LEGAL PROTECTION FOR DEFAULTED BONDS BASED ON VALUES OF JUSTICE

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ABSTRACT

Legal certainty for businesses is very important at this time because any investor basically wants the security of the investment that has been done. For businesses who often face many challenges and risks, the case of default by the issuer is very detrimental to investors or bondholders. The contractual relationship of the parties in the bond agreement does not reflect the relation that is based on fairness. Contract acts as a forum that brings together the interests of one party with another party to form a fair exchange of interests. In a contract between a bond issuer and an investor, it essentially must be based on basic principles of contract law and theory of justice as a foundation in the contract. Capital Market Law and Kep. Bapepam (Regulation of Capital Markets Supervisory Board) No. 412 that exist today do not provide strong legal protection, especially regarding the guarantees or collaterals provided by the issuer when issuing the corporate bond. Item 4 of Capital Markets Supervisory Board (CMSB) Regulation No. VI.C.4 point e. collaterals (if any) should then be reconstructed into (mandatory), so that form of legal certainty is visible and palpable for the debtors / customers as bondholders. With so, legal protection against bond defaults based on dignified justice will be achieved.

Keywords: Legal Protection, Bonds, Justice

Introduction

The economy is one of the three main pillars of development in addition to the social and politics (Surya, 2008). The success of national development to achieve a just and prosperous society, based on Pancasila and the Constitution of the Republic of Indonesia of 1945 is determined by:

a. Independence of the nation to implement a sustainable national economic development by relying on the strength of the community,
b. Optimal community participation in national development through financing program management mechanism of State Budget that can be justified,
c. Legal certainty for investors and commitment of the government to manage the financial sector that is transparent, professional and accountable.

Development of a country requires funds in very large amount. The implementation prioritizes domestic resource utilization, while funds of foreign loans are put as a complement. The investment climate can foster economic growth of a country (Widiyanti, 1995). Investment funds are not only used by the public sector, but also the private sector. The government usually acts as initiators of development of physical infrastructure, while the private sector (individuals / companies) is to act as a catalyst of commercial economic activity. All this requires a good investment fund for a short term such as working capital for the cost of operational needs, as well as for a long term such as the procurement of fixed assets required (Surya M. I., 2004).

Post the Old Regime in the late 1960s, the economy has begun to move more systematically and planned, initiated by the government. However, given the difficult period of the Indonesian economy at that time that dropped, it takes a huge amount of fresh funds to accelerate the development movement. Concrete effort made by the government at the time was through effort of borrowing funds from other donor countries such as the European countries which are members of the Inter-Governmental Group on Indonesia (IGGI) (later Consultative Group of Indonesia or CGI), Japan, and the United States (M. irsan Nasrudin, 2010). However, the government's innovation in obtaining funding does not stop at mere quest for foreign loans.

Stocks and bonds are the two most popular securities in the capital market. Stocks and bonds have some differences, among others are the definition and the rights of the holders of the securities. Stocks or shares are securities that have the nature of inclusion, meaning that if someone buys shares of a company, that person has committed equity of the company. On the other hand, bonds are debt securities, meaning that if someone buys the bonds of a company, he has loaned money to the company. In the event of liquidation or when the company is dissolved, the shareholders will get the last share after the company's assets are sold, while bondholders will get top priority on the sale of those assets (Fakhruddin, 2008). Bonds, in principle, are long-term debts because their average maturity is more than five years.

Bonds are offered to the public through public offering (Initial Public Offering). Party conducting a public offering of bonds is called the issuer. Bond issuers are referred to as the debtor or party receiving debt, while the investor is a creditor or a party providing debt and as bondholders. Bonds are classified into long-term debt, so over a long period of time various possibilities can occur to the company issuing the bond, for example, the company's business decline and thus suffered a loss and eventually the company bankruptcy or liquidation, and other things that are never previously thought such as the economic crisis, natural

disasters and so on. Therefore, in investments, investors should be cautious because in every interaction there must be risks which arise, and therefore investors should be able to analyze the risks and to minimize the risks involved; one of the ways is by looking at the rating given in bonds published (Anwar, 2005). Indonesia's bond market is now experiencing rapid development. This can be seen from the development of bond markets in Asia that has grown 10 times in the last 10 years so as to make Asia as the world's fourth largest bond market (www.vibiznews.com). As for the other largest bond markets are the United States, Europe, and one of the countries in Asia namely Japan, while among the countries in Asia that have good prospects for bonds and investing in general are China and Indonesia (www.bisnis.com). In Indonesia, the bonds are traded on the Indonesia Stock Exchange. Indonesian bonds, according to ADB (Asian Development Bank), showed the best performance in the Asian region throughout 2013 (Azis, 2013). The bond trading data reported in the Indonesian Stock Exchange in 2012 to 2014 can be seen in the following Table 1.2.

Table 1.2
Values of Corporate Bonds Period 2012-2014

Period	Outstanding Corporate Bond (USD)
2012	13948.01
2013	16229.34
2014	16619.35

Source: www.ojk.go.id

Bond market prices always fluctuate because buying and selling activities of investors, and are influenced by several factors such as the rate coupon, period and liquidity of bonds. As an illustration of the change in bond prices due to the factors mentioned above, it can be seen in the following table. Price Development of Corporate Bond of 2012 to 2014 can be seen in the following Table 1.3.

Table 1.3
Bond interest, Maturity and Liquidity

No	Name of Bond	Year	Bond Interest (per year)	Duration (years)	Liquidity	Price
1	ADMF I Th III B	2012	7,75%	3	100,60%	1,509
2	PNBN Sub III	2013	10,50%	7	99,82%	3,921
3	ISAT VI B	2014	10,800%	10	100,68%	269
4	BNII Sub I	2012	10,75%	7	107,90%	1,771
5	BCAF Sub I	2013	11,20%	5	99.9%	658

Source: www.ibpa.co.id and www.ojk.go.id

From Table 1.3 presented, it can be seen that there is the difference in bond prices in each company, the size of the difference in the price of bonds can be seen from the above factors; the first factor which is bond coupon; if coupon rate is high enough, bond prices will tend to increase. Conversely, if the coupon rate of the bond is quite small, bond prices will decline because of the attractiveness to investors or prospective buyers of such bonds is very small.

Although bonds are considered as a safe investment, but still bonds contain risks. One of the risks is the risk of default. If an issuer defaults, the investor will receive a return on bonds less than promised. Another thing that shapes public perceptions of the bond also depends on the macro-economic conditions, because the price of the bond depends on the prevailing interest rate or inflation policy determined by the government, as well as in terms of bond ratings. Default refers to a situation where the issuer as a debtor has broken promises with its obligations to pay principal or interest on the bonds at maturity (maturity date) to bond holders as creditor (CMSB, 2003).

Investments in bonds in Indonesia are no longer promising because lately there have been many cases of default and they cause loss, especially for investors. Cases of default which appeared are as follows: PT. Mobile-8 Telecom Tbk. which defaulted on bond coupon maturing in March 2013 and was declared in default by the bond value of Rp. 675.000.000.000.- (http://investasi.kontan.co.id/news/fren-berpotensi-gagal-bayar-obligasi-rp-675-m), Bakrie Telecom which issued bonds worth Rp. 3.800.000.000.000.- with coupons not paid Rp. 218.000.000.000.- maturing in May 2015 (http://finance.detik.com/read/2013/11/08/131609/2407403/6/bakrie-telecom-gagal-bayarbunga-utang-rp-218-miliar), and Berlian Laju Tanker and its subsidiaries which issued bonds worth Rp. 421.428.000.000.000.- maturing in February 2012 and was declared in default (http://market.bisnis.com/read/20120228/192/66155/emiten-berlian-laju-tanker-gagal-bayarutang-rp421-48-miliar). This is a problem that is happening in the Indonesian economy and has become serious because it can degrade the economy, especially in the capital market.

Some public companies in the Indonesia Stock Exchange ever defaulted on paying interest or principal on corporate bonds almost every year. The interest payment should have been done at maturity. In 2008, PT Infoasia Teknologi Global Tbk (IATG) failed to pay the 15th coupon of bonds of B and C version which matured on September 23, 2008 with interest rate of Rp 2.46

billion. In the following year, PT Mobile-8 Telecom Tbk (FREN) was unable to pay interest on the rupiah bonds of Rp 20.88 billion on maturity date of March 15, 2009. This was followed by three other companies namely PT Davomas Abadi Tbk (DAVO) which could not pay interest of the sixth bond worth US $ 13.09 million on May 8, 2009, PT Arpeni Pratama Ocean Line Tbk (APOL) which were late paying bond interest amounting to US $ 6.125 million at a maturity of 3 November 2009 and PT Central Proteinaprima Tbk (CPRO) failing to pay interest on bonds amounting to US $ 17.9 million at maturity December 28, 2009. In 2010, PT Suryainti Permata Tbk (SIIP) failed to pay interest US $ 5.03 million worth of bonds with a maturity date of January 18, 2010. In 2012, PT Berlian Laju Tanker Tbk (BLTA) could not pay debts maturing February 27, 2012 and February 9, 2012 with a maturity date of February 27, 2012 with a total interest of Rp 5.81 billion. Then, this was followed by PT Davomas Abadi Tbk (DAVO) not paying the dollar bond coupon which should mature on March 7, 2012.

The cases of default show that some companies have been in default against the investors or bondholders by not paying the principal and / or interest on corporate bonds according to the agreement that has been determined and agreed upon in advance. Companies that fail to pay and cannot be paying interest on corporate bonds are likely to have two following problems: the companies for a while do not have the cash to pay the principal and / or interest on the bonds and / or the companies are no longer able to pay the principal and / or bond interest.

The existence of the Law of Government Securities and other legislation such as the Regulation of the Minister of Finance No. 36 / PMK.06 / 2006 on Government Retail Bond Sales in the Primary Market is to provide legal certainty to investors on the government's commitment to meet financial obligations and conduct management of government securities (GS) more transparently, professionally and responsibly. Legal certainty for businesses is very important nowadays since any investor basically wants the safety of the investment that has been done. For businesses which often face many challenges and risks, legal certainty is very important. The existence of the clear and transparent legislation will provide an opportunity for any society members to conduct business (Rudianto, 2002). Cases of default by the issuer are very detrimental to investors or bondholders. The contractual relationship of the parties in such bond agreement thus does not reflect the relations that are based on fairness. In effect, the contractual relationship cannot be separated from its relation to the issue of justice. Contract acts as a forum that brings together interests of one party with another party to form a fair exchange of interests. In a contract between a bond issuer and an investor, it essentially must be based on basic principles of contract law and theory of justice as a foundation in the contract.

Article 8 paragraph 2 and 3 of Law No. 24 of 2002 on Government Securities states: Paragraph (2) The Government shall pay interest and principal of each Government Securities at maturity, Paragraph (3) Funds to pay interest and principal as referred to in paragraph (2) are provided in the State Budget every year until the end of the duty or obligation. This already shows legal certainty for investors who will invest in state bonds. However, for private or corporate bond investment, regulations regarding the bond are inadequate. Basically, the difference in trading stocks and bonds lies in a third-party as a trustee who is a bridge between investors and issuers. In addition, the trade must contain a trustee contract which is in accordance with Article 52 of Law No. 8 of 1995 on Capital Market which states that the issuer and the trustee shall make a trustee contract in accordance with the provisions made by Capital Markets Supervisory Board (CMSB). The article indicates that the bond transactions in the capital market make a contract as a benchmark because it is a legal protection for investors in case of default of the issuer's to investors. Article 53 of Law No. 8 of 1995 on Capital Markets states that "Trustee shall provide compensation to the holders of debt securities for damages for negligence in performing its duties as stipulated in this Law and its implementing regulations as well as trustee contracts," and in tune with the Regulation of CMSB No. 412 / BL / 2010 on general provisions and trustee contract of debt securities, in the annex of the Regulation No. VI. C.4 Item 2 Liabilities of Trustee letter (d): Trustee shall be responsible for providing compensation to the holders of debt securities for losses due to negligence in the performance of its duties as stipulated in the Trustee Contract and legislation.

The interesting thing to notice is the content of Item 4 of Rule VI.C.4 in order to protect and represent the rights of the holders of debt securities, the trustee shall make a contract with the trustee issuer which contains at least: a. The identity of the parties, b. Debt Principal, c. Maturity of Debt Principal, d. Interests, e. Collaterals (if any), et cetera. This CMSB decision is deemed not giving legal certainty to investors because it makes the point ‘collaterals’ not mandatory. In a credit, clearly, collateral is one of the elements. A debt has a vulnerable element of time, and it is not impossible that new things will happen in the presence of such vulnerable time, for example, the company becomes insolvent and unable to pay the interest and principal of the bonds. Surely, it becomes an anxiety for investors due to the lack of legal certainty.

According to Aristotle, justice is to do good, in other words, justice is the main virtue. As for the nature of justice itself, it has a long tradition. Justice is one of the virtues of the purpose of human life. Justice, one might say, is the most important virtue that underlies all of the social and political dimensions of life. Justice is one of the topics that has long been almost always accompanying the history of human civilization. One of the old civilization that upholds justice is the ancient Roman Empire. Justicia, the Goddess of Justice that we know today, is as a symbol of justice that is a legacy of such ancient civilization.

A simple definition of justice has been given since in ancient Roman times and even has older roots. A definition of justice is briefly described as *tribuere cuique suum*. This Latin phrase, in English, can be translated as: "to give everybody his own" or in Indonesian: *memberikan kepada setiap orang yang menjadi miliknya* (to give to each person what belongs to him or her) (Ginsberg, 2001).

The purpose of this study is to analyze and find legal protection, for investors affected by bond default, based on values of justice.

Discussion

The role of the trustee is a filter that oversees the issuer, especially overseeing the coupon payments by issuers to investors. The cases of default that occurred make the role of trustee be doubted. First, has due diligence been performed correctly? It seems as though the trustee does not do due diligence to issuers correctly and neutrally. The trustee seems to take side with the issuer, while the trustee is supposed to protect the interests of investors or bondholders. Second, the role of the trustee is not truly helping solve the problem of default to its conclusion, although Article 51 paragraph (2) of Capital Market Law and the Trusteeship Agreement states that the trustee represents the interests of bondholders in and out of court. Moreover, in CMSB Rule Number X.I.1 (Attachment of Decision of the Chairman of CMSB No. Kep-77 / PM / 1996, on January 17, 1996) on the Report of Trustees, it is said that the trustee must report important events concerning the activities of the trustee that should be reported including report of payments of debt principal and coupon (interest) before maturity, and delay in payment of debt principal and coupon (interest) which is a violation of the Trusteeship Agreement. The trustee is a party that should know and be able to protect the interests of investors before issuers are in default. Therefore, by the occurrence of default, the role of the trustee is in vain.

The legal protection given to protect investors or bondholders against default risk is divided into two namely preventive legal protection and repressive legal protection. Actions of trustee when negotiating which determine the content of the Trusteeship Agreement is included in preventive legal protection. By preventive legal protection, enterprise bond defaults by issuers can be prevented by including unbiased treaty provisions and protecting investors or bondholders as creditors. One of the provisions contained in the Capital Market Law and Regulation of CMSB No. 412 is the provision about guarantee. Asset guarantee by issuers is essential in order to protect investors or bondholders in case there is risk of bond defaults. Grant of guarantee in a bond issuance guarantees the fulfillment of the debtor's debt in case of default before the maturity date.

The guarantee of the company's bond issuance is needed, considering that the company's bond is a bond whose issuance is not guaranteed with particular assets, but is done on the ground of public confidence in the companies or individuals, known as debenture bond. In the bond prospectus of Berlian Laju Tanker III in 2007, it is explained that: "Bonds are not endorsed or guaranteed by specific collaterals and are not guaranteed by any parties. All the wealth of the company, both movable and immovable, both existing or that will exist in the future, are made as collaterals for the bonds, except for the credit rights of the company that has been secured specifically with the wealth of the company existing or that will exist in accordance with Article 1131 and 1132 of the Civil Code. Rights of the bondholders are allocated equally without preferential rights towards the credit rights of the company that are present or in the future." The same statement is contained in the bond prospectus of Indofood Sukses Makmur V of 2009 which states as follows: "These bonds are not assured by specific collaterals in the form of objects or income or other assets of the Company in any forms and are not guaranteed by any other parties. The entire wealth of the Company, both movable and immovable, both existing or that will exist in the future, are a guarantee on all of our debt to all creditors which are not secured specifically or without preferential rights and will be allocated evenly based on Article 1131 and Article 1132 of Civil Code."

Assets of issuers that have become general guarantee can be found in the Trusteeship Agreement and the company's bond prospectus. Statement about the guarantee explains that company bonds are issued without being secured by specific collaterals, and bondholders do not have the privilege to be prioritized according to Article 1133 of Civil Code section (1). The concept of general guarantees by Sri Soedewi Masjchoen Sofwan constitutes general guarantee that is not specifically designated and not designated for creditors, while the proceeds of collateral objects are allocated evenly among the creditors based on the money owed. This situation is likely to not pay off the money for investors or bondholders. Unsecured creditors will lose in the fulfillment of their receivables by creditors who have the privilege.

In Article 12.1 of Trusteeship Agreement which is analyzed by the author, it is stated that: "In order to guarantee the payment obligations properly and in time by issuers on the outstanding amount, the issuer shall submit collaterals in the form of all and any rights, authorities, bills and / or claims that are present and / or in the future, earned and can be run by issuers against any third parties, based on consumer financing agreement and / or lease-of-motorized-vehicle agreements which are not in arrears exceeding a period of 90 days after the last installment falls due to the trustee by deed of imposition of fiduciary security, which will be signed in front of me, a Notary, with the guaranteed value which is not less than 75% of the principal amount at each quarterly report. The provisions of Article 12.1 of Trusteeship Agreement is corroborated by Article 12.2 of Trusteeship Agreement which states "If the issuer cannot meet the provisions of Article 12.1 of the agreement, the issuer is obliged to deposit cash to be bound together in a fiduciary, so this always guarantees value at each quarterly report reaching 75% of the principal amount of the bonds."

Article 12.4 of the Trusteeship Agreement also includes provisions on general collateral which states: "In addition to the imposition of fiduciary security in Article 12.1 of the agreement, the entire wealth of the issuer, both movable and immovable goods, like that already exist or will exist in the future except for the assets of issuers that have been specifically secured to their creditors as collateral for all debts of the issuer to all creditors including bondholders that are equally allocated under the agreement, in accordance with Article 1131 and 1132 of Civil Code."
The statements in Article 12.1, Article 12.2 and Article 12.4 of the Trusteeship Agreement indicate that in addition to providing fiduciary, issuers also provide assurance in general. The provisions of Article 12.1 and Article 12.2 of Trusteeship Agreement could harm investor or bondholders if the issuer is not able to meet the fiduciary of 75% and / or experience circumstances that do not allow the issuer to deposit the money. If a default is experienced by the issuer, the fulfillment of investors' receivables will not be met from the fiduciary guarantee. Such damages can occur on the bondholders though issuers provide public assurance. Proceeds from sales of general guarantee will be divided proportionally if issuers default. The sales value of those

general collaterals could not fully pay off receivables of bondholders if there are creditors who have privileges or preferential creditors.

According to Sri Soedewi Masjchoen Sofwan, creditors who are holders of object titles also have the right of fulfillment over other objects from the debtor. The situation is likely to happen only if the fulfillment of investors' accounts of assurance mentioned in the Trusteeship Agreement has not been sufficient. Investors or bondholders may request the fulfillment of their receivables on the sale of the other collateral objects. In the Trusteeship Agreement analyzed by the authors, it is not expressed that the issuer has a debt owed to creditors preferred. This contrasts with item 4 letter f Regulation of CMSB No. 412 on the rights of primacy (seniority) of debt securities. Provisions concerning the rights of primacy (seniority) of corporate bonds may be included in the Trusteeship Agreement. Legal protection that can be provided by the trustee is through a change in the Trusteeship Agreement. Changes in Trusteeship Agreement are made so that the value of the guarantees given to investors as unsecured creditors are clear and detailed in case issuers default.

The government also provides preventive legal protection. The form of preventive legal protection given by the government is through legislation that is in Article 85, Article 86 paragraph (1), Article 87 paragraph (1), and Article 89 paragraph (1) of Capital Market Law that govern the disclosure of information either by issuer or trustee. Preventive legal protection is provided by item 4 letter e Regulation of CMSB No. 412 regarding security and item 4 letter f Regulation of CMSB No. 412 regarding the rights of primacy (seniority) of debt securities. Those regulations provide guidelines that can be used to prevent defaults on corporate bonds by issuers. Article 85, Article 86 paragraph (1), Article 87 paragraph (1), and Article 89 paragraph (1) of the Capital Market Law adhere to the principle of disclosure of information. The concept of disclosure of information by Irsan Nasarudin confirms that transparency or openness is a protection to bondholders. Judicially, transparency is a guarantee for the public's right to continue gaining important access, along with sanctions for barriers or negligence by the company.

Preventive legal protection in the form of examination and investigation is also provided by the Financial Services Authority (FSA) via the Capital Market Law. Authorized inspection by the FSA is expressed in Article 100 paragraph (1) of Capital Market Law which states "CMSB can conduct examination on any party suspected of committing or being involved in violation of this law and its implementing regulations." Article 100 paragraph (1) of Capital Market Law authorizes the FSA as Indonesia's capital market watchdog to conduct an examination of suspected issuers in default against the investors or bondholders. This examination is a form of prevention and response to the alleged violation.

The Government, through the FSA, provides not only preventive but also repressive legal protection. Repressive legal protection that can be provided by the government is through Article 102 paragraph (1) of Capital Market Law which stating "CMSB imposes administrative sanctions for violations of this law and its implementing regulations made by any party obtaining permits, approval, or registration from CMSB." FSA may impose sanctions against those who have obtained permission from the FSA, particularly issuers who violate the Capital Market Law or in default against the investors or bondholders. Government, through Article 111 of the Capital Market Law and Trusteeship Agreement, also provides repressive legal protection. Repressive legal protection given to investors is in the form of opportunity to make a claim or demand compensation against the issuer through the court in the event of default risk which later will be determined by the judge's decision. The provision of Article 111 of the Capital Market Law only applies in general because in the event of default risk of corporate bonds, claims and demands for compensation through the courts are filed by the trustee.

The trustee can file a lawsuit and seek redress through the court because the process is part of the obligations and responsibilities of a trustee when representing investors. The trustee is empowered by law to represent all interests of investors holding bonds. Responsibilities and obligations of the trustee are referred to in Article 3.3.5 of Trusteeship Agreement which states "In the event of circumstances that may harm the interests of bondholders in the form of the issuer's inability to perform its obligations to the bondholders based on the agreement document, the trustee may determine the measures to be taken against the issuer".

The legal protection provided by the trustee is contained in each corporate bond prospectus and started with a General Meeting of Bond Holders first. Decision of trustee whether to sue or not is decided in General Meeting of Bond Holders. The action of a trustee filing a lawsuit can be implemented if the content of the Trusteeship Agreement is not determined otherwise such as a provision of dispute resolution by consensus or by Arbitration Service of Indonesian Capital Market (ASICM). The trustee may use Article 1365 of Civil Code as the legal basis for filing a lawsuit and a claim for compensation to the issuer through the court. The Article 1365 of the Civil Code gives an order to the defaulted bond issuers to provide compensation to the injured party in this case the investors or bondholders. The compensation can be given in the form of loan principal or principal and interest. The legal protection granted by the Capital Market Law has not been enough to protect the rights of investors holding the bonds in case of default risk. Specifically, the legal protection for the bondholders is in the Trusteeship Agreement even though it does not fully protect the bondholders. The weakness of current Trusteeship Agreement is in the provisions, especially provisions on guarantees regulated by the FSA as in item 4 letter E of Regulation of CMSB No. 412 which is still too general. Provision about guarantee in item 4 letter E of Regulation of CMSB No. 412 is merely an information, not a necessity.

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 that 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.

Investors holding bonds have not been adequately protected if the issuer only gives a general guarantee in accordance with provisions in Article 1131 of Civil Code and Article 1132 of Civil Code. In Article 1131 and Article 1132 Civil Code, it is explained that the investors who are bondholders will share with other creditors according to values of receivables of each creditor. Fulfillment of receivables of investors or bondholders will be prioritized by the issuer if there are reasons to do it or they have privileges in accordance with Article 1133 paragraph (1) of Civil Code. Investors or bondholders who have the status as unsecured creditors will be less protected because the assets of issuers that will be auctioned will not be able to meet debt repayments to them.

The first step can be done to protect investors holding the bonds is through ASICM. ASICM dispute resolution is through a dispute resolution through mediation and arbitration out of court which can be done by the trustee. Mediation and arbitration efforts are made to achieve consensus agreement between the trustee and issuers to regain investors' or bondholders' rights. The provision concerning the settlement of disputes through ASICM is not regulated in Regulation of CMSB No. 412 and Capital Market Law. ASICM dispute resolution must be preceded by an agreement between the parties to the dispute that the dispute will be resolved through ASICM and there is a written request from the parties to ASICM. This provision is contained in Article 18.2 of Trusteeship Agreement which states: "Any dispute that cannot be settled amicably by the parties within 30 days from the date of written notice from either party about the dispute, will be resolved through national arbitration panel of Indonesia in Arbitration Service of Indonesian Capital Market (ASICM) subject to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution following the amendments ("Arbitration Law") ..." Without a preliminary agreement, the application for the settlement of disputes cannot be submitted to ASICM. The deal to resolve the dispute through the mediation process of ASICM can be poured into one of the provisions in the agreement made by the parties before a problem arises (mediation clause); or a separate agreement made by the parties after a problem arises.

Mediation through ASICM is an initial attempt to resolve a dispute between holders of bonds and issuers. ASICM Mediation is a way of solving problems through negotiations between the parties to the dispute with the help of a neutral and independent third party called mediator. The purpose of mediation through ASICM is in order to achieve peace between issuers and bondholders. If the mediation process fails or does not reach an agreement, the dispute resolution process is handed back to the issuer and the trustee as representative of bondholders, whether the next will choose the path of arbitration or court. Mediator concerned is forbidden to then become a witness in the arbitration or court over the dispute of the parties, but still allowed as an arbitrator or a judge as the last option.

The peace agreement obtained from the mediation process by ASICM in the dispute between the issuer and the bondholders will be set forth in a document of peace agreement signed by the parties to the dispute and the mediator. The agreement reached by the parties in the mediation process shall be final and binding and must be implemented. The second attempt in the settlement of disputes through ASICM is the arbitration process. Article 1 item 1 of the Arbitration Law and Alternative of Dispute Resolution explains that arbitration can be a choice of dispute resolution between the parties and is preceded by an arbitration agreement and this can be listed in the agreement before or after a dispute arises. Under the provisions of Article 1 item 3 of the Arbitration Law and the Alternative of Dispute Resolution, the issuer and the trustee may include a clause on arbitration during the process of determining the content of the Trusteeship Agreement. The parties which have been bound by the arbitration agreement do not have the right to file a dispute to the District Court, and in this case the Court is not competent to adjudicate disputes the parties who have been bound by the arbitration agreement. This is in accordance with the provision of Article 3 of Arbitration Law and Alternative of Dispute Resolution which mentions "the District Court is not authorized to adjudicate disputes that have bound the parties in the arbitration agreement."

A party that has been bound by the arbitration agreement and require arbitration process through ASICM held soon, that party should give prior notification to the other party that the arbitration requirement referred to in the arbitration agreement has been in effect so that the settlement of disputes will soon be submitted to the Arbitration of ASICM. After giving notice, the aggrieved party in this case the bondholders represented by a trustee must be filing a claim (request for arbitration) in writing to ASICM. This filing of lawsuit is useful to protect bondholders in an effort to regain his rights which is to get payment for principal and / or interest on corporate bonds. A decision on the settlement of disputes through ASICM arbitration is final and has permanent legal force and binding on the parties (issuers and bondholders) pursuant to Article 60 of Law of Arbitration and Alternative of Dispute Resolution. In the case of the arbitration decision that is not run by one of the parties in this case the issuer, the bondholders can seek execution from the Chairman of the District Court against the issuer. Legal remedies that can be done by trustee in obtaining payment of principal and/or interest on corporate bonds are not only through ASICM. Investors or bondholders through the trustee may file an individual lawsuit or bankruptcy lawsuit through the court. Lawsuit filed to the issuer by the trustee is one form of repressive legal protection that will be processed in the court and determined by the judge's decision.

The filing a lawsuit by the trustee is included in the provision of Article 3.3.5 of Trusteeship Agreement which states "In the event of circumstances that may harm the interests of bondholders in the form of the issuer's inability to perform its obligations to the bondholders based on the agreement document, the trustee may determine measures that will be taken against the issuer." The trustee may file a lawsuit through the court if in the Trusteeship Agreement there is no clause that specifies dispute resolution through ASICM or after the trustee calls the issuer and the bondholders to organize General Meeting of Bond Holders and in the meeting there is no settlement favorable to bondholders.

Postponement of Debt Repayment Obligation (PDRO) filing by the trustee as representative of bondholders is expected to make issuers as debtors focus on finding a solution to repay the loan in the form of principal and interest. Issuers and bondholders cannot file any legal actions against the decision of PDRO by the court, according to the provision of Article 235 paragraph (1) of the Bankruptcy and PDRO Law. Legal remedy through the courts is not set in Regulation of CMSB No. 412, but set in the Capital Market Law and Trusteeship Agreement. The lawsuit may be filed by the trustee under the terms of the Trusteeship Agreement. It could be implemented by the trustee because the Trusteeship Agreement is a law for the parties who are bound. Legal remedies in the form of a lawsuit through the court and the request for a declaration of bankruptcy of the issuer are ways to regain debt payments from issuers to investors or bondholders.

Judging from the theory of dignified justice by Prof. Teguh Prasetyo, this matter is the attraction between Lex Etema of above current and volksgeis of under current in understanding the law as an attempt to approach the mind of the God according to the legal system based on Pancasila (Prastyo, 2015). This certainly should reflect justice in Indonesian society, especially in terms of contractual matter between issuers and bondholders in accordance with volksgeis in Indonesia. Three common characteristics of justice are, first, justice has always focused on others or justice always is marked by other directness, second, justice must be enforced or implemented, third, justice demands equality (Ujan, 2001). Thus, the regulations on bond containing uncertainty towards investors which result in injustice must be reconstructed with reference to Pancasila particularly to the fifth precept 'social justice for all people of Indonesia'. The reconstruction is in Item 4 of Rule VI.C.4 point e. collaterals (if any) into (mandatory), in order to achieve legal certainty for investors based on dignified justice.

Conclusion

The legal protection provided by the trustee in the negotiations regarding the guarantee in the Trusteeship Agreement has not fully guaranteed the rights of investors holding bonds because of the guarantees given by issuer will not necessarily meet the payment of principal and / or interest on corporate bonds in case of default. Capital Market Law and Regulation of CMSB No. 412 that exist today do not provide strong legal protection, especially regarding the guarantees provided by the issuer when issuing the corporate bond. Efforts of mediation and arbitration through ASICM done by trustee do not fully protect investors or bondholders. This is because failure can occur and decisions are considered less fair by one of the parties in the mediation process. The weakness of the mediation process on ASICM also occurs in the arbitration process. Investors holding bonds who consider the arbitration decision unfair cannot appeal against the arbitration decision. Therefore, Item 4 of Regulation of CMSB No. VI.C.4 point e. collaterals (if any) must then be reconstructed into (mandatory), so that form of legal certainty is visible and palpable for the debtors / customers as bondholders. In the end, legal protection against bond defaults based on dignified justice will be achieved.

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