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Implementation of Debt to Equity Swap as a Corporation Debt Restructuring Effort

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ABSTRACT

This study aims to analyze the regulation of debt to equity swaps as an effort to restructuring corporate debt (corporation debt restructuring) in Indonesia and its legal consequences, and legal protection for diluted shareholders who do not agree to holding a debt to equity swap scheme. The method used in this research is a descriptive analytical research with a normative type of research. The data collection technique used is library research and the data analysis technique is a qualitative, deductive-inductive method. The results of the analysis show that arrangements regarding Debt to Equity Swaps have been regulated in the legal system regulations in Indonesia, namely those in Article 35 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT); Government Regulation Number 15 of 1999 Concerning Certain Forms of Claims That Can Be Compensated for as Deposits in Shares; OJK Regulation (P.OJK) Number 36/POJK.03/2017 Concerning the Prudential Principle in Equity Participation Activities. The legal consequence arising from the existence of a Debt to Equity Swap in an effort to restructure corporate debt is the emergence of legal certainty related to efforts to save the finances of a company that implements a Debt to Equity Swap. The form of legal protection that can be provided is by raising a rights issue in shareholder matters.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis pengaturan debt to equity swap sebagai upaya penataan kembali utang perusahaan (*corporation debt restructuring*) di Indonesia serta akibat hukumnya, dan perlindungan hukum bagi pemegang saham yang terdilusi dan tidak menyetujui diadakannya skema debt to equity swap. Metode yang digunakan dalam penelitian ini adalah dengan sifat penelitian deskriptis analitis dengan jenis penelitian adalah normative, untuk Teknik pengumpulan data yang digunakan adalah dengan studi kepustakaan dan Teknik Analisa data adalah metode kualitatif, deduktif-induktif. Hasil analisis menunjukkan bahwa Pengaturan mengenai *Debt to Equity Swap* telah diatur dalam regulasi system hukum di Indonesia, yaitu yang ada pada Pasal 35 ayat (2) Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (UUPT); Peraturan Pemerintah Nomor 15 Tahun 1999 Tentang Bentuk-Bentuk Tagihan Tertentu yang Dapat Dikompensasikan sebagai Setoran Saham; Peraturan OJK (P.OJK) Nomor 36/POJK.03/2017 Tentang Prinsip Kehati-hatian Dalam Kegiatan Penyertaan Modal. Akibat hukum yang ditimbulkan dari adanya *Debt to Equity Swap* dalam upaya restrukturisasi hutang perusahaan adalah timbulnya kepastian hukum terkait upaya penyelamatan keuangan dari suatu perusahaan yang menerapkan *Debt to Equity Swap*. Bentuk perlindungan hukum yang dapat diberikan adalah dengan dimunculkannya right issue dalam urusan pemegang saham.

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I. INTRODUCTION

The recent COVID-19 pandemic has had a devastating impact on all people around the world. This virus has an impact on almost every aspect of life on the planet. Because of the presence of this virus, which is quite fast in terms of transmission between humans, several countries have implemented policies related to health protocols for the community in order to prevent the virus from spreading further. Furthermore, the death rate from COVID-19 was quite high in several countries, including Indonesia, and due to the virus's rapid transmission, when humans are infected with this virus and have co-morbidities (comorbid), that person can die within a few days of contracting the virus (Lubis, 2020).

A large number of Indonesians have contracted COVID-19, and the death toll from the disease is overwhelmingly high in the country. This has urged the Indonesian government to implement a number of regulations pertaining to health protocols and the policy of Imposing Restrictions on Community Activities (PPKM) throughout the country. This government policy mandates that individuals limit their daily activities, including school, work, and socializing. Several sectors, including the economic sector, have been negatively affected by this policy.

One of the areas that has been significantly impacted as a result of the presence of the COVID-19 virus is the economic sector. Some businesses, seeing a decline in sales as a result of production cuts, take drastic measures to stay afloat, such as laying off workers and renegotiating debt with creditors. If no action is taken to save the business, it will shut down or collapse.

Since the business is insolvent, debt restructuring is a necessary action or endeavor to improve the capital structure's composition. With this action, it was hoped that the business could once again stand on its own two feet, financially sound. The company is making an effort in good faith to settle its debts with creditors by going through the debt restructuring process. To find the best restructuring model for both parties and ensure that no one feels disadvantaged, the type of restructuring that will be implemented should be discussed beforehand between the two parties.

When a company is in financial trouble, it is necessary to restructure the company as described above. In general, entrepreneurs would like to have a creditable company with a solid financial foundation, but due to a number of factors, one of which is external factors such as government policies, changes in interest rates, pressure on the domestic currency, which led to several companies being affected from an economic and financial perspective, companies began to be disrupted, such as due to the impact of COVID-19.

Corporate restructuring refers to a strategy that can help companies deal with declining performance, adopt new strategies and achieve credibility in the capital market, this can have a major impact on the company's market value. Restructuring is rearranging the ownership, operational and other structures with the aim of making the company more profitable and performing better. Restructuring is a significant change in strategy and policies related to the composition of assets, liabilities and capital as well as company operations (Djohanputro, 2014)

Restructuring can change assets, ownership and merger of companies by entering into alliances with the aim of increasing company value and maximizing shareholder wealth. Companies that have been effectively restructured will be leaner, more efficient, better organized and focused on their core business. Restructuring that has been adapted by managers in several industries so as to streamline costs, increase productivity and revenues, improve employee welfare, increase shareholder wealth, increase efficiency and improve performance (Gunadi, 2017)

A limited liability company as a business entity in the form of a legal entity (*rechtpersoon*, legal entity) is a capital partnership, which has shareholders as owners. Each shareholder has voting rights in order to obtain profits and benefits from equity participation in a company.

The establishment of the legal entity is carried out with the founders, namely the shareholders with the approval where the founders bind themselves to each other. Company establishment based on Law no. 40 of 2007 concerning Limited Liability Companies ("UUPT") is a legal entity established based on an agreement in which the company will have more than 1 shareholder. A limited liability company requires a person or party to take care of special functions in accordance with the purpose of its establishment. The company's organs are the Board of Directors, the Board of Commissioners and the General Meeting of Shareholders (GMS) (Fuady, 2017)

In addition to the company's organs, important things that must be considered in a limited liability company are the aims and objectives and business activities that do not conflict with the provisions of laws and regulations and capital. In fact, a limited liability company is a partnership of capital and capital itself can be interpreted as something that is obtained by a limited liability company in the form of issuing shares, which money will be used by the company to carry out and launch its business activities as determined in its articles of association. The Company Law divides capital into 3 (three) namely authorized capital, issued capital and paid-up capital.

Companies that have seen a decline in performance or are not in good health should indeed improve or restructure so that it can quickly emerge from the crisis. Some of the strategies that must be implemented include improving the company's management system and streamlining management, human resources, and finances. Basically, every company can choose and implement one type of restructuring, but can also carry out several types of overall restructuring at the same time, because restructuring activities are interrelated. In general, before carrying out a restructuring, company management needs to carry out a comprehensive assessment of all the problems faced by the company, this step is commonly referred to as due diligence or a company due diligence assessment (Djohanputro, 2014).

The most basic principle for restructuring a company is to improve the long-term sustainability and continuous existence of the company through efficiency and cost effectiveness. Corporate restructuring is intended to react to crises or to be part of the company's initial plan for survival. Restructuring is a long and tedious process, it makes for many challenging tasks and requires an analysis of social benefits and costs.

One of the restructuring efforts that companies can do is through debt to equity swaps. Debt to Equity Swap or converting a company's debt with shares or converting debt into capital participation is one way of restructuring a company's debt. Debt to Equity Swab is a step taken by creditors as compensation for their bills (Muljadi, 2010).

Based on the facts in the field, that of the several types of debt restructuring above, the debt to equity swap method is the best alternative, because it provides a minimum cost of capital (4.46%) and maximizes firm value (10%), thus enabling the company to operate within a optimal financial structure (Dewi, 2010).

The use of a debt-to-equity swap can be a win-win solution for both parties, where creditors can obtain partial ownership of shares in the debtor's company and can obtain dividends or profits on share ownership. In addition, debtors or companies that have debt are still given the opportunity to manage their company so that they still have the opportunity to enjoy the company's profits.

The basic aspect of a debt-to-equity swap is that debtor companies can continue to restructure their debts if they owe money to creditors. This is done so that creditors can continue to receive dividends from their shares as compensation for reducing debts on behalf of the debtor. This restructuring method is a step taken by the company to avoid bankruptcy as a result of unhealthy financial conditions.

As described in the preceding section, how to save debt using this method is a smart move because each party receives their own benefits. Especially for companies with this process the company will

be more stimulated in running the company for the better, thus the company can still enjoy profit after profit which can be used to save the health of the company again.

Many companies in Indonesia have implemented a debt restructuring process using the debt-to-equity swap method. Some of them are done by PT. Argo Pantes, Tbk, PT. Sekar Laut, Tbk, PT. Bumi Resources, Tbk, and so on.

Formulation of the problem: how is the regulation of debt to equity swaps as an effort to restructuring corporate debt (corporation debt restructuring) in Indonesia and its legal consequences?, what is the legal protection for diluted shareholders who do not agree to a debt to equity swap?.

II. RESEARCH METHOD

This study employs descriptive research methods. This research provide a comprehensive description of debt-to-equity swaps and the company's efforts to restructure company debt, followed by an in-depth analysis of the impl ementation of debt-to-equity swaps when companies engage in debt restructuring. This studies was a form of normative legal studies.

In this study, researchers uses secondary data and tertiary data as a source of data for discussion of the problem. Secondary data was data in the form of a series of laws and regulations that are relevant to the issue, according to the hierarchical structure of laws in Indonesia. In addition, secondary data can also be in the form of literature studies from books that are in accordance with the existing problems, also in the form of journals, theses, and other legal writings. Meanwhile, tertiary data was in the form of the use of legal dictionaries, encyclopedias, and other supporting materials (Sugiyono, 2019).

The data collection technique used in this investigation was a library research. Data analysis in this study used qualitative methods in order to obtain an overall picture of the symptoms and facts contained in the issue to be studied. Furthermore, conclusions was done by the deductive method, namely drawing conclusions by taking general things and then being drawn into specific things (Aan & Djam'an, 2011).

III. RESULTS AND DISCUSSIONS

Debt to Equity Swap Arrangements as an Effort to Restructuring Company Debt (Corporation Debt Restructuring) in Indonesia and Its Legal Consequences

It is natural in the Indonesian business world for a company to not always run smoothly and with a good level of financial soundness. Sometimes a company will experience a series of unexpected events that will have an impact on its financial health, as happened during the 1998 monetary crisis and is currently happening again due to the impact of the COVID-19 virus.

In 1998, a major incident shook the Indonesian economy; the monetary crisis that occurred in this country was like a nightmare for all Indonesians, especially entrepreneurs in this country. Most Indonesian entrepreneurs are unable to pay some of their creditors. This was due to massive inflation, which caused the value of their debt in US dollars to rise significantly. Companies with debts in foreign currencies are unable to pay their creditors and, as a result, many of them apply for debt restructuring.

Indonesia's economic situation is once again unstable as a result of the COVID-19 virus, which is also happening at the moment. The death rate in Indonesia is at an extremely worrying level as a result of the existence of a virus with rapid transmission capacity and the potential to kill those who are infected and have co-morbidities. This resulted in the Indonesian government taking decisive measures to limit community gatherings.

A number of shopping centers, malls, and restaurants were closed so as not to cause crowds, and people were asked to stay home if they were not urgently needed. Work-from-home (WFH) policies are now mandatory in many workplaces, and this has a direct impact on the salaries of workers who previously earned full pay but now receive wages or income equal to only half as much as they did before WFH was implemented (Putri, 2020).

This government policy has diminished the purchasing power of the public. People who previously spent a great deal of time in various shopping centers to purchase a variety of items now prefer to shop from the comfort of their own homes. In addition, their income has decreased by almost half, causing them to be more concerned with spending money on essentials. As a result, many businesses have failed because they did not receive positive feedback from the public (Radhitya, Theresia Vania, 2020).

Many companies that experience financial failure are ultimately unable to pay a number of debts to creditors, leading them to undertake restructuring as a final effort to save the business. In the business world, there are several types of debt restructuring patterns experienced by companies as follows:(Gunadi, 2017)

1. Debt Buy Back

Buying back debt is one way to mitigate financial stress caused by debt. Several parties have criticized such schemes because debt repurchase only benefits creditors and the return on the company's financial health is only temporary.

2. Haircut

Is a form of restructuring by deducting the amount of debt and interest. This is done with the approval of the creditor with the creditor's consideration that provided that the debt belonging to the debtor is paid rather than not paid at all. Moreover, in cases where the debtor really does not have the power and effort to pay off a number of existing debts, the creditor takes this path. Indeed, in the end the creditor will experience a number of losses and the debtor will benefit because he gets a fairly good discount. So this method can be said to be one-sided, profitable for the debtor but detrimental to the creditor.

3. Rescheduling

Efforts to save debts are pursued by extending the term of the debt or extending the maturity of the payment of the principal debt along with the interest. This is a standard effort made by debtors to creditors by rescheduling and has been widely used by debtors in terms of debt restructuring.

4. Debt to Equity Swaps

A debt restructuring effort by means of the debtor converting the amount of debt in the form of shares which later these shares will be managed or belong to the creditor. The creditor considers a number of things such as looking at the estimated prospects of the debtor's company for the next few years, if the prospects are going forward then the creditor will not hesitate to take this method, because from the share ownership the creditor can still attract dividends as well as the debtor is still allowed to manage the company's operations so that it is still possible to get profits that can be used to revive the company's finances. This method is considered to be the most relevant and fair way because no party is harmed, in fact each party will get its own benefits.

5. Debt to Asset Swaps

Is a way of transferring assets belonging to the debtor to the creditor. This is done when the debtor really feels unable to pay off his debts. This control is temporary because when the asset is sold, it will be used to pay off debts to creditors. This method is usually carried out by the Bank as a creditor.

There are 4 (four) conditions that must be met for the success of the restructuring, namely: (Harahap, 2017)

1. Maintain existing business or the company continues to operate

This requirement is to maintain the company's operations, because if the company in question stops completely, operations will stop and there will be a massive reduction in employees. As a result, the reputation risk of this company will be bad.

2. Turning the business course of the company

During a period that occurred as a result of COVID-19, many companies in the garment sector were closed because there was no demand from consumers, therefore there were several garment factories that turned their backs on becoming mask-making factories because at that time the demand for masks was high.

3. Determining claims against the debtor

This is necessary if there is a debt that cannot be paid, a restructuring will be carried out immediately and the resources that will be used to carry out the debt restructuring can be immediately determined.

Debt restructuring and share the value of the company

The success factor for a subsequent restructuring is, when the restructuring has been carried out, the debtor can then repay his debts, this can be done by means of the company dividing the value among the creditors.

According to observations in the field and studies of some literature, among the five ways of restructuring, the debt to equity swap method is the fairest method and is widely used by several companies that have debt, as well as in Indonesia. The debt to equity swap process complies with Indonesian laws and regulations.

Transactions carried out in debt-to-equity swaps in an effort to restructure corporate debt are regulated in Indonesian legal regulations, so that in practice on the ground they will not violate Indonesian legal regulations. On the other hand, these transactions will be protected by the legal basis in force in this country.

Debt to Equity Swapsregulated in Article 35 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). The article contains:

"The right to claim against the Company as referred to in paragraph (1) which can be compensated by the payment of shares is the right to claim against the Company arising from:

1. *The Company has received money or delivered tangible or intangible objects that can be valued in money;*
2. *The party who is the guarantor or guarantor of the Company's debt has paid off the Company's debt in the amount that is borne or guaranteed; or*
3. *The company is the guarantor or guarantor for debt from third parties and the company has received benefits in the form of money or goods that can be valued in money, which the company has directly or indirectly received."*

In addition to Article 35 paragraph (2) UUPT, regulations regarding Debt to Equity Swap if regulated in Government Regulation Number 15 of 1999 Concerning Certain Forms of Claims That Can Be Compensated as Share Deposits. Regarding the arrangements regarding Debt to Equity Swap according to the two regulations mentioned above, it can be described as follows:

1. The regulation contains further provisions regarding forms of claim rights that can be compensated for the payment of new shares;
2. Actions regarding the conversion of new shares can only be carried out after approval from the General Meeting of Shareholders (GMS). Hence, this process can only be carried out after the GMS agrees and includes it in the GMS approval;
3. In the company's articles of association, arrangements can be made regarding the waiver of preemptive rights. This can only be done in the field when the GMS has approved it.

4. Regarding the approval of the GMS in terms of the conversion of shares, it must be determined by a quorum with the presence of more than 2/3 of the members, unless the articles of association of the company stipulates otherwise. This share conversion transaction is mandatory to be announced in newspapers with a total of 2 (two) companies in the form of local newspapers and national newspapers.

Transactions in this Debt to Equity Swap are usually carried out in the form of issuing convertible bond instruments or can also be done by direct conversion of debtors' debts to creditors into new shares (Gunadi, 2017).

This Debt to Equity Swap system has been widely used by companies in Indonesia that have debts and cannot pay them. As experienced by PT. Garuda Indonesia (Persero) a State-Owned Enterprise (BUMN) company engaged in air transportation. Recently, Garuda Indonesia has been experiencing a severe financial crisis, which was caused by the COVID-19 pandemic which has also hit the air transportation industry. As a result of restrictions on community activities, many people rarely use air transportation other than the inspection factors that are considered quite difficult to carry out such as carrying out swabs where the price of this swab at that time was quite high so that it was not commensurate with the price of airplane tickets. Therefore, many people then choose alternative roads that are not too difficult in their regulatory problems.

As a result, Garuda Indonesia was unable to pay a number of debts to creditors, due to the company's internal financial condition which was not healthy. A number of parties, including the Financial Services Authority (OJK), have made suggestions regarding a scheme as part of an effort to save Garuda Indonesia.

OJK has proposed to carry out debt restructuring by means of a Debt to Equity Swap. The OJK considers that the debt status converted into shares can be implemented in the Garuda Indonesia case, because this scheme has been carried out by a number of companies with creditors such as banks. OJK gave an example when PT Semen Kupang experienced payment problems and in the end used a Debt to Equity Swap where the Mandiri as a creditor entered into one of the shareholders of PT. Semen Kupang even has an ownership percentage of 46% (Walfajri, 2021)

The Financial Services Authority (OJK) even added that the Debt to Equity Swap scheme is in accordance with OJK Regulation (P.OJK) Number 36/POJK.03/2017 concerning Prudential Principles in Equity Participation Activities. Hence, the implementation in the field does not violate regulations in Indonesia.

The legal consequence of holding a Debt to Equity Swap in an effort to restructure corporate debt is the emergence of legal certainty related to financial rescue efforts from a company that implements this Debt to Equity Swap, because by implementing this process the company knows about the efforts to be made regarding the settlement of its debts, so that the company This company can resume its business life in order to restore the company's financial health. In addition, in the use of Debt to Equity Swap, there will be advantages and disadvantages for both parties as a result of the accompanying law.

The benefits that can be obtained are that each party will get their respective share, creditors will get dividends from share ownership while debtors will still benefit from company operations as usual. As for the advantages of a Debt to Equity Swap are as follows:

1. There was an increase in the number of shareholders so as to increase the transparency of the issuer;
2. Can provide improvements to the financial condition of the issuer concerned;
3. Provides an increase in the value of the shares of the issuer held.

Likewise, in addition to profits, it will also result in losses, specifically when creditors as shareholders lack knowledge of the debtor's business activities, which can have a negative impact on a number of GMS-issued policies and lead to a decline in company performance. Before becoming a shareholder, it is recommended that the creditor conduct a thorough investigation of the debtor's commercial activities.

Legal Protection for Diluted Shareholders who Disapprove of the Debt to Equity Swap Scheme

In the Debt to Equity Swap scheme, although there are some advantages that occur between debtors and creditors, it should be noted that including creditors in the composition of shareholders is not an easy matter. Because before there were creditors in the ranks of shareholders, there were also several other shareholders. Therefore, it is necessary to discuss the legal protection for other shareholders.

In a share ownership there is a term that is diluted. Dilution is a decrease in the percentage of share ownership as a result of an increase in the total number of shares while investors do not buy new shares. Dilution refers more to reducing the percentage of share ownership does not reduce the number of shares owned by investors (Riyanto, 2018).

Dilution occurs due to several things, which can be described as follows:

1. Companies issue new shares to be sold both publicly and privately, this will result in a change in the percentage of share ownership;
2. There is a conversion of bonds into stocks, warrants, or options. This means that there is a change in the percentage of ownership as well;
3. Stock split and stock reverse, this does not change the percentage of share ownership.

What happened to points 1 and 2 also happened in the credit restructuring scheme using the Debt to Equity Swap model.

In a Debt to Equity Swap, the company issues new shares to creditors in order to save debts between debtors and creditors. In addition, in the Debt to Equity Swap transaction process, as stated above, it can be done through the process of converting bonds into shares. Hence, it can be said that the process of the Debt to Equity Swap can lead to dilution in share ownership.

As a result of dilution, investors will lose the value of their shares. Even though the percentage of share value in a shareholding will affect voting. When a GMS agreement occurs, the reduced share value will also reduce voting rights in a quorum.

For this reason, legal protection is needed for diluted shareholders. In essence, legal protection is a theory related to the provision of services to the community, but over time, legal protection can be used in all aspects of legal actions committed by an individual.

The form of legal protection that can be provided is by raising a rights issue in shareholder matters. Right issue is a public offering activity which is limited only to the old shareholders as a process to pre-order stock rights (Siswanto, 2019).

Another function of the rights issue for shareholders is to protect against the possibility of dilution and reduction of voting rights which will also affect their rights to dividends. Issuance of this rights issue will provide an advantage for the old shareholders to maintain their position and also their rights in the shareholder structure. Another advantage is that the company issuing the shares will deduct the underwriting fee on the issuance, which does not require the approval of the shareholders.

Right issue is the company's attempt to increase its funds or the number of shareholdings on the stock exchange is increased. Issuer companies conduct rights issues as an alternative to increase capital because the costs of carrying out rights issues are cheap, easy and fast. Right issue is a

process carried out by the company to give rights to shareholders to buy new shares, the number of which is proportionally adjusted to the ownership they already have (Siswanto, 2019).

This is done as an effort to protect shareholders affected by dilution. Legally protection for this matter is regulated in OJK Regulation (POJK) Number 32/POJK.04/2015 Concerning Additional Open Capital by Providing Pre-emptive Rights, this regulation has also been updated through POJK Number 14/POJK.04/2019. Apart from being regulated in the POJK, regarding rights issues as a form of legal protection for diluted shareholders, it is also regulated in Article 43 paragraph (1) of the Company Law, which reads:

"All shares issued for additional capital must first be offered to each shareholder in proportion to the share ownership for the same class of shares."

Thus, it is clear that a shareholder affected by dilution also continues to receive legal protection for them, various efforts will be conditioned beforehand before the creditor will enter as a new shareholder.

The next issues arises when there are shareholders who do not agree with the Debt to Equity Swap scheme. In an effort to save the company's finances using the Debt to Equity Swap method, before the process is realized, it must be based on the approval of the GMS. The GMS process in this negotiation will definitely have pros and cons, there are shareholders who accept the decision, but there are also not a few shareholders who also reject the existence of this scheme.

For those who refuse, they have their own reasons, here are some of the reasons for the rejection by shareholders of the Debt to Equity Swap scheme:

1. Usually, the shareholders who do this are minority shareholders who are afraid that if a Debt to Equity Swap occurs, their rights will be forgotten;
2. Shareholders who refuse this have the reason that when the Debt to Equity Swap is later held, it turns out that the creditor as the new shareholder does not have expertise in the field of work, so that it can result in the company's business being disrupted;
3. This refusal can also occur on the grounds that when later the creditor enters as a shareholder, the creditor will own the majority of shares and can eliminate some shareholders who have minority shares.

In fact, it is legal for shareholders to act in this manner, as the law permits it. The only difference is that the regulations in the law specifically address in writing shareholder objections to mergers, acquisitions, consolidations, and separations. On the other hand, the Debt to Equity Swap is implicitly disapproved of in this statement as well.

In this instance, the law provides legal protection for shareholders, particularly minority shareholders, in order to safeguard their rights. Prior to a decision regarding the Debt-to-Equity Swap, the company in this instance is required to negotiate. This concern regarding shareholder disapproval may impede the Debt to Equity Swap procedure. To resolve this issue, negotiations, mediation, or deliberations are conducted between the company and its shareholders to determine the optimal solution, so that all parties retain their rights despite being minority shareholders.

The legal basis for allowing refusal by shareholders is in Article 126 paragraph (2) UUPT, which reads:

"Shareholders who do not agree with the GMS decision regarding Merger, Consolidation, Acquisition or Separation as referred to in paragraph (1) may only exercise their rights as referred to in Article 62."

Thus, in this article it means that shareholders are allowed to disagree with GMS decisions, one of which includes the Debt to Equity Swap, because this is also included in the decisions taken through the approval of the GMS, because this refusal is one of the rights of the shareholders.

However, in Article 126 paragraph (3) of the Company Law it is stated that the refusal by shareholders who do not agree does not necessarily stop the process of merger, acquisition, consolidation or separation including Debt to Equity Swap. The processes mentioned above will continue as long as the shareholders do not agree and are still in the process.

For shareholders who reject the approval of the GMS, they also have a number according to what is regulated in Article 62 UUPT, namely as follows:

1. Shareholders who do not agree with the approval of the GMS have the right to ask the company to buy their shares at a reasonable price, if the shareholder does not agree to the approval of the GMS for:
   a. Amendments to the company's articles of association;
   b. Transfer or guarantee of the Company's assets that have a value of more than 50% (fifty percent) of the Company's net assets; or
   c. Merger, Consolidation, Acquisition or Separation
2. The matter in this article also includes a policy regarding Debt to Equity Swap, because this process is the product of the approval of the GMS and can be carried out later by the Indonesian people.

In the provisions regarding the purchase of shares at a fair price, the following will describe the criteria for a fair price. This provision is regulated in Article 37 paragraph (1) UUPT which contains:

"The share buyback does not cause the company's net worth to be less than the total issued capital plus the mandatory reserves that have been set aside; and the total nominal value of all shares bought back by the company and pledge of shares or fiduciary guarantees for shares held by the company itself and/or other companies whose shares are directly or indirectly owned by the company, does not exceed 10% of the total issued capital in company."

The following provision states that if the purchased shares exceed the company's provisions for purchasing shares, the company is required to sell them to a third party. This is governed by UUPT Article 62 paragraph (2). As a result, the purchase of shares and shareholder rejection of the GMS decision are valid because they have a clear legal basis. Even if the GMS decision is rejected, it does not stop or cancel the decision.

Shareholders who refuse the Debt to Equity Swap will still receive legal protection, this is based on a number of articles mentioned above, and the guarantee of the purchase of shares by the company.

Legal protection is a theory put forward by Roscue Pound, this expert gives his description that legal protection is divided into three types, namely:(Gultom, 2009)

1. Legal protection for the public interest;
2. Legal protection for the public interest; and
3. Legal protection for individual interests.

In matters relating to shareholders described in this section, the legal protection imposed is for individual interests. The main shareholders are minority shareholders who need legal protection outside of the company's internal mechanisms so that justice is realized between the interests of minority shareholders and the interests of majority shareholders.

The preceding information suggests that shareholders may reject/disapprove the decision to execute a Debt to Equity Swap. Shareholders who disagree with the decision may request that their shares be purchased by the company at a fair price for its shares. In the event that the shares requested to be purchased exceed the limit of the share repurchase provisions by the Company, the Company shall endeavour to have the remaining shares purchased by a third party. However, this shareholder rejection will not cancel the Debt-to-Equity Swap process.

IV. CONCLUSION

The arrangement regarding the Debt to Equity Swap has been regulated in the regulation of the legal system in Indonesia, namely in Article 35 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT); Government Regulation Number 15 of 1999 Concerning Certain Forms of Claims That Can Be Compensated for as Deposits in Shares; OJK Regulation (P.OJK) Number 36/POJK.03/2017 Concerning the Prudential Principle in Equity Participation Activities. The legal consequences arising from the existence of a Debt to Equity Swap in an effort to restructure corporate debt is the emergence of legal certainty related to efforts to save finances from a company that implements this Debt to Equity Swap, because by implementing this process the company knows about the efforts to be made regarding the settlement of its debts, so that this company can resume its business life in order to restore the company's financial health. In addition, in the use of Debt to Equity Swap, there will be advantages and disadvantages for both parties as a result of the accompanying law.

The form of legal protection that can be provided is by raising a rights issue in shareholder matters. Right issue is a public offering activity which is limited only to the old shareholders as a process to pre-order stock rights. This is based on the legal basis stated in OJK Regulation (POJK) Number 32/POJK.04/2015 Concerning Additional Open Capital by Providing Pre-emptive Rights, this regulation has also been updated through POJK Number 14/POJK.04/2019. Apart from being regulated in the POJK, regarding rights issues as a form of legal protection for diluted shareholders, it is also regulated in Article 43 paragraph (1) of the Company Law. Furthermore, in a decision made by the GMS in terms of Debt to Equity Swap, sometimes there are several people who disagree on this matter. For those who do not agree, this is permissible and protected by law because related matters are regulated in several legal regulations, namely: Article 126 paragraph (2) of the Company Law; Article 126 paragraph (3) of the Company Law; Article 62 paragraph (2) UUPT; Article 37 paragraph (1) UUPT.

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