

Analyzing Sukuk Holder Protection and Trustee Representation During Insolvency under Supreme Court Decision No. 146-PK/Pdt.Sus-Pailit/2016

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Abstract

The growth of the corporate sukuk market, which reached 678 issuances worth Rp188.25 trillion in Q1 2026, faces a dilemma regarding investor legal protection due to the vulnerability of concurrent creditor status, as revealed in the case of PT Berlian Laju Tanker. Previous research has not comprehensively analyzed characteristics of asset-based sukuk, concurrent creditor status, and trustee dominance in the process of Suspension of Debt and bankruptcy.

Meanwhile, this study aims to analyze the legal protection mechanism for sukuk holders and examine the consistency of voting-rights restrictions through trustees. This research employs normative legal methods, including statutory, case, conceptual, and comparative legal approaches. Supreme Court Decision No. 146 PK/Pdt.Sus-Parilit/2016 and the comparison of the true sale doctrine with the East Cameron case in the United States are also the main references in this research. The results of this study show that the *a quo* decision has hinted at legal certainty by applying Article 170 of Law No. 37/2004, thereby denying the priority rights of sukuk holders without collateral registration. Other findings also reveal that sukuk holders are very vulnerable due to the nature of in personam claims and the dominance of trustees, which reduces investor participation and rights when debtors default. Thus, a partial transplantation of the true sale doctrine and asset isolation, as practiced in comparative jurisdictions, is needed to reform OJK supervisory regulations to achieve economic justice for investors.

KEYWORDS *Bankruptcy Law; Insolvency; Investor Protection; Sukuk Syariah, Suspension of Debt Payment Obligations (SOP).*

Introduction

As one of the key instruments in the contemporary economic mechanism, the capital market system operate as vital framework that aggregate public liquidity to fund productive commercial sectors. Not only does the capital market provide an alternative source of financing for companies, but it also offers a variety of investment options for the public. Through the capital market, parties with excess funds (investors) can invest their capital in various financial instruments issued by entities in need of funding (issuers), thereby supporting national economic growth and improving public welfare.^{1,2} According to “Indonesian Law Number 8 of 1995 on the Capital Market, as amended by Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector”, the Capital Market is a part of the Financial System that relates to public offerings and transactions of securities, issuers, investment management, and public companies in connection with the securities they issue,

¹ Sunariyah, *Pengantar Pengetahuan Pasar Modal* (Yogyakarta: UPP STIM YKPN, 2018). PP.4.”

² Adrian Sutedi, *Hukum Pasar Modal* (Jakarta: Sinar Grafika, 2022), PP. 21-25.”

as well as institutions and professions related to securities. This regulation indicates that the capital market encompasses not only the buying and selling of securities but also various supporting institutions and legal mechanisms that ensure order, fairness, and efficiency in investment activities.³

The development of Indonesia's capital market is becoming increasingly complex as public demand for diverse investment instruments grows. In addition to conventional instruments such as stocks and bonds, Indonesia's capital market system also accommodates sharia-based investment instruments. The existence of the sharia capital market represents a form of development in the national financial system aimed at providing investment alternatives that comply with the principles of Islamic law while expanding financial inclusion for the public. Through the sharia capital market, investors can engage in investment activities without violating sharia principles prohibiting *riba*, *gharar*, and *maysir*.⁴

In the development of the Islamic capital market, sukuk is one of the instruments that plays a key role in this era. Etimologically rooted in the Arabic term 'sakk' denoting a deed or documentary evidence of property ownership. In the practice of the Islamic capital market, a sukuk is an Islamic financial instrument that represents undivided ownership of an asset, benefit, service, project, or specific investment activity that serves as the basis for its issuance (the underlying asset). Unlike conventional bonds, which are based on a debtor-creditor relationship and interest payments, sukuk utilize contracts that comply with Sharia principles.⁵

Regulations governing sukuk in Indonesia have evolved in tandem with the growing demand for investment instruments that comply with Sharia principles. Normatively, the issuance of sukuk is grounded in various Sharia capital market regulations issued by the relevant authorities and supported by fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The availability of sukuk not only provides an alternative financing option for the government and corporations but also expands

³ "M. Irsan Nasarudin et al., *Aspek Hukum Pasar Modal Indonesia* (Jakarta: Kencana, 2019), PP. 15-17."

⁴ "Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN-MUI Nomor 40/DSN-MUI/X/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal."

⁵ "Andri Soemitra, *Masa Depan Pasar Modal Syariah di Indonesia* (Jakarta: Kencana, 2014), PP. 129-132."

investment choices for the public who seek economic activities aligned with Sharia principles.^{6,7}

The development of sukuk in Indonesia has shown a positive trend in recent years. This is evident from the increase in the issuance of both government and corporate sukuk, which serve as sources of financing for development and business activities. This growth reflects the public's growing confidence in Sharia-compliant financial instruments. In addition to offering the potential for competitive returns.⁸ However, like other investment instruments, sukuk are not immune to various risks that could result in losses for investors. One of the most significant risks is default risk, a situation in which the sukuk issuer is unable to fulfill its obligations to sukuk holders in accordance with the agreed-upon terms. Default risk can arise from a deterioration in the company's financial condition, mismanagement of the business, or external factors that affect the debtor's ability to meet its obligations. Such circumstances can cause financial losses for investors and create uncertainty about the fulfillment of their rights as sukuk holders, particularly when debt settlement is carried out through the PKPU mechanism or bankruptcy proceedings. Therefore, legal protections are crucial to ensure that investors' rights are upheld throughout this process.⁹

When a sukuk issuer faces financial difficulties and is unable to meet its obligations to investors, the issue can be resolved through various legal mechanisms, including Debt Payment Obligation Deferral (PKPU). PKPU is essentially a legal mechanism that allows debtors experiencing financial difficulties to submit a restructuring plan to their creditors to avoid bankruptcy. Through this mechanism, the debtor may restructure its debt so that its business operations can continue and its obligations to creditors can be fulfilled in accordance with the agreed terms.¹⁰

Another issue to watch out for is the risk to sukuk holders if the issuing company faces severe financial difficulties, which can trigger debt restructuring

⁶ Indonesia, Otoritas Jasa Keuangan, *Roadmap Pasar Modal Syariah Indonesia 2023–2027* (Jakarta: OJK, 2023), PP. 15–18;

⁷ "Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa Nomor 32/DSN-MUI/IX/2002 tentang Obligasi Syariah."

⁸ Otoritas Jasa Keuangan, *Statistik Pasar Modal Syariah Indonesia Tahun 2024* (Jakarta: OJK, 2024), pp. 20–25.

⁹ Mahfuzoh and Nur Khasanah Khanifa, "Perlindungan Hukum Investor Bagi Pemegang Sukuk Ritel Terhadap Risiko Gagal Bayar," *Syariat* 5, No. 1 (2019): pp. 69–78.

¹⁰ "Sultan Remy Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU* (Jakarta: Pustaka Utama Grafiti, 2016), pp. 327–330."

through the mechanism of Suspension of Debt Payment Obligations or a second bankruptcy process (Subsequent Bankruptcies) based on a court decision.¹¹ In contrast to conventional corporate bonds, which explicitly establish the relationship between debtors and standard creditors based on interest-bearing debt. These Sharia sukuk instruments operate on a structural basis related to basic assets, benefits, or services based on sharia law actually become more vulnerable because the basis of bankruptcy law in Indonesia, which is mainly based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, often classifies sukuk holders as unsecured creditors or concurrent creditors, not as creditors with guarantee rights that have priority claims.¹² Thus, this classification raises a doctrinal paradox that needs to be studied further, even though the structure in accordance with Sharia implies a form of asset attachment or right to benefit, in contrast to the formal bankruptcy mechanism, which places investors in a proportional distribution scheme or *pari passu prorata parte* to eliminate their direct execution rights over the underlying asset.

Not only that, the problem of structural losses that occur is also exacerbated by the mandatory representation mechanism through the trustee system. Under the Capital Market Law, trustees have the legal authority to act collectively on behalf of investors involved in legal disputes, PKPU negotiations, and bankruptcy litigation. Although designed to achieve procedural efficiency, this single representation system actually creates conflicts for investors who lose their direct voting rights and active participation in judicial forums, leaving their economic interests entirely dependent on the institutional competence, discretion, and good faith of the trustees.¹³ Thus, when the debtor fails to fulfill its obligations under the court-approved peace agreement (homologation), the interaction among the characteristics of asset-based sukuk, its unsecured-creditor status, and trustee-dominated representation creates legal uncertainty that, in turn, threatens the realization of substantive justice for investors.

¹¹ Francois Geny Ritonga, "Cancellation of Peace Treaties (Homologation) as Legal Remedy for Creditors Against Debtors Who Neglect to Fulfill the Contents of Peace Agreements," *Journal of Law to-ra* 10, no.1 (2024). pp. 73-86

¹² "Kurniagung Nur Cahyono and Syafwendi Syafril, "Dispute Resolution for Sukuk in Indonesia: Regulatory Framework and Shariah Compliance Challenges," *Airlangga International Journal of Islamic Economics and Finance* 9, no.01 (2026). pp. 71-90"

¹³ Kurniagung Nur Cahyono and Syafwendi Syafril, "Dispute Resolution..."

However, not all settlement agreements reached through the PKPU process are successfully implemented. In practice, the debtor may be unable to fulfill the obligations agreed upon in the settlement agreement (homologation). If this occurs, creditors may file a petition with the court to have the settlement annulled. The annulment of a settlement has significant legal consequences, as it may result in the debtor being declared bankrupt and all of their assets becoming part of the bankruptcy estate,¹⁴ which will be used to satisfy the creditors' claims in accordance with bankruptcy law.¹⁵

The annulment of a settlement becomes increasingly complex when it involves a relatively large number of bond and sukuk holders. To ensure the effective protection of investors' interests, the legal relationship between bond or sukuk holders and issuers is carried out through a trustee, as stipulated in "Law Number 8 of 1995 on the Capital Market and Financial Services Authority Regulation Number 20/POJK.04/2020 on Trust Agreements for Debt Securities and/or Sukuk." The trustee acts as the party representing the interests of bond or sukuk holders in legal dealings with the issuer, including in taking legal action should the issuer default, enter into a Debt Payment Moratorium (PKPU), or file for bankruptcy. Nevertheless, the position of sukuk holders in PKPU and bankruptcy proceedings still raises several legal issues, particularly regarding their status as creditors, the mechanism of representation through the trustee, and the effectiveness of legal protections for investors' rights.¹⁶ ¹⁷This issue is becoming increasingly important given that sukuk are based on Sharia principles and have underlying assets. However, in the practice of debt settlement through PKPU or bankruptcy proceedings, sukuk holders are generally still treated as unsecured creditors, just like holders of conventional bonds.¹⁸

One case that has drawn attention in Indonesia's bankruptcy law practice is the case involving PT Berlian Laju Tanker Tbk. The shipping company faced

¹⁴ Rahayu Hartini et al., "The International Arbitration Award as a Simple Proof Requirement in Bankruptcy," *Lex Scientia Law Review* 8, no. 1 (2024): pp. 1-28.

¹⁵ M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan* (Jakarta: Kencana, 2019), pp. 217-220.

¹⁶ "Puti Marcelia, "Perlindungan Hukum Terhadap Wali Amanat Terkait Perjanjian Wali Amanat dalam Penerbitan Obligasi dan Transaksi di Pasar Modal," *Jurnal Pro Hukum* 12, no. 1 (2023)"

¹⁷ "Merry Natalia Wilar, *Analisis Yuridis Mengenai Kedudukan Hukum Wali Amanat dalam Hal Perusahaan yang Mengalami Gagal Bayar (Studi Putusan Nomor 146 PK/Pdt.Sus-Pailit/2016)* (Tesis, Universitas Sumatera Utara, 2021). pp. 98-103."

¹⁸ Burhanuddin Susanto, *Pasar Modal Syariah: Tinjauan Hukum* (Yogyakarta: UII Press, 2018), pp. 121-125.

financial difficulties, resulting in its inability to meet its obligations to creditors, including bondholders and sukuk holders. To address this situation, the company filed for a PKPU and obtained court approval (homologation) of the restructuring plan. However, in practice, the debtor was unable to fulfill its obligations as agreed, leading to a petition to annul the restructuring plan, which ultimately reached the Review stage at the Supreme Court.¹⁹

Through “Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016,” the Supreme Court affirmed the status of bond and sukuk holders as creditors whose interests are represented by a trustee in ongoing legal proceedings. This ruling is important to examine because it not only addresses the annulment of a settlement in a PKPU proceeding but also concerns the legal protection of investors in the Islamic capital market who may suffer losses due to a debtor’s failure to fulfill its obligations. Therefore, this ruling can serve as a basis for analysis to assess the extent to which Indonesian bankruptcy law protects the rights of sukuk holders in PKPU and bankruptcy proceedings.²⁰

Research on legal protection for sukuk investors has been conducted by Mahfuzoh and Nur Khasanah Khanifa, who examined the legal protection afforded to retail sukuk investors against the risk of default. The study indicates that legal protection for sukuk investors has essentially been provided through various regulatory instruments in the Islamic capital market mechanism. However, the study focuses more on legal protection against default risk in general and does not specifically address the status of sukuk holders in the PKPU (Debt Restructuring) process or in bankruptcy proceedings.²¹

A study on legal protection for sukuk holders was also conducted by Novta Rizky Ardiansyah Putri, who examined legal protection for investors holding *mudharabah* sukuk against the risk of default. The study focused on the forms of legal protection available to investors when an issuer is unable to fulfill its obligations under the agreed-upon contract. However, the study did not examine how investors are legally protected when an issuer enters a PKPU (debt restructuring) process or bankruptcy proceedings under Indonesia’s bankruptcy laws.²²

¹⁹ Mahkamah Agung Republik Indonesia, Putusan Nomor 146 PK/Pdt.Sus-Pailit/2016.

²⁰ Merry Natalia Wilar, “*Analisis Yuridis...*” pp.98-103

²¹ Amini Mahfuzoh and Nur Khasanah Khanifa, “Perlindungan Hukum Investor Bagi Pemegang Sukuk Ritel Terhadap Risiko Gagal Bayar,” *Syariat* 5, no. 1 (2019): 81–92, <https://doi.org/10.32699/syariat.v5i01.1187>, pp.83

²² “Novta Rizky Ardiansyah Putri, *Perlindungan Hukum Bagi Investor Pemegang Obligasi Syariah (Sukuk) Mudharabah Terhadap Risiko Gagal Bayar (Default)* (Skripsi, Universitas Brawijaya, 2018).”

Another study by Putri and Hasan examined the legal protection of bondholders against the risk of issuer default. The study highlighted various legal protection instruments available to bond investors in the event of issuer default. However, the study's focus was limited to conventional bonds. Thus, it did not examine the specific characteristics of sukuk as Islamic capital market instruments or their implications in bankruptcy and PKPU proceedings.²³

Meanwhile, Merry Natalia Wilar analyzed the legal status of trustees in companies experiencing default by studying Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016. The study confirms that trustees have the authority to represent bondholders' interests in legal proceedings under the Capital Market Law. However, the study focuses more on the scope of the trustee's authority and has not specifically examined the legal protection of sukuk holders in PKPU and bankruptcy proceedings.²⁴

Next, Mantili and Dewi discuss the protection of unsecured creditors under bankruptcy law. Their study explains that unsecured creditors are often at a disadvantage relative to secured and preferred creditors in the liquidation of bankruptcy assets. Although the study provides an overview of the legal protections afforded to unsecured creditors, it does not specifically address the status of sukuk holders as creditors in bankruptcy cases or PKPU proceedings.²⁵

Meanwhile, the existence and growth of the sukuk realization trend are not limited to Indonesia. Reflecting on the total growth of the global Islamic finance industry assets in the 4th quarter of 2020 which reached USD 3.374 Trillion US dollars or showed a growth of 14% YoY after previously being able to grow by 15% in the 4th quarter of 2019, of course, sharia sukuk is inseparable from the impact of this growth.^{26,27} When examined further, the sukuk market

²³ Nabilla Clasrissa Sasqia Putri and Umar Hasan, "Perlindungan Hukum Pemegang Obligasi Terhadap Resiko Emiten Yang Gagal Bayar (Default)," *Zaaken: Journal of Civil and Business Law* 2, no. 1 (June 12, 2021): 129–43, <https://doi.org/10.22437/zaaken.v2i1.11517>. pp.132

²⁴ Merry Natalia Wilar, "Analisis Yuridis...."

²⁵ "Rika Ratna Permata Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren Dalam Hukum Kepailitan," *AKSES: Jurnal Penelitian Dan Pengabdian Kepada Masyarakat Universitas Ngurah Rai* 12, no. 2 (December 14, 2020): 97–108, <https://doi.org/https://doi.org/10.70358/jurnalakses.v12i2.681>. pp.99."

²⁶ The Refinitiv Report in 2021 presents that the market share of Islamic banking/IBs is the largest sector with a portion of 7% of the total assets of the Islamic industry, where its assets grew by 14% in 2020. Refinitiv, "Islamic Finance Development Report 2021: Advancing Economies" (London: Refinitiv, January 1, 2021).

²⁷ Mohammed Ayoub Ledhem, "The Financial Stability of Islamic Banks and Sukuk Market Development: Is the Effect Complementary or Competitive?" *Borsa Istanbul Review* 22, no. 1 (September 2022): 579–591, <https://doi.org/10.1016/j.bir.2022.09.009>. PP.579

share is the second largest sector that contributes to global Islamic financial growth with a portion of 19% of total assets of the Islamic industry or in more detail, the growth of the global sukuk market reached 16% in 2020 so it can be interpreted that there was an increase of 14.7% compared to 2019.^{28,29} Indonesia as the third ranked country below Malaysia and Saudi Arabia in terms of issuance volume and market share of domestic sharia sukuk cumulatively from 2001 to 2020 with a domestic sukuk volume of USD 23,550 contributing 9.51% to the global domestic sukuk market share (USD 103,755 or contributing 17.81% to global growth in 2020)^{30,31} Of course, these findings also sparked the urgency of this research.

The commentary paper by Mc Millen highlighted countries' approaches to addressing and insolvency laws. Generally, he classified the United Kingdom as often cited as the 'paradigm of a creditor-friendly regime, while Chapter 11 of the United States Bankruptcy Code is often cited as the paradigm of a debtor-friendly regime.'³² The approach by the United States can be related to the decision in the case of East Cameron Sukuk, as highlighted by Yunis, whereby the court has rejected the argument to recategorize the sukuk as a

²⁸ In 2023, Otoritas Jasa Keuangan Republik Indonesia also stated that the sukuk market share will be the second largest contributor or 19% of the total assets of the global Islamic finance industry to be able to record a growth of 11% in 2022. "Otoritas Jasa Keuangan, "Laporan Perkembangan Keuangan Syariah Indonesia - 2023," Ojk.go.id (Jakarta: Otoritas Jasa Keuangan Republik Indonesia, January 2, 2025), <https://ojk.go.id/id/kanal/syariah/data-dan-statistik/laporan-perkembangan-keuangan-syariah-indonesia/>,"

²⁹ Refinitiv, "ICD - Refinitiv Islamic Finance Development Report 2022: Embracing Change" (London: Refinitiv, December 1, 2022).

³⁰ The International Islamic Financial Market in 2025 issued the IIFM Sukuk Report 2025 (14th Edition) which reported that in 2024 the total global sukuk issuance reached USD 205.1 Billion despite a decrease from the previous year which reached USD 212 Billion in 2023. The latest report does not mention that sukuk contributes the second largest contribution to global Islamic finance. However, the total number of sukuk issuances cumulatively stands at USD 2.2 Trillion and there are USD 902.82 billion sukuk currently in circulation (outstanding). Departing from this figure, it quantitatively confirms the position of sukuk as the largest and most dominant instrument in the global Islamic capital market sector, just below the Islamic banking sector. International Islamic Financial Market, "A Comprehensive Study of the Global Sukuk Market: IIFM Sukuk Report 2025 (14th Edition)," www.iifm.net (Manama, Bahrain: International Islamic Financial Market, November 1, 2025), <https://www.iifm.net/frontend/general-documents/>

³¹ International Islamic Financial Market, "A comprehensive study of The global sukuk market sukuk report," www.iifm.net (Manama, Bahrain: International Islamic Financial Market, July 1, 2020), <https://www.iifm.net/frontend/general-documents/>

³² "Islamic Financial Services Board and The World Bank, "Effective Insolvency Regimes: Institutional, Regulatory and Legal Issues Relating to Islamic Finance", 2011, available at https://www.ifs.org/wp-content/uploads/2023/10/Effective-Insolvency-Regimes_-Institutional-Regulatory-and-Legal-Issues-Relating-to-Islamic-Finance_En.pdf. (accessed on 15th of July 2026) p. 31"

secured loan; therefore, the certificate holder is regarded as being the owner of the sukuk asset.³³

Based on these previous studies, it is evident that research on the protection of sukuk investors, the role of trustees, and creditor protection in bankruptcy has been extensive. However, these studies still examine these aspects separately. To date, there has been limited research specifically analyzing the legal protection of sukuk holders in PKPU and bankruptcy proceedings, as evidenced by “Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016,” with a focus on the status of sukuk holders as unsecured creditors and the mechanism of representation through trustees.

The novelty of this study lies in its analysis, which integrates aspects of the Islamic capital market, bankruptcy law, the status of unsecured creditors, and the trustee’s role in providing legal protection for sukuk holders. This study not only examines the legal status of sukuk holders in PKPU and bankruptcy proceedings but also evaluates the alignment of the trustees’ representation mechanism with the principles of legal protection, justice, and legal certainty. This study also refers to the case of East Cameron Sukuk, where relevant, to identify the mechanism for protecting investors’ rights and how it can be adapted in the context of Indonesian jurisdiction. Thus, this study is expected to contribute to the development of Islamic capital market law and serve as a basis for consideration in efforts to strengthen the protection of sukuk investors in Indonesia.

Based on the discussion above, this study aims to analyze the legal protection afforded to sukuk holders in PKPU and bankruptcy proceedings and to examine the compatibility of restrictions on voting rights imposed through a trustee with the principles of legal protection and justice. The research questions in this study are: **First**, how can legal protection for sukuk holders be enforced in PKPU and bankruptcy proceedings? **Second**, are restrictions on voting rights held by a trustee consistent with the principles of legal protection and justice?

Based on the questions, this study aims to examine the legal protection mechanism for sukuk holders in PKPU and bankruptcy practices, and review the mechanism for restricting voting rights through trustees in accordance with the principles of legal protection and justice. The urgency of this research is based on a report by the Financial Services Authority in May 2026, which states

³³ “Islamic Financial Services Board...” p. 20.

that the cumulative number of sukuk issuances could reach 678 with an Accumulated Issuance Value of Rp. 188.25 Trillion. This figure jumped significantly compared to the accumulation in Q1-Q4 2025, which totaled 636 issuances valued at 173.37 trillion. In addition, the global Islamic finance industry is still growing.³³ Mordor Intelligence's findings also revealed that in 2031, transaction volume is projected to increase by 10.70%, reaching USD 8.46 trillion, compared to USD 5.10 Trillion in 2026.³⁴

Based on this data, there has been an upward trend in the issuance of corporate sukuk through public offerings, but guarantees of legal certainty have not been implemented. Moreover, the paradigm of Indonesian bankruptcy law which places sukuk holders who are positioned as concurrent creditors without special guarantees that are equivalent to conventional bondholders even though sharia sukuk has underlying assets and has limited voting rights in PKPU because trustees dominate it, so these two problems are enough to prove that there is a limitation of the principle of justice for investors which again sparks the urgency of this research. Not only that, but the relevance of this research also contributes to the study of the 16th Sustainable Development Goals (SDGs-16) regarding Peace, Justice, and Strong Institutions, especially target 16.3, which mainstreams the enforcement of the rule of law at the national and international levels, and ensures equal access to justice for all parties.

This study employs a normative legal method to examine the legal norms in legislation, legal doctrine, and court decisions regarding the legal protection of sukuk holders in the Debt Payment Moratorium (PKPU) process and bankruptcy proceedings. A normative legal research approach was chosen because the focus of this study lies in analysing the legal provisions governing the status of sukuk holders within the Islamic capital market system and their application in the practical resolution of debts through the PKPU and bankruptcy mechanisms.³⁵ Also to addressing the primary legal questions of this research: (1) how can legal protection for sukuk holders be enforced in PKPU and bankruptcy proceedings? Moreover, are (2) restrictions on voting rights through a trustee consistent with the principles of legal protection and justice?

³⁴ Mordor Intelligence, "Islamic Finance Market Size & Share Analysis - Growth Trends and Forecast (2026 - 2031)," [Www.mordorintelligence.com](https://www.mordorintelligence.com/industry-reports/global-islamic-finance-market) (Hyderabad, India : Mordor Intelligence, June 10, 2026), <https://www.mordorintelligence.com/industry-reports/global-islamic-finance-market>.

³⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2021), pp. 55–56.

To operationalize this normative inquiry, the analytical procedure is structured through four primary methodological steps: statutory interpretation, case analysis, conceptual evaluation, and comparative assessment.

First, the statutory approach examines primary legal authorities, specifically Law No. 8 of 1995 on the Capital Market, Law No. 37 of 2004 on Bankruptcy and PKPU, Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK), relevant Financial Services Authority Regulations (POJK), and National Sharia Council (DSN-MUI) fatwas. This step establishes the normative baseline regarding the status of sukuk holders as concurrent creditors and the statutory powers of trustees.³⁶

Second, a case-based approach was employed through an analysis of Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016 regarding the annulment of a settlement in the case of PT Berlian Laju Tanker Tbk. This analysis of the decision was conducted to understand the judges' legal reasoning *ratio decidendi* and its implications for the legal protection of sukuk holders in PKPU and bankruptcy proceedings.³⁷

Third, this study employs a conceptual approach, using the theories of legal protection, justice, and legal certainty, as well as the perspective of economic law, as analytical tools. The perspective of economic law is used to analyze the relationship between investor protection and the creation of certainty, efficiency, and trust in the operation of the Islamic capital market. Meanwhile, the theory of legal protection is used to assess the extent to which the legal system protects the rights of sukuk holders, the theory of justice is used to analyse the equitable treatment of sukuk holders in bankruptcy proceedings, and the theory of legal certainty is used to examine the consistency of the application of legal norms in the resolution of disputes that are the subject of this study.^{38,39}

Fourth, the comparative approach employs a structured cross-jurisdictional comparison among Malaysia, the Kingdom of Saudi Arabia, and the United States (focusing on the East Cameron Sukuk case). The criteria for selecting these jurisdictions are based on their systemic relevance, because Malaysia represents a leading dual-banking model with explicit asset-backed

³⁶ Peter Mahmud Marzuki, "*Penelitian Hukum....*" pp. 133–136.

³⁷ Peter Mahmud Marzuki, "*Penelitian Hukum....*" pp. 158–159.

³⁸ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987); John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971)

³⁹ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Gustav Radbruch, *Legal Philosophy* (New York: Oxford University Press, 1950).

securitization frameworks. Meanwhile, the Kingdom of Saudi Arabia has adopted a Sharia-compliant insolvency framework under the Saudi Bankruptcy Law. On the other hand, the United States of America exemplifies a debtor-friendly Chapter 11 mechanism highlighting true-sale disputes. The comparative units of analysis focus on asset ownership structures, special purpose vehicle (SPV) bankruptcy remoteness, and execution remedies available to trustees.

The legal sources used in this study consist of primary, secondary, and tertiary legal sources. Primary legal sources include legislation, fatwas issued by the National Sharia Council of the Indonesian Ulema Council, and Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016. Secondary legal materials consist of books, scientific journals, research findings, and other scholarly works related to the Islamic capital market, sukuk, PKPU, and bankruptcy. Tertiary legal materials include legal dictionaries, encyclopaedias, and other sources that support the understanding of primary and secondary legal materials.⁴⁰

Legal materials were collected through library research, and their analysis was conducted qualitatively using a descriptive-analytical method. Through this method, all the legal materials obtained were systematically analyzed to address issues regarding the legal protection of sukuk holders in PKPU and bankruptcy proceedings, as well as the compatibility of the representation mechanism through a trustee with the principles of legal protection and justice.⁴¹

Legal Protection for Sukuk Holders in PKPU and Bankruptcy Proceedings

Legal protection for sukuk holders cannot be separated from the status of sukuk as an instrument in the Islamic capital market mechanism. As a Sharia-compliant security, sukuk has characteristics that differ from conventional bonds because it is based on Sharia principles that emphasize ownership of specific assets, benefits, or business activities underlying its issuance. Therefore, the legal relationship between the issuer and the investor in

⁴⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2018), pp.13–15.

⁴¹ Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2017), pp.183–184.

sukuk is not solely a debtor-creditor relationship, as with conventional bonds, but also involves a Sharia contract that underpins the transaction.^{42,43}

Doctrinally, the author states that, the division of economic configurations between asset-based sukuk, which is often used in Indonesia and structures that are actually supported by assets or asset-backed structures. As for asset-based sukuk, the underlying asset is usually used to meet Sharia compliance requirements, such as *ijarah* or *mudharabah*; however, the legal right to absolute ownership is often not fully transferred to the *Special Purpose Vehicle* (SPV)⁴⁴ through a legally binding true sale mechanism. It guarantees separation from the risk of bankruptcy. As a result, investors have only had claims based on an *in personam* contract with the issuer to recover financial returns, and not ownership rights that are *in rem* and can be enforced against the underlying asset itself. Thus, when the issuer of the sukuk goes bankrupt, the underlying asset remains part of the debtor's general corporate assets because the doctrine of bankruptcy law in Indonesia does not automatically recognize the structure of a Sharia contract as equivalent to a statutory guarantee right (such as a right of tangible or fiduciary guarantee) unless it is officially registered under the national guarantee law, the sukuk holder cannot override the principle of *pari passu pro rata parte*. Thus, the existence of the underlying asset only serves as a theological and structural benchmark for the formation of profits, but does not provide legal protection in the form of priority rights in the event of a liquidation of the company.^{45,46}

⁴² “Burhanuddin Susanto, *Pasar Modal Syariah: Tinjauan Hukum* (Yogyakarta: UII Press, 2018), pp. 77–82.”

⁴³ “Vidya Noor Rachmadini, “Perlindungan Hukum bagi Investor dalam Pasar Modal menurut Undang-Undang Pasar Modal dan Undang-Undang Otoritas Jasa Keuangan,” *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18, no. 2 (July 21, 2020), <https://doi.org/10.31941/pj.v18i2.1093>. pp.23-29.”

⁴⁴ “Special Purpose Vehicle or SPV is a separate legal entity established specifically to issue sukuk and act as the party holding or managing the underlying assets for the benefit of sukuk holders, independently of the operational risks of the originating company (originator).”

⁴⁵ Sutan Emir Hidayat, “A Comparative Analysis between Asset Based and Asset Backed Sukuk: Which One is More Shariah Compliant?,” *International SAMAM Journal of Accounting and Finance* 01, no.2. pp. 24-31

⁴⁶ “Özgür Kocabaşoğlu, “Asset Backed Versus Asset Based Sukuk and their Application in Türkiye”, 2022, available at <https://www.erdem-erdem.av.tr/en/insights/asset-backed-versus-asset-based-sukuk-and-their-application-in-turkiye> (accessed on 16th of September 2026)”

TABLE 1: Asset-based Sukuk vs Asset-Backed Sukuk Comparison Matrix

Paramater	Asset-Based Sukuk	Asset-Backed Sukuk
Issuer	Company	SPV
Character	Debt-like	Equit-like
Source of Sukuk Payment	The revenues from asset-based sukuk generated by the underlying asset	The revenues from asset-backed sukuk generated by the underlying asset
True Sale Status	Absolute ownership is not transferred completely to the SPV through a legally binding true sale mechanism.	There is an absolute transfer of assets (true sale) to an SPV that separates the assets from the risk of bankruptcy of the issuer.
Legal Rights of Investors	in personam (a claim based on a contract against the publisher to obtain a return).	in rem (executable direct ownership rights over the underlying asset).
Position at the moment of Bankruptcy	Fixed assets are part of the company's bankruptcy assets; investors are subject to the principle of <i>pari passu pro rata parte</i> with other concurrent creditors.	The underlying assets are isolated from the issuer's bankruptcy and are protected for the benefit of the sukuk holder.

Source: Primary Data (2026)

Under Indonesia's capital markets legal system, sukuk holders are essentially parties who have the right to receive economic benefits in accordance with the contract and terms agreed upon at the time of the sukuk's issuance. These rights include the right to receive yield payments and the return of principal upon maturity. As investors, sukuk holders are also entitled to transparent information about the issuer's financial condition and any developments that may affect its ability to meet its obligations.⁴⁷

⁴⁷ Andri Soemitra, *Bank dan Lembaga Keuangan Syariah* (Jakarta: Kencana, 2017), pp. 475–480.

Sukuk investments, much like conventional financial instruments which, are not immune to credit risks specifically default by the issuing party. Financial distress typically impedes the issuer's capacity to fulfilling scheduled settlement commitments toward investors. In such circumstances, legal protection for sukuk holders is essential to ensure legal certainty and maintain investor confidence in the Islamic capital market.⁴⁸

One form of legal protection for sukuk holders is provided through various regulations governing the issuance and supervision of Sharia-compliant instruments in the capital market. This protection mechanism involving mandatory corporate disclosures, rigorous oversight by the Financial Services Authority (OJK), fiduciary representation through trustees to advocate for investors, and formal mechanisms for resolving disputes if default occurs. Furthermore, compliance with Islamic commercial law throughout the issuance and management lifecycle is continuously reinforced by religious edicts (fatwas) issued by the National Sharia Council of the Indonesian Ulema Council (Dewan Syariah Nasional -Majlis Ulama Indonesia).⁴⁹

Although sukuk have characteristics that differ from conventional bonds, as they are based on Sharia principles and involve underlying assets, in the practice of debt settlement through PKPU and bankruptcy proceedings, sukuk holders are generally still treated as creditors of the issuer. When an issuer is unable to fulfil its obligations to pay returns or repay the principal investment, this legal relationship gives rise to a claim that can be filed in either a PKPU or bankruptcy proceeding. Thus, sukuk holders have legal interests that must be protected at every stage of the debtor's debt resolution process.⁵⁰

Under "Law Number 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations," which was partially revoked by Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector, creditors in bankruptcy proceedings are generally classified into secured, preferred, and unsecured creditors. Secured creditors are those who hold security interests in assets, while preferred creditors are granted preferential rights under applicable laws and regulations. Concurrent creditors, on the other hand, are creditors who hold neither specific security interests nor preferential rights, therefore, their claims are settled proportionally based on the *pari passu prorata parte*

⁴⁸ Mahfuzoh and Nur Khasanah Khanifa, "Perlindungan Hukum..." pp. 70–73.

⁴⁹ "Fatwa DSN-MUI Nomor 32/DSN-MUI/IX/2002 tentang Obligasi Syariah; Otoritas Jasa Keuangan, *Roadmap Pasar Modal Syariah Indonesia 2023–2027*."

⁵⁰ Burhanuddin Susanto, "Pasar Modal...." pp. 121–125.

principle, a principle requiring that all assets of the bankrupt estate be distributed collectively among concurrent creditors in proportion to the amount of their respective claims after the claims of secured creditors and preferential creditors have been satisfied first.^{51,52}

In practice, bond and sukuk holders are generally classified as unsecured creditors because they do not hold security interests that grant them a special status in the distribution of bankruptcy assets. Consequently, sukuk holders must share with other unsecured creditors if the debtor's available assets are insufficient to settle all obligations. This status results in sukuk holders receiving a relatively weaker level of protection compared to separate creditors or preferred creditors, particularly in situations where the debtor's assets are insufficient to satisfy all claims filed.⁵³

The position of sukuk holders as unsecured creditors has become increasingly complex because they generally do not participate directly in either the PKPU or bankruptcy proceedings. Under capital market regulations, the interests of sukuk holders are represented by a trustee acting for and on behalf of the investors. The role of the trustee is intended to ensure efficiency and effectiveness in protecting the interests of many investors. However, this mechanism also raises questions regarding the extent to which the aspirations and interests of individual sukuk holders can be accommodated in decision-making processes related to their rights as creditors.⁵⁴

In the context of PKPU, the position of sukuk holders is crucial, as the success or failure of the settlement plan will directly affect the fulfillment of investors' rights. If a settlement approved through homologation is properly implemented, sukuk holders can receive payments in accordance with the agreed-upon restructuring scheme. Conversely, if the debtor fails to comply with the terms of the settlement and the court annuls it, the debtor may be declared bankrupt, in which case sukuk holders must assert their rights through the bankruptcy estate liquidation process alongside other creditors. Therefore, the effectiveness of legal protection for sukuk holders is greatly influenced by their standing in the PKPU and bankruptcy proceedings, as well as the legal

⁵¹ Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

⁵² M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan* (Jakarta: Kencana, 2019), pp. 43–49.

⁵³ Rika Ratna Permata Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren..." pp.97–108.

⁵⁴ Merry Natalia Wilar, "Analisis Yuridis..." pp. 85–92.

system's ability to ensure that investors' rights are fulfilled fairly and proportionally.⁵⁵

Based on the arguments that have been built, it can be seen that even though sukuk is based on sharia guidelines, as evidenced by the underlying asset, nevertheless, in the reality of bankruptcy law in Indonesia, sukuk holders are still positioned as concurrent creditors whose repayment rights are based on a proportional nature (*pari passu prorata parte*)⁵⁶. Their interests are represented collectively by the trustees as investor representations.

Meanwhile, when comparing its practice in Malaysia as a country with the first stage of sukuk issuance up to 453.89 Million USD (2001-2024),^{56,57} Malaysia prefers to adopt a very solid dual-banking system and dual-legal system approach through the Corporate Debt Restructuring Committee (CDRC) under the auspices of Bank Negara Malaysia and the Securities Commission of Malaysia.^{58,59} Thus, in the Malaysian Bankruptcy paradigm, if a certain sukuk structure is established, the investor can obtain equitable rights as a secured creditor because the asset no longer belongs to the issuer and allows for the transfer of ownership of assets legally and benefits to a Special Purpose Vehicle (SPV)⁶⁰ Because the transaction structure causes investors to have material rights

⁵⁵ Sutan Remy Sjahdeini, "Hukum Kepailitan..." pp. 327–335.

⁵⁶ M. Kabir Hassan et al., "The Impact of Sukuk Issuances on Liquidity, Profitability, and Asset Quality of Islamic Banks," *Research in International Business and Finance* 81, no. 103158 (October 10, 2025): 1–24, <https://doi.org/10.1016/j.ribaf.2025.103158>. pp.2

⁵⁷ "International Islamic Financial Market", "A Comprehensive Study of the Global Sukuk Market: IIFM Sukuk Report 2025 (14th Edition)," www.iifm.net (Manama, Bahrain: International Islamic Financial Market, November 1, 2025), <https://www.iifm.net/frontend/general-documents/>

⁵⁸ Mirzet Šeho, Obiyathulla Ismath Bacha, and Edib Smolo, "Bank Financing Diversification, Market Structure, and Stability in a Dual-Banking System," *Pacific-Basin Finance Journal* 86, no. 102461 (September 1, 2024): 1–20, <https://doi.org/10.1016/j.pacfin.2024.102461>. pp.2

⁵⁹ Jonathan Williams and Nghia Nguyen, "Financial Liberalisation, Crisis, and Restructuring: A Comparative Study of Bank Performance and Bank Governance in South East Asia," *Journal of Banking & Finance* 29, no. 8 (August 2005): 2119–2154, <https://doi.org/10.1016/j.jbankfin.2005.03.011>. Pp.2120

⁶⁰ A Special Purpose Vehicle or hereinafter referred to as an SPV in the issuance of sukuk in Malaysia is a special entity or legal entity established as the issuer of sukuk instruments and bridges transactions. SPVs are tasked with accommodating assets to be securitized, issuing sukuk certificates to investors, and distributing reward payments. The mechanism will involve the Issuer as the party representing the original issuer in issuing sukuk securities in the market; Asset Holding as a party that holds ownership of the underlying asset on behalf of the investor to comply with sharia principles; as well as risk protection parties who are tasked with preventing the risk of default or bankruptcy between the original issuer and the sukuk holder due to the legally separate SPV status. In Malaysia, the SPV framework is closely supervised and regulated by the Securities Commission Malaysia, which must ensure that governance and sharia agreements are properly implemented in sharia sukuk financial instruments.

to the underlying asset.^{61,62} With such a system and structure when faced with default, trustees in Malaysia have a clear executory right to liquidate or take over such assets in the interest of investors in accordance with the trust deed without having to compete with other concurrent creditors on a *pari passu* basis. As for such a structure, the assets on which the issuance of sukuk are no longer part of the issuer's bankruptcy portfolio so that the trustee can execute the rights to the asset for the benefit of investors in accordance with the transaction documents or better known as the asset-backed sukuk structure mechanism.⁶³ This condition provides a substantially stronger level of protection than the position of sukuk holders in the Indonesian bankruptcy system.

In contrast to Indonesia and Malaysia, Saudi Arabia as the country with the second ranking in the issuance of domestic sukuk volume (2001-2020) with an average issuance of 18,727 million USD, Saudi Arabia has shown significant progress in ensuring the protection of sukuk holders.⁶⁴ As a country that bases on the principles of sharia law, the application of bankruptcy law is inseparable from the principles of *fiqh muamalah*, including in terms of the enactment of the Saudi Bankruptcy Law issued by Royal Decree No. (M/50) dated 28/05/1439H (2018).⁶⁵ As for its realization, the legal character of sukuk is determined by the underlying contract structure. For example, in sukuk that is based on asset ownership, such as *Sukuk Ijarah* or *Sukuk Musharakah*, investors are seen as having rights to assets or beneficial rights (*usufruct*) that are the basis for issuing sukuk.⁶⁶ Therefore, in the Financial Restructuring Procedure (FRP) mechanism, these rights are in principle still respected as long as they have been

⁶¹ Kenneth Ayotte and Stav Gaon, "Asset-Backed Securities: Costs and Benefits of Bankruptcy Remoteness," SSRN Electronic Journal 24, no. 4 (2005): 1299–1335, <https://doi.org/10.2139/ssrn.687259>. pp.1312

⁶² Suruhanjaya Sekuriti (Securities Commission Malaysia), "Insolvency, Policy & Shariah: The Malaysian Context (SC-OCIS Visiting Fellowship Scholar in Residence Programme in Islamic Finance 2020-2021)" (Kuala Lumpur: Suruhanjaya Sekuriti, January 1, 2021).

⁶³ Mashiyat Tasnia, Is'haq Muhammad Mustapha, and Mohammad Hassan Shakil, "Critical Assessment of the Legal Recourse for the Case of Sukuk Default for the Asset-Backed and Asset-Based Sukuk Structures," EJIF – European Journal of Islamic Finance 21, no. 7 (July 1, 2017): 1–7. <https://doi.org/10.13135/2421-2172/2066>. pp.2

⁶⁴ "International Islamic Financial Market, "A Comprehensive Study of the Global Sukuk Market: IIFM Sukuk Report 2025 (14th Edition)," www.iifm.net (Manama, Bahrain: International Islamic Financial Market, November 1, 2025), <https://www.iifm.net/frontend/general-documents/>

⁶⁵ "Ahmed Hussain Fagehy, "Judicial Interpretation of Saudi Bankruptcy Regulations," International Journal of Criminal Justice Science 18, no. 1 (June 1, 2023): 113–131, <https://doi.org/10.5281/zenodo.4756208%20/>." pp.113"

⁶⁶ Monzer Kahf and Hiba al-Saudi, "Special Purpose Vehicles and Corporate UK: How True Is 'True Sale'?", Journal of King Abdulaziz University-Islamic Economics 29, no. 2 (October 31, 2016): 1–19, <https://doi.org/10.4197/islec.29-2.1.pp.2>

legally transferred based on contracts and transaction documents.⁶⁷ As a result, assets that have become the object of an investor's ownership or beneficial rights are not necessarily treated as part of the debtor's bankruptcy estate, thus providing a greater level of protection for sukuk holders than a system that solely qualifies them as concurrent creditors.⁶⁸

Meanwhile, in the United States, the case of East Cameron Sukuk is a 'useful example of the operation of a debtor-friendly bankruptcy and insolvency regime, initiated under Chapter 11 of the United States Bankruptcy Code in the United States Federal bankruptcy court in Louisiana.' It involves a reorganization proceeding which is described as 'relatively pro-debtor proceedings for reorganization of the business and affairs of the debtor.'⁶⁹ However, the approach still needs to be reconsidered if it were to be applied in other regions, such as the basis of the reorganization concept as well as fiqh adaptation.⁷⁰

TABLE 2: Regulatory Comparison

Jurisdiction	Systems Approach	Asset Status & Protection at Default	Impact on Sukuk Holders
Malaysia	A rigid dual banking system under the supervision of BNM & SC based on an asset-backed structure	The assets are legally transferred to an SPV (true sale), thus exiting the issuer's bankruptcy portfolio.	Investors have executory rights through trustees without having to compete with concurrent creditors (pari passu).
Saudi Arabia	Based on Sharia law (fiqh muamalah) and the Saudi	Ownership or usufruct assets are respected in the financial restructuring procedure (FRP) if legally	The underlying asset does not automatically fall into the debtor's bankruptcy estate,

⁶⁷ Abdullah Nasser Aldahmash, "Financial Restructuring Procedure: A Cross-Jurisdictional Examination of the Procedure in Saudi Arabia and United Kingdom Insolvency Law," 49 *مجلة البحوث الفقهية والقانونية*, no. 1 (May 13, 2025): 2843–2896, <https://doi.org/10.21608/jlr.2025.361286.1673.pp2845>

⁶⁸ "Saheed Abdullahi Busari, Luqman Zakariyah, and Akhtarzaite Abdul Aziz," "Sukuk Default Regulation in Malaysia and United Arab Emirates: Comparative Analysis," *International Journal of Fiqh and Usul Al-Fiqh Studies* 3, no. 1 (June 30, 2019): 90–102, <https://doi.org/10.31436/ijfus.v3i1.133>. PP. 92

⁶⁹ Islamic Financial Services Board and The World Bank, "Effective Insolvency Regimes: Institutional, Regulatory and Legal Issues Relating to Islamic Finance", 2011, available at "https://www.ifsb.org/wp-content/uploads/2023/10/Effective-Insolvency-Regimes_-Institutional-Regulatory-and-Legal-Issues-Relating-to-Islamic-Finance_En.pdf." (accessed on 15th of July 2026) p. 42.

⁷⁰ Ibid. p.42

	Bankruptcy Law transferred through a providing higher (Royal Decree contract. protection than simply No. M/50). concurrent creditors.
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Source: Primary Data (2026)

Based on the comparative analysis above, it becomes evident that while certain foreign legal mechanisms offer valuable benchmarks, indiscriminate transplantation into the Indonesian legal framework is unfeasible due to fundamental systemic differences. On the one hand, Indonesia can relevantly adopt Malaysia's strict adherence to true sale doctrine and regulatory oversight via robust SPV isolation and also Saudi Arabia's integration of fiqh-based usufruct and ownership recognition within formal restructuring procedures (FRP) to elevate sukuk holders from mere concurrent creditors by taking into account factors of affordability, custom, and trends, followed by a feasibility analysis to ensure continued relevance.⁷¹ It must be noted that the Indonesian bankruptcy regime heavily relies on statutory security rights registration (such as Hak Tanggungan or Fiducia) and the strict adherence to the *pari passu pro rata* principle, making discretionary asset segregation without proper statutory securitization legally incompatible. Therefore, regulatory reform in Indonesia must selectively adopt the robust asset-isolation features of Malaysia and Saudi Arabia while carefully harmonizing them with Indonesia's civil law-based statutory insolvency framework.

Analysis of the Case of PT Berlian Laju Tanker Tbk. in the PKPU and Bankruptcy Proceedings

Before this case was heard at the Review stage, PT Berlian Laju Tanker Tbk. First, it underwent a Debt Payment Moratorium (PKPU) process, which concluded with the Commercial Court's approval of a settlement agreement (homologation). Through this homologation ruling, the debtor was allowed to settle its obligations to its creditors in accordance with the agreed-upon debt restructuring plan. However, in its implementation, PT Berlian Laju Tanker Tbk. failed to fulfill its obligations as agreed, prompting the creditors to file a petition with the Commercial Court to annul the settlement. The court

⁷¹ "Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh: Scottish Academic Press, 1974)."

subsequently granted the petition and declared PT Berlian Laju Tanker Tbk. bankrupt, as it was proven to have neglected to carry out the terms of the settlement agreement, which had already obtained final and binding legal force. This ruling subsequently served as the basis for filing an extraordinary legal remedy in the form of a Review, which the Supreme Court subsequently decided through Decision No. 146 PK/Pdt.Sus-Pailit/2016.

Issues regarding the legal protection of sukuk holders in PKPU and bankruptcy proceedings are evident in the case involving PT Berlian Laju Tanker Tbk. The company is one of the national shipping companies that has experienced financial difficulties due to economic pressures and conditions in the shipping industry, which have impacted its ability to meet its financial obligations to creditors. These circumstances led PT Berlian Laju Tanker Tbk. to file for a Debt Payment Moratorium (PKPU) to restructure its obligations to its creditors.⁷²

During the PKPU proceedings, PT Berlian Laju Tanker Tbk. submitted a settlement plan to its creditors, which was subsequently approved and ratified by the Commercial Court through a homologation ruling. This settlement essentially serves as a legal instrument that provides the debtor with an opportunity to restructure its debt while also offering a payment mechanism that better enables creditors to have their claims satisfied. For sukuk and bondholders, the existence of a settlement agreement offers hope that the debtor's obligations can be resolved through a mutually agreed-upon payment plan.⁷³

However, in practice, PT Berlian Laju Tanker Tbk. was unable to fulfill its obligations under the settlement agreement. The debtor's failure to comply with the terms of the settlement subsequently served as the basis for the creditor to file a petition for annulment of the settlement with the Commercial Court. Pursuant to "Article 170 of Law No. 37 of 2004," if the debtor fails to fulfill the terms of an approved settlement, the creditor may petition the court to annul the settlement. Upon the court's granting of the annulment, the debtor may be declared bankrupt, and the process of settling its obligations will proceed under bankruptcy proceedings.⁷⁴

⁷² "Mahkamah Agung Republik Indonesia, Putusan Nomor 146 PK/Pdt.Sus-Pailit/2016."

⁷³ "M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan* (Jakarta: Kencana, 2019), pp. 173–176."

⁷⁴ "Indonesia, Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 170."

The case of PT Berlian Laju Tanker Tbk. is significant from the perspective of legal protection for sukuk holders because it highlights issues concerning investors' status when an issuer defaults on payments. Although sukuk holders have a legal basis in the form of ownership of sharia-compliant securities, in bankruptcy proceedings, they are still treated as unsecured creditors. This means that sukuk holders do not have priority in receiving payments from the bankruptcy estate compared to creditors who hold specific collateral or have preferential rights.⁷⁵

In addition to the issue of standing as a concurrent creditor, this case also highlights the importance of a trustee in representing the interests of sukuk holders. Given that sukuk holders may comprise numerous investors, capital market law grants the trustee authority to take certain legal actions in the best interests of holders of debt securities. In the case of PT Berlian Laju Tanker Tbk., this representation mechanism was a key aspect, as the PKPU and bankruptcy processes require a party to legally represent the collective interests of investors.⁷⁶

Thus, the case of PT Berlian Laju Tanker Tbk. demonstrates that capital market regulations and bankruptcy laws have provided protective mechanisms for sukuk holders but have not yet fully established a strong legal standing for investors. The status of sukuk holders as unsecured creditors, as well as the limited direct involvement of investors in decision-making through the trustee mechanism, indicates that challenges remain in achieving optimal legal protection for sukuk investors.

Analysis of Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016

Case No. 146 PK/Pdt.Sus-Pailit/2016 stemmed from PT Berlian Laju Tanker Tbk.'s default on its financial obligations to creditors, including holders of the company's debt securities. These financial difficulties led the company to file for a Debt Payment Moratorium (PKPU) as a debt-restructuring mechanism, providing the debtor with an opportunity to settle its payments to its creditors.

⁷⁵ Mantili and Dewi, Op.Cit., 97–108.

⁷⁶ Merry Natalia Wilar, "Analisis Yuridis..." pp. 98 - 103.

In the PKPU process, the debtor and the creditors then reach a settlement agreement, which is outlined in a settlement plan and receives approval (homologation) from the Commercial Court. Legally, homologation has a binding effect on the debtor and all creditors involved in the PKPU process. With this settlement in place, the debtor's obligations are no longer settled through ordinary payment mechanisms but rather based on a mutually agreed-upon restructuring plan.⁷⁷

However, problems arose when PT Berlian Laju Tanker Tbk. was unable to fulfil its obligations under the settlement agreement. The debtor's failure to comply with the settlement terms led the creditors to file a petition with the Commercial Court seeking to annul the settlement. The petition was based on the provisions of "Article 170 of Law No. 37 of 2004," which grants creditors the right to request the annulment of a settlement if the debtor fails to fulfil its obligations under a court-approved settlement agreement.⁷⁸

The primary legal issue in this case concerns not only the failure to repay debt but also the legal standing of holders of debt securities and sukuk in the process of settling the debtor's obligations. When a debtor enters bankruptcy proceedings due to the cancellation of a settlement agreement, questions arise regarding the legal standing of sukuk holders to obtain legal protection and how the mechanism of representation through a trustee can safeguard investors' interests.

In bankruptcy law, sukuk holders have a legal relationship as parties holding claims against the sukuk issuer. However, because they do not hold specific security interests in the debtor's assets, sukuk holders are classified as unsecured creditors. As a result of this status, sukuk holders do not have priority over separate creditors or preferred creditors in terms of payment.⁷⁹

This is a key point in analysing the legal protections afforded to sukuk holders. On the one hand, the law provides for resolution mechanisms, including PKPU and bankruptcy proceedings, to ensure that all creditors have a fair opportunity to receive payment. On the other hand, however, the status of sukuk holders as unsecured creditors exposes them to greater risk when the bankruptcy estate is insufficient to satisfy all the debtor's obligations.

⁷⁷ M. Hadi Shubhan, "*Hukum Kepailitan...*" pp. 171–176.

⁷⁸ "Indonesia, Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 170."

⁷⁹ Rika Ratna Permata Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren...." pp. 97–108.

“Supreme Court Decision No. 146 PK/Pdt.Sus-Pailit/2016” concerns a petition for review in the bankruptcy case of PT Berlian Laju Tanker Tbk. Following a prior PKPU process and the ratification of a composition agreement (homologation), the debtor was deemed unable to fulfil its obligations under the composition plan. This situation led the creditors to file a petition to annul the composition agreement, which ultimately resulted in the reinstatement of bankruptcy proceedings against the debtor.⁸⁰

In its ruling, the Supreme Court affirmed that a settlement in a PKPU proceeding is not merely a business agreement between the debtor and the creditor, but has legal consequences once approved by the court. Therefore, when a debtor fails to fulfil its obligations under an approved settlement, the creditor has the right to request the annulment of the settlement in accordance with the mechanisms outlined in “Law No. 37 of 2004 on Bankruptcy and PKPU.”⁸¹

The cancellation of the settlement demonstrates that the PKPU mechanism essentially provides debtors with an opportunity to improve their financial condition. However, that opportunity remains limited by the obligation to fulfil the terms of the agreed-upon settlement. If a debtor fails to demonstrate good faith in fulfilling its obligations, legal protection for creditors becomes the primary justification for reactivating the bankruptcy mechanism. From a bankruptcy law perspective, this reflects the principle of balance between the opportunity for the debtor to continue operating as a going concern and the protection of creditors’ rights.⁸²

In the case of PT Berlian Laju Tanker Tbk., the role of sukuk holders is critical, as they are among the creditors with a stake in the debtor’s ability to fulfill its obligations. Although sukuk holders are not directly parties to the legal relationship with the debtor during the court proceedings, their interests are represented by a trustee as provided for in “Article 51 of Law No. 8 of 1995 on the Capital Market” and further clarified in “Financial Services Authority Regulation No. 20/POJK.04/2020 on Trust Agreements for Debt Securities and/or Sukuk.” Based on these provisions, the trustee acts on behalf of holders of debt securities, including sukuk, to take legal action against the issuer in the event of default, PKPU, or bankruptcy. Nevertheless, the economic rights

⁸⁰ “Mahkamah Agung Republik Indonesia, Putusan Nomor 146 PK/Pdt.Sus-Pailit/2016.

⁸¹ Indonesia, Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 170.”

⁸² “Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU* (Jakarta: Pustaka Utama Grafiti, 2016), pp. 372–376.”

attached to sukuk holders remain with the investors as security holders. Therefore, any legal action taken during the PKPU or bankruptcy proceedings directly impacts the protection of sukuk holders' rights.⁸³

In this case, the Supreme Court also held that the status of debt security holders in bankruptcy does not automatically grant them preferential treatment over other creditors. Sukuk holders must still be subject to the principles of bankruptcy law regarding the classification of creditors. Because they do not have a security interest in specific assets owned by the debtor, sukuk holders are classified as unsecured creditors and receive payments on a pro rata basis with other unsecured creditors.⁸⁴

This situation highlights the difference between legal protection from the capital markets perspective and from the bankruptcy perspective. In the capital market, investors are protected through the principles of information disclosure, regulatory oversight, and the presence of trustees. However, in the event of bankruptcy, such protections do not grant preferential rights in the distribution of the bankrupt estate. Thus, legal protection for sukuk holders is more administrative and procedural in nature, rather than a guarantee of payment certainty should the issuer become insolvent.⁸⁵

Through an in-depth analysis of the Decision of the Supreme Court of the Republic of Indonesia No. 146 PK/Pdt. In Sus-Pailit/2016, it was revealed that the judiciary had complied with formalistic bankruptcy rules while ignoring the substantive economic realities of capital market instruments. In its legal considerations, the Supreme Court affirmed that once the debtor fails to meet the payment schedule outlined in the court-approved peace agreement (homologation), the legal consequences under "Article 170 of Law No. 37 of 2004" require the cancellation of the peace and the restoration of the debtor's status to bankruptcy. Thus, the Court affirms that the holders of debt and sukuk securities, despite having collective claims through the trustees, remain bound by the procedural provisions that are limited in the general bankruptcy regulations. Moreover, most importantly, the jurisprudence formed from this decision is focused on the argument that the commercial court will not grant

⁸³ Merry Natalia Wilar, "Analisis Yuridis...." pp. 98–103.

⁸⁴ Rika Ratna Permata Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren..." pp. 97–108.

⁸⁵ Ni Nyoman Juliantini, I Made Arjaya, and Ida Ayu Putu Widiati, "Prosedur Dan Akibat Hukum Penundaan Kewajiban Pembayaran Utang Perseroan Terbatas (Studi Kasus Putusan Nomor 03/PKPU/2010/PN. Niaga. Sby)," *Jurnal Analogi Hukum* 3, no. 1 (March 16, 2021): 101–1055, <https://doi.org/https://doi.org/10.22225/ah.3.1.2021.pp.101>.

secured *creditor status* to the bondholder only based on the terms of the issuance or contractual promise, unless the formal guarantee right has been legally charged to certain assets in accordance with the applicable legal provisions. As a result, this decision has become a dilemma: on the one hand, it provides legal certainty regarding the immediate termination of the failed restructuring plan, but on the other hand, it reinforces a rigid precedent by placing sukuk holders in a legally vulnerable position as concurrent creditors.

Based on an analysis of “Supreme Court Decision No. 146 PK/Pdt. In Sus-Pailit/2016,” it can be understood that the decision has provided legal certainty regarding the consequences of a debtor’s failure to comply with a PKPU settlement agreement. However, from the perspective of protecting sukuk investors, the decision also reveals the limitations of the legal system in granting sukuk holders a stronger position. Their status as unsecured creditors means that sukuk holders still face significant risks when the issuer enters bankruptcy.

An Evaluation of Legal Protection for Sukuk Holders in PKPU and Bankruptcy Proceedings

The case of PT Berlian Laju Tanker Tbk. demonstrates that the legal mechanisms available to sukuk holders essentially protect in the event of an issuer payment default. Through the PKPU mechanism, sukuk holders can participate in the debt restructuring process and approve the debtor’s proposed settlement plan. Furthermore, if the debtor fails to fulfil its obligations under the approved settlement, creditors retain the right to petition for the annulment of the settlement and seek resolution through bankruptcy proceedings.⁸⁶

However, the existence of such mechanisms does not yet fully ensure optimal legal protection for sukuk holders. The main issue lies in the status of sukuk holders, who are classified as unsecured creditors in bankruptcy proceedings. This status means that sukuk holders do not have the right to receive priority payment from the debtor’s assets over other creditors or preferred creditors. Thus, although sukuk holders legally possess valid claims, the realization of these rights remains contingent on the availability of the

⁸⁶ “Indonesia, Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 170.”

bankrupt estate's assets after obligations to creditors with higher priority have been satisfied.⁸⁷

From a legal protection perspective, this situation highlights the gap between normative legal protection and substantive legal protection. Normatively, sukuk holders have been provided with various protective instruments, such as disclosure obligations, oversight by capital market authorities, and representation mechanisms through trustees. However, in substance, these protections are not yet capable of fully guaranteeing investors' economic interests if the issuer defaults and enters bankruptcy proceedings.⁸⁸

This relates to the nature of sukuk investments, which essentially place the investment risk on the investor. Although sukuk transactions are based on Sharia principles, these instruments still carry business risk if the issuer experiences financial difficulties. Therefore, the legal system must strike a balance between protecting the issuer's business continuity and protecting the rights of investors as providers of funds.⁸⁹

In addition to their status as unsecured creditors, another weakness in the protection of sukuk holders lies in the limited direct involvement of investors in the dispute resolution process. In practice, the interests of sukuk holders are represented by a trustee acting as their collective representative. While this mechanism is necessary because the number of sukuk investors can be large, it can also create a disconnect between investors' individual wishes and the decisions made during PKPU or bankruptcy proceedings.⁹⁰

Restrictions on Voting Rights Through Trustees: An Analysis from the Perspective of the Principles of Legal Protection and Justice

In the capital market, the legal relationship between issuers and holders of debt securities and/or sukuk is not managed individually by each investor. Given

⁸⁷ M. Hadi Shubhan, "*Hukum Kepailitan...*" p. 48–53.

⁸⁸ Hadjon, Philipus M., *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987), pp. 2–5.

⁸⁹ Nurul Huda and Mustafa Edwin Nasution. *Investasi pada Pasar Modal Syariah*. (Jakarta: Kencana, 2008), pp.15

⁹⁰ Elvira Fitriyani Pakpahan et al., "Konsep Perlindungan Hukum Terhadap Wali Amanat di Pasar Modal," *Jurnal Hukum Samudra Keadilan* 14, no. 2 (December 26, 2019): 302–15, "https://doi.org/10.33059/jhsk.v14i2.1921. pp.304"

that the number of investors can reach hundreds or even thousands, the capital market's legal system establishes a representative mechanism through a trustee to act on behalf of and in the best interests of the security holders. The role of the trustee is intended to enhance efficiency in exercising investors' rights and to facilitate coordination in decision-making regarding the common interests of security holders.⁹¹

According to "Article 50(1) of Law No. 8 of 1995 on the Capital Market," a trustee is a party that represents the interests of holders of debt securities. In carrying out its functions, the trustee is obligated to perform its duties in good faith, with full responsibility, and by prioritizing the interests of security holders as further regulated by the provisions of the "Capital Market Law and Financial Services Authority Regulation No. 20/POJK.04/2020 concerning Trust Agreements for Debt Securities and/or Sukuk." These provisions indicate that the relationship between the trustee and sukuk holders is essentially a fiduciary relationship grounded in trust.

In sukuk issuance practices, the trustee plays a crucial role from issuance through to settlement in the event of the issuer's default. The trustee is responsible for monitoring the issuer's compliance with its obligations, providing information to investors, and taking legal action if any actions could harm sukuk holders. Therefore, the trustee serves as a legal safeguard designed to mitigate the risks faced by investors in the capital markets.

Nevertheless, the mechanism of representation through a trustee also limits sukuk holders' direct involvement in the decision-making process. In various legal proceedings, including those related to debt restructuring, PKPU, or bankruptcy, investors do not exercise their voting rights directly but rather through the trustee as a collective representative. Consequently, the will of each investor cannot always be directly expressed in decision-making processes that affect their economic rights.⁹²

This situation has sparked a debate regarding the extent to which the trustee mechanism reflects the principles of legal protection and justice. On the one hand, a representative system is necessary to ensure the efficient and

⁹¹ Adrian Sutedi, *Pasar Modal: Mengenal Nasabah sebagai Pencegahan Pencucian Uang* (Bandung: Alfabeta, 2018), pp. 214–216.

⁹² Kaiji Pangihutan, Abubakar, and Rahmawati, "Tanggung Jawab Wali Amanat Kepada Pemegang Obligasi Dalam Hal Wali Amanat Melakukan Kelalaian Terhadap Kontrak Perwaliamanatan," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (December 22, 2023): 2439–54, "https://doi.org/https://doi.org/10.37680/almanhaj.v5i2.4059. pp.2440."

effective management of the interests of a very large number of investors. Without a trustee, the decision-making process in both PKPU and bankruptcy proceedings could potentially become ineffective, as it would require the direct involvement of all sukuk holders. On the other hand, restricting investors' direct participation risks diminishing their control over decisions affecting their own rights and interests.⁹³

Delegating decision-making authority mechanism through a trustee structure, which inherently restricts sukuk holders from directly participating in corporate forums sparks vital questions regarding the true efficacy of investor rights protection. Evaluating this dilemma requires framing it through Philipus M. Hadjon's theory of legal protection. In this theory, Hadjon argues that legal protection entails not only the existence of legal rules governing relationships between parties but also the assurance that the rights of legal subjects can be effectively enforced. For sukuk holder's problems, the effectiveness of legal protection is measured not only by the presence of a trustee as a representative but also by the extent to which this mechanism ensures that investors' interests are genuinely accommodated in every legal action taken on their behalf.⁹⁴

An Analysis of Restrictions on Sukuk Holders' Voting Rights Based on the Principles of Legal Protection and Justice

The role of the trustee as the representative of sukuk holders is essentially established to provide more effective legal protection to investors. In capital markets practice, the very large number of sukuk holders makes it impossible for every investor to be directly involved in all legal processes involving the issuer. Therefore, the law grants the trustee the authority to act on behalf of investors to ensure the efficient and effective management of the collective interests of sukuk holders.⁹⁵

Through his theory, Hadjon defines legal protection as an effort to safeguarding the rights of legal subjects through mechanisms provided by the

⁹³ Puti Marceila, "Perlindungan Hukum Terhadap Wali Amanat Terkait Perjanjian Wali Amanat Dalam Penerbitan Obligasi Dan Transaksi di Pasar Modal," *Jurnal Pro Hukum* 12, no. 1 (March 19, 2023): 1046–60, "https://doi.org/https://doi.org/10.55129/v12i3.2746. pp.1050"

⁹⁴ Philipus M. Hadjon, "Perlindungan Hukum..." pp. 20–25.

⁹⁵ "Indonesia, Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal, Pasal 51."

legal system. Not only does legal protection provide certainty regarding the parties' rights and obligations, but it also ensures that those rights can be exercised effectively in practice. Hadjon distinguishes between two forms of legal protection, namely: preventive protection and repressive action. Before a dispute arises, preventive legal protection is provided to prevent rights violations through legal regulations, oversight mechanisms, or by allowing interested parties to express their views. Meanwhile, after a dispute arises, repressive legal protection is provided through legal resolution mechanisms, whether through the courts or other dispute-resolution bodies, to restore violated rights.⁹⁶

From the perspective of legal protection theory from Hadjon, this mechanism can be viewed as a form of preventive protection because it enables investors to obtain professional legal representation to address various risks that arise during the sukuk's term. Through the trustee, investors do not need to take individual legal action, which can entail high costs and coordination difficulties. Furthermore, the trustee has a legal obligation to monitor the issuer's compliance with its obligations and to take necessary steps if there are indications of a breach of contract that could harm investors.⁹⁷

On the other hand, once a debtor has been declared in default and the dispute enters the PKPU or bankruptcy process, legal protection for sukuk holders shifts to a form of repressive legal protection. Such protection is realized through dispute resolution mechanisms in court, including filing a petition to annul a settlement, review by the Commercial Court, and legal appeals for judicial review before the Supreme Court. Thus, Supreme Court Decision No. 146 PK/Pdt. Sus-Pailit/2016 constitutes the implementation of repressive legal protection by resolving disputes arising from the debtor's failure to fulfill obligations under a homologated settlement agreement.

Nevertheless, the effectiveness of such legal protections depends heavily on the trustee's ability to carry out its representative functions. In practice, sukuk holders have little direct involvement in strategic decision-making related to debt restructuring, settlement agreements, or legal actions in PKPU and bankruptcy proceedings. Consequently, the trustee's decisions may not fully reflect the will of all the investors they represent.⁹⁸

⁹⁶ Philipus M. Hadjon, "*Perlindungan Hukum...*" pp. 2–5.

⁹⁷ Indonesia, Peraturan Otoritas Jasa Keuangan Nomor 20/POJK.04/2020 tentang Kontrak Perwaliamanatan Efek Bersifat Utang dan/atau Sukuk.

⁹⁸ Muhammad Fauzi Rais and Rosewitha Irawaty, "Analisis Perlindungan Hukum Investor Terhadap Perusahaan Investasi Dalam Hal Gagal Bayar (Default)," *Jurnal Education and Development* 10, no. 3 (August 22, 2022): 322–25, <https://doi.org/DOI: 10.37081/ed.v10i3.4099>. pp.325.

From the perspective of John Rawls's theory of justice, a legal system can be considered just if it provides equal opportunities for all parties to obtain the protection of their rights. In the context of sukuk holders, the principle of justice relates not only to the final returns received by investors but also to the opportunity to participate in decision-making processes that affect their economic rights. When investors lack adequate access to express their views directly, while important decisions rest entirely in the hands of the trustee, questions arise regarding the extent to which the principle of fair participation has been realized within that system.⁹⁹

Drawing from John Rawls' theory of justice, Minggu, Jegalus, and Tan (2024) formulate two fundamental principles of justice: the principle of liberty and the difference principle.¹⁰⁰ To evaluate whether the representation mechanism aligns with Rawlsian justice, this study formulates a doctrinal baseline framework, as detailed in Table 3 below:

TABLE 3: Rawls Framework Analysis

Indicator	Sub-Indicator	Analysis
Liberty	Freedom of Opinion	The trustee's mandatory representation deprives individual sukuk holders of a direct voice in court and at creditors' meetings. Investors are unable to directly voice their objections or preferences regarding proposed debt restructuring terms during PKPU/insolvency proceedings
	Freedom of Belief	Although investors purchase sukuk based on Islamic commercial principles (sharia compliance and attachment to underlying assets), the civil insolvency framework forcibly subjects them to conventional debt-restructuring logic, ignoring the investors' Sharia-contractual expectations.

⁹⁹ Dian Pribadi Sihotang, "Pertanggungjawaban Debitor Terhadap Kreditor Konkuren Setelah Homologasi Perjanjian Perdamaian Penundaan Kewajiban Pembayaran Utang (PKPU)," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (December 2, 2024): 01–12, "https://doi.org/https://doi.org/10.62383/aliansi.v1i2.47". pp.03

¹⁰⁰ Minggu, A., Norbertus Jegalus, and Petrus Tan. "Analisis Prinsip Peredaan Menurut Rawls." *Jurnal Ilmiah Kajian Multidisipliner* 8. no. 4, (2024): pp. 27-34

	Right to Vote & Be Elected	Sukuk holders lose their direct voting rights when voting on the restructuring plan (homologation). The trustee exercises block-voting on their behalf, often without obtaining dynamic, binding instructions from each investor, thereby disenfranchising individual voting agencies.
	Right to Private Property	Under the asset-based structure, investors' economic rights over underlying assets are reduced to mere <i>in personam</i> unsecured claims (<i>pari passu pro rata parte</i>). The court decision affirms that, without formal statutory security registration, investors lose proprietary (in rem) protection over the assets.
Difference	Benefit Received by Society	The insolvency system prioritizes corporate rescue and the claims of secured creditors. Meanwhile, leaving retail sukuk investors to absorb heavy financial haircuts. This imbalance fails to allocate maximum benefit to the most vulnerable financial participants (the least advantaged).
	Equal Opportunity to Obtain Rights	Sukuk holders do not have equal procedural standing compared to secured creditors, who possess direct enforcement remedies. Representation by a trustee creates an asymmetrical barrier, preventing retail investors from directly accessing judicial remedies or negotiating terms.

Source: Primary Data (2026)

Based on the analytical framework above, the restriction of direct voting rights in favor of trustee representation does not automatically create an unbridgeable 'justice gap' merely because procedural efficiency is prioritized. However, to evaluate whether such restrictions remain normatively and procedurally justifiable, the trustee mechanism must be rigorously tested against the Six-Fold Procedural Fairness Test, such as: incorporating legitimate objective, necessity, and proportionality, information rights,

consultation/consent, accountability/remedy, and minority protection, as detailed in Table 4 below:

TABLE 4: Theory of Justice Indicator Analysis

Indicator	Analysis
Legitimate Objective	Centralizing representation through a trustee pursues a legitimate objective, such as: maintaining procedural efficiency, preventing coordination failure, and avoiding court deadlocks caused by thousands of dispersed retail investors.
Necessity & Proportionality	While collective representation is necessary to achieve efficiency and effectiveness, the complete elimination of direct voting rights is a disproportionate measure. The current mechanism lacks a proportional threshold (such as mandatory instructions for the General Meeting of Unit Holders) to balance administrative efficiency with investors' rights to make independent choices.
Information Rights	Sukuk holders typically face severe information asymmetry. Meanwhile, trustees often fail to provide timely and detailed updates on the debtor's actual financial condition, proposed restructuring, or legal strategies prior to a court vote.
Consultation & Consent	RUPS (General Meeting of Sukuk Holders) often functions as a passive, post-facto administrative formality rather than a genuine forum for meaningful consultation and binding consent before the trustee casts vote in PKPU/bankruptcy forums
Accountability & Remedy	The legal framework lacks effective civil liability standards or expedited judicial remedies against trustees who act negligently, engage in conflicts of interest, or act contrary to the best economic interests of sukuk holders.
Minority Protection	Current bankruptcy laws offer no appraisal rights or exit mechanisms (dissenters' remedies) for minority sukuk holders who object to a restructuring plan approved by the trustee or majority creditors.

Source: Primary Data (2026)

After evaluating these six indicators, we can conclude that restricting sukuk holders' direct voting rights cannot be accepted solely on administrative efficiency grounds. Meanwhile, the concept of centralized representation pursues a legitimate objective by preventing insolvency deadlocks; current regulatory practices fail the proportionality and minority protection tests. One of the problems is that sukuk suffers from severe information asymmetry, and the General Meeting of Sukuk Holders (RUPSU) often degrades into a passive formality rather than a mechanism for meaningful consent. Furthermore, current bankruptcy frameworks provide insufficient civil remedies against trustee negligence or conflict of interest.

These findings demonstrate that while a trustee mechanism is structurally necessary to safeguard collective interests, its legal justification is not automatic but strictly contingent upon robust procedural safeguards. Without statutory reforms establishing mandatory consultation thresholds, transparent disclosure, and strict trustee liability, restricting voting rights disproportionately prejudices retail and minority sukuk holders, thereby violating the substantive requirements of Rawlsian procedural justice. Therefore, the restriction of voting rights through a trustee mechanism is fundamentally justifiable, provided there are guarantees that the trustee acts transparently and accountably and truly represents investors' interests. In other words, the main issue is not only focusing on the existence of the trustee itself, but in the oversight mechanisms governing the exercise of its authority.¹⁰¹

In addition to the theory of justice, the analysis can be conducted through the lens of legal certainty. According to Gustav Radbruch opinion, legal certainty is one of the fundamental values that must be realized in a legal system.¹⁰² In the capital market field, legal certainty is necessary so that investors understand their rights and obligations and are aware of the mechanisms available to them in the event of a dispute or default. The provisions on trustees in the Capital Market Law and POJK provide a sufficiently clear legal basis for trustees' authority and responsibilities. Therefore, from a normative perspective,

¹⁰¹ Siahaan, B. I. (2022). "*Kedudukan Hukum Wali Amanat Mewakili Pemegang Obligasi di dalam Proses Penundaan Kewajiban Pembayaran utang (Studi Kasus Putusan Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat Nomor: 121/Pdt. Sus-PKPU/2018/PN. Niaga. Jkt. Pst)*" (Doctoral dissertation, Universitas Kristen Indonesia).

¹⁰² Ridwan Arifin, et al., "A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory," *Volksgeist Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (2023): 159-181, "<https://doi.org/10.24090/volksgeist.v6i2.9596>"

the mechanism of representation through trustees has essentially fulfilled the element of legal certainty.

Nevertheless, legal certainty is not always synonymous with justice. A rule may provide certainty about who has the authority to make decisions, but it does not necessarily offer adequate opportunities for participation by those affected by those decisions. In the case of PT Berlian Laju Tanker Tbk., this situation is evident in the position of sukuk holders, who a trustee legally represents but, in substance, continue to bear all the economic consequences of decisions made during both the PKPU and bankruptcy proceedings. Thus, there is a need to strengthen the trustee's mechanisms for communication, transparency, and accountability so that the legal protection provided is not merely formal but also substantive.¹⁰³

Based on this analysis, the mechanism of representation through a trustee that limits the direct voting rights of sukuk holders is essentially an arrangement intended to ensure the effective management of investors' collective interests during both PKPU and bankruptcy proceedings. However, the effectiveness of this mechanism in providing legal protection and upholding the principle of justice depends heavily on the trustee's transparent, accountable performance of its duties, which truly represents the interests of all sukuk holders. Nevertheless, this system still has weaknesses, namely, limited direct investor participation and a high degree of dependence on the quality of the trustee's performance. Therefore, regulatory strengthening is needed to govern transparency, reporting, and consultation mechanisms with sukuk holders, so that investors' interests can be more effectively protected during both the PKPU and bankruptcy processes.

Strengthening Legal Protection for Sukuk Holders in PKPU and Bankruptcy Proceedings

The development of the Islamic capital market in Indonesia shows that sukuk have become an increasingly popular investment instrument among the public and financial institutions alike. However, the rising number of sukuk issuances must be balanced by an adequate legal protection system, particularly when an issuer faces financial difficulties that lead to PKPU or bankruptcy. The case of PT Berlian Laju Tanker Tbk. demonstrates that although sukuk holders

¹⁰³ Mahfuzoh and Nur Khasanah Khanifa, "Perlindungan Hukum..."

receive protection through the trustee mechanism and the bankruptcy process, their status as unsecured creditors still leaves them vulnerable to significant financial losses.

From an investor protection perspective, one area that needs strengthening is information transparency throughout the PKPU and bankruptcy processes. Sukuk investors are generally not directly involved in debt-restructuring negotiations and therefore rely heavily on information provided by the trustee. Therefore, a more comprehensive and regular reporting mechanism is needed from the trustee to sukuk holders regarding developments in legal proceedings, the debtor's financial condition, and various decisions to be made in creditor forums. Adequate transparency will enhance investors' ability to understand the risks they face and reduce the potential for information asymmetry.¹⁰⁴

In addition to transparency, strengthening trustee accountability is critical. Under the current system, trustees have broad authority to represent investors' interests in various legal actions. This extensive authority must be balanced by clear accountability mechanisms to ensure that every decision made truly reflects the interests of sukuk holders. Therefore, it is necessary to strengthen regulations requiring consultation with sukuk holders before making strategic decisions that could significantly affect the value of their investments.¹⁰⁵

Legal protections can also be strengthened by optimizing the role of the Financial Services Authority (OJK) as the capital market regulator. The OJK not only oversees compliance with capital market regulations but also plays a crucial role in maintaining investor confidence in the Islamic capital market. In the context of sukuk defaults, the OJK can strengthen oversight of trustees' performance of their duties and promote the implementation of better investor protection standards through more detailed regulations and technical guidelines.¹⁰⁶

In addition, it is necessary to develop more inclusive mechanisms for investor participation in the debt restructuring process. Although a representative system through a trustee remains necessary for efficiency, sukuk holders should be given greater opportunity to voice their opinions on decisions that directly impact their economic rights. The use of information technology and electronic voting systems can be one alternative that allows investors to

¹⁰⁴ Otoritas Jasa Keuangan, *Roadmap Pasar Modal Indonesia 2023–2027*.

¹⁰⁵ Indonesia, "POJK Nomor 20/POJK.04/2020 tentang Kontrak Perwaliamanatan Efek Bersifat Utang dan/atau Sukuk."

¹⁰⁶ Otoritas Jasa Keuangan, *Roadmap Keuangan Syariah Indonesia 2020–2024*.

participate without hindering the effectiveness of the decision-making process.¹⁰⁷

From an economic law perspective, strengthening legal protections for sukuk holders is also crucial for maintaining the stability and sustainability of the Islamic capital market. A high level of investor protection will boost public confidence in sukuk instruments and ultimately drive the growth of the Islamic capital market as a whole. Conversely, weak investor protection can dampen investment interest and hinder the development of Islamic financial instruments as a source of financing for national development.¹⁰⁸ The approach in the case of East Cameron Sukuk can be adopted to preserve the rights of the sukuk holders.

Thus, legal protection for sukuk holders is insufficient if it is limited to recognizing their status as creditors in bankruptcy proceedings. Such protection must be realized through a system that ensures transparency, accountability, investor participation, and effective oversight of the parties representing investors' interests. Reforms in these areas will strengthen the position of sukuk holders and create a better balance among the interests of issuers, trustees, and investors in resolving disputes through both the PKPU mechanism and bankruptcy proceedings.

Based on Supreme Court Decision No. 146 PK/Pdt. In Sus-Pailit/2016, the restriction of sukuk holders' voting rights through a trustee mechanism is, in principle, still consistent with Indonesia's capital market legal system, which prioritizes collective investor representation. However, the case of PT Berlian Laju Tanker Tbk. also demonstrates that the legal protection afforded to sukuk holders has not yet been fully effective in eliminating the vulnerabilities arising from their status as unsecured creditors in PKPU and bankruptcy proceedings. Investors' reliance on the trustee's actions means that the effectiveness of legal protection depends heavily on the quality of the trustee's performance of its representative functions. Therefore, in addition to maintaining the trustee mechanism as an instrument of investor representation, it is necessary to strengthen transparency, accountability, participation, and oversight so that legal protection for sukuk holders is not merely formal but also capable of

¹⁰⁷ Nathania Diva Davina, Elisatris Gultom, and Ema Rahmawati, "Perlindungan Hukum Investor Dalam Kepailitan Manajer Investasi Ditinjau Dari Hukum Kepailitan Dan Hukum Pasar Modal," *Jurnal Sains Sosio Humaniora* 7, no. 1 (June 28, 2023): 101–15, "https://doi.org/https://doi.org/10.22437/jssh.v7i1.23757. pp.103"

¹⁰⁸ Otoritas Jasa Keuangan, *Roadmap Pasar Modal Indonesia 2023–2027* (Jakarta: OJK, 2023).

providing substantive protection for investors' economic rights in the process of resolving the debtor's debts.¹⁰⁹

Building upon previous discussions regarding general principles and values aimed at strengthening legal protections for *sukuk* holders during suspension of debt payment obligations (PKPU) and bankruptcy proceedings, the author has successfully formulated seven policy packages, including: [1] Amendment to POJK No. 20/POJK.04/2020; [2] Mandatory Periodic Reporting; [3] Material-Decision Consultation Threshold; [4] Electronic Voting Protocol; [5] Trustee Liability Standard; [6] Mandatory Conflict Disclosure; [7] Enhanced OJK Supervision and Administrative Sanctions. This policy proposal focuses on regulatory aspects, specifically POJK No. 20/POJK.04/2020 and the institutional capacity of the Financial Services Authority (OJK); the details of this reform are outlined in the following table:

TABLE 5: Policy Proposal

Policy Recommendations		Analysis
Amendment to POJK No. 20/POJK.04/2020		Otoritas Jasa Keuangan must issue a binding amendment introducing a dedicated chapter on "Trustee Conduct and Duties During Debtor Insolvency and PKPU Proceedings," removing existing ambiguities regarding the scope of trustee discretion in court forums.
Mandatory Reporting	Periodic	The amended POJK must obligate trustees to submit bi-weekly progress reports to all registered sukuk holders during PKPU restructuring and monthly reports during bankruptcy liquidation. These reports must detail the debtor's actual asset condition, restructuring proposal terms, and official creditors' meeting minutes.
Consultation Threshold		Trustees must be legally prohibited from voting on critical PKPU milestones (e.g., approving a restructuring plan haircut, debt-to-equity swaps, or settlement annulment) without prior authorization from

¹⁰⁹ Rika Ratna Permata Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren..." pp.99.

		the General Meeting of Sukuk Holders (RUPS). A statutory quorum of at least 67% (two-thirds) of total outstanding sukuk voting value must be mandated for any binding instruction given to the trustee.
Electronic Voting Protocol (e-Voting & e-Proxy)		To overcome geographic fragmentation and ensure meaningful participation of retail investors, OJK must mandate an institutionalized e-voting protocol integrated into the KSEI (Indonesia Central Securities Depository) platform (e-RUPS), enabling real-time, authenticated investor voting on restructuring terms.
Trustee Liability Standard		Article 50 of the Capital Market Law and POJK No. 20/2020 must be complemented by a strict civil liability standard (gross negligence and breach of fiduciary duty). Trustees who vote contrary to the explicit RUPSU majority resolution or act with gross negligence during restructuring negotiations shall be held directly liable for financial damages suffered by investors
Mandatory Disclosure	Conflict	The regulatory framework must require trustees to file a Sworn Disclosure of Conflict of Interest with OJK and sukuk holders within 48 hours of a debtor entering PKPU. If the trustee bank also serves as a commercial lender or creditor to the same debtor, an automatic recusal or independent co-trustee appointment must be legally triggered.
Strengthening Supervision and Administrative Sanctions	OJK and	OJK's Capital Market Oversight Division must establish a specialized audit oversight for defaulted sukuk issuers. OJK should be empowered to impose administrative fines, temporary suspensions, or license revocations on trustee institutions that fail to comply with

consultation thresholds or disclosure mandates.

Source: Primary Data (2026)

To ensure the viability of the policy proposal, the author also analyzed it for alignment with the Smart Regulation paradigm, evaluating the proposed policy package against specific indicators: holistic, inclusive, proportional, responsive, and supportive.^{110,111} The evaluation status for each indicator is classified as Fulfilled, Partially Fulfilled, or Unfulfilled, as detailed in Table 6 below:

TABLE 6: Proposal Alignment with the Smart-Regulation Framework Analysis

Indicator	Assessment Criteria	Status	Justification
Holistic	Integrates capital market regulations (POJK No. 20/2020) with civil insolvency law (Law No. 37/2004) and Sharia governance principles	Partially Fulfilled	Amending POJK 20/2020 successfully harmonizes capital market oversight and trustee conduct. However, full integration remains partial until Law No.

¹¹⁰ "Smart regulation" is a modern regulatory approach from Gunningham and Sinclair (2017), which were subsequently developed by the European Union and the OECD. Conceptually, this approach is characterized by responsiveness, adaptability, and support for innovation by applying measures that are incremental, proportionate, and risk-based. It prioritizes non-prescriptive instruments in the initial stages, escalating policy measures only when necessary to support technological and digital economic development as well as market openness. Thus, smart regulation can be understood as an inclusive instrument of regulatory design that leverages a combination of hard law, soft law, stakeholder engagement, and continuous learning mechanisms. Neil Gunningham and Darren Sinclair, "8. Smart Regulation," in *Regulatory Theory: Foundations and Applications* (Acton, A.C.T.: ANU Press, 2017), 133-135

¹¹¹ Yeong Zee Kin (2021) outlines a key framework for regulation-making the "smart-regulation framework" characterized by the following elements: holistic, inclusive, proportional, responsive, and supportive. He argues that implementing and analyzing this smart-regulation framework requires grounding the analysis in three aspects: *first*, socio-cultural connectivity; *second*, the ability to respond to market needs (intelligence); and *third*, the capacity to utilize historical data to guide future policy (data-driven). Zee Kin Yeong, "Smart Regulation: Implementing a Responsive Regulatory Regime in Singapore," in "The Asia-Pacific Europe Law Institutes Alliance (APELIA) Conference 2021 on Artificial Intelligence (AI), Trade, and the Rule of Law." (Singapore: Singapore Academy of Law, 2021), 1-11. "http://dx.doi.org/10.2139/ssrn.5093148"

				37/2004 itself is amendeded by Parliament to formally recognize Sharia asset-isolation in court.
Inclusive	Guarantees active participation and voting access for all tiers of sukuk holders (retail, institutional, and minority holders).	Fulfilled	Mandating a 67% RUPSU consultation threshold and integrating KSEI's e-voting protocol democratizes participation, eliminating geographical barriers for retail investors.	
Proportional	Balances corporate restructuring efficiency with the protection of investor property rights without imposing excessive administrative burdens.	Fulfilled	The 67% quorum threshold applies strictly to material decisions (restructuring haircuts/cancellations), leaving routine administrative decisions to trustee discretion, thus avoiding court deadlocks.	
Responsive	Provides swift regulatory enforcement, conflict disclosures, and immediate civil remedies in cases of default or trustee misconduct	Fulfilled	Enforcing a mandatory 48-hour conflict disclosure and establishing strict liability for gross negligence ensures rapid market responsiveness during debt crises.	
Supportive	Fosters market stability, reinforces investor confidence, and supports	Fulfilled	Reducing default risks and enhancing trustee accountability directly stabilizes the Islamic	

national sustainable finance goals (SDG-16)	capital encouraging public participation	market, broader
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Source: Primary Data (2026)

Based on the analysis of the table, the policy package proposed by the author generally meets all indicators of the “smart regulation” framework. Although the “holistic” indicator is rated as “Partially Fulfilled” due to the structural divide between administrative OJK regulations and statutory civil bankruptcy law (Law No. 37/2004), this limitation does not undermine the immediate efficacy of the proposed regulatory amendments. Targeted revisions to POJK No. 20/POJK.04/2020 offering a pragmatic, short- to medium-term legal remedy that significantly strengthens the substantive position of sukuk holders without requiring a lengthy legislative overhaul.

Conclusion

Legal protection for sukuk holders in the process of postponing Debt Payment Obligations and bankruptcy is formally accommodated through capital market instruments, the right to apply for the cancellation of peace agreements, and collective representation through trustees. However, this protection is not optimal because the bankruptcy law in Indonesia strictly treats sukuk holders as concurrent creditors, subject to the principle of *pari passu pro rata parte*, and does not recognize asset-based or contractual protections absent the registration of formal statutory guarantees. Therefore, the original doctrinal contribution of this study reveals a systemic conflict between capital market instruments and civil bankruptcy frameworks, with comparative insights from Malaysia and Saudi Arabia showing that true asset isolation requires a formal legal mechanism, as reflected in “Supreme Court Decision No. 146 PK/Pdt.Sus-Parilit/2016.”

Furthermore, the restriction of the voting rights of sukuk holders through the trustee mechanism has been in line with the principles of legal certainty and the efficiency of collective representation based on capital market law, but has not fully met the principle of substantial justice and the theory of effective legal protection of Philipus M. Hadjon due to the lack of direct investor participation and high dependence on the performance of trustees. To address

these vulnerabilities, this study's regulatory contribution emphasizes the urgency of reform by the Otoritas Jasa Keuangan to strengthen transparency, accountability, and technology-based consultation mechanisms. Finally, this study has limitations in its focus on Indonesia's bankruptcy jurisdiction and the comparative framework of Malaysia and Saudi Arabia, thereby opening space for future research to explore cross-border legal harmonization and alternative dispute resolution models for Islamic financial instruments.

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