ABSTRACT

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JURIDICAL ASSESSMENT ON CLEARING AND UNDERWRITING INSTITUTION ROLE IN EVENT OF EXCHANGE TRANSACTION DEFAULT

(XXI + 176 pages: 3 appendixes)

For any states in the world, Capital Market is not merely a luxury to have, but has become a very important asset in order to promote the economic growth. The failure or default of Exchange Transaction will surely hamper our Capital Market growth, because basically transaction success is the key factor to instill and promote trust within investors to keep on investing in our capital market. To adhere this issue, it is thus needed a system of guarantee or insurance within the Exchange Transaction which could guarantee the success of all transaction settlement without the need of going through a lengthy legal proceeding or causing any meaningful loss to each parties. Therefore, the utilization of Clearing and Underwriting Institution's guarantee service is an adequate solution on negating the risk of default in Exchange Transaction. Through the settlement guarantee service, Clearing and Underwriting Institution will instantly replace the legal liability of the Clearing Member which fails to fulfill its obligation within the elapsed time of settlement (T + 3). Therefore, the third party in the transaction will only make contact with the Clearing and Underwriting Institution, hence avoiding the difficulty to claim the payment directly from the defaulting party. However, this method will always refer Clearing Member as the defaulted, as clients are almost invulneraible in this mechanism. A question arises as to how this method works within the boundaries of legal relationships between the related parties, and what mechanism shall be used to assess the issue between the de jure defaulting Clearing Member with its client when in fact the default was a result of de facto fault by the client. The research method used here is a normative legal research method which will assess the quality and legal effects of the guarantee function provided by LKP for its members including any risks entailing from its usage. This research may assist the investors on gaining a better knowledge in Exchange Transaction, and how to adress the issue of Payment Failure concretely and efficiently.

Reference: 88 (1979 - 2012)

Key Word: Peran Lembaga Kliring dan Penjaminan, wanprestasi, Transaksi Bursa, Pasar Modal