

Making the Innovation of Smartcity through Municipal Bond Publishing

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12 Making the Innovation of Smartcity through Municipal Bond Publishing

12
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Abstract. The purpose of this paper is to know the various obstacles in the issuance of municipal bonds by local governments as well as the relationship of problem solving on the publication. The research methodology of the study was conducted in a way to verify data obtained from local and central government then tried to problem solving with a similar pattern of comparison in the State of Malaysia. Primary and secondary data are then analyzed and evaluated normative juridical. Finding of the research conducted by the Capital Market Supervisory Board there is a trend of positive law concerning the issuance of municipal bonds has been made yet implemented by the Central Government Local Government appear inconsistencies. Excessive licensing process by the Central Government is not in line with rational quality, readiness and potential of the region. Quantity areas analyzed at the time a row is Jembrana Local Government, Local Government Bandar Lampung, Medan Local Government and Local Government Tabanan. Problem of availability of funds for regional development is one of the main things that faced by all regions of the world, especially developing countries, including Indonesia. Utilization of funds from the public contributes to the success of regional development, especially through alternative municipal bond issuance. All elements of both investors Local Government and the Center have important role aspects. The role of the central government initiated since the manufacture of various statutory provisions and licensing provision relating to the issuance process. Local Government as the publisher and owner of the project, while investors concerned about the return on investment funds according the agreement between them. Knowledge of good financial management area and also the position of the object transparent collateral is one of the important things as a form of responsibility for Local Government in the event of default

Keywords: Credit Agreement, Sewabeli Agreement, Leasing Agreement, Novation Agreement, Fiduciary Agreement and Insurance (schade verzekering).

1. Introduction

Everyone longs for a safe, peaceful and prosperous life that the Indonesian people aspire to, that is fair and prosperous for all levels of society. To achieve the various state systems emerged, such as democracy. The ideals of a society can not be achieved without optimizing the quality of human resources. But there are still many problems for the nation of Indonesia, the problems that cause a lot of conflicts or chaos that occurs in urban communities. These storms can not be left further because it will be bad for the survival of the nation and state in this country. It would be nice if the problem that over time continue to arise lately can be resolved thoroughly, quickly and transparently so that people



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know very well the position and solution of the problem. So as to meet the need⁵ of people in urban areas to overcome the problems that occur so lately in Indonesia was dilencarkan concept of smart city (smart city). The concept of smart city (smart city)³³ coveted can be a solution to create a city even a safe and conducive and more fun. Alluding to the concept of smart city (smart city), must still be foreign to our ears. Smart city can, we mean as "smart city". Other terms that have been used for similar concepts include cyberville, digital city, electronics society, flexicity, city information, smart city, city-based knowledge, city of MESH, telecity, teletopia, ubiquitous city, cable of city. Smart City (Smart City) which makes technology as one of the main reference to become the city becomes smart (smart). So the understanding of smart city (smart city) is a concept of technology utilization in accordance with each city.

Smart cities can also be defined as an urban structuring concept that is integrated with smart city technology¹³ in government services, transportation and traffic management, energy, health care, water, innovative urban farming and waste management. All aspects are whether from government, residents, health, education and many others by making the development of technology as one of the tools. The development of technological devices in realizing the concept of smart city (smart city) is not separated with the Role of Information Communication Technology (hereinafter referred to as ICT) is now increasingly significant along with the transformation of the life of the world community towards the information society. ICT has now become one of the major infrastructure in modern society life like electricity, water, and road. ICT also serves as a resource of human production and consumption as well as supporting tools in the implementation of daily activities both of governance, industry and organization. To build a smart city (smart city) would require supporting infrastructure such as technology devices and information systems technology. Information and Communication Technology plays an important role in the management of smart city (smart city) in order to maximize existing resources. Maximizing these resources, it is hoped that the service to the citizens will be more effective and efficient. The use of ICT in the learning process (e-education), governance (e-Government), business (e-business), and others is evidence of how technology is able to change the pattern of individual and community action in daily activities.

Implementing the smart city technology concept is used to improve the efficiency and sustainability of urban space while reducing the cost and resource consumption of providing a city's situation information that can be accessed through a controlling room done comprehensively and in real time so that the information collected about the various factor of city life. Can be transmitted, collected, and analyzed by local government⁶. So that local leaders can get extrapolated information directly in order to take a policy in crime prevention, traffic management, energy use and waste reduction. This serves to facilitate better city planning and allows the government to tailor their services to the local population.

The concept of technology in smart city, is expected to support development, so that regional leaders can more quickly know the problems and problematiknya citizens ranging from garbage, about poverty, urban crime, natural disaster⁵ (floods) and traffic problems. So that local leaders are quicker to take policy in handling problems. The concept of technology in the smart city (smart city). Viewed from the economic side, a smart city⁵ is a city that is sustained by a good economy by maximizing the resources and potential of the city. The concept of technology in smart city (smart city), viewed from the side of the environment, smart city is assessed from the community that has a healthy habitable, healthy, efficient⁵ in the use of energy supported technology and information services and the role of a good society. The concept of technology in smart city (smart city), viewed from the side of the law, in law enforcement, informasih generated by smart city technology² has a combined effect of prevention and provide deterrent sanctions on motorists committing traffic violations. By controlling the speed of vehicles, authorities can minimize one of the more common risk factors in vehicle crashes. Similarly, by monitoring vehicle location² through a combination of GPS and camera technology, the government and the police can react in real time to minimize heavy traffic incidents and therefore the possibility of crashes. The technology also allows police² and emergency authorities to respond directly to accidents that may occur. So it can improve traffic management and efficiency, reduce energy consumption, and improve the safety of civilians. The concept of smart city technology is expected to enhance law enforcement effectively, optimize transportation services, and improve critical infrastructure systems,

including providing local government services through e-Governance platform. Based on the background can be formulated problems as follows how are the government's efforts in terms of financing to make the region a smart city and The legal basis for the issuance of municipal bond to realize Smart City Innovation.

2. Literature Review

Economic globalization in addition to providing severe challenges also creates a wide opportunity in the framework of developing a country's economy. Globalization demands more effective, efficient and far more competitive action. Globalization also demands work ethic, performance, system and process and marketing according to international standard. That means it takes the ability to face and make big changes in a relatively short time. An area with strong economic and human resource capabilities can accept this globalization process. On the other hand, globalization will have a bad impact if a region/city has no readiness, both in terms of economy, human resources and in terms of availability of policies and legislation as a supporter of economic growth itself. One of the efforts to implement Indonesia's economic development is through the capital market. At this time the Indonesian capital market is expected to play its role optimally as an alternative financing for the construction of structures and infrastructure and the other side as a vehicle for investment for the community. Understanding the investment itself according to Neoh Sean Kean is: "The exchange of cash for an asset with the hope that the asset will yield regular future income and or an increase in the value of the asset such that the sum of the income and the eventual value of the asset is greater than its purchase price".

Indonesia's capital market can be strong again will restore the Indonesian economy. The capital market is able to mobilize the real sector by utilizing funds from domestic investors. The vision of Indonesian capital market development is set forth in the "Capital Market Blueprint of Indonesia 2000-2004" which is to realize the capital market as a powerful and competitive national economic driver global.

Indonesia capital market in order to be able to compete globally, has been supported by the instrument of Act Number 8 of 1995 concerning Capital Market, hereinafter abbreviated as UUPM, as a solid foundation and legal certainty for related parties in conducting activity in capital market field. The existence of a solid tool, modern infrastructure and technically safe, as well as the professionalism of human resources, it is expected that activities in the field of capital markets will be able to develop dynamically and optimally. It is intended to produce strong capital market actors so that it becomes a powerful driver for the national economy. The capital market according to E.A Koetin can be defined: The meeting place between those who have idle funds, with business entities or governments that need additional capital to operate, while the transactions can take the form of inclusion. Represents a loan when an entity that requires capital issues medium-term credit securities or can also bonds / bonds it sells to the owner of the fund.

Refers to the above understanding if the linked regional development can be said in fact the capital market runs two functions. First, the capital market has an economic function that is a forum that brings together investors with local governments who need it to develop economic activities. Secondly, the capital market has the financial function of being a place for the availability of funds (non-Bank) for the Regional Government in need of development capital. The existence of a growing legal device, namely Government Regulation no. 54 of 2005 on Regional Loans, the regions may borrow or issue the Municipal Bonds concerned. The issuance of bonds is the authority of the Minister of Finance, the issuance of Regulation of the Minister of Finance No. 147/KMK.07/2006 on Procedures for Issuance, Accountability and Publication of Municipal Bond Information. This regulation clearly outlines how to issue Municipal Bonds and is expected to help the region to obtain funds. The absence of a complete legal umbrella makes the Local Government should think about how to manage the loan that will create a multiplier effect in the form of a network of economic activities that support the main project which all of which creates a lot of employment for the community. This condition will not happen to Local Government having big APBD. Investors do not have the

opportunity to invest their capital through the Municipal Bonds, which in turn will not have a positive impact on the regional economy. This is in accordance with the statement Jokowi (Governor of Jakarta at that time): “APBD DKI Jakarta each year must not be absorbed. Last year, the remaining budget utilization (Silpa) of APBD DKI reached Rp10 trillion. On that basis, Jokowi assess the budget owned by city government is sufficient. Jokowi asserted, he will not take the policy to issue bonds despite eligibility. He will immediately convey his attitude to the Minister of Finance Agus Martowardojo”.

The policy is in contrast to the vibrant East Java Provincial Government in 2016 to issue Municipal Bonds to finance development. This is in accordance with the statement of the Vice Governor Jawa Timur Saifullah Yusuf that: “The issuance of Municipal Bonds has a positive impact on the economy of East Java. The leading sectors are public infrastructure such as airports, toll roads and ports. For the value have not confirmed because it must be reviewed first [1].

The existence of the Regional Government of East Java issued Municipal Bonds in accordance with the mandate of Law Number 23/2014 on Regional Government Article 307 namely: paragraph 1: The property of the Region necessary for the conduct of Government Affairs is non-transferable, paragraph 4: Regional property as referred to in paragraph (1) and paragraph (3) shall not be borne or liable for a loan. It means the object of Municipal Bonds in the form of goods not for the administration of Government affairs then the object can be used as debt guarantee for the firm of investors' receivables. This is in accordance with Article 1131 of the Civil Code that: All the movable and immovable property of the debtor, whether existing or otherwise, shall be guaranteed for the debtor's individual engagements.

Finally all the development of Regional Bonds is inseparable from the existence of Local Government must hold good communication with other institutions concerned in the process of issuing Municipal Bond. Other findings came from the results of a study by the Capital Market Supervisory Agency Team who found several important issues related to the issuance of Regional Bonds as follows: Most of the Regions have potentials and project plans that can generate revenues and support the people's economy, but are faced with funding problems, Local Government already understands that Regional Bond is an alternative financing for the Region, but not yet know in more detail about Regional Bond and Public Offering mechanism through Capital Market, The Regional Government believes that it has adequate Human Resources to manage the regional finances properly, but the supporting institutions and professions have not seen the readiness of Regional Human Resources in managing regional finances properly and transparently, The Regional Government is ready to cooperate with capital market supporting institutions and professions in the context of the issuance of Municipal Bonds if it is required in accordance with applicable regulations, There are several technical obstacles in the issuance of Municipal Bonds, among others, concerning the status of Regional assets including project assets to be financed by Municipal Bonds. Besides, there are still constraints if the bonds are defaults, whether the guarantee of the bonds can be executed for the benefit of investors, A large number of supporting institutions and professions consider the need for a separate regulation governing the Public Offering of Municipal Bonds as well as other regulations relating to information disclosure before the bond matures, Most regional governments and Capital Market supporting institutions and professions require the need for a socialization of procedures and provisions concerning Municipal Bonds, in addition to accelerating the completion of their implementing regulations. So the issuance of these bonds must still follow the requirements set for the issuance of bonds in general that there must be disclosure, have accounting standards, credit rating, and can be announced with market-owned standards. This is in line with the framework of economic recovery that is the use of funds through the capital market in accordance with the spirit of good government. Financiers are entitled to know all actions taken by the Regional Government on their funds. The reason is if the Local Government does not implement the spirit of Good Government, then the potential benefits of investment that can be given to investors also must change.

3. Methods

This type of research is normative legal research. Normative legal research includes research on legal principles, systematic laws and regulatory consistency. This study also examines the principles of smart city law that form the basis for the issuance of Municipal Bonds in the legal layer, legal

theory and legal philosophy. Ultimately dogmatic law, legal theory, and legal philosophy should be directed to the practice of law, especially on two main aspects namely the establishment of law and the application of law. Issues of legal application include legal interpretation, legal vacuity, antinomy and blurred norms. The approach used in normative research is the statute approach and conceptual approach, namely: The statute approach is conducted by reviewing the laws and regulations relating to research objects, especially Law Number 8 of 1995 concerning Capital Market and Law Number 23 Year 2014 on Regional Government and its implementing regulations. The conceptual approach is done by examining the juridical concepts related to the protection of Bond investors in the capital market.

This research is conducted based on several stages. The first stage is to conduct an inventory of primary legal materials as well as secondary legal materials. In the primary legal materials used are laws and regulations relating to the object of research, among others: Law Number 23 Year 2014 on Regional Government, Law Number 24 of 2014 on Central and Regional Financial Balance, Law Number 8 of 1995 concerning the Capital Market, Government Regulation No. 24 of 2005 on Government Accounting Standards, Government Regulation no. 54 of 2005 on Regional Loans, PP. 3 Year 2003 on the Control of Cumulative Amount of APBN and APBD Deficit, Regulation of the Minister of Finance No. 147/KMK.07/2006 concerning Procedures for Issuance, Accountability and Publication Municipal Bond Information, Decision of BAPEPAM Number: KEP-81/PM/1996 or Regulation Number: X.K.4 regarding report on the realization of use of proceeds from the Public Offering, Decision of BAPEPAM Number: KEP-80/PM/1996 or Rule Number X.K.2 concerning obligation to prepare annual financial statements and semi-annual financial reports, Decision of BAPEPAM number: KEP-32/PM/2000 or Regulation Number IX.E.1 regarding conflict of interest of certain transaction. Primary legal material can be categorized as authoritative legal material, because it uses official documents made by the authorized institution. Secondary law materials used are literature of legal science and writings of experts in the field of capital market law in the form of books, journals, workshop results, and seminars and articles. The entire material of the law relates to the purpose of writing this dissertation. Primary and secondary legal materials are obtained in the library.

The second stage, starting from the primary legal material and secondary law material that has been collected, then further connected with snow ball method or snow ball. This method seeks to trace the entire legal materials that are consistent with this research. The third stage, an analysis of the legal materials that have been collected for identification, inventory and classification based on the focus of the problem being studied. The next step is the theoretical analysis of these materials to find, understand and explain in depth the process of legal arrangement, the existence and implementation of municipal bond principles in order to create smartcity.

4. Result and Discussion

The legal basis for the issuance of municipal bond to realize Smart City Innovation. The existence of reform in governance in Indonesia gave birth to the form of authority to the Regional Government to implement the system of regional autonomy. It means that local governments are mandated to implement development independently. Such authority is supported by a capacity as contained in Law Number 22 of 1999 on the financial balance between the Central. The government and the region as a sub-system of the Local Government system. The support of the existence of the financial balance is focused on the regional revenue derived from the original regional income (PAD) and the balance funds. As the implementation of the provision, Government Regulation 105/2000 on the management and accountability of regional finances is stipulated in Article 4 that : Regional financial management is conducted in an orderly manner and in compliance with the prevailing laws of law effectively, efficiently, transparently and responsibly with due regard to the principle of justice and compliance. Then addition, Article 19 of the Government Regulation is also affirmed that: In addition to financing sources in general, local governments can seek other sources of financing whether loans, equity, deposits or cooperation with private parties on the principle of mutual benefit. Both of them contain the understanding that the Regional Government may issue Regional Bonds to finance regional development on condition of paying attention to aspects of transparency and accountability. The amount of authority given to the regions by the Central Government will

encourage the growth of community social life in the region. This will affect the area will be more dynamic in carrying out the development. As a result, social life as well as economic expansion is also dynamic. Similarly, local governments will be increasingly expected to meet the aspirations of the community in the form of dynamics in service and fulfillment needs in development [2]. Communities will ask for easier, cheaper, faster and simpler services in order to meet their social needs. Suppose the community's need for health services, social security, cheap and quality education, fulfillment of sanitation, availability of clean water, adequate facilities and infrastructure and so forth.

In the above conditions, the support of tangible balancing funds between the Central Government and Local Government will be felt increasingly inadequate. In the end, local governments are required to be more creative in exploring the potentials that exist in local revenue both from existing sources and sources that will exist. The form of the above mentioned Government Regulation which comes from the authority of the Regional Government, one of which has the right to issue a municipal bond. According to Soekarwo's opinion, that the issuance of mutual bond is implemented by the Local Government is not as simple as that of a private company. This is because the budget managed by the Regional Government is a public fund that must be accounted for. This means that funds managed in the form of bonds must provide an added value, for local government in the form of increasing local revenue and for society in the form of improvement of quality of development and improvement of service quality. Regional bonds represent one of the debentures that the debtor in this case the Regional Government claims to have a debt to the creditors in certain long-term period. As one of the instruments of securities (waarde papier) and derived from external fund sources, the regional bonds have the following characteristics: can be traded, there is an obligation to return the principal of the debt, there is an obligation to pay the interest that has been agreed, there is a definite timeframe, there is recognition from the Regional Government either by guarantee or without guarantee [3], [4]. The existence of interest in the issuance of Municipal Bonds provides a contradiction between the issuer's point of view and the letter holder. For the holder of the securities wants a higher interest rate compared to the interest rate of the banking. Local Government expects that the interest is lower than the interest rate of banking and the repayment of principal debt made relatively long. They reasoned that the issuance of these securities will be used for development and public services. Finally, when the Daerah Government will issue Municipal Bonds, it should provide a responsible incentive from the budget post side and be economically feasible. Finally, in managing the funds derived from the issuance of regional bonds, the position of the Regional Government (in terms of rights and obligations contained in the Indonesian capital market) is concurrent with the role of public limited liability company in the private sector [5]. Differences Local Government is a public institution that can not leave its role in social services while gopublik limited liability is more oriented to the realization of benefits as contained in economic principles.

5. Conclusions

Government Efforts in order to realize smartcity by making regulations of Minister of Home Affairs and Minister Information and Communication. The existence of the executive officer will be implemented by the Regional Head in the form of a Regional Regulation. With the regulation is used sebagai legal umbrella for the apparatus under it to implement smartcity. Form the application of smartcity with livelihood funds through the issuance of regional bonds. However, the publication is in trouble because in practice the central government does not give permission for its issuance. Finally they seek funding from third parties as well as from the State Revenue and Expenditure Budget. The government needs to make its implementation regulation for the agency under it in order to make it easier for local government in implementing the smartcity. The form of implementation is difficult for the region to issue such bonds due to the difficult licensing factors of the Regional House of Representatives as well as the Central Government. Finally, it is advisable to create institutions that are not at risk.

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