

LEGAL PROTECTION AGAINST A BOND INVESTOR ACCORDING TO THE DIGNIFIED JUSTICE

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Abstract

The defaulted cases that occurred at PT. Mobile-8 Telecom Tbk., Bakrie Telecom, PT. Berlian Laju Tanker is very detrimental to bondholder investors. This is the problem that is happening in the Indonesian economy and becomes serious since it can reduce the wheels of the economy, especially for the capital market. The purpose of this research is to protect investor-based bonds with dignified justice according to Teguh Prasetyo's dignified justice theory. The research method used is empirical or non-doctrinal. The results of the research stated that legal protections based on fairness are not only given to bond investors but issuers and trustees.

I. Introduction

Human beings are creatures of God, born who have the basic rights that are the right to life, the right to be protected, the right to free, and other rights. So, every human being has the right to be protected including in state life. In other words, every citizen will get protection from the country. Law is a means of making it happen so that it appears a theory of legal protection. This is the protection of the *haraam* and dignity and human rights under the provisions of the law by State apparatus. Thus, legal protection is an absolute right for every citizen and is an obligation to be undertaken by the Government, given that Indonesia is known as a legal state.

Bond transactions in Indonesia are expected to be growing considering that bonds interest has an average of 7%-11% per year over regular savings rates or deposits that average reach a range of 5% per year. Bonds issued by the company are growing rapidly in Indonesia. Overall, the company's bond issuance continues to show an increase (Elvira Fitriyani Pakpahan, 2017). One of the factors that encourage the issuance of corporate bonds, i.e. the low rate of interest rates of Bank Indonesia or BI rate that is still at 5.75% will encourage the corporation to seek funding from the capital market compared to banking. Placing funds on bond instruments is not without risk, as publishers may fail to pay their obligations. This high risk is directly proportional to the high yield gained by investors.

Bonds are considered safe investments, but they still have risks. One risk is the risk of failing to pay. If an issuer has failed to pay, the investor will receive a return of the bond less than promised. Another thing that establishes the community's perception of

bonds also depends on the macroeconomic conditions, as the price of the bond depends heavily on the prevailing interest rate or government-defined inflation policy, as well as in terms of bond ratings. Failed to pay (Default) can be described as a state where the issuer as the debtor who has committed a pledge (tort) to its obligations to pay the underlying loan and/or the bond interest at maturity (maturity date) to the bondholders as a creditor (Bapepam, 2003).

Investasi dalam bidang obligasi di Indonesia menjadi tidak lagi menjanjikan karena akhir-akhir ini terjadi banyak kasus gagal bayar dan menimbulkan kerugian, khususnya bagi para investor. Kasus gagal bayar yang mulai bermunculan, seperti pada PT. Mobile-8 Telecom Tbk., yang gagal membayar kupon obligasi, waktu jatuh tempo Maret 2013 dan dinyatakan gagal bayar dengan nilai obligasi sebesar Rp. 675.000.000.000.-, Bakrie Telecom yang menerbitkan obligasi sebesar Rp. 3.800.000.000.000.- dengan kupon yang tidak dibayar sebesar Rp. 218.000.000.000.- waktu jatuh tempo Mei 2015, hingga perusahaan Berlian Laju Tanker beserta anak perusahaannya yang menerbitkan obligasi sebesar Rp. 421.428.000.000.000.- dengan waktu jatuh tempo pada Februari 2012 dan dinyatakan gagal bayar. Hal ini menjadi masalah yang sedang terjadi dalam perekonomian Indonesia dan menjadi serius karena dapat menurunkan roda perekonomian, khususnya di bidang pasar modal (Leonard, Tommy and Heriyanti, 2018).

Investment in the field of bonds in Indonesia is no longer promising because lately there are many cases of unpaid pay and losses, especially for investors. Defaulted cases that began to emerge, such as in PT. Mobile-8 Telecom Tbk., which failed to pay Bond coupons, time is due in March 2013 and started to fail to pay with a bond value of Rp. 675 billion.-, Bakrie Telecom issued bonds amounting to Rp. 3.8 trillion.-with coupons that are not paid for Rp. 218 billion.-Due time May 2015, until the company Diamond Laju Tanker and its subsidiaries issued bonds amounting to Rp. 421,428,000,000,000.-With due time in February 2012 This is a problem that is happening in the Indonesian economy and becomes serious because it can reduce the wheels of the economy, especially in the field of capital market (Leonard, Tommy, and Heriyanti, 2018).

The defaulted cases show that some companies have made the default to the investors of bondholders who do not pay the principal and/or bond interest of the company according to the agreement that has been determined and agreed upon beforehand. Companies that have failed to pay the payment cannot pay the company's bond interest may have 2 (two) problems i.e. companies to temporarily do not have the cash to pay the principal and/or bond interest of the company or company is no longer able to pay the principal and/or bond interest of the company.

The legal certainty for the business field is very important at this time because every investor essentially wants the security of the investments he has applied. Legal certainty for the business is important for business owners, managers, and other professionals to have a basic understanding of business law to help them make better decisions. A business can buy and sell property, sue and be sued, enter into contracts, hire and fire employees, and even commit crimes (Pranoto, P., Kholil, M., & Tejomurti, K. 2019: 105). For the business world that often faces many challenges and risks, a guarantee

of legal certainty is important. The existence of a clear, transparent, and will provide opportunities for people to conduct business activities (Rudianto, 2002).

Cases of failure to pay by the company's bond issuers severely detrimental to bondholders, the contractual relationship of the parties to the bond agreement do not reflect the relationship based on justice. In essence, the contractual relationship can not be released in conjunction with the problem of justice. Contracts as a container that brings together the interests of one party with the other party form a fair exchange of interests. In the contract between the issuers of bonds with the investor of bondholders, in essence, it should be based on the basic principles of contract law and the theory of justice as a cornerstone in contracting. Thus it is considered important to research how to safeguard against equity investors based on dignified justice.

II. Research Methods

The research method used is empirical or non-doctrinal. A sociological/empirical approach using a non-positivistic approach and the use of analysis is qualitative by reviewing the trading performance of bonds in the capital markets which are then projected to be established at standard norms. Applicable laws/regulations that are ideally expected to be further interpreted (interpretive) based on theories (theoretical interpretation) and for later drawn generalization as an ideal formulation (*ius constitutum*).

III. Research Result And Discussion

Justice according to Aristoteles is to do virtue in other words justice is the ultimate virtue. The nature of justice itself has a long tradition. Fairness is one of the priorities that become human objectives. Justice, arguably, is the most important priority underlying the entire dimension of social and political life. Fairness is one of the topics that have long since almost always accompanied the history of human civilization. One of the old civilizations that uphold justice was the ancient Roman Empire. Where *Justicia*, the goddess of justice we know today as a symbol of justice is a legacy of that ancient civilization

A simple definition of justice has been given since ancient Rome and has older roots. The definition of justice is described briefly as the "*Tribuere cuique suum*". Or the Latin sentence also in English can be interpreted as: "To give everybody his own" or in Bahasa Indonesia that gives everyone who belongs to him (Ginsberg, 2001).

Judging by the theory of the dignified justice by Prof. Teguh Prasetyo that the interesting pull between *Lex Eterna* upper currents and the current *Volksgeist* in understanding the law as an attempt to approach God's mind according to the legal system based on *Pancasila* (Prasetyo, 2015). *Pancasila* has been designated as the main source of all legal resources that have occurred in the country and nation of Indonesia, as quoted as follows:

Pancasila has been stipulated as the first source and the foremost source of all sources of law which has been in force in the system of laws of the independent and sovereign nation-state

Indonesia. The stipulation of the Pancasila as the first and foremost source of all sources of laws in the Indonesian legal system as such might be considered as an indication of the fulfillment of the conditions in jurisprudence, theoretically, in doctrine, as well as in legal practice as mentioned above. The stipulation as such is also fair and logical in other than a system of law, such as the Indonesian system, could, in the end, decide on when and at what moment a system of law of the independent and sovereign nation-state has already been established and freed itself from its state of dependence and no longer relies on the source of laws which has been made outside its system (Prasetyo, Pancasila The Ultimate of All the Sources of Laws (A Dignified Justice Perspective), 2016).

It must necessarily reflect justice in Indonesian society, especially in terms of the contract between the issuers of bonds with the investor of bondholders under the Volksgeis in Indonesia. The three common characteristics of the first justice, justice is always on the other person or justice always marked other directness. Secondly, justice must be enforced or implemented. Third, fairness demands equality (Ujan, 2001).

In addition to some of the government's interests to cover the country's revenue and expenditure budget deficit annually through the issuance of state bonds (the SUN) in the form of retail state Bond (ORI), which is considered necessary and very important to the society today is knowledge on the arrangement of the issuance of retail state bonds in the law provisions of domestic securities in Indonesia as well as about the position and It is not another thing to know how much security and legal protection of investment that has been implanted in the form of bonds, because it does not cover the possibility of the failure to pay state bonds in the reign of President Sukarno re-repeated.

The theory of the dignified justice is a theory of law that works by observing the legal materials of prevailing laws in a system of law, philosophy of law, theory, dogma, and doctrine in law and practice of law that takes place in the positive legal system. The theory of justice dignified the principle that doctrine, as well as legal dogmatics, there is a teaching about the invention of the Law (rectsvinding) that follows the nature of the always progressive law in the layers of legal philosophy, legal theory, dogmatics law and the practice of law to maintain values and morality (Prasetyo, Keadilan Bermartabat Perspektif Teori Hukum, 2015).

The theory of justice dignified has the principle to understand the doctrines and provisions that have been in the legal system based on Pancasila as the main system of law or the first agreement that is subjected to research and investigation of dignified justice theory. The theory of fairness in dignity has the dimension of how the Theeri view the development of a typical legal system of Indonesia. How the legal system positively gave his identity, amidst the powerful influences of the current systems of the world's laws and very loudly as if penetrating into the way of the Indonesian law.

The dignified justice theory noted an attitude in the development of the legal system based on Pancasila. The Indonesian legal system is not absolutely of law, nor does it adhere to the common law system, although many support the opinion that the judge made law system upholds the haraam and dignity of the judges as the institution or institution of a legal creator. The common law system believes that people who are dynamic and growing at all times are unlikely to be in the law and continue to develop

legal cases that occur during society. The legal system based on Pancasila is not easily deceived by such visions. Dignified justice theory applies to the legal system in Indonesia by finding a balance between the two dominant legal systems (Prasetyo, Keadilan Bermartabat Perspektif Teori Hukum, 2015).

The theory of dignified justice has a prominent feature in conducting investigations to find the rules and principles of the law through the layers of legal sciences. The theory is of justice dignified to maintain a different balance of view on the existing layers of legal sciences and not look at different opinions among the layers of legal science as a conflict. The theory of justice dignified to keep the conflicts in the law (conflict within the Law) (Prasetyo, dignified justice perspective of legal theory, 2015).

The theory of justice dignified the process of thought activities characterized by fundamental or radical thinking. The process of observation or activity of thinking from the theory of justice is dignified as a legal science and that produces a dignified justice theory of ways, roads, or scientific approaches (Poedwijatna, 1991).

The radicals in the theory of fairness are not radicalism but think of something that has a boundary. As the origin of the word radical from the Greek word meaning root (Teguh Prasetyo and Abdul Halim Barkatullah, 2012). Thinking radically is a feature of philanthroreity that is found in the theory of dignified justice. The theory of justice is dignified besides thinking fundamentally, the theory is responsible for the conscience. This shows the relationship between freedom of thought in philosophy with the ethics contained in the law that mean of the process and the outcome of the activity of thought (Teguh Prasetyo and Abdul Halim Barkatullah, 2012). The dignified justice theory has a vision in line with the purpose of the law, rejecting the radicalization of science for ideological purposes.

The legal theory of justice has the dignity to approach the law philosophically. This theory understands the law with love for wisdom; Philosophy means loving Wisdom (Teguh Prasetyo and Abdul Halim Barkatullah, 2012). The theory of justice has the dignity of the law to be a central point or focal point in the assessment or process of construction, deconstruction, or reconstruction of thought about the law and society in depth. The theory is of justice dignified to study up to its roots, to the nature of various legal issues. Theory of justice beneficial as a philosophy of law has a very high value of abstraction that is useful as a theory of umbrella (grand theory), can also function as middle range theory and Applied theory (Teguh Prasetyo and Abdul Halim Barkatullah, 2012).

The thought of Professor Ronald Dworkin who mentions that his attention to universal law is a concern for the Law empire or the Law of Empires. The Law Empire is the empire of Intellect, Karsa, and the taste of a son of man, wherever he lives. This situation is in line with the principle of beneficial justice theory that cares about using the opportunity given by God to him to help his neighbor through thinking activities. Furthermore, this thinking activity results in the action of humanizing humans or *nge wong ke wong* (Teguh Prasetyo dan Abdul Halim Barkatullah, 2012).

Legal theory including a dignified justice theory is a substantive (substantive) legal theory or more strictly speaking, can be viewed as the law itself. This theory is likened

to legal philosophy and can be likened to the philosophy of Law and Legal sciences (jurisprudence) as well as substantive legal sciences. This written thought corrects the writings of Teguh Prasetyo (2011) (Teguh Prasetyo and Abdul Halim B, 2011) who wrote that the science of law is only one field of law that is not identical with the law, because not every research and development of blasphemous science can be the law. All that turned into law when it was in accordance with the justice contained in society. The theory of justice became the rules and principles of positive law in Indonesia as identical with justice. (Teguh Prasetyo dan Abdul Halim Barkatullah, 2012).

The function of the law as a regulatory instrument and a protective instrument, in addition to other functions as mentioned below, is directed at a goal that is to create an atmosphere of legal relations between legal subjects in a harmonious, balanced, peaceful, and fair manner. Some authors say that "*Doel van het rechts is een vreedzame ordering van samenleving. Het recht wil de vrede...den vrede onder de mensen bewaart het recht door bepaalde menselijke belangen (materiele zowel als ideele), eer, vrijheid, leven, vermogen enz. Tegen benaling te beschermen*". The legal purpose is to govern the community peacefully. The law requires peace. Peace among mankind is retained by the law by protecting the interests of certain human beings (both material and Ideil), honour, liberty, soul, property, and so on that it is in the mind. The objectives of the law will be achieved if each subject of law obtains its rights appropriately and runs the obligations in accordance with the prevailing laws and regulations..

Legal protection for the people is a universal concept, in the sense adopted and applied by every country that is self-promoting as a state of law, but as Paul E. Lotulung mentioned, "Each country has its own means and mechanisms on how to realize the protection of the law, and also until how far the protection of the law is given (Lotulung, 1993)".

The theory of legal protection is a theory of study and analysis of the form and purpose of protection, the subject of protected law and protection objects, protected legal subjects and protection objects given by law to the subject. This theory was developed by Roscoe Pound, Sudikno Mertokusumo and Antonio Fortin (Salim, 2013).

The category of legal protection for the people, namely the protection of preventive, repressive, and curative law. On the protection of preventive law, the people were given the opportunity to appeal (Inspraak) or his opinion before a government decision got a definitive form. This means that preventive legal protections are aimed at preventing disputes, while repressive protections are otherwise aimed at resolving disputes. Meanwhile, curative protection is given to give the awareness to realize and want and able to improve in the future so that no longer repeated. Preventive legal protection is very large meaning for governmental actions based on freedom of action, because with the government's preventive legal protections compelled to be cautious in making decisions based on discretion.

In Indonesia legal protection for the people due to government legal action there are several possibilities, depending on the legal instrument that the government uses when committing legal action. It has been mentioned that the commonly used legal instruments are decisions and statutes. Actions of Government law in the form of issuing decisions

are government actions that belong to the category of regulation or Government action in the field of legislation. This is because, as mentioned before, that the decision issued by the Government is a statutory regulation.

Corporate bonds are one of the high yield investment instruments. The high yield provided by the bond issuing issuer is not independent of the investment risk. Legal protection is necessary given the risks inherent in the company's bonds at any time can harm the investor of the bondholder. Legal protection that can be given to bondholder investors i.e. preventive legal protection and repressive legal protection.

The preventive legal protection can be the contents of the trust agreement made by the trustee. Preventive legal protection is also provided by the Government through the appropriate precautions on Capital Market Law and Bapepam Decision Number 412. The repressive legal protection that can be given to the investor of the bondholders is the investor of the bondholder given the opportunity to obtain his rights through a lawsuit in court. The Investor of bondholders through a trustee is given the opportunity by article 111 of the capital market Law to prosecute the damages suffered to the party responsible for such damages

The risks inherent in corporate bonds are directly proportional to the returns offered by the issuer. Bondholder investors need a definite legal protection if at any time the risks that are potentially detrimental to their investments occur. The first risk is liquidity risk. Liquidity risk can occur due to unyielding in selling company bonds in the secondary market.

The difficulty of selling corporate bonds in the secondary market can be caused by the state of the bond market. Bondholder investors may request additional interest if they have an illiquid or hard-to-sell company bond on the secondary market. The addition of the company's bond interest rate may be requested by the investor of the bondholder to the issuer if previously stipulated in the Trust Agreement. Company bonds become liquid if there are buyers who are always available to buy company bonds in the secondary market.

The second risk is the risk of interest rate fluctuations. This risk can occur primarily on corporate bonds with fixed coupon interest rates. The risk of interest rate fluctuations occurs due to rising commercial interest rates. The rate of increase in commercial interest rates may lead to decreased price of corporate bonds. The increase in commercial interest rates may occur due to the market movement as well as the economic state of an erratic country. Protection that can be given to the investor of the bondholders only in the form of a preventive action. This can be an education and information notification to the prospective investor of the bondholder who will purchase the company's bonds.

The third risk is the risk of reinvestment. The risk of reinvestment can occur in corporate bonds with low coupon rate and long maturity. Company bonds with low coupon rate and long maturity will cause uncertainty in the principal loan return and the company's bond interest payment. Bondholders investors through a trust agreement made by the trustee may request an additional bond interest rate as well as a more definite period of time. This can be done by the trustee as the representative of the investor of bondholders at the time of negotiation to determine the contents of the Trust agreement. Company bonds that could potentially cause uncertainty in payments can be resolved.

The fourth risk is the default risk. The default risk can also be called a risk of failure. The risk of failing to pay may occur because the issuer cannot fulfill the obligation to pay the company's bond interest as well as the underlying loan to the investor of the bondholder. The risk of this failure can result in the issuer having no funds for a while, liquidation, dissolved, or bankrupt. The company can be said to fail to pay if it does not implement or do not comply with the provisions in the obligation payment obligations on the date of principal settlement of bonds and/or bonds interest on the date of bond payment (5.1.a, 2011).

The provisions are similar to the provisions of clause 10.1 of the Trustee Agreement which mentions "if the issuer insofdates the principal of paying the bonds on the date of principal repayment of bonds and/or bond interest on the date of the bond payment to the bondholder based on the treaty document." Legal protection that can be given to the investor of bondholders is the protection of preventive and repressive law contained in the provisions of Capital Market Law, Financial Services Authority Law, Trust agreement, and Bapepam Decision Number 412.

Another risk is the risk caused by the trustee. This risk may be the negligence of the trustee in carrying out its duties and the form of basic payment and/or bond interest caused by the payment agent. Bondholders who are harmed by the trustee can ask the trustee to conduct the RUPO. Trustees who have been negligent in carrying out their duties as a trustee and as payment agent and proved detrimental to the Investor of bondholders can be discharged through *RUPO*.

Bondholder investors can also report to the Financial Services Authority if the trustee ignores the losses suffered by the investor of the bond holder. The Financial Services Authority that has received reports from bondholders may request that the trustee or the issuer to conduct the RUPO. The RUPO, held at the request of the Financial Services Authority, aims to settle the issue of bondholders investor or dismiss the trustee and replace it with the new trustee. It can also be done by bondholders if the basic payment and/or bond interest is caused by another institution acting as a payment agent such as KSEI. Bondholders can report to the trustee or the Financial Services Authority in the event of a jamming of principal and/or bond interest by KSEI and may then be asked to convene a meeting by the trustees or the Financial Services Authority. The RUPO is held with the aim of completing principal and/or bond interest payments or replacing the payment agent

The risk of failing to pay is the highest risk inherent in corporate bonds. Almost every year there are one to several Privately owned Enterprises in Indonesia who have failed to pay company bonds. Based on several sources, there are still many issuers who have yet to pay off their company's bonds debt and hang the fate of bond holders investors. Bondholder investors need legal protection both preventive and repressive to regain principal payment and/or interest of corporate bonds issued by the issuer.

The issuer's failure to pay may occur because the issuer issuing the company's bonds is negligent in paying the corporate bond interest at the time specified in the Trust agreement. Failing to pay may also occur because the issuer does not pay for all underlying debts and principal debts and the company's bonds are due to bondholders.

The definition of due debt is in the explanation of article 2 paragraph (1) bankruptcy Law and The Delayed debt repayment prohibitions. According to article 2 paragraph (1) bankruptcy Law and The Delayed debt repayment prohibitions which is what is meant by "The debt that has been due and invoiced" is the obligation to repay the debt that has fallen time, either because it has been promised, due to the acceleration of its billing time as promised, due to the imposition of sanctions or fines by the competent authorities, or because of a court verdict, arbitrator, or an arbitral tribunal.

The trustee as representative of the bonds investor has a crucial role in providing legal protection for the party it represents. The legal protection is done after the trustee calls issuers and investors of bondholders to conduct the RUPO. The RUPO can be held at the request of bond holders investors, trustees, issuers, or Financial Service Authority. The RUPO held at the request of bondholders investors must fulfill the provisions set forth in the Trust agreement. Bondholders can request to be held by the RUPO, the investor of the bondholders themselves or collectively representing a minimum of 20% (twenty percent) of the number of principal bonds. Both remedies are done if there is no decision or settlement that benefits the investor of the bondholder.

A. Preventative law Protection

Legal protections provided to protect bondholders' investors against the risk of failing to pay are divided into 2 namely preventive legal protection and repressive legal protection. The act of trustee when negotiating determines the content of the trust agreements including the protection of preventive law. With preventive legal protection, failure to pay company bonds by issuers may be prevented by listing the clear provisions of the agreement as well as protecting bondholder investors as creditors.

One of the provisions of Capital Market Law and Bapepam Decision Number 412 is the provisions on the warranty. The issuer's wealth guarantee is important to protect the bonds of investors in the event of a risk of failing to pay bonds. Granting guarantees in a bond issuance serves to guarantee the fulfillment of debtor debt in case of tort before maturity time (Usman, 2009).

The guarantee in the issuance of corporate bonds is necessary considering that the company's bonds are bonds that are not guaranteed a certain asset, but are issued on the basis of general belief against the company or individual or known as Bond debenture (Safir Senduk et.al, 2009).

The wealth of issuers that become general assurance can be found in the trust agreements and corporate bonds prospectus. The statement on the warranty explains that the company's bonds are issued without being secured with special collateral and the investor of the bondholder has no privilege to be held in accordance with the provisions of article 1133 of the Civil Code paragraph (1) which mentions "the right to take precedence among the people in receivables derived from the privileges, from pawn, and from mortgages." The concept of general assurance according to Sri Soedewi Masjchoen Sofwan, the general warranty is not specifically designated and not intended for creditors, the proceeds of the sale of the collateral are divided

among the creditors balanced with their respective. The situation is potentially not the publication of receivables from bondholders investors. The concurrent creditor will lose in the fulfillment of his vote with the privileged creditors.

In article 12.1 of the Trustee Agreement analyzed by the author as follows: "In order to guarantee a good and timely payment obligation from the issuer of the outstanding amount, the issuer shall submit a fiduciary guarantee in the form of all and any rights, authority, bills and/or claims that are now and/or later will be held., obtained and can be carried out by the issuer to any third party also based on the consumer financing Agreement and/or the contract of lease of a motor vehicle that does not delinquent its payment through a period of 90 (ninety) calendar days after the last installment is due to trustees based on fiduciary guarantee deed, which will be signed in front of me, notary, with a guarantee value of not less than 75% (seventy five percent) of the principal value of the bond on each quarterly report."

The provisions of article 12.1 of the Trust agreement are strengthened by article 12.2 of the Trust agreement which mentions "if the issuer cannot fulfill the provisions of Article 12.1 of the Agreement, then the issuer is obliged to deposit the cash that will be tied to a fiduciary guarantee, so that the guaranteed value on each quarter report reaches 75% (seventy five percent) of the underlying value of the bond Article 12.4 The Trust Agreement also outlines the provisions of the general warranty mentioning the:

"In addition to a fiduciary guarantee in clause 12.1 of the agreement, all of the company's wealth, whether moving or stationary, either existing or existing in the day unless the asset's property has been specifically guaranteed to its creditor shall be collateral for all issuers' debts to all its creditor, including the bond holders by pari in accordance with the Agreement, pursuant to article 1131 and 1132 of the Civil Code of law."

The statements in section 12.1, section 12.2, and Article 12.4 of the Trustee agreement indicate that in addition to providing fiduciary guarantees, issuers also provide general assurance. The provisions of chapters 12.1 and article 12.2 of the Trustee agreement may harm the investor of the bondholder if the issuer cannot fulfill fiduciary of 75% (seventy five percent) and/or circumstances that do not allow the issuer to deposit money. If a company fails to pay by the issuer, the bondholders' receivables fulfillment will not be fulfilled by the fiduciary guarantee. Such damages may occur in bondholders even if the issuer provides a general guarantee. The results of the sale of general guarantees will be divided proportionally if at any time the issuer has failed to pay. The value of the general assurance sale is not fully able to settle the bond holder's receivables if there is a privileged or preferent creditor.

According to Sri Soedewi Masjchoen Sofwan, the creditor rights holder also has the right to fulfill other goods from the debtor. This situation may only occur if the obligation to fulfill the bonds of investors from the collateral mentioned in the Trust agreement is insufficient. Bondholder investors can request the fulfillment of their sales to other collateral items.

The legal protection that can be provided by the trustee is through a change of the trust agreement. The change of the Trust agreement is done so that the value of guarantee given to the investor of the bondholder as a conjugant creditor is clear and detailed if the issuer has failed to pay. The Government also provides preventative legal protection. The form of preventive protection provided by the Government is through statutory regulations, namely in article 85, article 86 paragraph (1), article 87 paragraph (1), and article 89 clause (1) Capital Market Law which governs the disclosure of information either by issuer or trustee. The protection of the preventive law is provided by the 4-letter E Bapepam Decision Number 412 regarding the warranty and 4-letter number of Bapepam Decision Number 412 on the priority rights (seniority) of the debt securities. The regulations contain guidelines that may be used to prevent the failure to pay company bonds by the issuer. The trustee must submit a report to the Financial Service Authority pursuant to the provisions of article 85 of the capital market which mentions "securities exchanges, clearing and guarantee institutions, depository and settlement institutions, mutual funds, securities companies, investment advisors, securities administration bureaus, custodian banks, trustees, and others who have obtained permits, approvals, or registrations from Bapepam shall submit reports to Bapepam." The provisions of the article explain that the Trustee as representatives and act on behalf of the investor of the bondholder shall convey all reports of any legal action he has committed. The submission of the report serves as information to the Financial Service Authority in order to easily supervise the activities of trustees and issuers.

In article 86 paragraph (1) Capital Market Law is clear that is a must to be done by the issuer. All events that occur to the issuer affect the price of securities, especially the price of corporate bonds in the Indonesian capital market and can harm the investor of bondholders. Submission of report by the issuer to the OJK is also a means of supervision and prevention by the Financial Service Authority

Issuer through a company director or Commissioner must also submit a report on the company's share ownership. These provisions are listed in Clause 87 clause (1) of Capital Market Law mentioning "director or commissioner of issuers or public companies shall report to *bapepam* on ownership and any changes in ownership of the company's shares." The provisions of section 87 paragraph (1) of Capital Market Law require that the company's directors or commissioners submit a report on ownership of the company's shares to the Financial Service Authority. The issuer shall also submit a report to the Trustee pursuant to the provisions of article 7.2.10 of the Agreement of the trustee that says "notify in writing and submit to the trustee copy of the deed relating to the amendment of the Articles of Association, the composition of directors and commissioners, dividend distribution and the decisions of the general Meeting of Shareholders (hereinafter referred to *RUPS*) of the issuer along with the evidence of consent, reports from, and/or notices to the relevant agencies (If it is available)."

This is necessary because the company's shares ownership and changes in the company's shares are expected to affect the price of the company's bonds. The company's share ownership and changes in the company's share ownership can

also affect the company's actions or policies in the use of the company's bond sales funds as well as other acts of majority shareholder who can harm the investor of the bondholder.

All information submitted to the Financial Service Authority is also an information for anyone including a trustee, issuer, bond-holder investor, and prospective investor of the bondholder. Information disclosure obligations by issuers and trustees is also listed on the company's bonds prospectus. The guarantee of obtaining this information is governed by article 89 paragraph (1) of Capital Market Law which mentions "information that is obliged to be submitted by each party to Bapepam under the provisions of this Law and or its implementation rules publicly available." The provisions of Article 89 paragraph (1) of Capital Market Law provides opportunities for the general public and related parties to know all information especially related to the company's bonds so that no one is harmed or in other words can take precautions.

Article 85, Article 86 paragraph (1), article 87 paragraph (1), and article 89 clause (1) of the Capital Law Market adheres to the principles of information disclosure. The concept of disclosure of information according to Irsan Nasarudin, transparency or openness is a protection to the investor of bondholders. From the juridical side, transparency is a guarantee for the public's right to continue to gain substantial access to sanctions for obstacles or omissions made by the company. The protection of preventive law in the form of investigations and investigations is also given by the Financial Service Authority through Capital Law Market. The authority of the audit by the Financial Service Authority is stated in Article 100 paragraph (1) of Capital Market Law, which says "Bapepam may conduct an examination of any party suspected of committing or engaging in violation of this law and/or its execution rules." Article 100 paragraph (1) Capital Market Law authorizes the Financial Service Authority as the supervisor of the Indonesian capital market to conduct checks on issuers that allegedly commit to bondholder investors. This examination is one of the prevention and handling of alleged violations. The Financial Service Authority's actions in the prevention and handling of the suspected violations are initiated by the Trustee report. This provision is in article 3.3.4 of the Trust agreement mentioning:

"Obliged to provide reports to *BAPEPAM* and the stock Exchange in accordance with the provisions applicable in the field of capital market and to the bondholders through *KSEI* directly to the bondholders in the event that the trustee is aware of the evidence that it considers sufficient that:

- i. Issuer's default/breach of provisions stated in the Agreement document
- ii. Circumstances that could harm the interests of the bondholders in the form of an issuer's inability to carry out its obligations to the bondholders based on the treaty documents.

The Trustee report is a precautionary measure by the trustee and Financial Service Authority to protect the investor of the bondholders. There is a report from the trustee, Financial Service Authority as the capital market supervisory institution can conduct the examination to the issuer and take the necessary measures so that the investor's bondholders are not harmed by the issuer.

B. Repressive legal protection

The government through the Financial Service Authority not only provides preventative legal protection, but also repressive legal protections. Protection of the repressive law that can be given by the Government through Article 102 paragraph (1) Capital Market Law that states “Bapepam impose administrative sanctions on the breach of this law and or regulation of its implementation by each party obtaining permits, approvals, or registrations from Bapepam.” The financial Service Authority may impose sanctions on the parties who have obtained permission from the Financial Service Authority, in particular, issuers that violate Capital Market Law or make a default against bondholders investors.

The Government in line with the article 111 Capital Market Law and the Trustee agreement also provide repressive legal protection. The protection of the repressive law provided is an opportunity to the investor of the bondholder to commit a lawsuit or claim compensation to the issuer through the court if there is a risk of failure to be determined by the judge’s verdict. The investor’s opportunity to conduct a lawsuit in court claims is 111 Capital Market Law says “any party that suffers a loss as a result of a breach of this law and the rules of implementation may claim damages, either alone or jointly with other parties who have similar demands, against the parties responsible for the breach.” Article 111 Capital Market Law provides an opportunity for bond holders to claim compensation through the court for the risk of failing to pay by the issuer. The provisions of article 111 of Capital Market Law are only valid in general because in the event of the risk of failing to pay corporate bonds, claims and claims for compensation through the Court are filed by the trustee.

The trustee may file a lawsuit and claim damages through the courts because it is part of the obligation and responsibility of the trustee as the party representing the investor of the bondholder. The trustee is authorized by law to represent all interests of the bondholders investor. The act of the trustee in the form of the lawsuit can be done if the trust agreement is not specified otherwise such as the provision of dispute resolution in consultation or through BAPMI. As Tommy Leonard in the International Journal Business Economics and Law (Tommy Leonard, Elvira Fitriyani, Heriyanti, 2016):

Repressive legal protection in the form of sanctions and a lawsuit through the court is one type of protection that is effective in case issuers are in default although it will not fully restore the rights of investors holding bonds as a whole. This is not really supported by the Trusteeship Agreement because the Trusteeship Agreement determines that the dispute is resolved through consensus or ASICM. In addition, legal protection in the form of specific guarantees that are clear and detailed is an effective form of prevention pursuant to Article 1133 of Civil Code section (1). The provision of Article 1133 paragraph (1) of Civil Code explains that a creditor has a higher level of receivables if they have the privilege over the receivables rather than other creditors. Creditors, in this case investors holding corporate bonds that have privileges as liens or mortgages, can be prioritized in the fulfillment of their accounts receivable by the issuer if there’s ever a risk of default on corporate bonds.

The trustee may use article 1365 of the Civil Code as the legal basis for filing a lawsuit and claim for compensation to the issuer through the court. The law of the Civil Code requires the person who caused the loss to compensate as stated in article 1365 of the Civil Code of law which says “any unlawful deed, which carries a loss to another, obliges the person due to harm to issue the loss, reimburse the damages.” Article 1365 of the Code of Civil law gives orders to issuers who fail to pay the company’s bonds to compensate the parties who are harmed in this bond holders investors. The indemnification can be the entire loan or principal of the loan and interest.

Legal protection provided by Capital Market Law is not enough to protect the rights of the investor of the bondholders in the event of a risk of failing to pay. The protection of the law especially against the investor of bondholders is found in the Trust agreement although it does not fully protect the investor of bondholders. The weakness of the agreement of the current trust is in the provisions of the special provisions on the warranties governed by the Financial Service Authority as in the 4-letter E Bapepam Decision Number 412 is still too common. Provisions on the warranty on the number 4 letter E Bapepam Decision Number 412 is only limited to the provisions of the information, not a necessity.

The protection of repressive law in the form of sanctions and lawsuits is one of the only guaranteed protection if an issuer’s time to make a default in the form of failing to pay the company’s bonds even if the way does not fully return the investor rights of the bond holders intact. It is not very supported by the Trust agreement because the Trust agreement determines that the dispute settlement is resolved by deliberation or BAPMI. In addition, the legal protection in the form of clear and detailed special assurance is an effective form of prevention according to the provisions of article 1133 of the Civil Code paragraph (1) which mentions “the right to take precedence among people in receivables derived from the privileges, from pawn, and from mortgages.” The provisions of Article 1133 paragraph (1) of the Civil Code shall explain that the creditor has a higher level of receivables if it has the privilege of its award from other creditors. Creditors in this case the investor of the corporate holder who has privileges such as pawn or mortgages can be precedence in fulfillment of the issuer by issuers in the event of a risk of failing to pay the company’s bonds.

Bondholders are not adequately protected if the issuer only provides a general guarantee according to the provisions of clause 1131 of the Civil Code which mentions “all material that is owed, whether moving or stationary, both existing and new will be in the present, being dependent on all its individual cases.” The arrangement of the warranties of article 1132 of the Civil Code says “the material is a guarantee for all those who are brought to him; The sales revenue of the items is divided according to the small amounts of their respective receivables, except when among the receivables there are legitimate reasons to precedence.

In chapters 1131 and section 1132 of the Civil Code, it is explained that bondholders will share investors with other creditors as per the value of each creditor’s receivables. Fulfillment of investor’s receivables will be able to be preceded

by the issuer if there are reasons to precedence or have a privilege in accordance with the provisions of article 1133 paragraph (1) of the Civil Code. Bondholders who have the status of a concurrent creditor will be less protected due to the wealth of issuers that will be auctioned in the future can not be adequate debt to the investor of bondholders.

IV. Conclusion

Protection of the law given to equity investor based fairness is dignified through the protection of preventive and repressive law. Preventive protection against the failing to pay the company's bonds by the issuer can be prevented by listing the provisions of the Agreement clearly and protecting the investor of the bondholder as creditor. Protection of the repressive law that can be given by the Government through Article 102 paragraph (1) Capital Market Law. By incorporating the theory of fairness in the legal protection concept of bond investors, it is certainly not only focused on investors, but how all parties are also protected. Both investors, issuers, and trustees. Investors are given preventive and repressive protection, issuers are given protection without revoking its operational permits in the capital market, and the trustee is given protection by creating a new regulatory concept of a new trust contract in addition to filing a lawsuit.

V. Suggestion

The Financial Service Authority should make a basic guideline for the trustee regarding matters that must be made in the trustee contract as a form of protection against investors to avoid the inconsistency of the trust contract between the issuer and the trustee.

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