

**ANALYSIS OF LEGAL PROTECTION OF SUKUK HOLDERS AGAINST
THE RISK OF ISSUERS THAT EXPERIENCE DEFAULT
POSITIVE LEGAL PERSPECTIVE**

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Abstract

Sukuk provide opportunities for the public to make long-term investments, issuance of sukuk can benefit in proportion to the profit sharing. Thus, there is a need for risk management and legal protection for sukuk holders. This study aims to find out clearly related to the regulations that cover sukuk holders against PT Berlian Laju Tanker (issuer) which has failed to pay its principal funds or margin/fees. The method in this study is normative juridical which is carried out by examining library materials or secondary materials. This study uses a qualitative data analysis method which is presented descriptively, namely by describing a policy related to the analysis of legal protection for sukuk holders against the risk of issuers failing to pay. Based on the findings of this study, investors holding sukuk can learn more about companies that issue sukuk so that it is possible to better evaluate the value of returns and control the risks associated with their ownership. Availability of information aimed at reducing default by issuers and increasing capital market efficiency. This research concludes that PT Berlian Laju Tanker sukuk holders are given two different types of legal protection, namely preventive legal protection and repressive legal protection.

Keywords: *Legal Protection, Sukuk, Default*

Abstrak

Sukuk memberikan peluang kepada masyarakat untuk melakukan investasi berjangka panjang, penerbitan sukuk dapat memperoleh keuntungan dengan proporsi pembagian hasil. Dengan demikian, perlu adanya manajemen resiko dan perlindungan hukum terhadap pemegang sukuk. Penelitian ini bertujuan untuk mengetahui secara jelas terkait dengan regulasi yang menaungi pemegang sukuk terhadap PT Berlian Laju Tanker (emiten) yang mengalami gagal bayar terhadap dana pokok atau margin/fee. Metode dalam penelitian ini adalah yuridis normatif yang dilakukan dengan cara meneliti bahan pustaka atau bahan sekunder. Penelitian ini menggunakan metode analisis data kualitatif yang disajikan secara deskriptif, yakni dengan menggambarkan suatu kebijakan terkait dengan analisis perlindungan hukum bagi pemegang sukuk terhadap resiko emiten yang gagal bayar. Berdasarkan temuan penelitian ini, para investor pemegang sukuk dapat mempelajari lebih lanjut tentang perusahaan yang menerbitkan sukuk sehingga memungkinkan untuk mengevaluasi nilai pengembalian dengan lebih baik dan mengendalikan risiko yang terkait dengan

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kepemilikannya. Ketersediaan informasi yang bertujuan mengurangi gagal bayar oleh emiten serta meningkatkan efisiensi pasar modal. Penelitian ini menyimpulkan bahwa pemegang sukuk PT Berlian Laju Tanker diberikan dua jenis perlindungan hukum yang berbeda yakni perlindungan hukum preventif dan perlindungan hukum represif.

Kata kunci: Perlindungan Hukum, Sukuk, Gagal bayar

INTRODUCTION

The Islamic capital market is a capital market whose entire mechanism of activity concerns issuers, types of electronic currency exchanged and trading procedures. To clarify when discussing sharia securities, it must refer to securities that are included in the rules and regulations of the capital market, namely regarding contracts, business management, and issuance of securities that are in line with sharia principles.⁴ Meanwhile, what is meant by "sharia principles" is a legal entity originating from Islamic teachings and the details of its implementation are finalized by a fatwa issued by the DSN-MUI.

It is known that a public business that has defaulted has violated its contractual obligations to sukuk (sharia bond) holders by not making timely payments of principal and/or margin/fees. Business actors who experience default due to lack of funds to pay for primary bonds and/or margin/fees may have two main problems. First, the company has experienced default and is unable to make payments on the principal of the company's sukuk and/or margin/fees and secondly, the company is no longer able to pay the principal of the company's sukuk. This default was experienced by PT Berlian Laju Tanker, Tbk which experienced several problems related to the company's sukuk funds. It was announced in 2007 that the proceeds from the sukuk would be used to pay off the company's debt. As a result, sukuk ijarah is unproductive provided that the profit margin/fee is quite large. This prevents the company from fulfilling its finance contract (default). In 2012, PT Berlian Laju Tanker defaulted on the ijarah fee installments of Rp. 20,600,000,000.- (twenty billion six hundred million rupiah) annually from the sukuk ijarah fund of Rp. 200 billion. Therefore, the

⁴ Ayun Ismiati, "Pengaruh Umur Sukuk, Ukuran Perusahaan, Sinking Fund Dan Profitabilitas Terhadap Rating Obligasi Syariah (Studi Empiris Pada Perusahaan Yang Menerbitkan Sukuk Di Bursa Efek Indonesia Periode 2012 - 2017)" (2019), <http://jp.feb.unsoed.ac.id/index.php/akuntable/article/view/529>.

company must pay installments of Rp 20,600,000,000 per year (twenty billion six hundred million rupiah) every three months.⁵

This requires legal protection for sukuk holders in order to protect their interests from default by corporate bond issuers. Given the expansion of the Islamic capital market, the influence of economic globalization, and the increasing interest of the public to invest in corporate sukuk instruments, the legal protection for sukuk holders must be clearly demonstrated. Therefore, "Analysis of Legal Protection of Sukuk Holders Against Issuers' Risk of Defaulting from a Positive Legal Perspective" is set as the title of this paper. The purpose and benefits of this research are to find out in more detail about the legal protection for sukuk holders which is expected to create legal certainty. This research can provide a more specific understanding related to sukuk so that sukuk holders can anticipate the risk of issuers defaulting.

METHOD

The research method used in this work is normative juridical, namely a type of legal research involving literary sources and secondary materials.⁶ This research examines the legal protection given to sukuk holders when issuers face default. This study uses an analytical descriptive method to analyze the legal material that has been collected, so that it can describe or provide an overview of the object under study through data or samples that have been collected from laws, literature, articles, journals, and related research. website on the internet. This information will then be linked to current issues. As a result, this study can provide procedures for analyzing legal protection for sukuk holders.

In normative legal research, the authors do not use primary data but only secondary data sources. Secondary data sources include various literary works that are transformed into formal objects. The target or subject of this research is PT Berlian Laju Tanker which has experienced default by not fulfilling its obligations to sukuk holders. In conducting research or studying the results of data processing with the help of ideas that are already available in the theoretical framework or formal object literature, or formal object literature. In addition, researchers organize universal data before looking to more specific ones.

⁵ Handoyo Widyanto, "Analisis Faktor Penyebab Gagal Bayar Obligasi Syariah Sukuk Ijarah Pt Berlian Laju Tanker," *Majalah Ilmiah Bahari Jogja* 16, no. 1 (2018): 65–89, <http://jurnal.stimaryo.ac.id/index.php/MIBJ/article/view/140>.

⁶Henni Muchtar, "Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia," *Humanus* 14, no. 1 (2015): 80, <https://doi.org/10.24036/jh.v14i1.5405>.

LITERATURE REVIEW

A. The basic concept of sukuk

In Rodoni view, the term and characteristics of the previous sukuk were a substitute for using the term loan (bond), it is known that the term bond has a meaning (debt), with the addition of an Islamic element, it is very contrary to its meaning because the loan mechanism is usually based on interest, whereas In Islam, interest is a violation of riba.⁷ Thus, BAPEPAM Lembaga Keuangan regulations that have been in force since 2007 stipulate that the term "debt" must replace "sukuk". Issuance of securities such as sukuk based on long-term sharia principles known as sukuk is expected to return the sukuk funds at maturity and provide income to the holder in the form of profit sharing or margin/fees.⁸

Sapto Rahardjo defines a sukuk as a sharia bond with provisions that oblige the issuer to pay a certain amount of profit-sharing income to the holders of the sukuk and return the funds on the day the funds are paid off; Revenue sharing is paid on the day of payment. The proportional income share is calculated for each time period (3 months, 6 months, or annually).⁹ In 2007, the word debt (bond) was replaced with the term sukuk as stated in the rules in BAPEPAM LK. This is because interest is the core of the bond/loan/debt mechanism, and interest involves riba which is prohibited.¹⁰

Based on DSN-MUI Fatwa No. 32/DSNMUI/IX/2002, it can be said that sukuk have various types of contracts. This contract also contains ijarah, salam, mudarabah, istisna' contracts and so on. The investor or holder of the sukuk here is referred to as the shahibul mal, while the issuer is referred to as the mudarib. In Law Number 8 of 1995 which regulates Sharia Capital Markets, OJK regulations, and Fatwa DSN-MUI prohibit Issuers from carrying out activities that are contrary to sharia principles.¹¹

It can be seen that there are several types of sukuk, such as mudarabah, ijarah, salam, istisna, and musyarakah. In this discussion, specifically related to sukuk ijarah, sukuk ijarah is a party that owns goods or services promises to the lessee or service user

⁷ Widyanto, "Analisis Faktor Penyebab Gagal Bayar Obligasi Syariah Sukuk Ijarah Pt Berlian Laju Tanker."

⁸ Fadllan Fadllan, "Obligasi Syariah; Antara Konsep Dan Implementasinya," *Iqtishadia Jurnal Ekonomi & Perbankan Syariah* 1, no. 2 (2014): 163, <https://doi.org/10.19105/iqtishadia.v1i2.479>.

⁹ Maisarah Leli, "Transaksi Obligasi Syariah (Tinjauan Transaksi Obligasi Menurut Prinsip-Prinsip Syariah)," *Juris(Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 53, <https://doi.org/10.31958/juris.v16i1.960>.

¹⁰ Yuska Supra Witami, "Pengarush Rasio Keuangan, Struaktur Sukuk Dan Corporate Governance Terhadap Rating Sukuk Program Pascasarjana (PPs) Universitas Islam Negeri Raden Intan Lampung 1440 H / 2020 M" (Universitas Raden Intan Lampung, 2020).

¹¹ Lutfi Bangun Lestari et al., "Analisis Tentang Penerapan Akad Ijarah Dan Penyebab Gagal Bayar (Default) Sukuk Ijarah (Studi Kasus Pada Pt. X)" 1, no. 1 (2022): 64–77.

to transfer the right to use or utilize an item and or provide services owned by the lessor or service provider in a group. period of time in exchange for payment of rent and/or wages, without being followed by a transfer of rights over the ownership of the object.¹²

In order to facilitate regulations on the issuance of sharia securities Law Number 8 of 1995 concerning Capital Markets which refers to the regulations for issuing sukuk and the procedure for issuing sukuk is explained in regulation Number IX.A.13 concerning Issuance of Sharia Securities in the attachment to the decision of the chairman of the BAPEPAM and LK board No. Kep-181/BL/2009.¹³ It is common knowledge that sukuk are under the purview of the Otoritas Jasa Keuangan (OJK), whose mandate is to regulate and supervise all financial service activities in the country, including the activities of banks and non-bank financial institutions such as stock exchanges, insurance companies and pension funds.¹⁴ From issuance to maturity, the sukuk is monitored not only by the OJK, but also by the trustee and the Dewan Pengawas Syariah (DPS) under the Majelis Ulama Indonesia (MUI). It is hoped that this system will further ensure that sukuk investors are protected by law and the concept of prudence.¹⁵ Because the potential profit through profit sharing is greater than from interest payments, sukuk provide more attractive returns for investors.¹⁶

Fatwa No. 20 / DSNMUI / TV / 2001 outlines the basic requirements for the issuance of sukuk, namely the absence of gambling, riba, the sale of alcoholic beverages that are not approved by the government and any business that makes, distributes and provides goods or services that are detrimental to morals and are mudarat.¹⁷ The purpose of Issuing SBSN is to serve the needs of state budgeting, such as project funding, expanding the Islamic financial market, diversifying investment instruments, utilizing state property, and utilizing public funds that have not been captured by conventional banking. Things that belong to the state or are financed by SBSN with economic value are considered as SBSN assets. This SBSN asset serves as the basis for issuing SBSN

¹² Putri Dewi Anggelina and Hendrawati, "Tinjauan Sukuk Ijarah Dan Mudharabah Dari Segi Regulasi Dan Akuntabilitas Dengan Menggunakan PSAK 110 (Perusahaan Penerbit Sukuk Yang Terdaftar Dalam Data Statistik Sukuk Otoritas Jasa Keuangan Tahun 2019)," 2020.

¹³ Novta Rizki askohar Putri, "Pelindungan Hukum Bagi Investor Pemegang Obligasi Syariah (Sukuk) Mudharabah Terhadap Resiko Gagal Bayar (Default)" (Universitas Brawijaya, 2018).

¹⁴ Nur Aini and H Ahmad Luthfi, "Analisis Peran Sukuk Dalam Perkembangan Keuangan Syariah," *Al-Mizan: Jurnal Ekonomi Syariah* 2, no. 2 (2019): 29–50.

¹⁵ Nevada Della Mena Amertha, "Obligasi Syariah Di Indonesia: Studi Terhadap Jenis Dan Penerapan Akad Serta Perlindungan Bagi Investor," *Skripsi* (Universitas Islam Indonesia, 2017).

¹⁶ Muhammad Iqbal Fasa, "Sukuk : Teori Dan Implementasi," *Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam* 1, no. 1 (2016): 80, <https://doi.org/10.31332/lifalah.v1i1.476>.

¹⁷ Leli, "Transaksi Obligasi Syariah (Tinjauan Transaksi Obligasi Menurut Prinsip-Prinsip Syariah)."

and can be in the form of real property (tangible assets) or intangible property (intangible assets). The following is a data representation regarding the differences between sukuk and conventional bonds:

Table 1
Differences Between Sukuk and Conventional Bonds

Varibel Differentiator	Sukuk		Conventional Bonds
	Mudarabah	Ijarah	
Akad	Mudharabah	Ijarah	Nothing
Transaction type	Uncertainty Contract	Certainty Contract	Debt recognition instrument
Publisher	Government, Corporation	Government, Corporation	Government, Corporation
Stakeholders	Obligor, SPV, Investors, <i>trustee</i>	Obligor, SPV, Investors, <i>trustee</i>	Obligor/Issuer, Investors
Bid price	100%	100%	100%
Coupons/earnings	Income/profit sharing	Rewards/fees	interst/riba
Principal payment	Bullet or amortization	Bullet or amortization	Bullet or amortization
Time period return	Medium short Indicative based on income	Medium short Predetermined	Medium short Predetermined
<i>Underlying Asset</i>	Need	Need	No need
Types of investors	Sharia/conventiona l	Sharia/convent ional	conventional
Consequence Law	Halal Maslahat world and akhirat	halal Maslahat world and akhirat	Haram Mudarat
Price			Market price
Use of published results	Must comply with sharia	Must comply with sharia	Free

Comparing and contrasting sukuk with regular bonds using Table 1.¹⁸

B. Previous research

Research conducted by M. Khozinul Asror and Nita Triana with the title "Wakif legal protection for retail wakaf sukuk holders against default risk," this study discusses risk management against default carried out by wakaf issuers.¹⁹ The similarities in this study are that they both protect the sukuk holders which in the previous study were

¹⁸ Maula Nasrifah, "Sukuk (Obligasi Syariah) Dalam Perspektif Keuangan Islam," *Asy-Syari'ah : Jurnal Hukum Islam* 5, no. 2 (2019): 165–79, <https://doi.org/10.36835/assyariah.v5i2.120>.

¹⁹ M Khozinul Asror and Nita Triana, "Perlindungan Hukum Wakif Bagi Pemegang Wakaf Sukuk Ritel Terhadap Resiko Gagal Bayar," *Menara Ilmu* XVII, no. 01 (2023): 72–77.

Wakif (persons/institutions that endow them) while in this study namely investors holding ijarah sukuk, the difference in previous research with this research is that previous research was more focused on protection Wakif law on retail sukuk transactions while this research is more on positive legal protection for sukuk holders.

Sharia economics as a practice in society that must be protected by law in an effort to create legal certainty to create justice and create stability in society, according to research by Amini Mahfuzoh and Nurma Khusna Khalifa (2019) on investor law protection for retail sukuk holders against default risk. It is not surprising that there is a risk of default on retail sukuk, but there is almost no default at all on retail sukuk.²⁰ This research can gain insight into the legal protection provided to retail sukuk holders against the possibility of default by issuers thanks to the findings of this study.

Research conducted by Lutfi Bangun Lestari in 2022 concerning the application of ijarah contracts and the causes of default, this study seeks to analyze the causes of default on ijarah sukuk at PT X and the suitability of applying sharia principles to the implementation of issuance of sukuk ijarah to PT. X.²¹ This research is consistent with the author's previous work on the topic of default with the main variation being in the focus of the research object.

Predicting Default Probability: The Case of the Malaysian Sukuk Market, S. Shahida and Dan friends. (2014), Fakultas Ekonomi dan Manajemen, Universiti Kebangsaan Malaysia. The popularity of sukuk is increasing at a much faster rate than other rapidly growing Islamic capital market securities. The reliance on sukuk as a practical and profitable access to long-term Islamic project financing has been undermined by a series of high-profile defaults in the Gulf Cooperation Council (GCC), including Investment Dar, Saad Group, and Dubai World's Nakheel Sukuk in 2009. recorded in the Malaysian sukuk market from the first issuance of sukuk in 1997 and 2013. Given this fact, it is better to see what causes default more significantly, so as to estimate the probability of default so that default can reduce the occurrence of default cases in sukuk. Default risk in sukuk should be identified in this way for monitoring and risk management reasons. A study by S. Shahida et al., examined high-risk (defalut)

²⁰ Amini Mahfuzoh and Nurma Khusna Khanifa, "Perlindungan Hukum Investor Bagi Pemegang Sukuk Ritel Terhadap Risiko Gagal Bayar," *Syariati* 5, no. 01 (2019): 81–92, <https://doi.org/10.32699/syariati.v5i01.1187>.

²¹ Lestari et al., "Analisis Tentang Penerapan Akad Ijarah Dan Penyebab Gagal Bayar (Default) Sukuk Ijarah (Studi Kasus Pada Pt. X)."

sukuk.²² Meanwhile, the author's research focuses primarily on how sukuk issuing companies can protect their investors (issuers).

RESULTS AND DISCUSSION

A. Sukuk ijarah on PT Berlian Laju Tanker

It should be noted that the author examines the sukuk ijarah at PT Berlian Laju Tanker to determine how the sukuk holder can determine positive legal protection. In sukuk ijarah, the owner of goods or services (lessee or service provider) promises to the lessee or service user to transfer the right to use or utilize an item and/or provide services owned by the lessee or service provider within a certain time during the lease (ijarah) and / or wages (ujrah), but without transferring the ownership of an item.²³

It can be seen that currently a number of large corporations such as PT Berlian Laju Tanker use sukuk ijarah. The company was founded on March 12, 1981 under the name PT Bhaita Laju Tanker. On March 26, 1982, the name was changed to PT Berlian Laju Tanker, then changed by Deed No. 127, Deed No. 10, and Deed No. 55. In 2007 the company failed to fulfill its sukuk obligations. Overall, PT BLT declared default on six series of bonds issued by the company and its subsidiaries totaling US\$ 44.13 million and Rp 17.51 billion. Formed six bonds consisting of four conventional bonds and two sukuk. Each of the six types of bonds are: BLT Finance BV Guaranteed Convertible Bonds amounting to US\$36.63 million which matured on 9 February 2012 (ISIN Code: XS0300718599) and BLT International Corporation Guaranteed Convertible Bonds amounting to US\$7.5 million which fell due due on February 9, 2012 (ISIN Code: XS0485132046). Bonds IV Year 2009 Series B and C issued by PT Berlian Laju Tanker worth Rp 5.81 billion and Rp 7.2 billion, respectively, and matured on February 27, 2012; Sukuk Ijarah II Year 2009 Series A and B issued by the same company worth Rp 1.74 billion and Rp 2.23 billion which mature on the same date. The company is still working with its financial consultant as of February 2, 2012 and promised to continue providing information about the company's debt restructuring.²⁴

²² S Shahimi, Hafizi Ab Majid, and Mhsb Abdullah, "Predicting Probability of Defaults: A Case Study of the Malaysian Sukuk Market," ... *Ekonomi Malaysia Ke-9* ... 72, no. 72 (2013): 1–35, https://www.ukm.my/fep/perkem/pdf/perkem2014/PERKEM_2014_3A1.pdf.

²³ Anggelina and Hendrawati, "Tinjauan Sukuk Ijarah Dan Mudharabah Dari Segi Regulasi Dan Akuntabilitas Dengan Menggunakan PSAK 110 (Perusahaan Penerbit Sukuk Yang Terdaftar Dalam Data Statistik Sukuk Otoritas Jasa Keuangan Tahun 2019)."

²⁴ Widyanto, "Analisis Faktor Penyebab Gagal Bayar Obligasi Syariah Sukuk Ijarah Pt Berlian Laju Tanker."

PT. Berlian Laju Tanker Tbk. offering Sukuk Ijarah worth Rp. 200,000,000,000.00 (two hundred billion rupiah) for a period of five years with a payment of Rp. 20,600,000,000.00 (twenty billion six hundred million rupiah) per year, made every three months (PT Berlian Laju Tanker, Tbk. Bond Prospectus, 2007). PT Berlian Laju Tanker is a company engaged in the transportation of international standard liquid cargo, mostly in the regions of Asia, the Middle East and Europe. The Company and its Subsidiaries are the largest marine transportation company in Indonesia transporting liquid cargo and one of the largest in Asia for Asian chemical tankers in terms of tonnage and number of vessels available.²⁵

The parties involved in the issuance of sukuk include:

- a. Obligor, or entities obligated to pay the principle and interest of the Sukuk, are participants in the issuance process in the UK.
- b. *Special purpose vehicle* (SPV) refers to a company formed for the exclusive purpose of issuing Sukuk.
- c. Sukuk holders who invest through the SPV are given a guaranteed interest on the underlying asset.
- d. *Syariah Advisor* is a third party that issues a fatwa or statement that a sukuk conforms to sharia standards.
- e. The trustee as agreed acts as an entity representing the interests of the sukuk holders.²⁶

B. Factor Occurrence of default on PT Berlian Laju Tanker

In this study, the default ijarah fee of the sukuk is used as the dependent variable. Sukuk default can be defined as a situation where the issuer acting as a debtor has failed to fulfill its obligations to repay investors with the principle of a loan and/or discount rate (ijara fee) at maturity. Investors in this case have two legal options, litigation or non-litigation. PT Berlian Laju Tanker was declared in default after being unable to pay the discount rate (ijarah fee) and the principal of the investor's loan.²⁷ In this case it was proven that PT Berlian Laju Tanker had failed to pay, namely not fulfilling its obligation to pay profit sharing in sukuk ijarah (hereinafter referred to as installments of ijarah rewards) of Rp. 20,600,000,000 (twenty billion six hundred

²⁵Widyanto.

²⁶ Maula Nasrifah, "Sukuk (Obligasi Syariah) Dalam Perspektif Keuangan Islam."

²⁷ Dicky Ageng Prasetyo, "Analisis Faktor-Faktor Makro Ekonomi Yang Mempengaruhi Fee Ijarah Default Sukuk PT Berlian Laju Tanker" (Universitas Islam Negeri Syarif Hidayatullah, 2013).

million rupiah) per year from the 200 billion rupiah ijarah bond received by the corporation. Therefore corporations are required to pay Rp. 20,600,000,000.- (twenty billion six hundred million rupiah) profit sharing (referred to as ijarah fee installments) every three months. The specified annual value of ijarah installments is 10% per year. This 10% amount displays “fixed interest,” as opposed to the concept of profit-sharing stated in the sukuk.²⁸ It is known that the company went into default for various reasons, including fraudulent issuance of sukuk used to settle debts, reduced cash reserves, and legal disputes involving company affiliates. The occurrence of this violation caused the company to default because the company could not anticipate the company's income.²⁹

Efforts to avoid default include analyzing the concept of openness for issuers of sukuk. To evaluate the value of return and control investment risk, sukuk holders need information from the company that issued the sukuk. Consequently, the availability of such data determines the efficacy of such capital immersion. Therefore, it is important for sukuk holders to publish information about the company issuing the sukuk. Investors should read the Prospectus produced by the entity issuing the sukuk very carefully before making any investment decisions. One of the most important parts of any public offering is observing the Prospectus issued by the company. According to chapter 1 of the Pasal Modal Constitution Number 26, prospectus is any written material related to a public offering that aims to persuade other parties to buy securities. In connection with the above, a prospectus is any printed statement or information used in a bond offering with the intention of persuading other parties to buy or trade bonds, except for statements or information based on OJK regulations, and this prospectus is a request from the principle of disclosure.³⁰

C. Effort to provide legal coverage for sukuk apprentices

Preventive protection and repressive protection are two legal safeguards that can be implemented to protect sukuk holders from potential default. The act of negotiating the trustee in determining the contents of the trusteeship agreement which outlines the rights and obligations of the parties is included in preventive legal remedies. The trustee

²⁸ Widyanto, “Analisis Faktor Penyebab Gagal Bayar Obligasi Syariah Sukuk Ijarah Pt Berlian Laju Tanker.”

²⁹ Lestari et al., “Analisis Tentang Penerapan Akad Ijarah Dan Penyebab Gagal Bayar (Default) Sukuk Ijarah (Studi Kasus Pada Pt. X).”

³⁰ F Titisari, “Analisa Yuridis Prinsip Transparansi Oleh Emiten Obligasi Sebagai Upaya Perlindungan Hukum Investor Dalam Hal Mencegah Terjadinya Gagal Bayar” (Universitas Brawijaya, 2018), <http://repository.ub.ac.id/163215/>.

as stated by Peggy J. Naile is responsible for the following matters in case of default or default of the publisher:

- a. Arrange the disbursement of reserve funds or sinking funds (if any) to pay bondholders.
- b. Mapping matters that have the potential to cause a conflict of interest.
- c. Notification to sukuk holders or investors.
- d. Reconcile and maintain warranties.³¹

Implementation of guarantee execution and disbursement of sinking funds, civil lawsuits for default, class action, PKPU requests against issuers, bankruptcy against issuers are some of the legal actions that can be taken by sukuk holders represented by trustees if negotiation efforts fail to find a solution, these actions are included in the scope of law repressive. Trustee activities during negotiations will decide the scope of the trustee agreement, including any provisions for anticipatory assistance. Avoiding corporate sukuk default by issuers can be helped by specifying explicit conditions in the agreement and protecting investors who hold the sukuk in their capacity as creditors.³² Every issuance of sukuk has an agreement that gives rights and obligations to interested parties. The agreement is made between the government and the entity that issues the sukuk, with the sukuk holder acting as the investor.

It is possible to compare agreements between issuers and investors with what happens between a debtor and one or more creditors.³³ PT Berlian Laju Tanker has several assets such as a subsidiary ship which serves as collateral for this Sukuk Ijarah (M.T. Chembulk Shanghai, M.T. Chembulk Kobe, M.T. Chembulk Yokohama, M.T. Chembulk Barcelona, M.T. Chembulk Houston dan M.T. Chembulk Ulsan, M.T. Chembulk Hong Kong, M.T. Chembulk Virgin Gorda, M.T. Chembulk Savannah, M.T. Chembulk New York, M.T. Chembulk Gibraltar).³⁴ Both the Company and Gold Bridge Shipping Corporation (company guarantee) put in this loan with their full

³¹ Hendro Saptono Siva Nur Azahro, Budiharto, "Diponegoro Law Review Pasar Modal Memberikan," *Diponegoro Law Review* 5, no. 2 (2016): 1–12.

³² Syehni Rizky Putra Abadi, "Perlindungan Hukum Bagi Investor Pemegang Obligasi Perusahaan Yang Diterbitkan Oleh Badan Usaha Milik Swata (BUMS) Terhadap Risiko Gagal Bayar," *Novum: Jurnal Hukum* 1, no. 1 (2014): 1–11.

³³ Pristika Handayani, "Analisis Hukum Terhadap Penerbitan Surat Berharga Syariah Negara (Sukuk) Berdasarkan Undang-Undang No 19 Tahun 2008," *Fakultas Hukum UNRIKA Batam*, no. 19 (2013): 1–9.

³⁴ P T Berlian and Laju Tanker, "Prospektus Penawaran Umum Terbatas V Kepada Para Pemegang Saham Perser Dalam Rangka Penerbitan Hak Memesan Efek Terlebih Dahulu," 2006, [https://idnfinancials.s3-ap-southeast-1.amazonaws.com/prospectus/IPO-Rights-Issue/BLTA/2010_BLTA_Penawaran Umum Terbatas V Dengan Hak Memesan Efek Terlebih Dahulu.pdf](https://idnfinancials.s3-ap-southeast-1.amazonaws.com/prospectus/IPO-Rights-Issue/BLTA/2010_BLTA_Penawaran%20Umum%20Terbatas%20V%20Dengan%20Hak%20 Memesan%20Efek%20Terlebih%20Dahulu.pdf).

confidence and support. Sukuk holders are given several legal guarantees by the promises set out in the prospectus.

Sukuk follow a system that upholds a system of contracts for doing business by requiring all parties to a transaction to commit in writing to terms that do not violate sharia law. In line with the provisions of the SSBN/sukuk issuance agreement, the Government is required to pay the fee and nominal value of each SSBN/sukuk, regardless of whether it is issued directly by the Government or the SSBN/sukuk issuing company.³⁵ Contracts or agreements in Article 1313 KUH Perdata as "Actions where one or more individuals promise to one or more other people."³⁶

In the capital market sector, the Otoritas Jasa Keuangan can impose administrative sanctions on any party who violates the provisions of this Otoritas Jasa Keuangan Regulation, including the party causing the violation, as stipulated in Article 14 paragraph (1) POJK NO. 18/POJK.04/2015 regarding the issuance and requirements of sukuk, among others:

- a. Written warning.
- b. A fine is an obligation to pay a certain amount of money.
- c. Limit commercial pursuits.
- d. Suspension of commercial operations.
- e. Revocation of business license.
- f. Agreement to cancel.
- g. Registration process.³⁷

If a default occurs by the issuer, the trustee can negotiate with the issuer, if negotiations cannot resolve the problem then the trustee can execute the guarantee and disbursement of the sinking fund, file a civil lawsuit against the issuer, class action against the issuer, and file a request for bankruptcy against the issuer.³⁸ This is a repressive legal protection as mentioned above for sukuk holders to be able to ask for their rights to the investment they have made to the sukuk issuer.

³⁵ *Undang-Undang Republik Indonesia Nomor 19 Tahun 2008 Tentang Surat Berharga Syariah Negara*, 2008.

³⁶ Berlian and Tanker, "Prospektus Penawaran Umum Terbatas V Kepada Para Pemegang Saham Perser Dalam Rangka Penerbitan Hak Memesan Efek Terlebih Dahulu."

³⁷ "POJK No.18/POJK.04/2015 Tentang Penerbitan Dan Persyaratan Sukuk," 2015, 23, [http://www.ojk.go.id/id/kanal/iknb/regulasi/lembaga-keuangan-mikro/peraturan-ojk/Documents/SAL-POJK PERIZINAN FINAL F.pdf](http://www.ojk.go.id/id/kanal/iknb/regulasi/lembaga-keuangan-mikro/peraturan-ojk/Documents/SAL-POJK%20PERIZINAN_FINAL_F.pdf).

³⁸ Witami, "Pengaruh Rasio Keuangan, Struktur Sukuk Dan Corporate Governance Terhadap Rating Sukuk Program Pascasarjana (PPs) Universitas Islam Negeri Raden Intan Lampung 1440 H / 2020 M."

CONCLUSION

From the description above, it can be concluded that the legal coverage effort is that of sukuk holders against issuers who have defaulted on payment in sukuk at PT. Berlian Laju Tanker has two legal protections, namely preventive legal protection and repressive legal protection. The trustee's actions during negotiations determine the contents of the trustee agreement which contains the rights and obligations of those involved in the agreement, including preventive legal remedies. If negotiating actions cannot resolve the problem, the legal actions that can be taken by the sukuk holder represented by the trustee are execution of guarantees and disbursement of sinking funds, civil lawsuits for default, class action and PKPU or bankruptcy requests for issuers, this is included in the scope of repressive law. Civil lawsuits can use Article 1313 of the Civil Code regarding agreements as well as Article 9 paragraph 2 of the SBSN Law which contains obligations to pay the government compensation or nominal value for each sukuk with reference to the sukuk issuance contract. Thus PT Berlian Laju Tanker may be subject to administrative sanctions as set forth in Article 14 paragraph (1) POJK NO. 18/POJK.04/2015 Regarding Issuance and Requirements for Sukuk.

This research is limited to the legal protection that is obtained by the holder of the sukuk when the issuer experiences default in the form of rights and obligations that must be carried out by the holder of the sukuk, so that it has not explained in detail the mechanism for handling it by the issuer when a default occurs. Suggestions for further research so that they can analyze the obligations of issuers who default on sukuk.

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