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# Legal Remedy Against Regress Rights for Endosans Who Make Non-Payment / Non-Acceptance Judging from the Use of Securities in KUHD

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### Abstract

Basically the provisions regarding the right of regressions are regulated in the Commercial law code. Regres right means the right to collect. Within the legal framework of money orders, Regres rights is right to collect from the debtor must regres because debtor interested in not being willing to accept or not pay the money order requested on the day of payment. This regression right is given to the notes holder because the money order has been rejected by the interested ( non-acceptability) or interested recipient of the money order payment on the day of payment(non payment). If a non-acceptance occurs,the holder has a regres right to the debtor must regres. As for the debtor meant in the right of regres are all people who have the obligation to guarantee payment of the relevant notes. The debtor must regres cn be a publisher or endosan or avalist. The regresion itself can be exercised if there is no acceptance (non-acceptability) and no payment (non payment). In the case of non-payment after acceptance, regres can be directly addressed to acceptor itself. The acceptor is bound to pay the note because he has put his signature on the note when accepting the note. As such it is a mandatory regres that must meet payment.

**Keywords:** Regres; Wesel; Debtor; Avalist.

## A. Introduction

Basically the right to regress is regulated in Articles 142 to 153 of the Indonesian Criminal Code. The right of regress is the right granted by law to the holder of the money order either due to non-acceptance or due to non-payment. The person who is obliged to guarantee payment of the promissory note, whose signature is on the promissory note. They are publishers, endangers and avalis.

There are things that cause the money order holders themselves can use their regres rights. First, due to the rejection of acceptances from being involved in whole or in part, so that there are non-acceptances. Second, because of the refusal of payment from the acceptor after becoming accepting, so there is a non-payment situation. Third, because of the rejection of acceptances and at the same time the refusal of payment from being stuck, so there are non-acceptance and non-payment conditions.

In the case of non-acceptances and non-payments, it is necessary to protest first to the stuck because the protest is a requirement to be able to exercise the right of regres. In addition, if the issuer has paid payment to the holder, the other progress agreement is free. If the endosan who has paid to the holder, the other obligatory regres are free but the endosan who pays has the right to claim against other regres

compulsory. If the avalis who have paid to the holder, the other regres compulsory are free, but this avalis has the right to claim other regres wajib.<sup>1</sup>

If there is an event as stated above, the holder does not need to wait for the day of payment to demand payment from the stuck, because the person who refuses acceptance is not yet obliged to pay the money order.

Not only that there is also the possibility that the acceptor refuses payment that if the caught has accepted the money order, then he is bound to pay the money order on the day of payment (article 127 clause (1)). Rejection of payment of notes can occur because the issuer does not provide a letter of advice to the stuck. If the promissory note on this basis is not paid by the acceptor, then the issuer in the burden of reimbursing all costs arising from the refusal of payment of the draft.

In addition to the provisions mentioned above, the right to regress is implemented if there is a non-accepting event or there is no payment event (article 142). There is the day before the payment that is if the acceptance is partially or completely rejected. If the accepting is partially rejected, then the rejected part is only the payment of the right through regressions, if the issuer goes bankrupt, and if it is involved, as an acceptor or not, goes bankrupt or gets permission from the judge to delay debt payment.

At the time of payment due to a non-payment event that is against a money order with the clause "no cost or no protest", the holder of the fee can exercise regresnta rights without protest, whereas for notes other than those mentioned above, holders who wish to exercise their right of regres must make the first protest (authentic process or simple protest), so that the new holder can exercise his right of regress at the earliest the day after the pay day.<sup>2</sup>

If the note holder experiences non-acceptance or non-payment, according to the provisions of article 144 paragraph 1 of the KUHD the holder must notify the non-acceptor or non-payment to his endosan and to the issuer within four working days after the day of protest, or if the money order is issued with a clause "No charge" (zonder kosten) within four working days after the appointment day. This notification is called notification (notification, notification).

Notification is not only the obligation of the note holder, but also the obligation of the endosan. In the notification must be mentioned the names and addresses of all those who have done the previous notification and thus until it returns to the publisher.

Furthermore, for those whose signature is in the promissory note, which receives a notification, it is also obligatory to make a notification to their avalist at the same time, that is, two working days after receiving the notification.

## **B. Research Methods**

Writing this law will use a juridical-normative research approach. Normative research conducted by the literature, which is carried out using theories about the principles of law, legal systematics, the level of legal synchronization, the history of law, as well as legal comparisons while juridical is carried out using statutory regulations.

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<sup>1</sup>Abdulkadir Muhammad,Hukum Dagang Tentang Surat Beharga,(Bandar Lampung:PT Citra Aditya Bakti,2003),hlm. 111

<sup>2</sup> <https://law.uui.ac.id/2013/09>

Based on the nature of this study using descriptive analytical research methods, where the statements contained in this scientific work by analyzing the references used so that they can evaluate the understanding in the reference in accordance with the object of the problem in this work. And as for the method of library research conducted in scientific work in the form of library data obtained through library research sourced from legislation, books, official documents, publications, and research results.

## C. Results and Discussion

### 1. Use of Regress Rights

The use of regres rights according to the provisions of article 142 KUHD that the holder of the notes can use their regres rights to the parties to the notes payable debtor. What is meant by a debtor having the obligation to regres is all those who have or are obliged to guarantee payment of the money order, and whose signature is already present and contained on the note. And they are publishers, endorsements, and avails.

According to Prof. Abdulkadir Muhammad, SH said that there are three things that can cause holders of money orders to use their regres rights, namely:

- a) Because of the existence of a rejection of the conception of the person concerned, either in whole or in part, so that a non-acceptance situation can occur.
- b) Because there is a decline in payment by the acceptor after the acceptance occurs, so that a non-payment situation can occur
- c) Because there is a rejection of acceptances as well as rejecting payments from those concerned, so that there can be non-acceptances and non-payment conditions.<sup>3</sup>

If the issuer has made payment of payment to the holder, the relevant regressors must be free. If an endosan has already paid to the holder, the other obligatory regressors are free, but this endoser has the right to claim other regressors (Article 148 KUHD).

In the case of non-payment after the acceptance, the regress can be directly addressed and submitted to the acceptor by bringing it before the court based on the default.<sup>4</sup>The acceptor who has been declared bound to pay the promissory note is declared obliged to pay because he has agreed to put his signature on the note when accepting the note. Then he is declared obliged to make a regress which must make payment.

### 2. Jamount that can be sued with Regress Rights

Provisions according to Article 147 of the Indonesian Criminal Code, the holder has the right to sue the following things to the person in regress:

- a) The minimum amount of promissory notes that are not accepted or not paid, plus interest if this has been agreed.
- b) 6% interest per year calculated from the day of payment
- c) Protest costs, notification costs that have been made, and other costs <sup>5</sup>

<sup>3</sup>Abdulkadir Muhammad, Hukum Dagang Tentang Surat Beharga, (Bandar Lampung: PT Citra Aditya Bakti, 2003), hlm. 112

<sup>4</sup> Ibid, hlm 122

<sup>5</sup> Opcit, hlm 124.

Once the debtor who is obliged to regress has fulfilled the payment (rembours), then he has the right to determine another debtor with the obligation to regres, namely:

- a) All amounts paid
- b) 6% interest per year, calculated from the day of payment
- c) Other costs incurred. (Article 148 KUHD).

For those who have paid their mandatory regress payments, they can demand the surrender of their promissory notes together with their protest deed and their receipts, to be used as evidence according to payments from debtors of other mandatory regres. And if the endosan has fulfilled the mandatory requirements for the regressions by paying the notes, then he can and is allowed to cross out the endorsement, so also applies to the next endosan. (Article 149 KUHD).

### **3. Death of Regress Rights**

Provisions pursuant to Article 152 paragraph 1 of the Indonesian Criminal Code, the right of regresion of the holder of the money order will be null or void against the issuer, endosan and other debtors shall be obliged to regress except the acceptor if the period of time determined according to the law has passed, namely;

- a) The promissory note (op zicht) within one year after its issuance and is not requested to make payments. (Article 133 Paragraph (1) KUHD
- b) Notes after sight (nazicht) within one year after the date of issuance and acceptance is not requested {Article 122 Paragraph (1) KUHD).
- c) The time to make a non-acceptance or non-payment protest as specified in Article 143 Paragraphs (2) and (3) of the KUHD has not been used.
- d) The time to request payment for a note with clause "without protest" and or "without charge" as specified in Article 137 Paragraph (1) of the Indonesian Criminal Code that has been no longer used. Then for the promissory note on the vision can be seen within a period of one year (Article 133 Paragraph (1) KUHD).

### **4. Endorsement**

Endorsement has been regulated in Articles 110 till 119 KUHD.<sup>6</sup>Endorsement is an institution in the draft law where the holder of the note can be transferred to the next holder in a very simple way. How to transfer the transfer to the next holder according to the law which results in the transfer of ownership rights to securities. Marketable securities which are transferred by way of endosement are securities which are of a substitute nature. And the party who transfers the right to the money order can be called an endorsement, while the person who receives the transfer is called Geendosserde.

Conditions as endorsement, namely:

- a) Must be obliged to pay all debt bills
- b) Unconditional transition statement
- c) Signatures of the transferring party

### **5. Various Types of Efforts in Regress Rights**

- a) Protest

A protest is an act by the holder of a money order against a non-acceptor, or against an acceptor in a non-payment condition. Protests were also made against acceptors in non-dating situations at acceptances and in partial non-

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<sup>6</sup> Lihat Pasal 110 s.d 119 KUHD

payment conditions.<sup>7</sup>This protest must also have evidence which is called an authentic deed called non-accepting protest or non-payment protest<sup>8</sup>

b) Place and how to protest.

Of course in carrying out these protest actions there are procedures and places where the protest will take place. If the request for acceptance or payment is made at the place of involvement or acceptance, then in the event of a non-acceptance or non-payment condition, protests must also be made at the place of residence of the lodged or acceptor, or at the place of payment must be made. Protests must be made within the grace period determined by law.<sup>9</sup> Based on the provisions of article 152 paragraph 1 of the Indonesian Criminal Code, if within the prescribed time limit, protests are not carried out, then the holder's egress rights shall be nullified against the endosan, issuers, and other regres debtors, except acceptors<sup>10</sup>. Exclusion of acceptors will not be canceled because he has been bound to pay, and can even be sued in court.

Protests in the case of non-acceptances must be made within the timeframe specified for the acceptance request<sup>11</sup>. The grace period for requests for acceptance takes place from the time of issuance to the last day before the payment day<sup>12</sup>

If the non-payment protest is made against a promissory note then what must be paid is precisely on the specified day (*dagwissel*), or on a certain date (*dato-wissel*), or at a certain time after the vision (*nazicht-wissel*) must be done on one of the from the next two business days after payment day.

If the person who has to pay the money order is completely unknown or cannot be found, then the protest must be made at the post office of the residence designated as the place of payment, and if there is no post office at the place, the protest must be made at the head of the local government. This is stated in Article 143a paragraph 3 of the Indonesian Criminal Code.

c) Form of protest

According to the provisions of the Law there are two forms of protest, namely Authentic protests (articles 143b and 143c KUHD) and simple protests (article 143d KUHD).

1) Authentic Protest

Based on article 143b of the KUHD the authentic deed of protest both non-acceptance and non-payment protests must be made by a notary or confiscator, and accompanied by 2 witnesses. The protest deed contains:

- 2) Word for word derivative of the promissory note, acceptance, endorsement, aval, and address written therein.
- 3) A statement that the acceptance or payment has been requested but has not been fulfilled.

<sup>7</sup> Abdulkadir Muhammad, *Hukum Dagang Tentang Surat Beharga*, (Bandar Lampung: PT Citra Aditya Bakti, 2003), hlm 113.

<sup>8</sup> Lihat Pasal 143 ayat 1 KUHD

<sup>9</sup> Opcit, hlm 114.

<sup>10</sup> Lihat Pasal 152 ayat 1 KUHD

<sup>11</sup> Lihat Pasal 143 ayat 2 KUHD

<sup>12</sup> Lihat Pasal 120 KUHD

- 4) Information about the reasons for non-acceptance or nonpayment that are stated.
- 5) A warning letter or reprimand to sign the protest and the reasons for the refusal.
- 6) The statement that he was a notary or confiscator, because non-acceptance or non-payment made the protest.<sup>13</sup>

For a notary or bailiff who has made the protest deed must make the protest derivative, which act must be explained in that derivative. Then he must record it in a special register. For that, according to the order in time, and numbered. If the notary or bailiff does not do so, he is threatened with the penalty of paying compensation and interest. If the person concerned wants it, he must give the derivative to the person concerned.<sup>14</sup>

#### 1) Simple Protest

Simple protest is a substitute for authentic protest. It is said to be a simple protest because basically this protest does not have to be made in a separate deed nor is it official.

A simple protest can be made if:

- Wesel Letter Holders do not want to present authentic protests.
- The protest party was willing to provide assistance.
- There was no firm statement from the publisher that the protest must be with an authentic deed.

The way to make this simple protest is to place a statement on the note that the acceptance or payment was rejected and dated and signed by the protesting party. With this simple form of protest the procedure for making a protest is very easy and fast as well as reducing the cost of making a protest, which becomes a burden of being stuck or accepting.<sup>15</sup>

But, this form of protest has its weaknesses, which could be that the protest signature was falsified, or the date was falsified, for example it was made retroactive. If such doubts arise, the pointless debtor who is obliged to regress can reject the simple protest, and can be asked to make an authentic protest and require more time and money. Doubts about fake signatures and false dates are not likely to be at authentic protest.

#### 2) Regress Without Protest

In addition to the Efforts made with the Protest there is also a regress given by the law still given the possibility of implementing the right of regress without protest. If the endosan or avalis who puts the clause "without protest", then the holder makes a protest even though it has been banned, then all the costs of protest can be collected from all those with the signature contained in the note. Here there is a difference between the non-protest clause placed by the publisher and placed by endosan and avalis in legal consequences if the holder makes the process as well.

The difference is that if a publisher places a clause without protest, the costs of the protest are borne by the holder himself, but if the endosan or avalis puts the clause

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<sup>13</sup> Opcit, hlm 116.

<sup>14</sup> Lihat Pasal 143c KUHD

<sup>15</sup> Opcit, 116

without protest, the holder can charge all the revised money order personnel. If the publisher makes the clause without protest, then the legal effect is to overwhelm all those whose signatures are in the promissory note. This means that the holder can exercise his right of regres against all money order debtors with the obligation to regress without protest, so that they are all exempt from protest fees.

The legal consequence of this provision is that if the holder will exercise his right of regres, there is no need to make a protest first. The submission can immediately revert to the notes receivable debtor. But, beforehand, the holder must ratify in advance within the grace period determined by the Act. However, there are restrictions on making protests so that the holder cannot be forced to prove the existence of timely payment requests. If in any case there is a denial, the party must prove it.<sup>16</sup>

In that case, it can be seen in the provisions of article 145 paragraph 1 which states that "the issuer or provider of the aval by affixing and signing in the notes of a clause without fees or without protest or other clauses of the same intent, can free the holder from the obligation to make non-protest acceptances or non-payments to exercise their regres rights".

#### **D. Conclusion**

Based on the description of the material above, I, as a writer, give a conclusion in using the regres rights themselves.

- 1) Use of Regress Rights for endosan. The right of regres is basically not only used directly, there are things that need to be known in advance. The use of regres rights according to the provisions of article 142 KUHD that the holder of the notes can use their regres rights to the parties to the notes payable debtor.
- 2) Legal remedies that can be done by endosan related to their right of regres are in the form of protest. Well, these protests consist of 2 types, namely: Authentic Protests. In this protest was carried out using an authentic deed which was made before a competent authority such as a notary public and this protest was also official in nature. Simple protest. Different from the authentic protest earlier, Simple protest is a substitute for authentic protest. It is said to be a simple protest because basically this protest does not have to be made in a separate deed nor is it official. Not only that, legal remedies can also be done with regres without protest. However, the effort is difficult and must be proven.
- 3) Endorsement has been regulated in Articles 110 till 119 KUHD.<sup>17</sup> Endorsement is an institution in the draft law where the holder of the note can be transferred to the next holder in a very simple way. How to transfer the transfer to the next holder according to the law which results in the transfer of ownership rights to securities. Marketable securities which are transferred by way of endorsement are securities which are of a substitute nature. And the party who transfers the right to the money order can be called an endorsement, while the person who receives the transfer is called Geendosserde.

<sup>16</sup> Lihat Pasal 145 ayat 2 dan 3 KUHD

<sup>17</sup> Lihat Pasal 110 s.d 119 KUHD

Conditions as endorsement, namely:

- a) Must be obliged to pay all debt bills
  - b) Unconditional transition statement
  - c) Signatures of the transferring party
- 4) Provisions pursuant to Article 152 paragraph 1 of the Indonesian Criminal Code, the right of regresion of the holder of the money order will be null or void against the issuer, endosan and debtors shall be required to regress except the acceptor if the period of time determined by law has passed.

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