

# Rechtsidee

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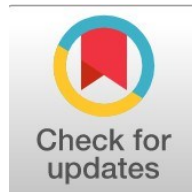
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## Legal Protection for Intermediaries in Transactions Involving Negotiable Certificates of Deposit: A Comparative Analysis of Indonesian and United States Law

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### Abstract

**General Background** Financial market transactions involving negotiable instruments require legal certainty, proportional liability, and reliable protection for parties acting in good faith. **Specific Background** Negotiable Certificates of Deposit create complex chains of legal relations because they are transferable financial instruments involving issuers, investors, and intermediaries. **Knowledge Gap** Existing regulation has not clearly defined the legal status, duties, and civil liability limits of intermediaries, causing vulnerability in disputes and inconsistent legal interpretation. **Aims** This study analyzes intermediary protection in Negotiable Certificate of Deposit transactions through the PT MNC Asia Holding Tbk case and formulates a stronger legal framework through comparison with the United States legal system. **Results** The findings show that intermediary protection remains partial, reactive, and normatively ambiguous, while the Uniform Commercial Code provides a clearer model through holder in due course protection, good faith standards, transfer warranties, and fault-based liability. **Novelty** The study offers a comparative legal formulation that recognizes intermediaries as independent transactional actors requiring preventive and repressive safeguards. **Implications** The findings support specific regulation for negotiable instruments, explicit recognition of intermediary status, national due diligence standards, and adoption of good faith and holder in due course principles to strengthen fairness, legal certainty, and financial market stability.

### Highlights:

- Existing rules leave brokers vulnerable to broad liability interpretation.
- Good faith parties receive clearer safeguards under commercial paper doctrine.
- Regulatory reform should define duties, status, and due diligence standards.

**Keywords:** Legal Protection, Negotiable Certificate of Deposit, Uniform Commercial Code.

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## Introduction

The development of the financial services sector in Indonesia demonstrates increasingly complex dynamics in line with the growing innovation of financial instruments and transactional patterns involving multiple parties. This complexity not only creates economic opportunities but also amplifies legal risks, particularly in determining liability among legal subjects. In this context, law no longer functions merely as a regulatory instrument, but must also be capable of providing legal certainty and proportional protection for all parties involved. Problems arise when existing regulations are unable to keep pace with the complexity of legal relationships occurring in practice. This is particularly evident in transactions involving intermediaries whose legal position is not always clearly defined.

One instrument that reflects such complexity is the Negotiable Certificate of Deposit (NCD), which possesses the characteristics of both a banking instrument and a transferable instrument [1]. The negotiable nature of NCDs allows for repeated transfers of rights in secondary transactions, thereby creating complex chains of legal relationships [2]. In practice, this gives rise to issues concerning certainty of ownership, validity of the instrument, and liability in the event of default or payment failure. Accordingly, NCDs generate not only economic implications but also legal implications that require more comprehensive regulation. The absence of specific regulation has the potential to create legal uncertainty for the parties involved.

In facilitating NCD transactions, the presence of intermediaries has become indispensable in financial market practice. Intermediaries function as connectors between parties with differing interests while also ensuring the smooth execution of transactions. However, the intermediary's position between the parties places it in a legally vulnerable situation. In many cases, intermediaries are not merely regarded as facilitators but are also treated as parties bearing liability for losses incurred. This indicates a lack of clear boundaries between the intermediary's function and that of legal subjects who bear responsibility.

Normatively, regulations concerning intermediaries in financial transactions are governed by various provisions emphasizing prudential principles and compliance. However, such regulations tend to focus on administrative and licensing aspects, without clearly defining the limits of intermediaries' civil liability. As a result, when disputes arise, the determination of liability often depends on judicial interpretation of the facts and legal relationships involved. This condition may lead to inconsistent decisions and legal uncertainty. Thus, a gap exists between normative regulation and its practical implementation [3].

This gap becomes more evident in the case involving PT M, which relates to NCD transactions that ultimately resulted in legal disputes. In this case, the intermediary was not only acting as a transaction facilitator but was also implicated as a party held accountable. This raises fundamental questions regarding the legal basis for imposing liability on intermediaries. Furthermore, the case demonstrates an expansion in the interpretation of the intermediary's role, which is not always aligned with its fundamental function. This condition underscores the importance of analyzing the implementation of legal protection for intermediaries in practice.

From a doctrinal perspective, intermediary liability may be constructed through various approaches, including tort, breach of contract, and agency relationships. However, the absence of clear boundaries exposes intermediaries to the risk of being burdened with liability exceeding their actual role in the transaction. This not only creates injustice for intermediaries but also has the potential to disrupt the balance of legal relationships among the parties. Moreover, such conditions may generate uncertainty for business actors performing intermediary functions. Therefore, a legal framework capable of clearly defining proportional limits of liability is required.

In addition to implementation issues, another equally important aspect is the lack of optimal preventive legal protection for intermediaries. Existing regulations tend to focus more on dispute resolution after losses occur rather than on preventive measures. In the context of complex financial transactions, a preventive approach is essential to minimize legal risks from the outset. The absence of adequate preventive mechanisms may place intermediaries in a persistently vulnerable position to litigation. This indicates the need to strengthen legal protection concepts that are not only repressive but also preventive in nature.

Legal protection for intermediaries also has broader implications for the stability and efficiency of financial markets. Intermediaries constitute an integral part of market infrastructure, facilitating transactions and maintaining liquidity. If intermediaries are exposed to disproportionate legal risks, this may reduce the willingness of business actors to perform such functions. Consequently, market efficiency may be disrupted, and confidence in the financial system may decline. Therefore, strengthening legal protection for intermediaries is important not only at an individual level but also from a systemic perspective [4].

Based on the foregoing, a research gap can be identified in the lack of studies specifically examining the implementation and strengthening of legal protection for intermediaries in NCD transactions, particularly through a case study approach. Most existing studies focus on financial instruments or the liability of principal parties, without adequately addressing the position of intermediaries. Accordingly, this research seeks to fill that gap by analyzing the case of PT M as a concrete study. Furthermore, this study aims to formulate a more comprehensive and applicable concept for strengthening legal protection. Thus, it is expected to contribute both theoretically and practically to the development of financial market law in Indonesia.

The research questions of this study are as follows: (1) How is the implementation of legal protection for intermediaries in

NCD transactions in the case of PT M? and (2) How can legal protection for intermediaries in NCD transactions be strengthened?

## Method

This study employs a normative legal research method that focuses on the analysis of legal norms and their application in practice [5], particularly in relation to legal protection for intermediaries in transactions involving NCD. The approaches adopted include the statutory approach, the conceptual approach, and the case approach. The statutory approach is conducted by examining relevant regulations in the financial services sector; the conceptual approach is utilized to understand the concepts of legal protection and civil liability; while the case approach focuses on the analysis of cases involving PT M. Through this combination of approaches, this study aims to provide a comprehensive analysis of the relationship between legal norms and their implementation in practice.

The legal materials used in this research consist of primary, secondary, and tertiary sources obtained through library research. Primary legal materials include statutory regulations and court decisions, while secondary legal materials consist of books, journal articles, and scholarly opinions relevant to the research topic [6]. The analytical technique employed is qualitative analysis using a deductive reasoning method, whereby general legal provisions are examined and subsequently applied to concrete cases [7]. The analysis is conducted systematically to assess the conformity between legal norms and actual practices, as well as to formulate solutions to the issues under study. Accordingly, this research is expected to produce conclusions that are logical, structured, and academically accountable.

## Result and Discussion

### A. Implementation of Legal Protection for Intermediaries in Negotiable Certificate of Deposit Transactions: The Case of PT M

The implementation of legal protection for intermediaries in Negotiable Certificate of Deposit (NCD) transactions cannot be separated from the general legal framework governing civil relationships and activities within the financial services sector. In practice, intermediaries act as parties that bridge the interests of sellers and buyers of financial instruments. However, this role is not always accompanied by clarity regarding the scope of legal liability attached to them. This situation gives rise to challenges when disputes occur, particularly in determining whether intermediaries merely act as facilitators or bear responsibility for the resulting losses. Therefore, the implementation of legal protection must be assessed based on how the law is applied concretely in actual cases.

In the case involving PT M, NCD transactions became the subject of dispute, illustrating the complexity of legal relationships among the parties. In this case, the intermediary did not merely perform administrative functions but was also involved in the distribution process of the instrument to the purchaser. When issues arose concerning the redemption or validity of the instrument, the intermediary was also implicated as a party considered to have contributed to the losses incurred. This condition demonstrates that, in practice, the position of intermediaries is often not regarded as neutral. The implementation of law in this case reflects a tendency to expand the scope of liability imposed on intermediaries [8].

From a civil law perspective, the liability of intermediaries in such cases is often associated with the concept of tort (unlawful act). Intermediaries may be deemed negligent if they fail to exercise due care in ensuring the validity of the instrument or the credibility of the parties involved. However, the assessment of such negligence is often subjective and dependent upon judicial interpretation. In the case of PT M, this issue becomes particularly significant due to the absence of standardized rules explicitly governing the obligations of intermediaries in NCD transactions. As a result, the implementation of legal protection remains inconsistent.

In addition to the tort-based approach, the relationship between intermediaries and other parties may also be analyzed through the concept of agency. In this context, intermediaries may be deemed to act on behalf of or in the interest of a particular party. If such a relationship is established, legal liability may be extended to the intermediary as a representative. However, in practice, such legal relationships are not always clearly stipulated in written agreements. This lack of clarity may disadvantage intermediaries, as it opens the door to broad interpretations of their role.

The implementation of legal protection for intermediaries is also influenced by sectoral regulations governing money markets and financial services. Existing regulations generally emphasize administrative obligations, such as licensing and compliance with prudential principles. Nevertheless, these regulations do not specifically address the limits of intermediaries' liability in the context of civil disputes. In the case of PT M, this regulatory gap is evident in the absence of clear normative references for determining the intermediary's legal position. Consequently, the legal protection afforded remains suboptimal [9].

In judicial practice, judges play a crucial role in determining whether intermediaries should be held liable. Such assessments are typically based on the facts revealed during trial, including the extent of the intermediary's involvement in the transaction. Where intermediaries are deemed to have actively influenced decisions or provided certain assurances, the likelihood of liability increases. Conversely, where intermediaries merely act as passive facilitators, their liability should be limited. However, the distinction between active and passive roles is often unclear in practice.

The implementation of legal protection may also be evaluated based on whether intermediaries have access to adequate

defense mechanisms. In the case of PT M, intermediaries are required to demonstrate that they have performed their duties professionally and in accordance with applicable standards. This burden of proof presents a significant challenge due to the absence of concrete guidelines defining such standards. As a result, the position of intermediaries in legal proceedings becomes relatively weak. This indicates that existing legal protection has not fully ensured balance among the parties.

On the other hand, it is necessary to examine whether preventive legal protection mechanisms exist in NCD transactions. In the case at hand, it appears that preventive measures have not been optimally implemented. Intermediaries lack clear guidelines to mitigate legal risks at the outset of the transaction. This condition suggests that legal protection remains reactive in nature, emerging only after disputes arise, whereas preventive protection is essential to minimize potential conflicts.

The suboptimal implementation of legal protection also affects legal certainty for intermediaries. The lack of clarity regarding the limits of liability places intermediaries in a legally vulnerable position. In the long term, this may reduce the willingness of business actors to perform intermediary functions in financial transactions. Consequently, market efficiency and liquidity may be adversely affected. Therefore, the implementation of legal protection has implications not only for individual actors but also for the broader financial system [10].

In conclusion, the implementation of legal protection for intermediaries in NCD transactions in the case of PT M continues to face several challenges. These include unclear boundaries of liability, normative regulatory gaps, and inconsistencies in legal application. This condition indicates that the existing legal framework has not yet effectively protected intermediaries. Accordingly, efforts are required to clarify the legal position of intermediaries in order to achieve greater legal certainty and fairness. This forms an essential basis for strengthening legal protection in the future.

## **B. Strengthening Legal Protection for Intermediaries in Negotiable Certificate of Deposit Transactions**

Strengthening legal protection for intermediaries in NCD transactions must begin with the establishment of a normative framework that clearly regulates the position and role of intermediaries. At present, existing regulations remain general in nature and do not specifically define the scope of intermediaries' liability in NCD transactions. This condition creates legal uncertainty by allowing broad interpretations in judicial practice. Therefore, it is necessary to introduce regulations that explicitly classify intermediaries as facilitators rather than principal parties in the transaction. Such clarity would minimize the risk of disproportionate liability being imposed upon intermediaries.

Furthermore, strengthening legal protection must also involve the clarification of the standards of obligations applicable to intermediaries in performing their functions. These standards should include duties of care, transparency of information, and verification of traded instruments. The existence of clear standards enables an objective determination of whether intermediaries have properly fulfilled their responsibilities. This is essential to avoid subjective assessments in judicial proceedings. These standards also function as benchmarks for determining the presence or absence of negligence on the part of intermediaries.

In this context, it is necessary to establish clear distinctions between administrative liability and civil liability of intermediaries. To date, administrative violations are often directly associated with civil liability without adequate analysis. In fact, not all administrative violations result in direct losses to other parties. Therefore, the strengthening of legal protection must ensure that civil liability is imposed only where fault and actual loss are present. Such separation is essential to maintain proportionality in the allocation of legal responsibility.

Legal protection may also be enhanced through the development of a *safe harbour* concept for intermediaries. This concept provides protection to intermediaries if they have acted in accordance with professional standards and applicable regulations. With the existence of a safe harbour, intermediaries cannot be easily held liable for losses beyond their control. This mechanism would provide legal certainty and security for intermediaries in performing their functions, while also encouraging compliance with established standards.

From a contractual perspective, strengthening legal protection can be achieved through the drafting of clearer and more detailed agreements between intermediaries and the parties involved. Such agreements should specify the limitations of liability, the scope of authority, and exculpatory clauses under certain conditions. Comprehensive contractual arrangements can minimize the potential for disputes from the outset. Moreover, such agreements may serve as strong evidentiary instruments in legal proceedings. This demonstrates that legal protection is not solely dependent on regulatory frameworks but also on the awareness of parties in structuring their legal relationships.

The strengthening of legal protection must also be supported by an enhanced role of regulators in issuing more specific technical guidelines. Regulatory authorities, such as the Otoritas Jasa Keuangan, may adopt provisions governing best practices for intermediaries in NCD transactions. These guidelines serve not only as operational references but also as benchmarks for assessing compliance. The existence of clear guidance would contribute to greater uniformity in interpreting the role and responsibilities of intermediaries, thereby enhancing legal certainty in practice.

From an enforcement perspective, consistency in judicial decisions concerning intermediaries' liability is essential. Inconsistent rulings may generate legal uncertainty and undermine confidence in the legal system [11]. Therefore, judges must carefully consider the position and role of intermediaries in each case. The approach adopted should reflect principles

of justice and proportionality. In this way, judicial decisions will not only provide legal certainty but also embody substantive justice.

Strengthening legal protection must also encompass preventive measures through the enhancement of intermediaries' capacity and professionalism. Intermediaries should be equipped with adequate knowledge of legal aspects and risks associated with NCD transactions. Training and certification programs may serve as effective means to improve such competencies. Increased professionalism will reduce the likelihood of errors and, ultimately, minimize the risk of disputes involving intermediaries.

In addition, consideration should be given to the establishment of more effective alternative dispute resolution mechanisms for intermediaries. Non-litigation dispute resolution may provide faster and more efficient solutions. Such mechanisms also allow for more flexible and equitable outcomes. With the availability of these alternatives, intermediaries are not always required to undergo lengthy and complex litigation processes, thereby providing an additional layer of protection in the resolution of disputes.

## C. Comparative Analysis with the United States on Legal Protection for Intermediaries in Negotiable Certificate of Deposit Transactions

Legal protection for intermediaries in NCD transactions is inherently inseparable from the fundamental characteristics of negotiable instruments, which emphasize transferability and a trust-based system among the parties. These characteristics necessitate a strong guarantee of legal certainty so that all parties involved, including intermediaries, may perform their roles without being exposed to disproportionate legal risks. In this context, the legal system in the United States, through the regime of the Uniform Commercial Code, offers a relatively more established and comprehensive model of protection compared to Indonesia. This is particularly reflected in the application of the *holder in due course* (HDC) doctrine, which provides special protection to parties who acquire negotiable instruments lawfully, in good faith, and without knowledge of prior legal defects.

Within the United States legal system, legal protection for intermediaries is not explicitly formulated through specific regulations governing "intermediaries" as a distinct legal subject. Instead, such protection is constructed through the legal framework of negotiable instruments, which functionally extends protection to any party acquiring the instrument lawfully, in good faith, and without knowledge of prior legal defects. This approach demonstrates that the focus of protection lies not on the formal status of being an intermediary, but rather on the quality of acquisition and the legal conduct of the parties involved in the transaction. This concept is clearly embodied in the HDC doctrine, which constitutes one of the principal pillars of the Uniform Commercial Code. Through this doctrine, parties qualifying as HDCs are protected against various claims or defenses arising from prior legal relationships, thereby ensuring certainty and fluidity in the circulation of negotiable instruments.

Conceptually, the *holder in due course* doctrine refers to a party who acquires a negotiable instrument by giving value, acting in good faith, and without knowledge of any legal defects or issues associated with the instrument at the time of acquisition. Such a party is granted a "superior" legal position compared to other parties in the transactional chain, as they benefit from special protections not afforded to ordinary holders. One of the primary implications is that an HDC is shielded from most *personal defenses*, namely defenses that are relative in nature and arise from prior legal relationships between parties.

In commercial law literature, the HDC concept has long been regarded as a fundamental mechanism for ensuring efficiency and continuity in financial transactions, particularly those involving negotiable instruments. Its existence not only provides protection to good-faith parties but also serves as a systemic instrument to foster trust in the circulation of commercial documents. Protection for HDCs constitutes a crucial element in maintaining the "fluidity of commercial paper," ensuring the uninterrupted circulation of financial instruments without unnecessary impediments [12].

Research conducted by Bhupender Singh demonstrates that the absence of the HDC concept within a legal system may give rise to "legal hazards," namely significant legal risks for parties involved in negotiable instrument transactions. This occurs due to the lack of adequate protection for parties who acquire instruments lawfully, in good faith, and without knowledge of prior defects. Without a mechanism such as HDC, such parties may be burdened with legal consequences originating from previous legal relationships, thereby creating uncertainty and diminishing trust in financial transactions. Accordingly, the existence of the HDC doctrine is crucial not only for protecting good-faith parties but also for maintaining the stability and efficiency of the financial system as a whole [13].

Furthermore, studies by Vinay Solanki indicate that the HDC concept confers significant rights and privileges upon qualified holders of negotiable instruments. One of the primary protections is the right to enforce payment of the instrument notwithstanding defects or disputes in prior legal relationships between the parties. In other words, an HDC enjoys a privileged legal status, as it is not bound by most personal defenses, thereby ensuring the enforceability of its rights to payment. This condition reinforces the function of HDC as a legal protection mechanism that promotes certainty, trust, and efficiency in financial transactions [14].

In the context of intermediaries, whether acting as financial intermediaries or brokers, the application of the HDC doctrine within the United States legal system carries significant juridical implications for their legal position and responsibilities in NCD transactions. First, intermediaries who receive or transfer NCD instruments may obtain legal protection as HDCs, if

they fulfill the required elements, such as acting in good faith and lacking knowledge of prior defects. Second, disputes or legal defects arising from prior legal relationships among the parties are not automatically attributed to intermediaries, thereby shielding them from disproportionate legal risks originating from other parties within the transactional chain. Third, the scope of intermediaries' legal liability is clearly limited to specific circumstances, namely where elements of fraud or negligence are present. Thus, as long as intermediaries act in accordance with reasonable standards of care, legal protection remains available.

Moreover, the Uniform Commercial Code also regulates in detail the mechanisms of transfer warranties and presentment warranties, which function to ensure the validity and legitimacy of transferred instruments. Through these provisions, each party within the transactional chain is afforded clarity regarding their respective legal rights and obligations, thereby establishing a structured, transparent, and proportional allocation of responsibility. Legal risks are not unfairly imposed upon a single party but are instead distributed based on the roles and actions of each party in the transaction. From an academic perspective, Amasa M. Eaton emphasizes that modern negotiable instrument systems are designed to "minimize risks for good-faith third parties" as part of efforts to achieve efficiency in financial markets. This perspective reinforces the argument that protection for intermediaries and third parties is not merely a protective policy but also a systemic necessity to maintain efficiency, trust, and stability in financial transactions [15].

Based on the foregoing analysis, it can be understood that the United States legal system provides robust legal protection for intermediaries in negotiable instrument transactions through several structured and measurable mechanisms. First, the explicit recognition of the *holder in due course* principle ensures protection for parties acquiring instruments lawfully, in good faith, and without knowledge of prior defects, thereby strengthening legal certainty in the circulation of such instruments. Second, the implementation of an objective good faith standard emphasizes not only subjective honesty but also the assessment of conduct based on reasonable commercial practices, thereby creating a more objective benchmark for evaluating legal actions. Third, the application of fault-based liability ensures that legal responsibility is imposed only upon parties proven to have engaged in negligence or wrongdoing, thereby preventing intermediaries who have acted with due care from being subjected to disproportionate legal risks. Collectively, these elements enable the United States legal system to provide a more comprehensive framework of protection while maintaining a balance between legal certainty, fairness, and efficiency in financial transactions.

## Conclusion

Based on the findings of this study, it can be concluded that legal protection for intermediaries in transactions involving Negotiable Certificates of Deposit (NCD) in Indonesia has not yet been optimally implemented, both from preventive and repressive perspectives. This condition is reflected in practice, particularly in the case of PT M, which demonstrates the existence of normative gaps and regulatory ambiguity concerning the position and responsibilities of intermediaries in such financial instrument transactions. In contrast, the legal system in the United States provides a relatively more comprehensive model of protection through the application of the holder in due course doctrine, as well as systematic regulation under the Uniform Commercial Code. This model can ensure legal certainty and offering stronger protection for parties acting in good faith in negotiable instrument transactions.

In line with these findings, several strategic measures are required to strengthen legal protection for intermediaries in NCD transactions in Indonesia. First, there is a need to establish specific regulations that explicitly govern negotiable instruments, including NCDs, to address the current legal vacuum. Second, it is necessary to provide explicit recognition of the legal status of intermediaries as independent parties in transactions, so that their rights and obligations have a clear legal basis and are adequately protected. Third, Indonesia may consider adopting principles developed in the United States legal system, such as the principle of good faith and the holder in due course doctrine, as an effort to enhance protection for parties acting in good faith. Fourth, national standards concerning the implementation of due diligence for intermediaries should be formulated, thereby providing clear guidelines in fulfilling the duty of care and minimizing the potential for future disputes. Accordingly, it is expected that a more adaptive and responsive legal system can be developed, one that provides legal certainty and fairness for all parties involved in NCD transactions.

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