monetary policies released in order to closing over deficit of State Budget which was another form of Government Securities sold by retail to public, and apart from that, implementation of retail state bonds is one of potential funding to lessen the burden and risk of state's finance in the future by keeping noticing to assorted relevant consideration and aspects, both negative and positive aspects. Historically, issuance of state bonds (in 1950s) in the period of Governance of President Soekarno experienced default. In relation to that, what are becoming problems are how regulation of issuance of retail state bonds in the law of government securities is, and legal status and protection for holders of retail state bonds. This is none other than to know how big the guarantee is and legal protection for the investment which has been put in the form of the bonds. Based on the result of this study, it is clear that the regulation of issuance of retail state bonds in the law of government securities guarantees the existence of bonds issued by Government of Republic of Indonesia. This means that the government guarantees and is obliged to pay the interest and principal of each due government securities. The legal status for holders of retail state bonds is basically not different from unsecured creditors in a debt agreement whose payments have no rights to be prioritized from other creditors if the government is in default. The legal protection for holders of state bonds is pursuant to Law of Government Securities and pursuant to money-loan agreement between government and investors.

Keyword: Issuance, Retail State Bonds.

Introduction

Indonesia's economic development mandated by the constitution must be implemented by all the potential that exists in society. Amended Article 33 paragraph (4) of the Constitution of 1945 states that the national economy is organized based on economic democracy with the principles of togetherness, environmental friendliness, independence, and balancing economic progress and national economic unity. Article 2 (1) of the Law No. 25 of 2004 on National Development Planning System states that development must be conducted with due regard to the principles of self-reliance. National economic development should be pursued on the basis of its own strength so that development can be done in a sustainable manner (Sumantoro, 1986). In order to realize a just and prosperous society in accordance with the ideals and national goals based on Pancasila and the Constitution of the Republic of Indonesia of 1945, we need to improve the ability and independence to implement a sustainable national economic development by relying on the strength of the community. In addition, if we observe rate of growth and the mobilization of funds through financial markets at the moment, it has actually reflected the effort of optimal community participation in national development through the mechanism of management of the State Budget (known as APBN in Indonesia). The success of national development to create a society that is fair, and prosperous based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 is determined by the presence of: (1) the nation's independence to sustainably carry out the national economic development by relying on the strength of the community, (2) optimal community participation in the program of financing national development through the management mechanism of State Budget (APBN) that can be justified, (3) legal certainty for investors and the commitment of the government to manage the financial sector that is transparent, professional and accountable.

The Indonesian government has several times issued its government bonds that are still getting considerable attention from investors. This is proven by the usual occurrence of 'oversubscribed' (Indonesia Legal Center Publishing, 2008) every time the government sold bonds on the primary market. In terms of holdings, mostly government bonds this time are owned more by financial institutions and only a few are owned by individual investors (Cahyadi, 2004). It cannot be denied because the emergence of state bonds in 1997 was also triggered by the government's efforts to recapitalize the banking industry which was in 'trouble' (Suli Murwani). This phenomenon got a lot of responses from economists and bureaucrats. There are two groups of thinkers that have two different opinions regarding this phenomenon. The first group tends to see this as a very reasonable thing and does not need to be fixed because the main purpose of the bond issue is to obtain fresh funds from domestic and international investors without questioning who would buy the bonds. The second group is looking at the distribution of bond holdings as it is no less important than the absorption of the bond itself. This second group tends to see that more ownership of government bonds is distributed the stronger bond position Indonesia will have as a gauge of investment (investment benchmark). Furthermore, the prevalence of public bond holdings will imply the government's concern in providing greater access for the public towards government assets. During its development, to this day, the second think tank's pressure are strong enough to

push the government to issue government bonds in the form of retail which eventually issued a Retail Bonds (hereafter referred to as ORI) with serial numbers ORI-001 (Cahyadi, 2004).

Policy of the regime of President Susilo Bambang Yudhoyono and Vice President Jusuf Kalla to publish the ORI in July 2006 and continued in 2008 is one of the monetary policies that was issued in order to cover the deficit of State Budget, which was nothing but another form of Government Securities (hereafter referred to as GS) sold in the form of retail to the public; besides, ORI is also one of the ways of funding to reduce the burden and state financial risk in the future, rather than constantly relying on the nation's dependence of foreign debt that will continue to accumulate. Today's fact shows that the issuance of ORI of ORI-001 version has been greeted with great enthusiasm by the public and businesses in Indonesia. Indicative target sales of ORI-001 of 2 trillion rupiahs (about 150 million dollars) has been achieved in a very short time (Agus Supriyanto, 2006), even up to August 7, 2006 the Ministry of Finance has absorbed the entire order of ORI-001 as much as 3,283 trillion rupiahs (about 250 billion dollars) worth. Most investors are domiciled in Jakarta Special Capital Region, which is about 62.2 percent of total orders, the rest scattered in West Java, East Java and North Sumatra. Meanwhile, according to data derived from the General Director of State Treasury of the Ministry of Finance, total 17,403 orders from investors, as much as 23.83 percent come from the private employees. The rest, the majority of investors covering 17.03 percent comes from the housewives, entrepreneurial class 17.08 percent, the group of Civil Servants of 16.21 percent, the military and police faction of 0.63 percent, and the remaining 25.22 percent are investors coming from various professional groups (Hartopo). This actually has to reflect that the credibility of the government at the moment is encouraging, where the public completely trust to make investments in the form of bonds. In addition, indirectly, society has also participated in order to finance national development (Hartopo).

Viewed historically, the issuance of ORI is actually not a new thing for the Indonesian people, because in the 1950s the government at the time of President Sukarno also started ORI with 3% interest per year. These bonds were also traded on the stock exchanges in Jakarta, but the payment of the bonds went into a mess for the government at that time did not have enough money. Bond prices had also become very low since the government executed policy of devaluation (Winardi, 1988) of the rupiah in 1966, where the value of Rp. 1000.00 trimmed to Rp. 1.00 (Winarto). Therefore, the current decision by the government to publish the ORI did not take a short time. ORI issuance has of course also noticed a wide range of considerations and related aspects, both from the negative and positive aspects. From a legal standpoint alone, it is certainly very directly related to the existence of Law No. 24 of 2002 concerning Government Securities which serves as the legal basis for investors, including some other supporting regulations. Financial market participants are very interested in the information about the direction of national economic development policy that is reflected in the state budget, considering the implications of the policy on interest and investment opportunities in the domestic financial market. Market perception will largely depend on the consistency of the government's actions in implementing the policy. In addition, investors need legal certainty and guarantee of the professional management of financial markets and international standards.

The existence of Government Securities Law and other legislation such as the Regulation of the Minister of Finance No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market is to provide legal certainty to investors on the government's commitment to meet its financial obligations and the implementation of management of GS more transparent, professional and more responsible. Legal certainty for businesses is very important at this time for any investor basically wants the security of the investment that has been done.

"For businesses who often face many challenges and risks, a guarantee of legal certainty is very important. The existence of the legislation that is clear, transparent, ..., will provide an opportunity for any society member to conduct business activities ... " (Rudianto, 2002)

Furthermore, since 2001 the Government of Indonesia through its ministry has done some research and comparative studies in several developed and developing countries, among them are the State of Japan, Hong Kong, the Philippines and other States that have been successfully selling Retail Government Bonds (RGB), as a reference for the Government in selling Retail Bonds in Indonesia. In general, the Government Securities is classified as a risk-free investment. In particular, the Government Securities classified as risk-free investments is associated with the presence of government guarantees for the repayment of principal and interest at maturity. Despite an assurance from the government, it cannot be equated with the insurer according to the Civil Code, but only a promise / commitment of the government to fulfill its obligations in respect of Government Securities (Sihombing, 2008). Government Securities becomes as well as a reference (benchmark) for other securities instruments traded on the capital market (Rahardjo, 2003).

The Government is aware that the existence of Retail Government Bond in Indonesia is very urgent, it can be seen from; (I) the role of GS as a financing instrument in the increasing policy of the State finances, (ii) the need to enhance the credibility of GS as a benchmark investment in Indonesia through the expansion of GS ownership among the people (Makmun, 2004). The credibility of the government is a very important element to make government bonds as a benchmark for long-term investment activities in Indonesia. To realize benchmarking as intended, among other it requires proper management of debt portfolio, so 'risk-free' attached to Government Bonds is fully recognized by investors (Makmun, 2004). Apart from some of the government's intention to cover the deficit of State Budget every year through the issuance of GS in the form of ORI, which is considered necessary and very important for today's society is the knowledge of setting the issuance of state bonds retail (ORI) in the legal provisions of Government Securities (GS) in Indonesia as well as on the status and legal protection for the bondholders. This is none other than to determine the extent of safety and legal protection of the investments that are made in the form of bonds, because there is always a probability that the occurrence of state bond default under President Sukarno will happen again. Based on the explanation of the background, the problems can be formulated as follows:

1. How is the regulation of issuance of Retail Bonds (ORI) in securities laws in Indonesia?

2. What is the legal position for holders of Retail Bonds (ORI)?
3. What legal protection can holders of Retail Bonds (ORI) get?

Basically, the purpose of the study is to look for a true understanding of the problem formulated. Research objectives can be described in more detail as follows:

1. This research was conducted in order to obtain more detailed information regarding the issuance regulation of Retail Bonds (ORI) in securities laws in Indonesia.
2. In addition to the legal basis, this study also aimed to obtain a fundamental and comprehensive description about the legal position for holders of Retail Bonds (ORI).
3. To study, research and analyze the legal protection for holders of Retail Bonds (ORI).

Discussion

Regulation of Government Retail Bond Issuance

1. Law Number 24 of 2002 on Government Securities

To ensure the existence of bonds issued by the Government of the Republic of Indonesia, or better known as Government Securities, since October 22, 2002, the Government has enacted Law No. 24 of 2002 on Government Securities. The ratification of this law became very important and most awaited by investors, both foreign and domestic investors. Government's basis of considerations when formulating and passing the legislation is to support the success of national development in order to create a just and prosperous society based on Pancasila and the Constitution of the Republic of Indonesia in 1945. In the context of national independence, the potentials available in the country should be optimized to carry out economic activities and fund development activities. In connection with this, the Government should be given the opportunity to increase access to explore the potential sources of financing for development and strengthening the domestic investor base. The financing will be secured if the mobilization of public funds is paired with the workings of the financial system, including the efficient banking system, money markets and capital markets. The creation of diversity in the mobilization of funds can generate a strong financial system and provide an alternative for investors. In the activity in the financial markets, the role of the GS market is very strategic. That is, the profit rate (yield) of GS, as a risk-free financial instruments, is used by traders as a reference tool in determining the level of profitability of an investment or other financial assets. Thus, the issuance of securities on a regular basis and planned is required to establish a benchmark that can be used in assessing the reasonableness of the price of a financial asset or securities. The existence of efficient financial markets will provide some benefits, among others:

- a. To provide opportunities and a greater participation of investors to diversify their investment portfolio.
- b. To help create a good governance because of the high level of transparency of financial information in the capital markets, and
- c. To help achieve a stable financial system due to reduced systemic risk due to decreasing dependence on capital from the banking system.

From the point of view of the mobilization of public funds through the mechanism of the state budget, the use of GS potentially can reduce dependence on foreign financing which is highly vulnerable to exchange rate fluctuations. In addition, good and correct management of GS can reduce losses to the state caused by a variety of financial risks in the portfolios of state debt. Through the mechanism of the state budget, then by itself it will lead to directly public oversight system. Financial market participants are very interested in the information about the direction of national economic development policy that is reflected in the state budget, considering the implications of the policy on interest and investment opportunities in the domestic financial market. Market perception will largely depend on the consistency of the Government's actions in carrying out the policy. In addition, investors need legal certainty and guarantee of the professional management of financial markets and international standards. Based on the above ideas, this will require an active securities market and liquidity, both in the primary market and the secondary market. In order to realize the market, it takes necessary strategic steps to build infrastructure, among others, the publishing system on the primary market, secondary market trading system, registration system, an efficient clearing and settlement, as well as the regulatory framework that is transparent and fair. The most important prerequisite for the creation of GS is the existence of market confidence in the securities issued by the Government. For that, through Law No. 24 of 2002 on

Government Securities, Government regulates matters as follows:

- a) GS management transparency in fiscal policy framework and policy of GS market development by organizing more about the purpose of GS issuance.
- b) Government authority to issue GS delegated to the Minister of Finance, for example, in determining the terms and conditions of GS.
- c) The authority of the government to pay all the obligations or duties arising from the issuance of these securities in full and on time until the end of the obligations.
- d) The legal basis for further regulation on procedures and mechanisms for the issuance of government securities in the primary market and trading government securities in the secondary market in order to obtain the certainty for investors to own and trade GS easily and safely.

2. The Ministry of Finance Regulation No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market

In addition to Law No. 24 of 2002 concerning Government Securities (GS) which serves as the legal basis by investors, specifically regarding Retail Bonds, Finance Minister Sri Mulyani Indrawati also issued Decree of Ministry of Finance No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market, which was established on May 16, 2006. In order to manage GS as referred to in Article 9 of Law No. 24 of 2002 on GS, Minister of Finance can sell securities through the auction

and / or without auction. Sales of GS without an auction can be implemented by selling Retail Bonds to the public through the selling agent. Issuance of Retail Bonds will broaden the base of government securities in the community. Based on the reasons mentioned above, it is considered important enough for the Minister of Finance to issue regulations on the Sale of Retail Bonds as set forth in the Primary Market through the Decree of Minister of Finance Number 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market. Third party that is very helpful marketing Retail Bonds as mentioned above is the selling agent. Therefore, in Article 5 of the Minister of Finance Decree No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market has been organized specifically on the appointment of sales agents which is carried out through the following stages:

- a. Submission of a letter of request for proposals to the Bank and / or the securities company that has a reputation and has shown interest to become a Sales Agent Retail Bonds in the Primary Market.
- b. Acceptance and examination of proposal document of prospective Selling Agents.
- c. Selection of candidates for Sales Agent to join the presentation stage.
- d. Presentation of candidates for Sales Agent.
- e. Ranking of Sales Agent
- f. The appointment of the Selling Agent

While Article 6 paragraph (1) Minister of Finance Decree No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market notes that to be appointed as Sales Agent, Sales Agent candidates must:

- a) Submit proposal and supporting documents
- b) Meet the criteria and requirements set, and
- c) Pass the selection carried out by the Selection Committee

Criteria referred to in paragraph (1) letter b above, at least are as follows:

- a) Having branch offices in a minimum of five cities in Indonesia.
- b) Having a work plan, strategy, and methodology of the retail bond sale
- c) Having team members who have the knowledge and experience of selling financial products in retail.
- d) Having the support of information technology systems that are integrated into office branches.

In addition to regulation about Selling Agent, the Minister of Finance Decree No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market also regulate documents, provisions of the sale of Retail Bonds, the Employment Agreement between the Government and the Selling Agent, the arrangement of the proceeds and allotment, settlement and sales costs incurred in the implementation of sales Retail Bonds in the Primary Market. Based on State Retail Bonds arrangements as stated in Article 1 (1) of Law No. 24 of 2002 on government securities, government guarantees interest and principal payments of government securities at maturity. The guarantee from the government intends to create an attraction for investors to invest in government securities. With the law of these government bonds, the bond holders do not have to worry about going on the default risk. In accordance with Article 1 (1) of Law No. 24 of 2002 on GS and Article 8 paragraph (2), the government is obliged to pay interest and principal for each Government Securities at maturity. In addition, the theory of Treaty (*Overeenkomst Theorie*) by *Thol* is very appropriate to explain the basis for a legal bond between the government and investors (bondholders). This theory states that the binding legal basis of securities between the issuer and the holder is an agreement that is a legal act of the two parties, namely issuers who sign and the first holders who receive the securities. In the case that if the first holder transferred the letter to the next holder, the issuer remains bound under the treaty (Emirzon, 2002). For public interest, government securities should always include material and important information for potential investors, namely: (Rahardjo,

Panduan Investasi Obligasi, Second Edition, 2004)

- a. Coupon: interest rate income paid regularly by the government to bondholders.
- b. Principal / Nominal Value: an amount of principal to be paid by the government to investors at maturity.
- c. Maturity: the final period of the bonds, which will be repaid (principal / nominal bonds)
- d. Interest Payment Date: schedule of coupon payments to bondholders previously agreed.
- e. Calculation of Interest Payments: Interest payment calculation methods that are quite detailed and clearly understood by investors.
- f. Right to Buy Back (buy-back): the government has the right to buy back the bonds, although not yet entering a period of maturity. Of course, also taken into account the various costs incurred.
- g. Transfer of Ownership: procedures for transferring ownership of state bonds are set formally and clearly when switching owners.

In Law of GS Article 20 is set about the transfer. Also Article 11 letter h also mentions provisions on transfer of ownership. Thus, the retail state bonds can be transferred to another person.

Legal Status for Holders of State Retail Bonds (ORI)

Guarantee, from the viewpoint of civil law, is closely associated with a responsibility. Basically, a responsibility is an agreement in which, for the benefit of creditors, a person / a third party promises and bind themselves to meet obligations of debtors when the debtor does not fulfill its obligations to creditors (Subekti, 1995). In other words, there exists a holding of a responsibility to strengthen the position of creditors at the time when the debtor can not fulfill its obligations (M.Yahya Harahap, 1986). Responsibility mentioned above is similar to the existence of a guarantee from the government for Retail Bonds contained in Law No. 24 of 2002 on Government Securities, although not to be equated with that. The provision contained in Article 1 of the Law No. 24 of 2002 on Government Securities states that:

"Government securities are securities in the form of promissory note guaranteed payment of interest and principal by the Republic of Indonesia in accordance with the validity period"

The existence of a guarantee from the government in the law is basically intended for government securities to be more attractive to the public. The government does not want to experience what happened to state bonds that let the public down in 1950s to 1960s (Soeprapto, Segi-segi Hukum Obligasi, 2004), affecting the public interest in government securities. Therefore, the clause about assurance from the government is made so that state bonds are demanded by the public and their marketing do not face obstacles. The guarantee from the government to repay all obligations associated with state bonds makes investors prefer investing in state bonds compared with other fixed-income investments. In general, the existence of a guarantee is linked to the existence of a back-up that can be used as a source of obligation fulfillment referred to at the time of maturity. These back-ups can be either a bank of guarantee or cash which is specially built, called sinking-fund. If the form of back-up is realized in the form a sinking-fund, the fund must be completely set aside on a regular basis, recorded separately from other funds, and are held in a separate account (escrow account) which is opened specially for it.

When analyzed more closely, the guarantee of the government contained in Article 1 of Law No. 24 of 2002 on Government Bond actually only is supported by the provision that the principal and interest of government securities will be included as an expenditure items in the budget each year.

Assurance from the government that is supported only by the extent of the inclusion of interest and principal payments of government securities into expenditure items like this is actually very weak, because if the government's financial condition has difficulty, government can not escape from the solution issuing new debt to replace old debt that has matured (paper paid by paper). Experience shows that in paying off state debt securities that will mature, governments often seek resolution by way of re-profiling or any other means which simply extend the period of government securities (Djoko Retnadi, 2005). From the contents of Article 1 of Law No. 24 of 2002 on Government Securities it is apparent that there is no person or other entity that can be a guarantor for the repayment of the state debt securities at maturity if the government can not keep its promises. With the aim to build investors' confidence in state debt, lawmakers have been using the term guarantee as contained in Article 1 of Law No. 24 of 2002 on Government Securities. The law has placed the government as the party that owes as well as a guarantor for themselves to the repayment of its debts. In terms of the law of engagement, the position of the insurer and a guaranteed party may not be on the one hand / person. The issuance of government securities is an act of civil law, so it should be subject to and must comply with the rules under civil law. Therefore, it is necessary to align the definition of government guarantees contained in Article 1 of Law No. 24 of 2002 on Government Securities. If the legislation is unclear or incomplete, efforts are needed to complete it by way of legal discovery (*rechtsvinding*) (Mertokusumo, 2001). Uncertainty of use of the government guarantee clause contained in Article 1 of Law No. 24 of 2002 on Government Bond forces to perform legal discovery (*rechtsvinding*) with respect to the guarantee of the government in question.

When considered as a whole content of the law No. 24 of 2002 on Government Securities, there is no appointment of a third party as a guarantor of government debt with respect to government securities issued by the government. Similarly, the government does not take legal action to ensure that there will always be enough available funds settlement in time to pay the obligations of government securities that have matured. What government does is merely to enter the payments of interest and principal state bonds that will mature in the state budget each year, as stated in Article 8 paragraph (3) of Law No. 24 of 2002 on Government Securities. If the state revenues in the fiscal year do not reach the target so that there is no assurance that the government would not sacrifice the payment obligations on state bonds, and prioritize urgent expenditures such as payment of salaries, improvement of facilities and vital infrastructure, and others. Thus, the guarantee of the government only as a promise is that the position of the investors / bondholders are basically not much different from unsecured creditors on a debt agreement that do not have the right to first payment than other creditors if the government is in default. Although the legal position of the government is equal to other civil legal entities in civil transactions, it should be anticipated that suing the government is not as easy as suing ordinary people and the steps to sue the government is one of the most difficult parts of civil law and administrative law (HR, 2006). Past experience has shown that investors who bought government bonds issued by the government in 1950-1959 could not do much in relation to the decrease of purchasing power of bonds held, and could only wait until the bonds matured. The investors did not try to file a lawsuit against the government because they realized that suing the government would cost time and money. Guarantee clause from the government only as a promise from the government to pay its obligations in due time has strengthened the argument that the Theory of Agreement (*Overeenkomst Theorie*) is apt to explain the binding legal basis between the government and investors of retail state bonds.

Legal Protection for Holders of Retail Bonds

Article 1313 of the Civil Code states the following about an agreement:

"An agreement is an act by which one or more persons bind himself to one or more other people"

An agreement is an event of a promise to another person or two people promising each other to implement something (Subekti, Hukum Perjanjian, 19th Edition, 2002). In each issue of government securities contains an agreement that creates rights and duties of those involved in the agreement in question. The agreement is created between the government as an issuer and the holders of state bonds as an investor. Agreement between the government and the investors can be likened to an agreement that occurs between a debtor and one or several people indebted (creditors). At the time of the issuance of state bonds on the primary market, the government acknowledges a debt / borrowing money from investors who become creditors through an auction mechanism, following the rules on the capital market. If a transaction of auction of state bonds happens on the primary market, basically there has been a lending-borrowing agreement between the government on the one hand and investors in the other party. Government bind themselves in a lending-borrowing agreement with so many investors who buy bonds of such countries.

State bonds issued by the government become the container of the lending and borrowing agreements, and the essence of the existence of agreements between debtors to creditors can be seen in Article 1 (1) Law No. 24 of 2002 concerning Government Securities, stating that the GS is an acknowledgment of debt.

With the lending-borrowing agreement between the government and investors through the means of state bonds, the investors have the right to charge the government as a debtor when installment of principal and interest on the bonds are at maturity. Bills which are manifested in the form of securities, certificates or bills paper or electronic records about the existence of the bills provide legitimacy to the holder as the owner (Satrio, 1999). In addition to the agreement between the government and investors with respect to the issuance of state bonds, there is also an element of agreement between governments on the one hand and Bank of Indonesia on the other. The existence of the element of the agreement can be seen in Article 12 to Article 14 of Law No. 24 of 2002 on Government Securities. The government appoints Bank of Indonesia as agent of auctioneer on the primary market, interest and principal paying agent, as well as the agent of implementing the administration of state bonds. With the assignment of the agency to Bank of Indonesia, it has the meaning that between the government and Bank of Indonesia have reached an agreement; Bank of Indonesia has agreed to carry out tasks that are contracted as best as possible. Agreement between the government and Bank of Indonesia for the implementation of the tasks of the agency provides legal protection for investors or bondholders for all interests related to the administration, storage, and the repayment of principal and interest on the bonds, and that it will be done by a state institution whose order of administration is well taken care of. The task of an agent that is carried by the Bank of Indonesia puts it as an institution that is very important in the success of the issuance and trading of government bonds.

Furthermore, there is a Trustee Agreement that is an agreement made between the issuer and the trustee binding for the investor bondholders. Bonds are debt securities that must be paid, which is also an obligation that must be met. Obligation to fulfill payment obligations of debt that was born from the issuance of bonds under the Trustee Agreement pursuant to Article 1131 of the Civil Code is secured by all assets of the issuer. In addition, trustee in the event when there is no material collateral, trustee is a holder of an individual claim rights and sole executor of individual claim rights owned by all investors as bondholders. In this case, objects belonging to the Trustee is right to claim individual whose authority is based on the Capital Market Law and the Trustee Agreement submitted to the Trustee. No investors can exercise the rights of the individual lawsuit. Thus, based on the Trustee Agreement, investors holding bonds cannot be directly associated with the issuer, because every investor who is bondholder only has parts of the global debt securities or jumbo represented by the trustee. Each investor's action is concerted action of all investors holding these bonds, which are conducted by the trustee based on a command or mandate of the General Meeting of Bondholders. As long as the trustee does the tasks and obligations to investors and of their rights to the government, all the rights and interests of investors or bondholders will be protected in law. Protection in the form of a guarantee fulfillment of payment of bonds (as debt) will be assured, when the bonds are secured by a debt underwriting pursuant to Article 1820 of the Civil Code with the release of a privilege, or a guarantee of payment pursuant to Article 1316 of the Civil Code, or the provision of collateral material (Jono, 2006). The basic concept of holding an agency relationship is to allow one person or one party to expand its activities through actions or services of others. Civil Code and the Commercial Code do not expressly govern the agency agreement. More akin to the task of the agency is the work done by brokers (Setiawan, 1996) and commissioners (Sewu, 2004) as contained in Article 62 to Article 73 and Article 76 to Article 85a Commercial Code. Nevertheless, the characteristics contained in realtors' and commissioners' activities cannot be equated with the activities of agency.

The agency agreement is a manifestation of freedom of contract contained in the Civil Code. This is the basis of freedom of contract to fill a void in the field of contract law that are public, with the intention that the law can meet the needs of the community to follow the dynamics of economic development and can be a means of renewal (a tool of social engineering). Agency relationship always begins with the agreement, and from the content of the agreement can be seen what actions can be performed by an agent against a third party in the representation of the principal. The task of the agency held by Bank of Indonesia related to state bonds are more specialized, and as the activities of the agency in general, Bank of Indonesia in carrying out its duties is to act for and on behalf of the government. Seeing its specialty, as mentioned above, the task of the agency implemented by Bank of Indonesia is not appropriate if classified into the activities of a broker or commission stipulated in the Commercial Code, but more appropriately classified as an authorization as stipulated in Article 1792 of the Civil Code. With this in mind, an authorization will give birth to a representative that is the person who represents another person to commit a legal act that can occur because of a treaty or for the laws, and the power received by Bank of Indonesia provided by the law as stated in Article 12 to Article 14 of Law No. 24 of 2002 concerning Government Securities. Although it is difficult to imagine, the government would refuse to pay back bondholders, considering this act will definitely decrease public confidence in the ORI, because the one that makes a lot of investors interested in buying the retail bonds is the certainty of repayment by the state. That's why although ORI does not have the underlying assets, this does not diminish the public confidence to buy. Moreover, GS Law already stipulates that the funds to pay the holders of state bonds will be set aside in the state budget each year until the end of the payment obligation.

No matter how small, the risk of default and the government's refusal to make payment still remain. Moreover, there was a case in which the government oppressed and refused payment obligations under a court order (Surabaya District Court's Decision No. 07 / Pdt.G / PN.SBY jo 14 September 1999, the East Java High Court Decision No. 112 / B / PDT / 2000 / PT.SBY jo dated June 6, 2000, the Supreme Court of Cassation Decision No. 3939 K / PDT / 2001 dated January 24, 2003 jo. Reconsideration of the Supreme Court Decision No. 161 PK / PDT / 2004 dated January 31, 2007) (Boen). GS holder does not have the certainty of obtaining payment except for assurances from the government that will be not necessarily implemented. This is important to consider so that no investors of GS would end his life because of their investment money is not returned, as what a victim of fictitious Bank Century funds did.

Filing a lawsuit might be useless because the government can refuse to pay. Hope on the good faith of the government? It seems that for the sake of legal certainty for investors, good faith is not enough. Reselling or making a factoring agreement bill on state bonds, clearly does not solve the problem, at least in the long term. The regulation is that of state assets can not be seized should not be applied rigidly. It is true that the country's assets valued vital for the survival of the country and historically valued like *Gelora Bung Karno* should not be confiscated for any reason, but as long as the asset only has economic value alone, it seems there is no other reason why such state assets may not be confiscated. It can be arranged that the court can give an order to the government to put payment in the state budget, or sell and / or auctioning the assets that are pledged. If the government continues to refuse to do so, then the court can confiscate and auction off these assets. Conditions like these can ensure the supremacy of court ruling against the government, that the court has an equal position with the executive and state. If the government was not subject to court decisions, it would be destructive to the existing law and set a bad precedent for the life of the state. In a broader scope, such provision could protect all citizens against state tyranny. All people have the same position in law, including the state itself. It is true that the state makes the laws, but after the legislation is valid, the state would be the party subject to it. It happens similarly to the decision of the judiciary which is sourced from its own constitution.

The most important thing to remember is that during this time the ban of seizure of state assets already applies limitedly. It has often happened where law enforcement officers, with the reason of securing state assets, both the Corruption Eradication Commission and the Attorney General of the Republic of Indonesia foreclose on state assets suspected to be the proceeds of crime. For example, seizure of the accounts of PT SMP, one of the suspects in the alleged criminal act SISMINBAKUM. Thus, the state assets can be seized if there is a good reason. It feels that seizure of state assets by a court order for the government for breaching a contract or refusing to provide the rights of its citizens is also a good reason, because it shows that we all, including the state or the government, live under the Constitution of the Republic of Indonesia and have the same status before the law. A jargon in the capital markets industry, *my word is my bond*, emphasizes the importance of fulfilling the promises that were spoken. If the promise is broken, credibility is destroyed. Although ORI has a high trust level because the state guarantees, the protection of investors is also associated with a reasonable and fair price when traded. Investor protection, among others, is concerning transparency in bond prices. Based on the information from management of Surabaya Stock Exchange, the bond price formation in the stock today is not perfect because only about 50% of market participants report their transactions to the Stock Exchange. The reporting was delayed because the new bond transaction report was given when payment (settlement) had taken place after a few days of the transaction, so the price had changed (Suli Murwani).

Back to Law of GS Article 1 (1) and Article 8 paragraph (2), which states that the government guarantees and shall pay interest and principal, this is essentially a legal protection for bondholders. In Article 8, paragraph (3) and (4), in terms of interest and principal payment obligations exceeding the estimated budget, the Minister of Finance is to make payments and deliver the realization of the payment information to Parliament in the discussion of The Change of the State Budget.

Conclusion

Based on the discussion and analysis, it can be summed up as follows:

1. Regulation of the issuance of ORI in Law Number 24 of 2002 on Government Securities guarantees the existence of bonds issued by the Government of the Republic of Indonesia. That means that the government is obliged to pay interest and principal of each Government Securities at maturity. The guarantee from the government is intended to create an attraction for investors to invest in government securities. With the law of these government bonds, the bondholders do not have to worry about going on the default risk. In accordance with Article 1 (1) of Law No. 24 of 2002 on GS and Article 8 paragraph (2), the government is obliged to pay interest and principal of each Government Securities at maturity.
2. The legal status of holders of Retail Bonds is basically not much different from unsecured creditors on a debt agreement in which they do not have the rights to get first payment than other creditors if the government is in default. The guarantee from the government to pay the interest and principal of government securities as stated in Article 1 of Law No. 24 of 2002 on Government Securities is basically intended for government securities to be more attractive to the public.
3. The legal protection of Retail Bonds holders is based on the Law on securities and an agreement of money lending between the government and the investor; the investor has the right to charge the government as a debtor at the time of installment of principal and interest on the bonds maturing and this has provided legitimacy to the bondholders. Furthermore, based on an agreement between the government and Bank of Indonesia, for the implementation of the tasks, the agency has provided legal protection for investors or bondholders for all interests related to the administration, storage, and the repayment of principal and interest on the bonds; this will be carried out by an institution whose orderly administration is well taken care of.

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