

Legal Review of Legal Protection for Bond Holding Investors (Case Study at Bank X)

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Abstract

The Capital Market has a quite promising role in the development of the Indonesian economy, namely as a source of financing for the business world and an investment vehicle for the community. One form of investment activity offered to investors in the capital market is bonds. Investing in bonds is not without risk, because the bond issuer may fail to pay its obligations. To protect investors from this risk of default, in the bond issuance process, the issuer involves a third party (trustee) who represents the interests of investors. This research is a normative-empirical juridical type. This research is descriptive. The data in this study consists of primary data and secondary data. The data collection instruments in this study are divided into two, namely primary and secondary data. Primary data was collected using the interview method, while secondary data collection used documentation studies. This study uses qualitative analysis techniques, because the data obtained is mostly qualitative data. The objective of this study is to analyze the application of legal protection for bondholder investors against the risk of default.

I. Introduction

Nowadays, the development of the investment world is growing. Many people are interested and enter the stock exchange to invest in increasing world developments. This is what makes fund managers busy creating various products to be available to the public in two ways, namely the money market or the capital market.(Tandelilin 2001). In carrying out its role in the economic function, the capital market becomes a media provider to be able to bring together two elements of interest, namely parties who basically have excess funds (investors) and parties who need cash injections to develop their business activities (issuers). Through the capital market intermediary, it will be very easy for parties who have excess funds to invest the funds in the hope of making a profit, while companies can use the funds they have obtained for investment purposes without having to wait for the availability of company operational

funds which of course will take a longer time. Meanwhile, when observed in the financial function, the capital market can provide an opportunity or chance to be able to make a profit for fund owners, according to the characteristics of the chosen investment.(Masraf 2016).

One form of investment activity offered to investors in the capital market is bonds. Bonds are a contract containing a promise. Bonds are letters containing a promise in which one of the parties (principal or issuer) can be a company or government. The promise in the bond is a promise to pay a certain amount of money at a certain time, namely on the specified due date. Therefore, the bond contains a promise that the debt will be given interest, the form of which depends on the agreement, whether floating interest or fixed interest.(EF Pakpahan, Legal Analysis On Bond Issuance Of The Retail (Ori) 2016).

Recorded in the history of Indonesian bonds, the activity of buying and selling shares and bonds has been carried out since the 19th century. Based on the book Effectengids written by Verreniging voor den Effecten handel in 1939, the buying and selling of securities has been going on since 1980. The securities traded at that time consisted of shares and bonds of Dutch plantation companies operating in Indonesia. For example, in the past, there were several types of bonds of the Government of the Republic of Indonesia such as 3% Bonds, 6% Bonds with prizes in 1959, Development Bonds in 1964, and besides other bonds from other business entities such as BNI Bonds in 1954, BNI Bonds 46 in 1962, 5% Grand Hotel Preanger Bonds and so on.(Fadhila 2021).

The bond market can also be distinguished into the primary market and the secondary market. If the primary market functions more as a market that accommodates financing needs, the existence of the secondary market will be more utilized by investors. The activities of the secondary bond market in other countries, for example in the United States and Japan, are very dependent on the supporting facilities available. In Japan, bond trading in the secondary market is quite high with transactions that have a very short term. However, in the United States the secondary market is not so active because investors prefer to hold their CP until maturity.(Priyono 1999). Investing in bonds is not without risk, because the bond issuer may fail to pay its obligations. To protect investors from this risk of default, in the bond issuance process, the issuer involves a third party (trustee) who represents the interests of investors. In addition, bond issuers usually periodically set aside funds for reserve funds to pay bond coupon interest. There are also bond issuers who provide collateral in the form of assets they own. Bonds also contain liquidity risks that arise in line with the ease of reselling bonds at a price close to their actual value.(Siva Nur Azahro 2016).

This high risk is directly proportional to the high returns obtained by investors. Several public companies on the Indonesia Stock Exchange have been declared to have failed to pay interest or principal on corporate bonds almost

every year. The interest payment should have been made at maturity. Bond investors must be on guard against the company's risk, namely default risk or the risk of failure to pay. The risk of default is the risk of the company being unable to pay coupons or return the principal of the bond. Cases of bond defaults have occurred in several large companies in Indonesia.(Siva Nur Azahro 2016).

The public companies that were declared in default indicate that several companies have committed default towards bondholder investors, namely by not paying the principal and/or interest on corporate bonds according to the agreement that has been determined and agreed upon previously. The companies that were declared in default were unable to pay the interest on corporate bonds, possibly having 2 (two) problems, namely the company temporarily does not have cash to pay the principal and/or interest on corporate bonds or the company is no longer able to pay the principal and interest on the corporate bonds.(Siva Nur Azahro 2016). The case of default by the issuer of corporate bonds will certainly be very detrimental to bondholder investors. Therefore the establishment of a legislative and regulatory framework is certainly very much needed to enlarge the scope of the investment network. It is important to note that the government needs the right procedures to be able to manage all forms of financing instruments to business actors to ensure more significant growth prospects in the Investment sector.(Tommy 2023).

Existing laws and regulations have not yet clearly protected the rights of bondholder investors. Given the increasingly developing capital market conditions along with economic globalization and also the increasing public enthusiasm to place funds in corporate bond instruments.(Siva Nur Azahro 2016), legal protection for bond-holding investors must be truly visible.

2. Research Method

This research is a normative-empirical juridical type, which aims to analyze a legal phenomenon that is not only in a normative context, but also includes an analysis of technical aspects in order to implement legal provisions in society. This is because the effectiveness of a law cannot be explained without first examining the law in the normative aspect (law in books) and the law in the reality aspect (law in action), if a comparison is not made between these two variables, it will certainly be impossible to measure the level of effectiveness of a law.(shalmont 2021). This research is descriptive in nature, namely a problem-solving procedure that analyzing by describing a phenomenon including the subject or object of law in research based on facts found or as they are without any engineering.(My 2018). Sources of legal materials are obtained through primary data and secondary data. Primary data is data that is directly relevant to

the problems in the research, which is obtained through the words or actions of informants who can provide information to researchers who are collecting data, or can be called data obtained directly from sources or first hand in the field.

Primary data is obtained through the distribution of questionnaires and interviews with credible sources. While secondary data is additional data that supports the problems in the research, and is a data collection activity by researchers by citing data through available documents.(Edrisy 2021). The data collection instrument in this study was carried out using two methods. Primary data collection through distributing questionnaires followed by interviews, then secondary data collection through documentation studies. This interview was conducted using the in-depth interview method, which is a method of collecting data through interviews conducted in depth to explore more specifically a phenomenon being studied against data sources.(EF Pakpahan, Reconstruction of Bond Regulation in the Indonesian Capital Market Based on Justice 2017).

Documentation study is conducted by collecting documents and data needed and then analyzed intensively so that it can support, increase trust, and prove a phenomenon in order to obtain secondary data. Researchers collect data in the form of scientific books related to the problem being studied, documents, appropriate laws and regulations and so on by reading and reviewing them.(EF Pakpahan, Reconstruction of Bond Regulation in the Indonesian Capital Market Based on Justice 2017)

3. Results and Discussion

The Issuer's Responsibility for Default Risk

The economy is one of the three main pillars of development in addition to social and political. Indonesia, which is supposed to be a developing country that is in the stage of national development. Indonesia's National Development is focused on efforts to improve the quality of human beings and Indonesian society, which are carried out sustainably, based on national capabilities, by utilizing advances in science and technology and paying attention to global challenges.(LT Pakpahan 2023). Over time, many challenges have emerged in business activities in Indonesia, one of which is bond transaction activities in the capital market. Investment in bonds in Indonesia is no longer promising because lately there have been many cases of default and have caused losses, especially for investors. The problem of default, of course, has legal consequences. The party most disadvantaged is the investor, because the investor as the party who has provided the funds, does not get his rights in the form of bond interest according to the agreed agreement.(Kamarga 2014).

Protection for investors from the risk of default in the bond issuance process, the issuer involves a third party (trustee) who represents the interests of

investors. In addition, bond issuers usually periodically set aside funds for reserve funds to pay bond coupon interest. There are also bond issuers who provide collateral in the form of assets they own. Bonds also contain liquidity risks that arise in line with the ease of reselling bonds at prices close to their actual value.(Siva Nur Azahro 2016). Bonds are actually one of the business activities of the banking sector, and if we look deeper into banking business activities, in running their businesses, banks in Indonesia must be managed based on the principles of economic democracy guided by the principle of prudence. In the process of national development, banking has a macro and micro role in its functions, this is clearly illustrated in the philosophy of banking.(EF Pakpahan, Concept of Legal Protection for Trustees in the Capital Market 2019).

In accordance with the objectives of the Indonesian State as stated in the Preamble to the 1945 Constitution, paragraph two, "And the struggle for the Indonesian independence movement has reached a happy moment, safely leading the Indonesian people to the gate of the independence of the Indonesian state, which is independent, united, sovereign, just and prosperous". Then in the Preamble to the 1945 Constitution it is stated that, "the development of the Indonesian nation is to protect all Indonesian people and all of Indonesia's blood and to realize general welfare, educate the nation's life and participate in creating world peace based on eternal peace and social justice".(EF Pakpahan, Reconstruction of Bond Regulation in the Indonesian Capital Market Based on Justice 2017). Against the backdrop of the benchmark of ideals contained in the sentences "fair" and "prosperous", when linked to the aspect of the capital market world, especially regarding bond transaction activities, it is necessary to conduct an in-depth evaluation of the legal protection aspects provided to the parties involved in order to provide a real sense of "justice" to the parties so that it can realize the "prosperity" of the Indonesian economy which is born from a healthy capital market system.(EF Pakpahan, Reconstruction of Bond Regulation in the Indonesian Capital Market Based on Justice 2017).

Default is a form of default by the issuer that causes losses to investors or bondholders. The issuer's obligations in the event of default refer to the agreement of the parties in the agreement. There are several defaults as defaults, including:

1. The issuer failed to pay the principal and interest on bonds that had matured.
2. The issuer fails to implement or comply with any of the provisions in the trusteeship agreement and other issuance documents.
3. The issuer is dissolved for other reasons or is declared bankrupt, and the bankruptcy declaration has permanent legal force.
4. A court or government agency has seized or taken over in any manner all or a substantial portion of the issuer's assets, or has taken action that prevents the

- issuer from carrying out some or all of its business activities, thereby materially affecting the issuer's ability to fulfill its obligations to bondholders.
5. The issuer's statements and guarantees regarding the issuer's financial condition or status and/or the issuer's management are materially inconsistent with reality, where such inconsistency is proven to be caused by the issuer's deliberate actions or bad faith.
 6. The issuer is declared to be in default in relation to a debt agreement by one of its creditors (cross default) in the amount of debt exceeding 25% of the issuer's equity, whether existing at the time of the bond issuance or existing in the future, which results in the amount owed by the issuer based on the debt agreement in its entirety becoming immediately collectible by the party having the bill and/or the creditor concerned before the time for repayment (there is acceleration of repayment).
 7. If the rights, permits and approvals from the government held by the issuer are null and void by law or declared invalid; and or,
 8. Issuers based on court orders that have permanent legal force.(Kamarga 2014)

In the issuance of bonds, the issuer has the main responsibility, namely to make bond interest payments and repayment of the principal of the bond on time. Bond issuers who experience default in this case are issuers who are negligent because they do not carry out their obligations, namely not paying bond interest or not paying their principal debt. Issuer's responsibility for default, the issuer has an important role in the issuance of bonds, the issuer has the main responsibility to make bond interest payments on time. The trustee has no responsibility whatsoever to make bond interest payments (and fines if any), in the event that the trustee has carried out his duties and obligations as well as possible professionally as stipulated in the trustee agreement. In certain cases, the trustee can be sued by the bondholder and asked to compensate the bondholder's losses, if the trustee is negligent or does not carry out his duties and obligations properly according to the trustee agreement. The protection needed by bond investors to protect their capital from the possibility of default risk can consist of three things, namely information disclosure, collateral included in the issuance of bonds, and sinking funds.(Siva Nur Azahro 2016)

Legal Relationship Between Issuers and Bondholders in the Capital Market

Legal relationship is a relationship between two or more legal subjects. In this kind of legal relationship, the rights and obligations of one party conflict with the rights and obligations of the other party. Not all relationships are legal relationships, because legal relationships must have a legal basis to regulate them and be accompanied by legal events.(EF Pakpahan, Concept of Legal Protection for Trustees in the Capital Market 2019). The legal relationship between the issuer

and the bondholder is a legal relationship regulated in Article 1754 of the Civil Code. The position of the trustee in capital market law is a party that represents the interests of debt securities in accordance with laws and regulations. The main points of the trustee agreement as the basis for the legal relationship regulate: (a) the issuer's obligation to pay the principal of the bond, fines and interest that have matured, and to pay off the bond debt (b) If the issuer defaults, the trustee will warn the defaulting bondholder in writing, At the same time, the bondholder and the issuer are invited to hold a RUPO (General Meeting of Bondholders). Second, the consequence of a civil default is to give the bondholder the right to claim compensation. After the registration statement comes into effect, the trustee as the representative of the interests of the issuer's bondholders is obliged to always submit important information in the form of periodic reports and reports of important events.(EF Pakpahan, Concept of Legal Protection for Trustees in the Capital Market 2019).

In addition to the trustee agreement, one of the most important things for the protection of bondholders from a legal aspect is information disclosure. This information disclosure is the soul of capital market transparency. The form of legal protection for trustees according to Law Number 8 of 1995 concerning Capital Markets and Law Number 21 of 2011 concerning the Financial Services Authority is preventive and repressive. Preventive legal protection is indicated by the provisions that require guidance, education and supervision from the stock exchange and supervisory authorities, while repressive legal protection is the application of sanctions in the form of administrative sanctions as ultimum remedium for parties who violate the rules of law in capital market regulations. The institution authorized to do this is the OJK.(EF Pakpahan, Concept of Legal Protection for Trustees in the Capital Market 2019).

Bonds are debts that must be fulfilled or paid off by the issuer who issues the bonds to public investors who buy the bonds issued and then become the owners of the bonds. By buying bonds, the bondholder becomes a creditor to the issuer and also has the right to interest. The interest obtained by the creditor is not based on whether the bond issuer makes a profit or suffers a loss.(Aritonang 2008). The rights and obligations of bondholders will arise based on the prospectus issued by the bond issuing company in a trust agreement (PWA). Provisions regarding the basis for the formation of a trust agreement are regulated in Regulation Number VI.C.4./Decree of the Capital Market and Financial Institution Supervisory Agency Number KEP-412/BL/2010 Concerning General Provisions and Trust Contracts for Debt Securities. However, in principle there are no provisions governing the standards of a trust agreement. A trust agreement is made based on the principle of freedom of contract in accordance with the provisions of Article 1338 paragraph (1) of the Civil Code and the provisions of Article 52 of the Capital Market Law. This trust

agreement is a benchmark regarding the extent to which protection will be provided to investors.(Heriawanto 2014).

A legally valid agreement, as stated in the principle of *pacta sunt servanda*, is a commitment that must be maintained. The principle of legal certainty contained in *pacta sunt servanda* emphasizes the importance of complying with the agreement that has been made, so that judges or third parties must respect the contents of the contract that binds the parties without any interference from other parties.If the principle of *pacta sunt servanda* is applied to a trusteeship agreement made by the issuer and the trustee, then they will be given freedom to contract according to the agreement desired by the parties as long as it does not violate the rules of law or other types of regulations, then the trusteeship agreement will be valid as a law. -laws that will bind all parties involved in making the agreement.(Sinambela 2024).

Based on the provisions of Article 1 number 30 of Law Number 8 of 1995 concerning Capital Markets in conjunction with Article 51 Paragraph 2 of the Law on Capital, the interests of bondholders are fully submitted to the Trustee who is responsible to him, including representing the interests of bondholders, both in and out of court. The rights of bondholders include: receiving full payment of the principal of the bonds from the Issuer, receiving notification of the amount of bonds still outstanding after the principal of the bonds is paid, the right to bond interest (coupons), receiving payment of the principal and interest on the bonds that must be paid by the Issuer based on the PWA, if there is a default on the payment of the principal of the bonds or the interest on the bonds, the bondholder has the right to receive a fine payment for each such default in accordance with the PWA and one or more bondholders representing 20% of the principal amount of the bonds owed, the right to submit to the Trustee to hold a RUPO.

Bondholder investors, when viewed from the perspective of a creditor, will have an obligation to hand over the promised money to the debtor, with the requirement that the money will be received back from the debtor at the right time, accompanied by interest that has been agreed upon by the parties when the credit agreement is approved by the parties, with the legal basis for the credit agreement regulated in Book III Chapter XIII, especially Articles 1754-1769 of the Civil Code.(Grace 2011)Bondholders, through the Trustee, are obliged to represent them both inside and outside the court based on the provisions of the PWA that they have signed. This means that the obligations of bondholders are delegated to the Trustee's power of attorney. This is based on the Trustee's main obligation as a party representing bondholders by being fully responsible for any negligence caused by interests related to the duties of the Trustee.

Legal Protection for Bondholder Investors Against Default Risk at Bank X.

The term legal protection is the protection of a person's interests by giving him the freedom to act according to his will which is guaranteed by law. Setiono argues that legal protection is an action or effort to protect society from arbitrary actions of the authorities that deviate from the applicable legal rules, order, and peace so that humans can enjoy their dignity as human beings. Meanwhile, according to Satjipto Rahardjo, legal protection is an act of protecting individuals by aligning the relationship of values or rules that are manifested in attitudes and actions in creating order in social life between fellow human beings. From several explanations regarding the definition of legal protection, it can be concluded that legal protection emphasizes the point of fulfilling absolute rights for legal subjects guaranteed by regulations and elements of power (government) in a country.(Wati 2023). Based on the results of research conducted on one of the Banks in Medan City, North Sumatra Province through the submission of a questionnaire addressed to the relevant Bank, then obtained a picture of the form of legal protection for bondholder investors in the event of a default in a bond transaction. In this case, Bank X is guided by the provisions of Article 1 number 30 of Law Number 8 of 1995 concerning the Capital Market, the trustee is a party that represents the interests of debt securities holders. Where one of the main tasks and responsibilities is to represent the interests of debt securities holders and/or sukuk, both inside and outside the court in accordance with the trusteeship contract, OJK regulations regarding debt and/or sukuk trusteeship contracts. Based on this explanation, it can be interpreted that all interests of all bondholder investors at Bank X will be guaranteed through a trustee agreement.(NORTH SUMATERA 2021).

One thing that is the basis of the legal relationship between bondholder investors and issuers is a trust agreement. This agreement will be a reference to the extent of protection that will be given to bondholder investors. The provisions that must be included in the trust agreement regulate the following matters:

1. Regulation of the use of funds. Generally, the plan for the use of funds from bond issuance is regulated in sufficient detail so that it can provide a sufficient picture for prospective bondholders about the plan and at the same time act as a control for the issuer not to use the funds for other purposes.
2. The rights and obligations of a trustee, including the duties, responsibilities and obligations that must be carried out by the trustee.
3. Restrictions on actions that can be taken by the issuer and actions that must be taken by the issuer. In the trusteeship agreement, there are restrictions and things that must be done by the issuer until the amount owed by the issuer is paid off. The benchmark for how tight the restrictions and things to do are, depends on the issuer's bargaining position against the underwriter (who tends to be more active in negotiating the trusteeship agreement) and the trustee. If the issuer is a large company that is very well known, has a good

rating and has never neglected its obligations to creditors in general, then its bargaining position is very good, therefore the provisions of the trusteeship agreement for the company tend to be less stringent than other companies. One of the reasons for this good bargaining position is because it is not difficult for the company to obtain alternative funding other than bonds. These restrictions and obligations can be deviated from by the issuer as long as there is written approval from the trustee.

4. Collateral not all bonds that have been traded are issued with special collateral. The presence or absence of this special collateral is also very much determined by the issuer's bargaining position in general such as the issuer's rating and financial condition. If the issuer has a good position then it is possible to issue bonds without special collateral.
5. Default event. In the event of default, it is usually regulated regarding when the issuer is considered and declared to have defaulted, for example: defaulting on payment of principal of bonds and/or interest on bonds and/or other amounts that must be paid by the issuer, defaulting on implementation of provisions in the trusteeship agreement. The regulation of default events does not only cover default by the issuer, but also includes default by the trustee. If the trustee is defaulting, it is usually regulated in the trusteeship agreement that Article 1267 of the Civil Code applies to such default. In this case, the bondholder has the choice of whether to force the trustee to continue to fulfill the agreement, or to demand cancellation of the agreement, along with reimbursement of costs.

Issuer's Statement (Guarantee). This statement generally contains information regarding the validity of the company and its changes, the composition of the board of directors and commissioners, the truth of disclosures in connection with the registration statement to BAPEPAM, permits and approvals held by the company in running its business, the company's involvement in cases, the issuance of bonds in accordance with the articles of association and applicable laws and regulations, and the company's financial statements.(NORTH SUMATERA 2021). As mandated in Article 51 paragraph 2 of the Capital Market Law, the trustee is a party that represents the interests of investors holding debt/bonds both inside and outside the court. So that in carrying out its functions and responsibilities towards investors in PT Bank X, the Trustee is required to always prioritize and prioritize the interests of bondholder investors. In this regard, the Trustee is prohibited from having an affiliated relationship with the issuer/issuer of bonds. The prohibition on affiliated relationships between the Trustee and the Issuer is intended to avoid conflicts of interest between the Trustee as a representative of PT. Bank X bondholder investors with the interests of the issuer. This is necessary so that the Trustee can carry out its functions independently so that it can protect the

interests of debt/bondholders to the maximum. If explained, there are several roles and tasks that must be carried out by the trustee(NORTH SUMATERA 2021), which includes:

1. Analyze the issuer's capability and credibility, whether the company (issuer) in question has the operational capability to produce and pay bonds and their interest;
2. Assess the issuer's assets to be used as collateral. The trustee must know for sure whether the value of the issuer's assets that are used as collateral is equivalent or adequate compared to the value of the bonds issued;
3. Supervise the issuer's assets. If the assets used as collateral are transferred for use or ownership, this must be done with the knowledge of the trustee.
4. Continuously monitor or follow developments in the company's (issuer's) development and provide advice and input to the issuer; and
5. supervising and monitoring the payment of interest or other benefits along with the bond principal which is the right of the investor on time.

If there is an error or negligence made by the trustee that causes the investor to suffer a loss, then the form of legal responsibility of the trustee is to bear all forms of losses experienced due to negligence, carelessness, or actions of the trustee that are contrary to the interests of the bondholder investor. Article 53 of Law Number 8 of 1995 concerning the Capital Market is the legal basis for bondholder investors to claim compensation for losses experienced. If observed from the aspect of a trust agreement, the role of the trustee is limited to the individual's right to be able to file a lawsuit and/or execute collateral rights if at any time the debtor of the bondholder investor defaults. The trustee is one of the capital market supporting institutions that acts as a party representing bondholder investors so that legally it is interpreted as carrying out certain legal acts where the person representing receives the legal consequences. All forms of civil lawsuits or execution of collateral rights carried out by the trustee will only be taken on the basis of the results of decisions that have been approved by bondholder investors through the General Meeting of Bondholders (RUPO) with the procedures that have been agreed upon in the trust agreement.

If there is a default in the issuance of bonds that causes losses to investors, in this case investors who are the main parties in funding, especially as buyers and bondholders, must receive legal protection. Issuers must be responsible to investors if there is a default with the responsibility in the form of continuing to pay the principal and interest on bonds to investors as promised or agreed in an agreement. In accordance with Law Number 8 of 1995 concerning the Capital Market, bond issuers who experience default can be subject to administrative sanctions, civil sanctions, and criminal sanctions.

The provisions regarding administrative sanctions are regulated in Article 102 paragraph (1) of Law Number 8 of 1995 concerning Capital Markets, namely Bapepam-LK (OJK) provides administrative sanctions for violations of Law Number 8 of 1995 concerning Capital Markets and its implementing regulations committed by any party that obtains a permit, approval, or registration from Bapepam-LK (OJK). In accordance with the provisions of Article 102 paragraph (2) of Law Number 8 of 1995 concerning Capital Markets, administrative sanctions can be in the form of written warnings, fines for payment of a sum of money, restrictions on business activities, freezing of business activities, revocation of business licenses, cancellation of approvals, and cancellation of registration. Criminal sanctions are regulated in Article 103 of Law Number 8 of 1995 concerning Capital Markets, namely those given to parties who carry out capital market activities without a permit, approval, and registration can be threatened with imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000,000.00. Another legal effort that investors can take outside the trusteeship agreement is to file a lawsuit for damages for default (default) to the court in accordance with the provisions of Article 111 of Law Number 8 of 1995 concerning the Capital Market. Investors' interests are represented by a trustee in accordance with the provisions of Article 51 paragraph (2) of Law Number 8 of 1995 concerning the Capital Market, which states that since the trusteeship agreement was signed between the issuer and the trustee, the trustee has agreed and bound himself to represent the bondholder investor. In this case, the trustee is authorized by law to represent and can take legal action related to the interests of bondholders, including demanding rights, both in and out of court, without requiring a special power of attorney from the bondholder but must still follow the provisions contained in the agreed trusteeship agreement. Based on this, it can be said that the form of protection for trustees in the Capital Market consists of:

- a. Preventive Legal Protection, with the aim of preventing before a violation occurs, the government provides preventive protection by implementing laws and regulations and providing signs or limits for a violation. The form of prevention is through guidelines, guidance, and direct direction as per laws and regulations, including Law Number 8 of 1995 concerning Capital Markets. Protection for investors provides legal certainty in seeking complete, accurate and correct information so that investors can make the right decisions because they are supported by strong information and based on applicable laws and regulations. The legal protection provided is in the form of preventive measures through the OJK (a form of rules, guidelines, guidance, and direction). One form of preventive legal protection through laws and regulations is in Article 85, Article 86 paragraph (1), Article 87 paragraph (1), and Article 89 paragraph (1) of Law Number 8 of 1995 concerning Capital

Markets which regulates the disclosure of information by both the Issuer (issuer), namely a public company or a trustee. Other preventive legal protection provided by the Government is in the form of protection through the Financial Services Authority. According to Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority, providing legal protection is intended to prevent losses to consumers and the community.

- Preventive legal action in its initial steps is when the trustee negotiates to determine the contents of the trusteeship agreement.
 - Regulations in the decision of Bapepam-LK (now called OJK) attachment to Decision: 412/Bl/2010 (Regulation Number VI.C.4) concerning General Provisions and Trusteeship Contracts for Debt Securities, namely concerning the provisions regarding the existence of guarantees in number 4 letter e, and number 4 letter f concerning priority rights (seniority) of debt securities.
 - Preventive legal protection is also provided by the Government, namely in Article 85, Article 86 paragraph (1), Article 87 paragraph (1), and Article 89 paragraph (1) of Law Number 8 of 1995 concerning Capital Markets which regulates the openness of information by both the Issuer, namely a public company or a trustee.
 - Other preventive legal protection is protection through the Financial Services Authority (OJK), namely the Financial Services Authority Law Article 28.
- b. Repressive Legal Protection. Forms of protection for bondholder investors include conducting examinations and investigations of issuers who have violated regulations, or what is called repressive legal protection. This repressive legal means is a sanction if things happen that can harm bondholder investors in the form of:
- Administrative sanctions are regulated in Article 102 paragraph (1) of Law Number 8 of 1995 concerning Capital Markets, administrative sanctions can be in the form of written warnings, fines for payment of a sum of money, restrictions on business activities, freezing of business activities, revocation of business permits, cancellation of approvals, and cancellation of registration.
 - Criminal sanctions are regulated in Article 103 of Law Number 8 of 1995 concerning Capital Markets, namely that parties who carry out capital market activities without a permit, approval, and registration can be threatened with imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000,000.00.
 - Civil sanctions are regulated in Article 111 of Law Number 8 of 1995 concerning Capital Markets, namely "Parties who suffer losses as a result

of violations of this law and/or its implementing regulations may claim compensation.

4. Conclusion

The Legal protection for bondholder investors will refer to the prospectus issued by the bond issuing company in the trustee agreement (PWA). Bondholder investors have the right to receive full repayment of the principal of the bonds from the Issuer, receive notification of the amount of bonds still owed after the repayment of the principal of the bonds, the right to bond interest (coupons), receive payment of the principal and interest on the bonds that must be paid by the Issuer based on the PWA, if there is a default on the repayment of the principal of the bonds or bond interest, the bondholder has the right to receive a fine for each such default in accordance with the PWA and one or more bondholders representing 20% of the principal amount of the bonds owed, the right to submit to the Trustee to hold a RUPO. Meanwhile, bondholder investors have an obligation to submit the money or capital promised to the debtor, with the requirement that the money will be received back from the debtor on time, accompanied by the interest agreed in the trustee agreement.

From the results of the questionnaire submitted to Bank X, there has never been a case of default in bond transactions at Bank X. This shows that Preventive Legal Protection has been implemented with good procedures. If at any time there is a problem of default in bond transactions, then the responsibility will be delegated to the Trustee who is the guarantor of the interests of investors holding Bank X bonds both inside and outside the court in accordance with the provisions of Article 1 number 30 of Law Number 8 of 1995 concerning the Capital Market.

It is necessary to reconstruct the regulations governing bond transactions. The existing regulations so far do not contain specific provisions regarding the elements or methods of making a trust agreement. By making regulations regarding the procedures for making a trust agreement, it is hoped that it can prevent losses that investors can experience from a trust agreement.

References

- Aritonang, Maria Imelda. "Implementation of Trustee Responsibilities in Issuing Bonds in the Capital Market." Diponegoro University Thesis Semarang, 2008: 79.
- Edrisy, Ibrahim Fikma. "Law Enforcement Against Pornography Threat Perpetrators (Case Study of North Lampung Police)." *Legalita Law Journal* Vol 1 No. 2, 2021: 101-102.
- Fadhila, Wildan. "The Effectiveness of Bonds as an Alternative Financing in Land Acquisition for Public Interest." *Diponegoro Law Journal*, Vol 10 No 1, 2021: 195.

- Heriawanto, Benny Krestian. "Analysis of the Principle of Proportionality in Trusteeship Contracts Made Based on the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number KEP-412/BL/2010." Core, 2014: 4.
- Kamarga. "Responsibility of Bond Issuers to Investors in the Event of Default According to Capital Market Law Provisions." E-Journal Graduate Unpar Vol 1 No 2, 2014: 74-80.
- Masraf, Faiza Muklis Al. "Development and Challenges of Indonesian Capital Market." Al Masraf (Journal of Financial Institutions and Banking), Vol 1, No.1, 2016: 65.
- Ongku, Mara. "Implementation of Government Regulation No. 17 of 2013 concerning the Implementation of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises in the Cooperatives and SMEs Service of the Province of Sumatra." Postgraduate Thesis of the Master of Public Administration Program, University of Medan Area, 2018: 27.
- Pakpahan, Elvira Fitriyani. "The Concept of Legal Protection for Trustees in the Capital Market." Samudra Keadilan Law Journal Vol 14 No 2, 2019: 302-315.
- Pakpahan, Elvira Fitriyani. "The Concept of Legal Protection for Trustees in the Capital Market." Samudera Keadilan Law Journal, Vol. 14, No. 2, pp. 302-315, 2019: 302-315.
- Pakpahan, Elvira Fitriyani. "Legal Analysis On Bond Issuance Of The Retail (Ori)." International Journal of Business, Economics and Law, Vol. 11, No 4, 2016: 28.
- Pakpahan, Elvira Fitriyani. "Reconstruction of Bond Regulation in the Indonesian Capital Market Based on Justice." Dissertation UNISSULA Semarang, 2017.
- Pakpahan, Leonard Tommy and Elvira Fitriyani. "Economic Stimulus Policy As A Government Effort To Address The Impact Of Covid-19 On The National Economy." Baltic Journal of Law & Politics", vol 16 No.3, 2023: 489.
- Priyono, Ratnawati. Money Market Securities,. Jakarta: Gravita, 1999.
- Rahmat, Agusra. "People's Credit Bank (KBPR) VII Koto Pariaman." Diploma Thesis Andalas University, 2011.
- shalmont, Jerry. "Legal Aspects of Assistance for Micro Business Actors (BPUM) during the COVID-19 Pandemic Jurnal Rechts Vinding, Vol.l. 10, No. 3, p. 363, 2021." Jurnal Rechts Vinding, Vol.l. 10, No. 3, 2021: 363.
- Sinambela, Jamalum. "Expansion of the Essence of Pacta Sunt Servanda in the Dignified Padan of the Toba Batak Indigenous Community." Migration Letters, Vol 21 No. 4, 2024: 381.
- Siva Nur Azahro, Budhiharto and Hendro Saptono. "Legal Protection of Bond Investors Against Default Risk." Diponegoro Law Journal Vol 5, 2016: 2-3.
- SUMUT, Bank. Interview, Medan, 2021.

- Tandelilin, Eduardus. Investment Analysis and Portfolio Management. Yogyakarta: BPFE, 2001.
- Tommy, Leonard. "The Influence of Green Tax Regulations on New Renewable Energy Funding in Indonesia." *Bestuur*, Vol 11, No. 2, 2023: 394.
- Wati, Widharta Linda. "Concept Of Legal Protection Against The Creators Of Painting Arts Based On The Principles Of Dignified Justice." *Russian Law Journal*, Vol 11 No. 4, 2023: 83.