

RESOLUTION OF DISPUTES REGARDING CORPORATE BONDS DECLARED BANKRUPT BY COMMERCIAL COURT

Patih Ahmad Rafie¹, M. Martindo Merta², Junaidi^{3*}

¹⁻³ Faculty of Law, Universitas Sjakhyakirti
E-mail: ¹⁾ junaidi@unisti.ac.id

Abstract

The objective of this study is to examine the resolution process for corporate bonds that have been declared bankrupt by the commercial court. This research adopts a normative legal approach, which involves analyzing the law as a comprehensive system comprising legal principles, norms, and rules. The findings of this analysis reveal that the Law of the Republic of Indonesia Number 8 of 1995, which pertains to the capital market, encompasses provisions on bonds. Additionally, article 1 number 3 of the finance ministerial regulation Number 27 of 2020 specifically regulates government securities (SUN) that qualify as bonds. These bonds have a maturity period exceeding one year and are accompanied by coupon payments and limited interest installments (discounts). Bonds can be interpreted as a form of liability protection offered by bond issuers to investors, along with an agreement to repay the principal amount and premium coupons at a predetermined time. Notably, in the case of a company or issuer being declared bankrupt, it is crucial to examine the settlement system for these bonds.

Keywords: Bankruptcy and Suspension of Debt Payment Obligation (PKPU), Bonds, Capital Markets, Trustee

1. INTRODUCTION

The capital market sector is a term that is widely recognized, especially among people who are currently involved in the business world (investment) (Bodie et al., 2019). In Indonesia, the image of the capital market is the Indonesia Stock Exchange (IDX) (Jogiyanto, 2017). What is meant by the capital market is a place or place where demand and supply meet for long-term monetary (financial) instruments, generally within a period of one year (Mohamad, 2015). The capital market is a business opportunity for various long-term monetary instruments that can be traded, both as a form of debt and equity (Fachruddin, 2001). More specifically, there are two parties that come together in the capital market. The main party in the capital market is the party that finances or the party that provides capital (investor), while the second party is the issuer or business actors who need capital (Tandelilin, 2017).

The function of the capital market is to bridge the activities of offering investment instruments from issuers to investors or the public (Hariyani & Purnomo, 2010). Various investment instruments traded in the capital market include stocks, bonds or debt securities, sukuk, securities, futures contracts on securities, warrants, rights issues, and other securities. The capital market has the function of connecting the implementation of investment instrument offerings from issuers to funders or the general public (Handini & Astawinetu, 2020). Various investment instruments traded in the capital market include stock offerings, securities or debt securities, sukuk, protection, futures contracts on (securities) protection, warrants, rights issues and various other protections (Mihmii, 2023). In addition to investors and issuers, other parties engaged in the capital market are also managers, where in Indonesia this ability is carried out by the Indonesia Stock Exchange which also acts as a controlling regulator. Then, at that point there are

financiers or guarantors. The ability of the guarantor is to be responsible if the issuer defaults or defaults (Mihmii, 2023).

In addition, several other institutions engaged in capital market trading are PT Kustodian Sentral Efek Indonesia (KSEI), Indonesian Clearing and Guarantee (KPEI), and finally the Financial Administration Authority (OJK) as the controller and manager (Hidayah & Hamid, 2018). One of the instruments in the capital market is securities which are interchangeable medium and long-term liability protection. Bonds contain a commitment from the party providing protection to pay rewards in the form of interest (coupons) within a certain period and pay off at the end of a predetermined time, to the party who buys the bond (Chumaida, 2023). Bonds are one of the investments with fixed protection that aims to provide a relatively stable speculation value growth rate with a more stable risk, compared to stocks.

A legally binding agreement, which includes a "guarantee" that must be adhered to, is established when one of the parties or the guarantor (the leader) promises to fulfill the principal obligation to the investor on a specific occasion, along with the payment of interest in the form of coupons within the specified timeframe. Interestingly, in the event that the company issuing the bonds is declared bankrupt or insolvent, resulting in a default or inability to make payments, the question arises regarding the company's liability as a bond issuer. Based on the aforementioned context, an issue arises concerning the dispute resolution process for corporate bonds that have been declared bankrupt by the Commercial Court.

2. RESEARCH METHODS

Legal research is a crucial activity aimed at finding appropriate solutions to research issues or problems. This type of research, known as normative legal research, adopts a comprehensive approach by considering the law as a complete system comprising legal principles, norms, and rules. Its primary objective is to generate arguments that effectively address the legal problems at hand (Marzuki Mahmud, 2009). In normative legal research (Marzuki Mahmud, 2009), the analysis is centered around legislation, both binding and non-binding legal instruments, as well as legal principles that pertain to the specific legal issues being examined.

3. RESULTS AND DISCUSSION

Article 51 paragraph (2) of Law Number 8 of 1995 concerning Capital Markets Jo Decree of the Chairman of the Capital Market and Financial Institutions Supervisory Agency Number KEP-412/BL/2010 concerning general provisions and Trustee Contracts dealing with investors holding debt securities on liability protection both in court and in court regulates the liability protection of trustees. The article reads as follows:

(2) The trustee shall be fully liable to the holders of debt securities for any and all losses as a result of negligence, recklessness, or other actions detrimental to the interests of the holders of debt securities committed by the trustee in carrying out his duties as trustee.

The article emphasizes that the trustee is fully responsible for any losses suffered by the holders of debt securities as a result of negligence, carelessness, or other actions detrimental to the interests of the holders of debt securities committed by the trustee in carrying out his duties as trustee.

This provision provides stronger protection for holders of debt securities. Previously, under Law Number 8 of 1995 on the Capital Market, the trustee was only liable for losses suffered by holders of debt securities as a result of acts of negligence or fraud committed by the trustee in carrying out its duties. The article also provides legal certainty for holders of debt securities. Holders of debt securities can claim compensation from the trustee in court or arbitration.

As investors have the right to submit bills, in this case investors have the privilege of submitting bills and requesting and/or requesting bankruptcy to the Guarantor or issuer (Nisa & Juliprijanto, 2022). is the Trustee as a party representing the interests of investors (bondholders). It should be noted in advance that with regard to the above arrangements, the protection holder/investor can apply for financial protection through the trustee and therefore, the trustee is also the party handling the protection holder to submit the case to the curator whose issuer is declared bankrupt/bankrupt (Husnan, 1992).

Furthermore, KEP-BAPEPAMLK stipulates that each Trust Agreement may control the arrangement with respect to the Guarantor's guarantee and the arrangement of sanctions related to the assumption that the commitments in the Trust Agreement for the protection of liabilities are not fulfilled (Nur, 2015), because the Trustee has controlled or held the Issuer's property security based on Article 1133 jo. 1134 of the Civil Code ("KUHPer") which reads:

Article 1133 KUHPer

The right of precedence among creditors is based on privilege, on pledge and on mortgage. Liens and mortgages are discussed in Chapters 20 and 21 of this book.

Article 1134 of the Civil Code

Privilege is a right granted by law to a creditor which causes him to be superior to others, solely by virtue of the nature of the receivable. Liens and mortgages are superior to privileges, except in cases where the law expressly determines otherwise.

Based on Article 303 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK), the Commercial Court is authorized to examine and decide on bankruptcy cases, including disputes arising from bond agreements.

Basically, bondholders can apply to the Commercial Court to settle their disputes with the bankrupt bond issuer. The application can be submitted individually or jointly with other bondholders. When the application is received, the Commercial Court will form a management and supervisory team. The management and supervisory team will be responsible for managing and settling the bankruptcy estate, including to resolve disputes arising from the bond agreement.

Based on Article 15 paragraph (1) jo. Article 16 paragraph (1) of Regulation No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the

authority appointed by the curator and administrator is delegated to perform supervisory duties or potential bankruptcy settlement resources from the date the choice is articulated. In the handling and repayment arrangements, the Curator will provide all Loan leaders of bonding organizations/Debt Holders with a valuable opportunity to submit legitimate cases to the Borrower through the curator, which will then be coordinated (see Article 27 of the Insolvency and PKPU Regulations).

Article 15 paragraph (1) jo. Article 16 paragraph (1) of Regulation Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) regulates the authority of curators and administrators. The article reads as follows:

(1) The curators and administrators are authorized to perform supervisory duties or potential bankruptcy settlements over the bankruptcy estate from the date the choice is articulated.

(2) The curator and administrator are authorized to represent and act on behalf of the debtor in all matters relating to the bankruptcy.

The article confirms that the curators and administrators are authorized to perform supervisory duties or potential bankruptcy settlements over the bankruptcy estate. This authority comes into effect from the date the option is articulated, i.e. the date the bankruptcy declaration decision is pronounced.

Article 27 of the Bankruptcy and PKPU Regulations regulates the transfer of cases to the curator. The article reads as follows:

(1) In the handling and repayment arrangements, the receivership will provide all loan leaders of bonding organizations/debt holders with a valuable opportunity to submit legitimate cases to the debtor through the receivership, which will then be coordinated.

The article stipulates that the receivership will provide loan leaders of bond-issuing/debt-holding organizations with the opportunity to submit legitimate cases to the debtor through the receivership. Such legitimate cases will then be coordinated by the curator.

Based on these two articles, it can be concluded that curators and administrators have the authority to carry out supervisory duties or potential bankruptcy settlements over bankruptcy assets. This authority comes into effect from the date the option is articulated. In the handling and repayment arrangements, the receivership will give the loan leaders of the bonding organizations/debt holders the opportunity to submit legitimate cases to the debtor through the receivership. Such legitimate cases will then be coordinated by the receivership.

Thus, to be able to register themselves as Creditors, bondholders/investors can first communicate with the Trustee as the authorized representative to represent the interests of bondholders to register their bonds to the Curator, or in accordance with the Trust Contract can register their own bills to the Curator. Furthermore, the Curator will conduct debt matching by referring to the Trust Contract submitted by the Trustee to determine the position of bondholders in the hierarchy of Creditor types.

In general, Creditors are divided into 3 (three) types, namely: (Nur, 2015)

1. Preferred Creditors, Creditors who have preference rights or privileges to be prioritized for repayment.
2. Separate Creditors, Creditors who hold property rights such as liens, fiduciaries, mortgages, mortgages, or other property rights.
3. Concurrent Creditors, Creditors who do not have the privilege of precedence and do not hold property security.

Therefore, in the event that the bonds are not backed by a property security, the bondholders are classified as Concurrent Creditors. These creditors will receive payment from the proceeds generated by the sale of unsecured assets or from the remaining proceeds of the sale of property security assets belonging to the separatist creditors. On the other hand, if the Trust Contract includes a property guarantee, the bondholders are categorized as Separate Creditors. According to Article 55 of the Bankruptcy and PKPU Law, Separate Creditors have the right to enforce their claims as if there was no bankruptcy. However, as stated in Article 56 paragraph (1) of the Bankruptcy and PKPU Law, the execution process will be temporarily suspended for a maximum period of 90 days from the date the bankruptcy declaration is announced, and an additional maximum period of 2 months after the commencement of insolvency to carry out the execution and sale process, as specified in Article 59 paragraph (1) of the Bankruptcy and PKPU Law

In the bankruptcy process, there are 2 (two) main things that will be carried out by the Curator, namely managing and administering the bankruptcy estate. In the management process, the bond issuing company or Debtor has the right to offer a peace offer to all Creditors (vide Article 144 of the Bankruptcy and PKPU Law). The peace offer is submitted by the bond issuing company or Debtor in a Peace Plan containing the methods and restructuring of payments to all Creditors. Based on Article 151 jo. 152 Bankruptcy and PKPU Law, the Peace Plan will be accepted if it is approved at the Meeting of Creditors by more than 1/2 (one-half) of the number of Concurrent Creditors present and representing at least 2/3 (two-thirds) of the total bills. The Commercial Court then based on Article 159 of the Bankruptcy and PKPU Law may ratify or refuse to ratify the accepted Peace Plan.

If the bonding institution or debt holder fails to submit a peace plan, refuses to acknowledge the peace plan, or if the peace plan sanction is revoked, then according to the law, the bankrupt property is considered insolvent. This state of insolvency serves as the basis for the initiation of settlement proceedings by the Curator. During the settlement stage, the Curator has the authority to propose to the creditors that the bond issuing company or debt holder continues its operations as a going concern, enabling it to make payments to all creditors. This proposal can be accepted if it receives support from more than half of the concurrent creditors present during the Meeting of Creditors, as stipulated in Article 180, paragraph (1) of the Liquidation and PKPU Regulations.

If in case to continue the bond issuing company or debtor is not approved, the Curator will start to settle and sell all bankruptcy assets. After the agreement is executed, the Curator will prepare a distribution list to the Creditors whose debts have been coordinated. The distribution list will be based on the principles of *pari passu pro rata parte* and *paritas creditorium*. Thus, the payment process in the distribution list will be carried out in the order of the Creditors' categories, namely to:

1. Preferred Creditors, who have special freedom or honor to focus on reimbursement of expenses, such as workers' wages and taxes;
2. Sparatis Creditors, who have material security such as pledges, trusts, encumbrances, contracts, or other material freedoms;
3. Concurrent Creditors, who do not have extraordinary privileges and material freedoms.

Once the installment of payment has been made, the obligor or Obligor is declared finished or terminated.

4. CONCLUSION

Settlement of bond disputes in which a state-owned enterprise is declared bankrupt can be carried out by legitimate steps taken by Bondholder Investors, for this situation handled by the trustee for losses caused by default, including through settlements within the limits of the field of monetary policy that are legitimately resolved. non-cases include the purpose of internal questions that are complemented by covering internal dispute resolution carried out by complaints to Financial Services Business Actors by Consumers, the financial services sector with Integrated Financial Services Sector Alternative Institutions. In addition to settlements within the scope of the financial services sector, other external settlements are known which are conducted in litigation through the Court to which the Civil Procedure Law applies.

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