



Influences Of Information Technology Development On The Concept Of Shares Ownership Transfer In Scripless Trading In Indonesia Stock Exchange

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Abstract. This research aims to find out the influences of information technology development on the concept of shares ownership transfer in scripless trading and how this scripless trading looks like in the Indonesian Stock Exchange. This research employed a normative research method, statutory and conceptual approach, with also primary, secondary, and tertiary legal materials to support the research data, all of which were analyzed based on descriptive-qualitative analysis technique. The research results came to the following conclusions: (1) the development of information technology (IT) manages to transform jurisprudence especially regarding the concept of transfer of rights of a moveable and intangible object which is more like in the transfer of shares ownership in scripless trading, (2) in the execution of scripless trading, the stock exchange offices serve as the front office fully supported by several institutions backing up transactions going on in the stock exchange, the institutions include Securities Clearing Agency (henceforth LKP) executed by PT Kliring Penjamin Efek Indonesia (henceforth KPEI) and Depository and Settlement Agency (henceforth LPP) executed by PT Kustodian Sentral Efek Indonesia (KSEI), both of which are to assist in scripless trading in a stock exchange.

Keywords: Information Technology, Transfer Of Ownership Right To Share, Scripless Trading.

1 Introduction

The shifts of law and social trends, no matter how slight, are inextricable from information and technology development. People tend to shift from their traditional way of life to the new one once they interact with science and technology.

Maskoeri Jasin confirms that the development of science of an individual is triggered by two factors:

1. Practical stimulus. Humans are blessed with thoughts, characters, feelings, and willingness to push themselves to the limit to be superior above all, and this stimulus has brought humans further to applied science and technology.

2. Non-practical and theoretical stimulus. Humans are always extremely curious about things around them. This drive gives rise to pure science [1]

Science and technology can benefit or even pose a threat to people. The good side of it is that it helps people with their primary human needs including their needs for clothes, roofs, and food. On the other hand, science and technology could even present drawbacks or even jeopardize their life when science and technology are not properly implemented.

It is essential to take a closer look at the process of change in law triggered by the development of science and technology due to rapid globalization, global influences on technology, the increasing number of websites, and many more. The utilization of the technology, as in Law Number 8 of 1995 concerning Capital Market, is the harbinger of the existence of adaptation of law.

One of the significant issues in all existing systems always involves efforts to survive amidst shifts and changes, and this challenge can be faced with adaptation to the changes to allow people to live their life. A system is deemed crippled when it fails to exist, pushed away by the shifts and changes. On the other hand, when such a challenge is well responded by adaptation, a system will manage to survive.

Changes in law are paramount because these days law is written. This form guarantees certainty but at the same time, it can be costly in terms of the amount of money involved in quick adaptation to changes taking place in the surrounding. Written laws are rigid in comparison to customary law that is more fluid and open to adaptation [2]

Modern technology involves the development that demands a specific adaptation given by law. In the last years of the twentieth century, it is getting more and more obvious that this technology is taking control of human life. In comparison to human history, the civilization of modern technology is much too young. Nevertheless, influences sparked by social life seem to be unrivaled to other events in history. Before coming into the age of modern technology, this world looked as if it had been asleep and then awoken by interruptions arising from the revolution of technology. Adaptation of law to modern technology could also be performed by utilizing the technology per se. Being left behind by this technology is an indication of a failure of adaptation. Among the utilizations of the technology and modern techniques is the use of computer technology in scripless trading in a stock exchange.

The above elaboration also indicates several changes represent the nature of this 21st century. These changes are inextricable from human life and these 21st-century changes are considered exceptional and come as a challenge for the law and this challenge deserves responses. These responses indicate that the law is doing the adaptation. Otherwise, the law not capable of doing this will collapse.

Departing from the above issue, this research aims to investigate whether there are influences of information technology development on the concept of transfer of shares ownership rights in scripless trading, and how scripless trading looks like in the Indonesian Stock Exchange.

This research employed normative-juridical method with a statutory and conceptual approach. With legal materials including primary, secondary, and tertiary data,¹ the analysis was conducted based on the descriptive-qualitative method.

2 Discussion

2.1 Influences of Information Technology Development on the Concept of Shares Ownership Rights Transfer in Scripless Trading

Globalization has been pervading all aspects of human life, and the impacts are obvious especially in developing countries, including Indonesia. The changes globalization has brought have also affected law since human needs also experience changes both quantitatively and qualitatively. However, the change in law also sparks another problem over to what extent this law could adjust to the changes caused and what this law can do to stay in line with social change. Moreover, it is essential to notice to what extent people could be congruent with the changes in the law since harmony needs to be created for social order and peace as expected. Globalization also triggers shifting values in society, causing some problems that require the existence of lawmaking and law enforcement, and this is important to consider since these shifting values are inevitable.

The dominant implication is related to the change in the law. There is always a law growing in society and this social change will affect the development of law. Thus, law plays an important part in the life of the people, and the law also influences the law reform intended to build the rule of law. Logically, these changes are understandable since they are congruent with what people have expected, an improvement. The development of science and technology is one of the factors affecting the development and change of law in social life. Society will shift from traditional to the modern way of life once they get in touch with science and technology.

This research discusses how science and technology are connected to the law in terms of a shifting law, how science and technology could change a law, to what extent technology can play its role as a law changer, and how the process of change of law takes place resulting from the development of science and technology these days, especially regarding shares ownership transfer in scripless trading.

Science and technology have opened access to fulfilling the ever-increasing needs of human life. Humans survive, develop culture, give meaning to life, respect others, and encourage others to keep observing and to increase their knowledge. Several aspects of science and technology have changed the nature of human life, including their law life.

The development of science and technology is advanced and rapid, and it has also accelerated the information current to every corner of the world, like electronic commerce in world trade. E-commerce is indicated by paperless information exchange on businesses through EDE (Electronic Data Exchange), email, EBB (Electronic

bulletin board), EFT (Electronic Fund Transfer), and other technologies utilizing internet networks. That is, e-commerce involves the transaction of goods and services through electronic media [2]

The vast development of e-commerce is seemingly due to the efficiency it promises. E-commerce is believed to save time and cost in transactions in comparison to the conventional way. With e-commerce, business principles can also be performed as expected recalling that online businesses also promise low operational cost, not like in conventional businesses where they require far higher cost than in cyberspace.

United Nations (UN) and several states issued several regulations concerning e-commerce, and every state is expected to contribute relevant regulations on electronic contracts that are in progress [2]. Regulations regarding the impacts arising from the utilization of computer and computerized data in positive law in Indonesia are still around criminal aspects in a traditional scope, such as the imposition of criminal punishment on criminal offenses whose impacts are real. The law is still emphasized more on the loss caused, not on the criminal aspects committed on computers. Law Number 8 of 1997 concerning Company's Documents governs electronic data, but this law is deemed imperfect and needs more improvement in the future despite its relation to the company's documents saved in microfilm or other forms of media.

In terms of regulating e-commerce transactions between sellers and buyers, the law concerned should govern the content, domain name, clickwrap contract, choice of law, taxation, and email spamming. Problems regarding consumer protection against unfair practices done electronically such as price fixing, boycott, linked ATM networks, transactions of securities in the cyber capital market also deserve attention. Some matters such as the confidentiality of customers' data also need to be taken into account. To what extent a service provider needs to keep the data of the customers confidential is comparable to the liability of a bank in keeping its clients' data from any illicit access by another irresponsible party. The method of payment on electronic transactions with a credit card, electronic L/C, electronic negotiable instrument, and other aspects in electronic commerce also needs to be considered [2]. This consideration is deemed important since Law Number 8 Year 1997 concerning Company's Documents only touches the tip of a huge problem possibly arising from e-commerce activities. That is, the development of science and technology especially regarding information technology has the power to affect jurisprudence, especially that concerning the concept of rights transfer of moveable and intangible objects such as shares.

Conceptually, according to the notion of Abdul Kadir Muhammad, moving or transferring ownership rights requires an agreement regulating the rights of moving objects as a result of obligatory legal consequences. An agreement on the transfer of rights of objects is to realize the obligatory requirements [2]

In reference to this notion, only those who own the properties or who have control over the properties under provisions set forth on a notarial deed (a legal connection serving as a fundamental of the transfer) have a legitimate authority to transfer the rights, as those people have an absolute authority to do so. The actual transfer of moving objects must be indicated by hand-to-hand transfer,[2] and the transfer of intangible objects such as the transfer of account receivables of *opnam* is indicated by *cassie* [2]. The transfer of *aan order* as account receivables must be done based on the submission

of this statement along with *endossemen* that constitutes a written clause stating to whom the account receivables are transferred [3]

Scripless shares are categorized as a movable and intangible object whose right transfer is done based on *cessie* and *endossemen* according to Article 613 of Civil Code, but not according to Article 55 paragraph (1) of Law Number 8 of 1995 concerning Capital Market stating that the right transfer is based on book entry settlement which, in this paragraph, refers to the fulfillment of rights and obligations arising from an electronic exchange transaction using debits and credits to securities accounts with a custodian [2]

Regarding book entry settlement as referred to in the provision of Article 55 paragraph (1) of Law Number 8 of 1995 concerning Capital market and its explanation, Bapepam issued a regulation requiring shares to be distinguished based on (1) beneficial ownership of shares, including the rights of the shareholder's account over particular benefits related to recorded shares in collective deposit in the accounts of shares under a company, custodian bank, or depository and Settlement Agency arising from the contract of securities accounts between an account holder and the custodian; and (2) registered ownership of shares, in this case, a shareholder towards an issuer of shares related to the registered shares in the book of issuers under the name of a shareholder [2]

Proof of beneficial ownership of shares must be given by the custodian to securities account holders in writing, while the transfer of the ownership of shares benefits must be recorded based on credits and debits of the securities account of the custodian and this must be communicated to the securities account holder. Following the transfer of shares ownership, the custodian is required to confirm the purchase and sale of shares, issue the receipt of the shares to the securities account, confirm the receipt and transfer of shares, make a monthly report of the securities account regarding debits and credits on securities account, and submit other documents published by the custodian regarding debits and credits on the securities account, including electronic confirmation. The ownership of shares benefits on the securities account can be proven based on the notification of an issuer regarding the distribution of rights to registered shareholders if shares are registered in the securities account on a certain date, including the distribution of bonus shares or stock dividend, consolidation or stock split, rights issue, bonds payment in maturity, or conversion shares, and other kinds of right distribution.

The Regulation of Capital Market Supervisory Body (henceforth Bapepam) Number VI.A.3 concerning Securities account of Custodian further explains that the method of transfer of shares rights in the system of scripless trading refers to the fulfillment of rights and obligations arising from an electronic exchange transaction using debits and credits to securities accounts with a custodian during book entry settlement. The transferred ownership due to stock exchange involves beneficial ownership of shares, while the registered ownership of shares is proven on an issuer notification regarding rights distribution to registered ownership only if the shares are recorded in securities account on a particular date after the shares registered on an issuer book under a shareholder's name are converted to scripless shares or online trading.

According to the theory of responsive law from Philippe Nonet and Philip Selznick, the effectuation of Article 55 paragraph (1) of Law Number 8 of 1995 concerning

Capital Market and the Regulation of Bapepam Number VI.A.3 through the Decision issued by the Head of Bapepam Number Kep-/PM/1997 in December 1997 concerning securities accounts of custodians, which serves as the legal basis of electronic scripless trading system, is the response to social change and public aspiration. The theory of responsive law puts forward openness to accept social change for the sake of justice and public emancipation[2]. Law is an instrument for humans by which their needs are served. The scripless trading going on in the stock exchange represents the vast development of information technology.

According to the theory of law, the provision of Article 613 of Civil Code is deemed not pro-people. During the time like these days where human life has experienced massive changes due to this unbelievably rapid development of technology that should make all the systems efficient, effective, and practical, the technology does not entirely give benefits and justice to the people. The conflict of norms between the provision of article 55 paragraph (1) of Law Number 8 of 1995 and that of Article 613 of Civil Code, requires improvements and judicial review of the provision of Article 613 of Civil Code. When this article is linked to the system of scripless trading in the stock exchange, an improvement and adaptation of Article 613 of Civil Code to modern technology are necessary. This is all is intended to ensure that the law is not left behind this rapid development. The provisions in the legislation specifically governing levering mechanism towards the shares traded in the capital market as mentioned in Article 55 paragraph (1) of Law Number 8 of 1995 will just rule out general regulations regarding levering mechanism in civil law. When this is the case, the principle of *lex posteriori derogate lex priori* should be applied, meaning that a new regulation rules out a former regulation or *the principle of lex specialis derogate lex generalis*, meaning that a specific regulation rules out a more general regulation. In terms of these human needs, Satjipto Rahardjo once expressed his view through the theory of progressive law, implying that law is for people, and not the other way around [3]. Progressive law does not take the law as an absolute and final institution, but it relies on its capability to serve people. Progressive law is a correction of the shortcomings of the system of modern law laden with bureaucracies. This law does not exist for its own sake, but it is for the people.

Jeremy Bentham, however, argues that law should be able to bring contentedness to people. A good law should give the greatest happiness for the greatest number [4]. The law made should represent justice for all individuals to allow the contentedness for all in great number. Bentham's perspective indicates that elements such as legal certainty, benefits, and justice are there for us to distinguish, but they are not to be separated from one another [2].

In the context of scripless trading in the stock exchange, the presence of law governing capital market gives benefits to the majority of people since, with this law, the stock exchange can be practically and efficiently implemented. On the other hand, the provisions in civil law regarding shares ownership transfer applied in scripless trading will surely spark injustice. Thus, the effectuation of a policy issued by exchange authorities through the Regulation of Bapepam (now OJK) is intended to provide legal certainty in the stock exchange.

Congruent with the notion of Bentham, John Stuart Mill much further linked the benefits to justice in law. Mill argues that justice should mainly be based on benefits [2]. Furthermore, Rudolf von Jhering linked the perspectives of Bentham and Mill to that of John Austin based on legal positivism. Jhering opines that the objectives of law lie in practical motive, where the law was intentionally made by humans to achieve certain objectives as expected by the people [3]. Jhering also stated that law exists to protect interests, and the definition of interests are in line with the notion expressed by Jeremy Bentham commonly described as the pursuit of happiness (pragmatic), avoid sufferings, and making individual interests as a part of social objectives by linking them to the interests of others [3]. Even though Jhering shared the same opinion as Bentham's, implying that law is intended to bring the greatest happiness for the greatest number and reduce the sufferings of the people, in terms of individual objectives, this is considered as a social objective of the law.

Law is a social institution that keeps growing, and what is expected should come true. On the other hand, laws applied these days will probably fade away and finally be gone due to the time since they may no longer be applicable as time changes [4]

2.2 Scripless Trading in Indonesian Stock Exchange

In electronic scripless trading, stock exchange offices as the front offices responsible to execute transactions are fully backed up by several institutions in the settlement of transactions in the stock exchange. The institutions involve LKP performed by PT Kliring Penjaminan efek Indonesia (KPEI), and LPP performed by PT Kustodian Sentral Efek Indonesia, both of which are institutions responsible to assist in the execution of the system of scripless trading in the stock exchange [4]

In capital market, KPEI and KSEI are Self-Regulatory Organizations (SRO) other than stock exchange. The KSEI, according to the provision of Law Number 8 of 1995 concerning Capital Market, runs its function as LPP in the capital market of Indonesia by providing central custodian services and facilitating the settlement of transactions of shares in a regularly, acceptably, and efficiently. The KSEI runs its operations consisting of the settlement of transactions of shares with scrips that take over the function similar to that of PT Kliring Deposit Efek Indonesia (KDEI) which formerly served as Clearing, Depository, and Settlement Organization.

The LPP is an agency responsible for the settlement of all transactions recorded by LKP. To date, the function of LPP is run by KSEI. The LPP is principally a party responsible to hold central custodian events for custodian bank, stock exchange offices, and other parties. These services have to comply with the standards in service use. The custodian services provided by LPP have to be able to provide full services including the distribution of rights over stocks such as dividend and bonuses, the administrative process for events held by an issuer regarding the interests of account holders as in General Meeting of Shareholders (RUPS). Like its function, KSEI provides services consisting of the electronic deposit of shares, the administration of securities accounts, shares transactions settlement, the distribution of the results of corporate action, and other related services such as post trade processing (PTP) and the availability of reports on central custodian services. To protect the parties involved in LPP events, Law

requires the LPP to issue a regulation governing rights and obligations for LPP service users to comply with, and this regulation must be approved by Bapepam. Since LPP is a non-profit organization, the cost spent on the services provided by LPP must be relevant to the budget and the need of the development of the organization concerned following the decision on using the services.

In scripless trading these days, the role of KSEI is even more massive since it plays its significant role as a central custodian, meaning that all shares/stocks are kept in electronic records. The shares that were formerly in the form of certificate are now converted to electronic records owned by KSEI, commonly known as C-BEST (Central Depository and book Entry Settlement System). Since this system records securities accounts, the transaction settlement is more effective and efficient because the settlement only requires book entry settlement from one account to another. KSEI succeeds to settle all conversion programs in all stocks recorded in the stock exchange from scrip to scripless trading.

The KPEI, established by Law Number 8 of 1995 concerning Capital Market, provides regular, acceptable, and efficient clearing and guarantee for stock exchange. The KPEI was established in 1996 and is recognized as a legal entity under the legalization of the Justice Minister of the Republic of Indonesia. The KPEI is an institution of Clearing and Guarantee according to the Decision of Bapepam Number Kep-26/PM/1998. The KPEI is an SRO that plays a role in determining where the capital market development in Indonesia is led to. As Central Counterpart (CCP), the KPEI provides clearing and guarantee services in stock exchange settlement. The presence of KPEI as CPP is required to improve the efficiency and certainty in the settlement of transactions in the Indonesian stock exchange.

3 Conclusion

This research has concluded that:

1. The development of science and technology, particularly in information technology, can also change jurisprudence especially regarding the concept of transfer of rights over movable and intangible objects such as the transfer of shares ownership in the system of scripless trading.
2. Scripless trading is performed electronically with stock exchange office as a front office is responsible to execute transactions fully supported by several institutions backing up the settlement of transactions in stock exchange. The institutions consist of LKP by KPEI, and LPP by KSEI, both of which are the institutions assisting in the running of the system of scripless trading in a stock exchange.

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