



## Blank Cheques Commercial Law Perspective

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### ABSTRACT

*Cheques are one of the Securities Regulated in the Commercial Law Code, the use of cheques is increasing day by day, cheques as a means of payment is very beneficial for the issuer, because this check gives a sense of security for the issuer who issued the check and also the issuer can issue a check backwards if at the time the issuer issued the check, the funds in the bank is not enough. But in practice, there is often abuse of check issuance by issuing blank checks. By issuing a blank cheque will result in the issuer's account will be closed and reporting to Bank Indonesia, and the issuer's account should not be associated banks and may also be subject to criminal acts of fraud.*

### INTRODUCTION

In today's trading world, banking institutions are in great demand and needed in the community, because the products produced by banking institutions are very helpful to the community in conducting financial transactions. In addition, with the existence of banking institutions, entrepreneurs in buying and selling transactions whose nominal is large enough is very helpful, because it is often agreed by the parties in the payment using banking products in the form of securities, among others, checks.

According to Abdulkadir Muhammad securities are letters issued by the issuer deliberately as the implementation of the fulfillment of a feat in the form of payment of a sum of money, but the payment is not done by using currency, but by using other means of payment. The payment instrument is in the form of a letter in which it contains an order to a third party, or a statement of being able to pay a sum of money to the holder of the letter.

With the rapid development of the trading world, the use of securities is increasingly in demand by the public. Therefore, innovations in payments are also constantly being developed by banking institutions. The goal is to anticipate the risk of large cash payments. In the banking world, non-cash payments in the form of securities are also

known. Non-cash payments in the form of securities have advantages that are practical and safe. Practical means that if there is a business transaction the parties do not need to carry large amounts of money, just bring securities while safe means that only certain people are entitled to use securities because there are certain conditions specified by banking institutions in using securities as a means of payment both cash and credit.

There are various kinds of securities and can be used as a means of payment of cash or credit, so that in each transaction the parties do not need to carry large amounts of money, just by pocketing the Securities. In addition, in terms of security, it is also more secure because not everyone who is not entitled to use these securities. Payment by securities requires a certain way that is different if we use large amounts of money. One of the innovations in non-cash payments is cheques as one of the securities which is a giral cash payment instrument as a substitute for chartal money. Securities in the form of checks are regulated in the Commercial Law Code (KUHD).

A check is an unconditional warrant from the customer to the bank that maintains the customer's checking account, to pay a sum of money to the party mentioned in it or to the holder of the check, the legal terms and the use of the check as a giral

payment instrument are regulated in Article 178 of the Criminal Code.

The use of checks as a means of cash payment in giral as a substitute for chartal money, tends to provide opportunities for irregularities in the use of checks, giving rise to the desire of some people who have bad intentions to use blank checks, namely where there is no availability of funds when the check is cashed or shown.

## METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary sources obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

## RESULTS AND DISCUSSION

### Legal Issues In The Legal Check Commercial Law Perspective

In the traffic of Commerce or companies, except paper money, are known various letters that in general people say it as securities because in reality the securities have a monetary value or can be exchanged for a certain amount of money or what is called in the letter can be valued or exchanged for money, as we know so far, letters or other

According to Sri Harini, securities are writings or deeds that by law or custom are given a legitimacy to the holder to claim their rights or claims based on the letter. So, it can be in the form of a deed or even writing instead of a deed. In the code of Criminal Procedure, book I Chapter VI-VII, the securities are a deed under the hand, in this case according to Molengraff securities provide formal legitimacy.

According to Purwosutjipto, securities are valuable letters that are proof of debt claims that are difficult to sell and buy.<sup>93</sup> from the above opinion it can be concluded that securities have three main characteristics as follows :

- a. As a means of payment (money exchange).
- b. As a tool for transferring collection rights ( traded easily and simply)
- c. As a letter of collection (Letter of legitimacy).

So if a letter has met these three characteristics, then the letter can be classified as securities. This is in accordance with the characteristics set forth in the code of Criminal Procedure. Securities Regulated

in the code of Criminal Procedure include: notes, promissory notes, checks, receipts and promissory notes on appointment.

Securities are letters that the issuer deliberately issues as the executor of the fulfillment of a feat. Payment by securities is not done by using money, but by using other means of payment in the form of a letter containing a warrant to a third party to pay a sum of money to the holder of the letter. By issuing securities to the Issuer, the holder of the letter has the right to collect the amount of money in it, by showing and submitting the securities to the third party.

Securities Regulated in the code of Criminal Procedure is a letter that can be easily transferred so that since the letter was issued until the time of payment is always changing hands. This is due to the required classula on securities that result in securities can be easily transferred based on the law or the will of the issuer, generally always affixed classula on appointment or classula on replacement. Klasula topunjuk is a translation of the original term in Dutch Aan Toonder, in English to Bearer. While the substitute upper class is a translation of the original term in Dutch Aan Order, the English To Order. But if the issuer does not want the securities can not be transferred to another person in a simple, then the issuer may affix the rekta klasula that reads no substitute. With the recta classification, the first holder of securities is not allowed to transfer the securities to the next holder. If the first holder of the securities still wants to transfer to another party, then the legal consequence is that the issuer is not responsible according to the securities law to the new holder.

While the check is one of the Securities Regulated in the Criminal Code, according to Widjanarto, a check is a letter that contains an unconditional order to the bank that maintains the customer's account to pay a certain amount of money to a certain person or designated by him or to the bearer. Thus a check is essentially the same as a bill of exchange, which is an order to pay (betalingsopdracht) and not an ability to pay (betalingsbelofte). The provisions on checks are set out in Book VII-I-X of the Criminal Code (KUHD). The provisions of Article 178 of the Criminal Code can be concluded that the check klasula function to distinguish from other securities. Klasula checks must be written in the language of the check was written, if the check is issued in Indonesia is written with the word check, but kalu issued in England is written with the word cheque. In addition, the order to pay the check should not be hung with certain conditions that prevent, interested in the

check can only be a bank, the period of circulation of the check is only 70 days from the date of issue and the check must be signed by the drawer.

The use of checks as legal tender in transactions in the business world can facilitate business affairs between the parties. Therefore, if examined in more depth, there are several factors that cause why checks are preferred by the community, namely :

1. The check is a cash payment tool, so payment is more practical and faster, therefore as a consequence the check must be cashed immediately after the check is issued.. This is confirmed in Article 205 Paragraph 1 of the code of Criminal Procedure.
2. The period of circulation of the check is only 70 days from the date of its issuance..
3. Cheque issuance is more flexible and can be used according to the issuer's financial condition.
4. The transfer check is easy.

In its development checks are increasingly used as a means of payment. The demand for human life needs in trade is increasingly pushing towards the complexity of the form of checks that were originally solely as a means of payment in standard form, in its development, it has expanded into special forms according to the designation and purpose of issuance.<sup>96</sup> as for the kinds of special checks that circulate in accordance with the designation and purpose of the issuance, among others, are as follows :

1. Checks on the substitute, where the issuer acts also as the first holder;
2. Check on the publisher's own orders menbayar addressed to the publisher's own;
3. Checks for the calculation of others that checks can be issued at the request of the third person;
4. Collection check or also called a check for granting power of attorney or for billing;.
5. Check domicile where who can designate where the check should be paid or domicile on the check letter is only the issuer;.
6. Blank check is where the unavailability of funds when the check is cashed or shown;
7. Traveler"s cheques are checks in transit cheques for people traveling;
8. Reverse checks where the check is issued before the date stated in the check.

The use of checks as a means of payment is increasingly in demand by the public because it is easily transferable and checks can also be transferred to other people just by handing over the check and the check can be paid to anyone and someone who controls it is considered the owner.

The use of checks as a giral payment tool cannot be separated from the existence of transactions carried out by the parties. The legal actions carried out by the parties resulted in both parties having to perform the obligations as stated in the contract they made. The parties to the agreement or contract, one is a creditor and the other party is a debtor. The creditor is entitled to an achievement in the form of payment, while the debtor is obliged to counter the achievement in the form of payment implementation. The above engagement arises because of an agreement, such as a sale and purchase agreement, lease and others.

In the sale and purchase agreement made by the parties, it is often the achievement that the debtor will perform in the form of payment of a check that serves as a means of payment. Payment by check should be viewed as a means of payment in ordinary cash. The purpose of issuing a check letter is to increase the guarantee of payment. Therefore cheques are only issued to bankers, and cheques may only be issued if the banker has funds for payment and the cheque is valid for a short period of time. In Article 178 to Article 122 KUHD there are several provisions that indicate that the Securities checks as a means of payment, not as a means of credit.

The onset of the obligation to pay by issuing a check is due to an agreement concluded in advance by the parties. The issuance of checks is as the implementation of the obligation to pay. The issuance of checks as a means of payment must meet the formal requirements as specified in Article 178 of the code of Criminal Procedure. A cheque is a means of payment because a true cheque will terminate a transaction in which one party provides goods or services and the other party pays them.

In banking practice today is often found a check dated backwards, this is done or taken by the issuer if at the time of issuing the check issuer does not have sufficient funds, so that the date of issuance is made backwards. This check directly has a longer circulation period than ordinary checks. The issuance of a backdated cheque is based on trust and necessity in the practice of transactional payments. On the issuance of this reverse check there has been an agreement between the issuer and the holder. Therefore, the holder already understands that he is not entitled to payment before the date of issue. The holder of the backdated check holds the check as a guarantee that he or she is entitled to payment at the offer grace period calculated from the date of issue stated in the backdated check. The Bank that

controls the funds for a backward-dated check under Article 205 of the Criminal Code must make payment at the time the check is offered, even if the check is offered before the grace period of the offer.

Reverse checks are often associated with blank checks, even though the definition of reverse checks is different from blank checks. A blank cheque is a cheque whose funds are not available at the time the cheque is presented to the drawee, or the funds are not available to the drawee or insufficient. This will certainly be another understanding if it is connected with law Number 17 of 1964 concerning blank check violations which were later revoked by Law Number 12 of 1971. The use of checks as a means of payment is now increasingly in, interest by entrepreneurs, because the parties in each transaction do not need to carry large cash as a means of payment, but simply by pocketing checks as a means of payment, in terms of security is also more secure because not everyone who is not entitled to use checks, not be the target of robbery, theft with violence and others.

But in practice it often happens that the issuer issues blank checks. Blank check is a check submitted to the bank but the customer's funds are not sufficient to fulfill the mandate on the check in question. The issuance of a blank check can occur starting with the issuer issuing a reverse check, actually the issuance of this reverse check is due to an agreement between the issuer and the holder of the reverse check, which is due to the deliberate intention of the check issuer who has the intention of not either issuing a blank check or paying with a blank check in a business transaction. A factor supporting the practice of using blank checks is bank Secrecy. The Bank will not provide information on the number of customer accounts. So if it turns out that the check is insufficient or empty funds, the recipient of the check may not know it. The cheque holder simply believes that at the time of presenting the cheque, he will obtain payment from the bank. In Indonesia, the regulation on blank checks has been included as a form of non-criminal crime in accordance with law Number 17 of 1964 concerning the Prohibition of the withdrawal of blank checks. In Law No. 17 of 1964, the issuer of blank checks can be threatened with Death, Life, 20 years imprisonment and can also be fined up to 6 times the value of the written check, because the Indonesian government at that time considered the act of drawing blank checks an act of manipulation that could disrupt and thwart the government's efforts to stabilize the monetary and economy.

However, in its development, the government revoked Law No. 17 of 1964 with Law No. 12 of 1971 because the government considered that the law was considered to hinder the smooth running of trade traffic in general and the banking world in particular.

With the repeal of the law on the withdrawal of blank checks, the resolution of problems arising in the practice of using blank checks as a means of payment is very complicated, because the holder of a blank check is burdened with a long procedure for claiming his rights, until finally it must be resolved by returning to the main agreement of the parties. Considering that the settlement of the use of blank checks actually creates a burden for blank check holders and the sanctions given to issuers who issue blank checks are only sanctions from Bank Indonesia, namely account closure and account owners must not be related to banks both domestically and abroad, resulting in bad faith check issuers will still issue blank checks in their business transactions., and can cause a lot of blank checks in circulation. Therefore, it is necessary to strictly regulate the issuance of checks so as not to be misused by cheque issuing customers who are delinquent so that it will harm the public and eliminate public confidence in the banking world.

To anticipate the actions of the customer issuing a blank check and its use as a means of payment in a business transaction carried out, Article 378 of the Criminal Code can be used to ensnare the cheque issuer with fraud. Likewise, if the customer of the check issuer deliberately issues checks many times to different parties, then the check issuer will be categorized as committing a crime of fraud as regulated in Article 378 of the Criminal Code (KUHP).

Therefore, to further foster public confidence in the use of checks as a means of payment, it is necessary to create a law prohibiting blank checks with sanctions that provide severe penalties for perpetrators, so as to reduce the misappropriation that has occurred in the case of blank checks.

## CONCLUSION

The emerging practice in the use of checks as a means of payment is that it is possible for the issuer of the check to issue a check without controlling how much funds there are, so that when the check holder shows the check to the bank, it turns out that the funds are insufficient, the check will be rejected by the bank and classified as a blank check. And the issuer of the check will be

penalized his account is closed and the account owner is not allowed to deal with banks both in the country and abroad. Whereas if the cheque issuer deliberately issues a blank cheque, then the sanctions that will be received by the cheque issuer who deliberately issues a cheque are in addition to the account being closed and the account owner must not be related to banks both domestically and internationally, also the cheque issuer that is not good can be sued civilly or subject to criminal fraud as stipulated in Article 378 of the Criminal Code (KUHP)

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