

Green Bonds Investors Protection Against the Risk of Greenwashing Based on POJK Number 60 of 2017

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Abstract. The Indonesian government has shown its commitment to reduce carbon emissions through Enhanced Nationally Determined Contribution targets. A large investment flow is needed to finance green projects, one of which can be obtained through the issuance of green bonds. Green bonds issuance in Indonesia is quite rapid, reaching up to USD 2.75 billion and USD 1.27 billion in 2018, 2019 and 2020. This was made possible by The Financial Services Authority (OJK) Regulation Number 60/POJK.04/2017 concerning Issuance and Requirements for Green Bonds (POJK GB). Unfortunately, the credibility of green bonds is questioned and this article will examine to what extent POJK GB provides protection to investors from the risk of greenwashing. A normative juridical approach is used to analyze the risk of greenwashing in POJK GB. Furthermore, interpretation analysis techniques and systematic interpretation of the research material were carried out. The results found that POJK GB had not provided maximal preventive and repressive protection as it only required Issuers to meet green requirements without specifying the criteria, obtain an Environmental Expert assessment without verification on its capability, and carry out disclosure and reporting without mentioning the level of quality of information. Repressive protection is also carried out in the form of administrative sanctions. It can be concluded that the POJK has not guaranteed investors from the risk of greenwashing.

Keywords: Green Bond, Greenwashing, Legal Protection, Investor Protection, Capital Market

Abstrak. Pemerintah Indonesia berkomitmen kuat untuk mengurangi emisi karbon melalui target Enhanced Nationally Determined Contribution. Aliran investasi yang besar diperlukan untuk mendanai proyek-proyek hijau, salah satunya didapatkan melalui penerbitan Green bond (obligasi hijau). Penerbitan Green bond di Indonesia dapat dikatakan cukup pesat mencapai USD2,75 miliar dan USD 1,27 miliar pada tahun 2018, 2019 dan 2020. Hal ini dapat terjadi karena Otoritas Jasa Keuangan (OJK) mengeluarkan Peraturan Nomor 60/POJK.04/2017 tentang Penerbitan dan Persyaratan Efek Bersifat Utang Berwawasan Lingkungan (POJK GB). Meski begitu, terdapat kekhawatiran terkait kredibilitas green bond sehingga perlu diketahui sejauh mana POJK GB memberikan perlindungan terhadap resiko greenwashing. Artikel ini merupakan hasil penelitian yuridis normatif dimana POJK GB menjadi objek utama aturan yang diteliti. Selanjutnya dilakukan teknik analisis interpretasi dan penafsiran sistematis terhadap bahan penelitian. Hasilnya ditemukan bahwa POJK GB belum maksimal dalam memberikan perlindungan preventif dan represif karena POJK GB hanya mewajibkan Emiten untuk memenuhi persyaratan KUBL tanpa memberikan kriteria yang jelas, memperoleh penilaian Ahli Lingkungan tanpa adanya verifikasi kompetensi, dan melakukan pengungkapan dan pelaporan tanpa memberikan standar kualitas informasi. Pelindungan represif juga hanya diberikan melalui sanksi administratif. Disimpulkan bahwa POJK belum bisa menjamin investor terhindar dari risiko greenwashing.

Kata kunci: Green Bond, Greenwashing, Pelindungan Hukum, Pelindungan Investor, Pasar Modal

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INTRODUCTION

Climate change, which triggers extreme weather and disrupts global stability, has prompted nations worldwide to convene and set targets to limit the rise in Earth's temperature.¹ This agreement is known as the Paris Agreement, and Indonesia is one of the participating countries that ratified it through Law Number 16 of 2016 on the Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change. Additionally, Indonesia has committed to considering environmental sustainability in its development through Presidential Regulation Number 59 of 2017 on the Implementation of Achieving Sustainable Development Goals. As an archipelagic country, Indonesia is highly vulnerable to the adverse impacts of climate change, such as rising sea levels,² droughts, floods, landslides,³ and more. Through the Enhanced Nationally Determined Contribution (NDC) target, Indonesia has pledged to reduce greenhouse gas (GHG) emissions by 31.89% with domestic efforts and by 43.20% with international support.

To achieve these targets, it requires significant financial flows and capital investments to fund low-carbon projects⁴ such as renewable energy, energy efficiency, pollution management, and more. One increasingly significant funding source for green projects is the issuance of green bonds.⁵ Green bonds are debt securities whose proceeds are invested in environmentally friendly ways. Through this product, the public can participate by investing in environmentally conscious projects.

¹ Pertemuan ini adalah sesi tahunan ke-21 dari Konferensi Para Pihak (COP) Konvensi Kerangka Kerja PBB tentang Perubahan Iklim (UNFCCC) 1992 dan sesi ke-11 dari Pertemuan Para Pihak Protokol Kyoto 1997. Perjanjian Paris mulai berlaku pada 30 November 2016. Lihat: UNFCCC, "Landmark Climate Change Agreement to Enter into Force" dikutip dari <https://unfccc.int/news/landmark-climate-change-agreement-to-enter-into-force>. Diakses 8 Des. 2024.

² BPHN. "Bahas Isu Kenaikan Permukaan Laut, Indonesia Utamakan Kepastian dan Keseimbangan Hukum." Badan Pembinaan Hukum Nasional, 18 Okt. 2023, <https://bphn.go.id/publikasi/berita/2023101808510182/bahas-isu-kenaikan-permukaan-laut-indonesia-utamakan-kepastian-dan-keseimbangan-hukum>. Diakses 6 Des. 2024.

³ BRIN. "Potensi Dampak Perubahan Iklim terhadap Lingkungan." Badan Riset dan Inovasi Nasional, 4 Des. 2023, <https://www.brin.go.id/news/116543/potensi-dampak-perubahan-iklim-terhadap-lingkungan>. Diakses 6 Des. 2024.

⁴ Pasal 2.1(c) Paris Agreement to the United Nations Framework Convention on Climate Change.

⁵ Juan Antonio K, dkk. *Transforming Green Bond Markets: Using Financial Innovation and Technology to Expand Green Bond Issuance in Latin America and the Caribbean*, (Inter-American Development Bank, 2019),4.

The estimated funding needed for green projects in Indonesia by 2030 is substantial, amounting to approximately IDR 67.8 trillion⁶ or USD 4.7 billion. Between 2018 and 2020, the issuance of green bonds and green sukuk in Indonesia grew rapidly, reaching USD 2.75 billion and USD 1.27 billion, respectively.⁷ This progress was possible due to the issuance of the Financial Services Authority Regulation (POJK) Number 60/POJK.04/2017 concerning the Issuance and Requirements for Environmentally Friendly Debt Securities (POJK GB), which became a key driver for developing the green bond market in Indonesia. However, there remains a significant gap between the funding needs for green projects and their fulfillment.

Globally, there are concerns about the credibility of the "green" aspects of green bonds, as existing regulations are deemed insufficient to protect investors from greenwashing. This includes issues related to information transparency, the quality of reporting, and investor protection. This is concerning, as the green bond market has grown exponentially since 2015, demonstrating significant potential to scale up and meet the financing needs of low-carbon projects. It would be unfortunate if this opportunity were hindered by the credibility issues surrounding green bonds themselves. Are the proposed projects genuinely having a positive environmental impact? Are the investment funds fully allocated to environmental projects? Are the information and reports provided accurate and reflect realities on the ground? What categories of projects can be considered environmentally friendly?

These questions arise because, at present, there is no agreement on standardized green bond categories to determine whether a bond is truly "green."⁸ While private institutions, states, and regional organizations have established their own standards, there is no universally recognized international standard, which increases the risk of "greenwashing."⁹ Greenwashing refers to the practice of making unfounded claims

⁶ Otoritas Jasa Keuangan, *Roadmap Keuangan Berkelanjutan Tahap II*, (2021):17, <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Documents/Pages/Roadmap-Keuangan-Berkelanjutan-Tahap-II-%282021-2025%29/Roadmap%20Keuangan%20Berkelanjutan%20Tahap%20II%20%282021-2025%29.pdf>

⁷ Climate Bonds Initiative, *Unlocking Green Bonds in Indonesia: a Guide for Issuers, Regulators and Investors*, (2019): 4, <https://www.climatebonds.net/files/reports/climate-bonds-indo-barriers-20191219.pdf>

⁸ OECD, "Mobilising Bond Markets for a Low-Carbon Transition" *Green Finance and Investment*, (2017): 38

⁹ Dewi Tamara, dkk, *Keberlanjutan dalam Perspektif Bisnis dan Inklusifitas*, (Surabaya: Scopindo Media Pustaka, 2021), 56.

about a company's environmental commitments. In simpler terms, it involves providing misleading or false information about environmental efforts. In the context of green bond issuance, issuers can be accused of greenwashing if they claim their projects are environmentally friendly but fail to provide tangible evidence of environmental benefits during implementation.

To mitigate this risk, it is essential to ensure that the proceeds from green bond issuance are genuinely used to finance green projects, as outlined in the registration statement and prospectus, which serve as a basis for investors' decisions. Governments must intervene by creating regulations for green bonds to provide legal certainty and protect investors from greenwashing risks. As an independent state institution mandated to implement sustainable finance,¹⁰ the Financial Services Authority (OJK) issued Regulation Number 60/POJK.04/2017 on Issuance and Requirements for Green Bonds (POJK GB). While this regulation establishes criteria for green bond issuance, further examination is needed to determine whether it adequately protects against greenwashing risks. Understanding this is crucial for enhancing public trust in Indonesia's green bonds, ensuring that funding for green projects can be realized.

Previous research has not comprehensively and deeply analyzed the greenwashing risks from the POJK GB. At least two studies have addressed the legal aspects of green bond regulations in Indonesia. The first is a study by Josua L. Tobing, which discusses how green bond regulations in Indonesia address challenges in implementing green bonds in the capital market. This study focuses on implementation issues and elaborates on existing regulations, such as POJK GB, OJK Regulation Number 51/POJK.03/2017 on the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies; and Presidential Regulation Number 77 of 2018 on Environmental Fund Management. While greenwashing is mentioned in this research, it is not a central topic of discussion.

¹⁰ Pasal 4 (n) UU P2SK

The second study is a thesis by Niken A. Lestari, examines the forms of legal protection for green bond investors against greenwashing risks in POJK and compares regulations between Indonesia and the People's Republic of China. Although the legal issues discussed may seem similar, the approaches and conclusions differ. The thesis concludes that POJK GB lacks preventive legal protection and instead provides repressive legal protection through the Capital Market Law. This paper also concludes that POJK GB offers repressive protections, including administrative sanctions and mechanisms for buybacks or compensation. Moreover, previous studies have not analyzed POJK GB articles related to greenwashing, making this paper novel as it provides a more comprehensive examination of green bond requirements under POJK GB. The recommendations and solutions offered are based on analyses of existing international rules and standards rather than cross-country comparisons of green standards, as done in earlier studies.

METHODOLOGY

This article is the result of normative juridical research, with POJK GB serving as the primary regulatory object under review. Normatively, related regulations such as the Capital Market Law, Consumer Protection Law, Financial Sector Development and Strengthening Law (P2SK), OJK Regulation on Consumer and Community Protection in the Financial Services Sector (POJK PKMSJK), as well as legal doctrines, principles, and theories, are used as the basis for analysis. These regulations are examined hierarchically and assessed for their specificity or generality, and recent or older. Through a normative juridical approach and the use of legal materials, analytical techniques such as grammatical and systematic interpretations are employed to interpret the relationship between articles or regulations. Document studies, including books, articles, and literature reviews, are also utilized to provide a deeper contextual understanding of POJK GB.

RESULT AND DISCUSSION

Legal Protection on Investors in the Capital Market

Legal Protection is understood as protection granted to legal subjects, either individuals or legal entities, in the form of mechanisms that are both preventive and repressive.¹¹ Satjipto Rahardjo describes legal protection as providing safeguard to human rights harmed by others and offering such protection to the community so they can fully enjoy the rights granted by law.¹² Thus, legal protection can be interpreted as a form of protection enshrined in legislation.¹³ Philipus M. Hadjon also explains that legal protection can be viewed from two perspectives: preventive and repressive. Preventive legal protection aims to prevent disputes by minimizing problems and avoiding the consequences of those problems. On the other hand, repressive legal protection focuses on resolving disputes that have arisen, emphasizing efforts to find a form of dispute settlement that can defend the rights of the parties involved.¹⁴

Law Number 8 of 1999 on Consumer Protection states that consumer protection includes all efforts to ensure legal certainty in providing protection to consumers.¹⁵ Legal certainty is a key legal measure to achieve justice for all parties,¹⁶ including green bond investors. Legal certainty provides assurance to individuals to act in accordance with applicable legal provisions, fostering order in society.¹⁷ Normatively, legal certainty is realized through regulations that are clear (unambiguous) and do not conflict with other norms (logical).¹⁸ The principle of legal certainty offers protection against arbitrary actions, ensuring that individuals can expect and achieve specific

¹¹ Marbun, Eldbert Christanto Anaya "Mengkaji Kepastian Hukum dan Pelindungan Hukum Terhadap Investasi di Indonesia Melalui Lembaga Perizinan Online Single Submission (OSS)," *Jurnal Fakultas Hukum Universitas Indonesia Dharmasiswa*, Vol. 1, No 4, (2021):1752, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?Pasal=1133&context=dharmasiswa>

¹² Marbun, Eldbert Christanto Anaya "Mengkaji Kepastian Hukum dan Pelindungan Hukum Terhadap Investasi di Indonesia Melalui Lembaga Perizinan Online Single Submission (OSS)," *Jurnal Fakultas Hukum Universitas Indonesia Dharmasiswa*, Vol. 1, No 4, (2021):1752, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?Pasal=1133&context=dharmasiswa>

¹³ Fitria Dewi Navisa, *Mitigasi Risiko Politik dalam Investasi Penanaman Modal*, (Gresik: Thalibul Ilmi Publishing & Education, 2023), 3.

¹⁴ Phlippus M. Hadjon, *Pelindungan Hukum Bagi Rakyat di Indonesia*, (Cetakan I) (Jakarta: Bina Ilmu,1987), 205.

¹⁵ Pasal 1(1) Undang-Undang Nomor 8 tahun 1999 tentang Pelindungan Konsumen.

¹⁶ CST Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Cetakan VIII)(Jakarta: Balai Pustaka, 1989), 3.

¹⁷ Fitria Dewi Navisa, *Mitigasi...*, 9.

¹⁸ *ibid.*

outcomes under certain circumstances.¹⁹ Legal certainty also requires the creation of regulations by competent authorities to ensure they possess juridical aspects that guarantee the law functions as enforceable rules.²⁰

Investors, as consumers in the financial services industry, also have the right to protection in conducting investment or capital placement activities.²¹ Specifically, the Financial Services Authority (OJK) issued Regulation Number 22 of 2023 on Consumer and Community Protection in the Financial Services Sector, which requires Financial Service Providers (PUJK) to act in good faith in conducting business activities.²² One of the principles emphasized is openness and transparency regarding product and/or service information.²³ The Law Number 8 of 1995 on the Capital Market (UUPM) also stipulates that for the Capital Market to develop, a solid legal foundation is needed to better guarantee legal certainty for parties operating in the market and to protect the interests of investors from harmful practices.²⁴ The UUPM prohibits issuers from providing false or misleading information in public offerings, whether through omissions or discrepancies with material facts.²⁵

The capital market itself encompasses activities related to public offerings and the trading of securities.²⁶ These public offerings are conducted by entities known as **issuers**. Securities refer to financial instruments, including debt acknowledgment notes, commercial papers, shares, bonds, and similar instruments. A public offering is conducted by an entity known as the issuer (*emiten*). Meanwhile, securities (*efek*) refer to financial instruments such as debt acknowledgment notes, commercial papers,

¹⁹ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*, (Bandung: Citra Aditya Bakti, 1993), 2.

²⁰ Fitria Dewi Navisa, *Mitigasi...*, 14.

²¹ Vidya Noor R, "Pelindungan Hukum Bagi Investor Dalam Pasar Modal Menurut Undang-Undang Pasar Modal dan Undang-Undang Otoritas Jasa Keuangan", *Pena Justisia: Media Komunikasi dan Kajian Hukum* Vol. 18, No. 2, (2019):93, <https://jurnal.unikal.ac.id/index.php/hk/article/view/1093/793>

²² Pasal 4 (1) POJK Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan

²³ Pasal 3(2)b. POJK Nomor 22 Tahun 2023 tentang Pelindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan

²⁴ Menimbang (b) Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal (UUPM).

²⁵ Pasal 80 (1) UUPM. Fakta Material merujuk pada Pasal 1 (7) yaitu adalah informasi atau fakta penting dan relevan mengenai peristiwa, kejadian, atau fakta yang dapat mempengaruhi harga Efek pada Bursa Efek dan atau keputusan pemodal, calon pemodal, atau Pihak lain yang berkepentingan atas informasi atau fakta tersebut.

²⁶ Pasal 1(13) UUPM.

shares, bonds, and others.²⁷ The Capital Market Law (UUPM) serves as a realization of legal protection by regulating supervising authorities, guarantors, dispute resolutions, as well as the rights, obligations, and sanctions that may apply in capital market activities. Since 2011, all regulations and supervision across all financial services sectors, including the capital market, have been managed by the Financial Services Authority (OJK), which is authorized to issue regulations or OJK decisions (POJK).²⁸

As the enforcer of the Capital Market Law and the Financial Services Authority Law, OJK is tasked with issuing technical regulations on the trading of green bonds to provide a legal foundation and certainty for issuers conducting public offerings of environmentally sustainable debt securities (*green bonds*).²⁹ These regulations are then examined to determine whether they provide sufficient protection to investors against the risk of greenwashing.

Green Bond Regulation in Indonesia

Green bonds, as a financial product traded in the capital market, are specifically regulated under OJK Regulation Number 60/POJK.04/2017 on the Issuance and Requirements for Environmentally Sustainable Debt Securities (Green Bonds). This regulation has binding legal authority as it is mandated by higher regulations (e.g., the Capital Market Law) and formulated based on authority (e.g., the Financial Services Authority Law).³⁰ Furthermore, the Financial Services Sector (SJK) plays a critical role in accelerating the transition from conventional business models to a sustainable one.³¹ As the regulator of SJK who is responsible for fostering a green economy,³² thus OJK issued regulations on the issuance of green bonds to provide legal certainty and promote the development of green bonds in Indonesia.³³

²⁷ Pasal 1(5) UUPM.

²⁸ Pasal 8 Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan.

²⁹ Menimbang c. POJK GB

³⁰ Pasal 8 ayat (1) Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan

³¹ Otoritas Jasa Keuangan, *Roadmap*..., 9.

³² Otoritas Jasa Keuangan, *Laporan Kajian Pengembangan Green Bond di Indonesia*, (2016):2, <https://ojk.go.id/sustainable-finance/id/publikasi/riset-dan-statistik/Documents/Pengembangan%20%20Green%20%20Bonds%20%20di%20Indonesia.pdf>

³³ Otoritas Jasa Keuangan, *Laporan* ..., 3.

Prior to this regulation, OJK has published the Sustainable Finance Roadmap Phase I (2015–2019) and Phase II (2021–2025), which outlined strategies for achieving low-carbon economic growth in Indonesia.³⁴ According to these roadmaps, the development of green bonds is identified as a viable alternative for environmentally friendly financing in the capital market.³⁵ The key distinction between green bonds and traditional bonds lies in their financing objectives, which are exclusively dedicated to environmentally sustainable projects.³⁶ Therefore, based on the roadmap, it led to the formulation of green bonds regulation that address at least three aspects to ensure the certainty of this investment product, namely:

1. Green Project Requirements

OJK Regulation on Green Bonds (POJK GB) stipulates that projects eligible for funding through Environmentally Sustainable Debt Securities (green bonds) must be business activities and/or other initiatives aimed at protecting, improving, and/or enhancing the quality or functionality of the environment. These are collectively referred to as Environmentally Sustainable Business Activities (KUBL).³⁷ Article 4 identifies 11 types of KUBL, which include:

1. Renewable Energy;
2. Energy Efficiency;
3. Pollution Prevention and Control;
4. Biological Resources Management and Sustainable Land Utilization;
5. Conservation of Land and Aquatic Biodiversity;
6. Environmentally-friendly Transportation;
7. Sustainable Water and Water Waste Management;
8. Climate Change Adaptation;
9. Product that can decrease the use of resources and produces less pollution (eco-efficient);
10. Environmentally friendly buildings that meet the nationally, regionally or internationally recognized standards or certifications; and

³⁴ *ibid.*

³⁵ Bareksa, “OJK Terbitkan Peraturan Obligasi Daerah, Green Bonds dan e-Registration”, Retrieved February 25, 2023 from <https://www.bareksa.com/berita/berita-ekonomi-terkini/2017-12-29/ojk-terbitkan-peraturan-obligasi-daerah-green-bonds-dan-e-registration>

³⁶ Muliaman D. Hadad dan Istiana Maftuchah, *Sustainable Financing*, (Jakarta: Elex Media Komputindo, 2015):187.

³⁷ Pasal 1(3) POJK GB.

11. Business operation and/or other operation which is environmentally friendly. To issue a green bond, issuers (*emiten*) are required to obtain an evaluation from an Environmental Expert and include the results as supplementary documentation during the registration process for issuance.³⁸ This evaluation must also be disclosed in the Prospectus used for the public offering.³⁹ If there are any changes in the use of funds raised from the offering⁴⁰ or material changes to the KUBL, the issuer must also provide an updated opinion from the Environmental Expert.⁴¹ The role of the Environmental Expert is crucial in determining whether the projects to be financed genuinely align with environmental objectives. To ensure this, POJK GB requires that the Environmental Expert possess the competency to assess, verify, or test KUBL activities, either individually or as part of a group.⁴² For instance, an issuer selects Renewable Energy as the KUBL sector and proposes a Light Rail Transit (LRT) project powered by electricity. This project would not automatically qualify as "environmentally sustainable" or align with KUBL unless the Environmental Expert confirms it. This is true even if it could be categorized under "environmentally friendly transportation" as described in the sixth KUBL category.

2. Document and Reporting Requirement

For issuers intending to issue green bonds in Indonesia, there are at least two documents that must be prepared: the Registration Statement and the Prospectus.⁴³ The Registration Statement document is similar with the registration of bonds in general,⁴⁴ but it has additional documents such as:

- 1) Issuer's commitment declaration letter to use the offering proceeds to finance KUBL.⁴⁵
- 2) Environmental expert assessment result that says KUBL is beneficial to the environment.

³⁸ Pasal 5 dan 6 POJK GB.

³⁹ Pasal 7 POJKGB.

⁴⁰ Pasal 9 POJK GB.

⁴¹ Pasal 10 POJK GB.

⁴² Pasal 1(4) POJK GB.

⁴³ BAB III POJK GB.

⁴⁴ Pasal 6 POJK GB.

⁴⁵ Penjelasan POJK GB.

- 3) The environmental expert's certificate of competence in providing an assessment.⁴⁶

The second document that must be prepared is the Prospectus, which is similar to a standard prospectus but includes additional information regarding KUBL. In this document, issuers are required to detail the designated KUBL category, the objectives of environmental preservation, the processes and methods applied to identify and manage social and environmental risks, and a summary of the Environmental Expert's assessment.⁴⁷ These two documents serve as considerations for investors in making decisions about investing in green projects.

In addition to these two documents, issuers are also required to submit periodic environmental review reports annually and whenever there are material changes to the KUBL.⁴⁸ These reports must be attached to the annual reports submitted to the OJK and must continue to be submitted until all obligations are fulfilled.⁴⁹

If a report indicates that a project no longer meets the requirements for KUBL, the issuer must draft a plan and submit it to OJK within 14 working days from the date of the review report. The issuer is then required to take actions to ensure compliance with KUBL requirements within one year from the date the plan is received by OJK.⁵⁰ Conversely, if the issuer fails to requalify as KUBL, they must submit a Material Fact report to OJK and publicly announce that the green bond no longer meets KUBL criteria.⁵¹ The issuer is also obligated to either buy back the green bonds or compensate bondholders for their losses (with exceptions).⁵² This is the consequence of Article 9 of POJK GB, which allows issuers to redirect the use of proceeds to another KUBL as long as it is accompanied by an evaluation from an Environmental Expert.⁵³ Furthermore, POJK GB also only requires 70% of the proceeds from the offering to be

⁴⁶ Pasal 6 POJK GB

⁴⁷ *ibid.*

⁴⁸ Pasal 10 (1) POJK GB.

⁴⁹ Pasal 10 (2-3) POJK GB.

⁵⁰ Pasal 12 (1) POJK GB.

⁵¹ Hal ini sesuai dengan Peraturan Otoritas Jasa Keuangan Nomor 31/POJK.04/2015 tentang Keterbukaan atas Informasi atau Fakta Material oleh Emiten atau Perusahaan Publik.

⁵² Pasal 13 POJK GB.

⁵³ Pasal 9 POJK GB.

allocated toward financing KUBL.⁵⁴ This means there is a possibility that not all the funds raised will be used for environmentally sustainable projects.

Furthermore, issuers are required to report the use of funds raised from the public offering of green bonds in accordance with OJK Regulation Number 30/POJK.04/2015 on Realization on Reports of Funds Utilization from Public Offerings.⁵⁵ Under this regulation, realization reports must be submitted to the OJK until full allocation is achieved, following the prescribed format and publication schedule.⁵⁶ Issuers are also obligated to manage the funds by either opening a special account or recording them separately in financial statements.⁵⁷

3. Sanction

POJK GB specifically regulates sanctions in Chapter VIII, Articles 19–21. According to these provisions, the OJK is authorized to impose administrative sanctions on any party violating the regulations, including those responsible for causing the violation. These sanctions do not preclude criminal penalties in the capital market sector and may include:

- 1) Written warning;
- 2) Fine, which is a duty to pay a certain amount of money;
- 3) Restrictions on business activities;
- 4) Suspension of business activities;
- 5) Revocation of business license;
- 6) Cancellation of approval; and/or
- 7) Cancellation of registration.

OJK can also take certain actions against any parties that violate the law and announce it to the public.⁵⁸

⁵⁴ Pasal 8 POJK GB.

⁵⁵ Pasal 11 POJK GB.

⁵⁶ Pasal 2-4 Peraturan Otoritas Jasa Keuangan Nomor 30/POJK.04/2015 tentang Laporan Realisasi Penggunaan Dana Hasil Penawaran Umum.

⁵⁷ Pasal 11 POJK GB.

⁵⁸ Pasal 20 POJK GB.

Analysis on the Protection of Green Bond Investors Against the Risk of Greenwashing

In general, POJK GB has established a legal framework that provides a degree of certainty to protect investors from harmful practices. However, it is essential to analyze whether these regulations are sufficient to prevent the risk of greenwashing, which has become a pressing issue in recent discussions. Until September 2020, records of greenwashing had amounted to nearly US\$40 billion, where the funds raised were used to finance projects that did not meet the required criteria.⁵⁹ For instance, green bond guidelines in China categorize coal-fired power plant efficiency projects as environmentally friendly and eligible, but some green bond indexes exclude them due to their reliance on fossil fuels.⁶⁰

The term greenwashing refers to actions that mislead consumers regarding the environmental benefits of a product or service.⁶¹ Greenwashing can also occur when issuers make misleading claims about how environmentally beneficial their projects are or when they fail to provide supporting evidence for their environmental claims.⁶² In the context of green bonds, greenwashing occurs when issuers promote green bonds by advertising environmentally friendly initiatives but operate in ways that harm the environment,⁶³ or when the funds raised are not used to finance green projects.⁶⁴ To help investors avoid the risk of greenwashing and to boost trust in green bond investments, it is critical to establish clear definitions of green project categories, ensure transparency in information, and provide investor protection mechanisms in cases of greenwashing. The following is an analysis of the provisions and articles in POJK GB to evaluate the extent of protection provided to green bond investors in Indonesia:

⁵⁹ Ward J, dkk. "EU's Green Bonds Set to Preempt Rules That Will Govern Them" Retrieved February 24, 2023 from <https://www.bloomberg.com/news/Pasals/2020-11-06/eu-green-bonds-set-to-preempt-the-rules-that-will-govern-them>

⁶⁰ *ibid.*

⁶¹ Lyon TP and Montgomery AW, "The Means and End of Greenwash" *Organization & Environment*, (2015): 225

⁶² Morreale L, "The Coming Backlash to 'Greenwashing' of Bonds", Retrieved February 24, 2023 from <https://www.bloomberg.com/news/Pasals/2017-08-11/the-coming-backlash-to-greenwashing-of-bonds-quicktake-q-a>

⁶³ Milhench C, "Emerging Climate Bonds Boom, but Are They Really Green?", Retrieved February 24, 2023 from <https://www.reuters.com/Pasal/us-emerging-bonds-green/emerging-climate-bonds-boom-but-are-they-really-green-idUSKCN1AY1F4>

⁶⁴ Berensmann, K., "Upscaling green bond markets: the need for harmonised green bond standards" *German Development Institute Briefing Paper No. 12* (2017):2, https://www.idos-research.de/uploads/media/BP_12.2017.pdf

1. Definition and Category of Green Project

OJK GB has provided definitions and criteria for activities that can be financed through the issuance of green bonds under 11 categories of KUBL. However, these categories remain too broad, with no further requirements or regulations governing these activities. For instance, can a coal-fired power plant project claim to be an energy efficiency initiative that is "environmentally friendly"? There is also a possibility for "other" environmentally friendly business activities to qualify as KUBL, provided they receive an assessment from an Environmental Expert. The question is, can the objectivity of these expert assessments be guaranteed?

Article 5 provides only a general explanation that KUBL can be considered beneficial to the environment as long as the aim is to "protect, improve, and/or enhance the quality or function of the environment." However, how is such benefit evaluated? Is there any assurance that the stated objectives will indeed be realized? What if a KUBL is categorized as environmentally friendly transportation (e.g., electric-powered, low-pollution) but the production processes for its batteries or components cause environmental damage (e.g., acid water impact from nickel mining)? Would such a project still be deemed eligible for green bond financing?

In 2022, Indonesia successfully launched Green Taxonomy 1.0, which provides a classification of green activities aimed at enhancing the credibility and transparency of environmentally friendly projects. This Green Taxonomy can serve as a guideline for disclosure of information, risk management, and the development of innovative sustainable finance products and/or services for the Financial Services Sector (SJK) and issuers. The document confirms green criteria thresholds based on applicable policies and regulations.⁶⁵ Consequently, the classification of economic activities in the Green Taxonomy supports efforts for environmental protection and management as well as climate change mitigation and adaptation.⁶⁶ For example, coal mining activities in the Taxonomy are categorized as "yellow" or not hazardous if they meet

⁶⁵ Otoritas Jasa Keuangan, *Taksonomi* ..., 12.

⁶⁶ *Ibid.*, 13.

the requirements set by the Ministry of Energy and Mineral Resources (ESDM) regarding:

1. Reclamation Guarantee.
2. Post-mining Guarantee as specified
3. Reclamation Implementation.
4. Reclamation Implementation Report.
5. Has a carbon, capture and storage technology system.

Additionally, compliance with the Ministry of Environment and Forestry (KLHK) regulations is required, covering environmental permits, air and water pollution control, hazardous waste (B3) management, and beyond-compliance.⁶⁷

Despite this, the use of the Green Taxonomy is not mandated under POJK GB and remains voluntary. Neither issuers nor Environmental Experts tasked with assessing green bonds are required to base their evaluations on the Green Taxonomy or existing green project standards. As a result, the responsibility for providing explanations and assessments rests entirely with Environmental Experts, who will conduct evaluations, verifications, and inspections of KUBL based on their own expertise. POJK GB does not even establish minimum competence requirements or mandate verification of these experts' qualifications. This makes the requirement to obtain an Environmental Expert's assessment appear to be a mere formality, as there is no mechanism for OJK to verify the qualifications or quality of these assessments. How, then, can it be ensured that the individuals conducting the evaluations are truly qualified and possess the appropriate expertise for the proposed projects?

POJK GB merely regulates administrative requirements, such as attaching proof of competence or expertise to the registration statement documents submitted by issuers. The regulation further specifies that proof of competence includes certifications issued by nationally or internationally recognized institutions in the environmental field or evidence of experience and expertise in environmental audits, as demonstrated by work experience or active involvement in environmentally friendly activities.

⁶⁷ Otoritas Jasa Keuangan. (2022). *Taksonomi Hijau Indonesia Edisi 1.0*. ojk.go.id. Retrieved May 1, 2023, from <https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Documents/Pages/Taksonomi-Hijau-Indonesia-Edisi-1---2022/Taksonomi%20Hijau%20Edisi%201.0%20-%202022.pdf> 40-41

However, this reporting is based on trust, and OJK does not conduct further verification of the authenticity of these documents or the competence of the Environmental Experts.⁶⁸

Moreover, issuers are also given the discretion to select their Environmental Experts, with no guarantee that these experts will be objective in their evaluations. For instance, an electric vehicle manufacturing project, which may potentially increase the reliance on coal-fired power plants,⁶⁹ could be deemed “environmentally friendly” as long as a “competent” Environmental Expert claims so. There is also the possibility that issuers may choose experts who support their project plans (lacking independence) or replace experts or evaluation methods if initial results are negative or do not align with their expectations. This lack of standardized criteria for measuring environmental benefits, coupled with the absence of substantial requirements and supervision for Environmental Experts, makes it difficult for investors to ensure the credibility, transparency, and independence of the projects funded through green bonds.

This situation could potentially disadvantage investors due to the lack of assurance that the funded projects will truly align with established environmental benefit standards, as the evaluations rely entirely on Environmental Experts whose objectivity may not be guaranteed. Furthermore, POJK GB requires that at least 70% of green bond proceeds be allocated to KUBL, leaving up to 30% of the funds potentially allocated to projects that are not environmentally friendly.⁷⁰ This provision undermines the credibility of Indonesian green bonds by diminishing confidence that the proceeds will be fully used to finance activities aimed at environmental preservation. It is unfortunate if regulations intended to promote green investment actually deter environmentally motivated investors due to a lack of assurance regarding the “greenness” of the bonds issued by the issuer.

⁶⁸ Penjelasan halaman 6 POJK GB

⁶⁹ Center for International Climate Research “Second Opinion on PT.Sarana Multi Infrastruktur (Persero) (PT SMI)’s Green Bond and Green Sukuk Framework” (24 April 2018), <https://ptsmi.co.id/wp-content/uploads/2018/07/Second-Opinion-on-PT-SMI-Green-Bond-and-Green-Sukuk-Framework.pdf>

⁷⁰ Pasal 8 POJK GB.

2. Guarantying Information Transparency

Transparency is a realization of legal certainty for parties in the capital market and serves as a form of protection for investors against harmful practices.⁷¹ Currently, investors face challenges related to “green credentials” when trying to understand how a project will provide environmental benefits.⁷² According to the Green Bond Principles, credibility can be achieved through assurances regarding the availability of information on environmental impacts and adherence to disclosure standards.⁷³ With such credibility, investor confidence in allocating funds to green bonds would naturally increase.⁷⁴

POJK GB actually does require issuers to prepare and publish specific documents, including details on the objectives of the green project, the process for identifying and assessing its feasibility, and the evaluations provided by Environmental Experts. Unfortunately, these requirements appear to be mere formality and do not emphasize on the quality of reporting on the project’s environmental impacts, as previously explained. Article 7 of POJK GB states:

“The Prospectus for a Public Offering of Green Bonds, in addition to meeting the provisions in OJK regulations concerning the form and content of the prospectus and brief prospectus for the Public Offering of Debt Securities, must disclose in a dedicated section the following additional information:

1. A description of the KUBL financed by the proceeds from the issuance of Environmentally Friendly Debt Securities (Green Bonds), which must at least include:
 - i. The Type of KUBL
 - ii. The environmental preservation targets

⁷¹ Menimbang (b) UUPM.

⁷² Kevin M. Talbot, What Does "Green" Really Mean?: How Increased Transparency and Standardization Can Grow the Green Bond Market” , *Villanova Environmental Law Journal*, Vol. 28, Iss. 1, (2017): 142, <https://digitalcommons.law.villanova.edu/elj/vol28/iss1/5>

⁷³ International Capital Market Association, “Green Bond Principles Voluntary Process Guidelines for Issuing Green Bonds”, (Juni 2018):2 , <https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/Green-Bonds-Principles-June-2018-270520.pdf>

⁷⁴ Kevin M. Talbot, “What...”, 140.

- iii. The processes, and methods applied to identify and manage environmental and social risks that have the potential to be material in relation to the business activities
- iv. A summary of the evaluation results from the Environmental Expert.”

This article indicates that the regulation only requires document completeness and does not regulate the content of the reports to be submitted, the impacts that must be reported, or the specific information that must be disclosed by the Environmental Expert, among other things. A search through OJK’s official website also reveals no information on these aspects.

Research suggests that when issuers provide high-quality information about the environmental benefits of funded projects, investor demand for green bonds increases.⁷⁵ The investor base in the green bond market will also expand in line with greater transparency.⁷⁶ Thus, the challenge for OJK is to define "high-quality information" that issuers must report. Currently, POJK GB mandates issuers to prepare pre-issuance and post-issuance documents. Pre-issuance documents consist of the Registration Statement and Prospectus, in which issuers are required to disclose information about KUBL. Although there is an obligation to disclose information, the quality or detail of information required under POJK GB is insufficient to ensure the credibility of the green bonds themselves, particularly due to the absence of standardized KUBL categories and a lack of supervision mechanisms for Environmental Experts. Without clear green standards and verification mechanisms for Environmental Experts, the disclosed information may merely serve as a "formal" procedure.

Regarding post-issuance documents, POJK GB requires issuers to submit annual reports containing reviews of environmental outcomes. However, the regulation does not specify what should be reported or reviewed, allowing issuers to potentially report only favorable outcomes. This could lead to practices that harm investors, as the regulation allows issuers to report information they deem relevant without any

⁷⁵ Ryan Preclaw & Anthony Bakshi “The Cost of Being Green” (2015):7, https://www.environmental-finance.com/assets/files/US_Credit_Focus_The_Cost_of_Being_Green.pdf

⁷⁶ Santibanez M, dkk, “Transparency the Key for Burgeoning Green Bond Market” Retrieved February 24, 2023 <https://www.reuters.com/Pasal/green-bonds-idUSL6NOWW16120150330>.

obligation to ensure positive environmental impacts. Without such guarantees, how can one distinguish between conventional bonds and bonds specifically intended for environmental benefits? How can it be ensured that the reports reflect what actually occurs on the ground?

Another post-issuance document is the Realization Report, which requires issuers to disclose the management or allocation of green bond proceeds in line with the predetermined projects. This reporting obligation is integrated with the existing OJK requirements regarding the realization report for proceeds from Public Offerings. However, once again, this regulation only addresses formalities and does not mandate that all (100%) of the funds raised be used for green projects.

Despite these shortcomings in the reporting requirements, the obligation to submit reports under POJK GB represents a form of transparency that provides legal protection. Unfortunately, the information disclosed may not necessarily shield investors from the risk of greenwashing, as it does not emphasize the material substance of the green project's impacts.

3. Green Bond Investors Protection from the Risk of Greenwashing

Currently, there are no specific regulations governing greenwashing. However, if we define greenwashing as any action, whether related to information or material facts, that contradicts the environmental commitments disclosed to the public (green bond investors), it can be considered a form of misleading green information. For instance, Article 8 of POJK mandates that at least 70% of the proceeds from green bond offerings must be allocated to funding KUBL. If an issuer fails to allocate 70% or more of the funds to KUBL, it constitutes greenwashing because it does not comply with the green bond requirements. This means, if the funds raised are used to finance activities that do not benefit the environment, it clearly deceives green bond investors as it contradicts the initial offering.

Other provisions related to greenwashing include failure to meet the obligation to obtain an environmental expert's assessment,⁷⁷ omitting additional information about

⁷⁷ Pasal 5 POJK GB

KUBL in the Registration Statement⁷⁸ or Prospectus⁷⁹, failing to submit review reports by the environmental expert⁸⁰, mismanaging green bonds and reporting their proceeds,⁸¹ or neglecting to report changes in green bond status.⁸² If these obligations are not fulfilled, it could be classified as greenwashing since the absence of information related to environmental benefits or commitments may mislead investors about the offered green bonds.

If such scenarios happen, how does POJK GB provide protection? Chapter VIII has two types of sanctions applicable to any party violating the rules: administrative and criminal penalties.⁸³ For example, if an issuer fails to provide details on processes and methods for identifying and managing environmental and social risks as required in Article 7(b), OJK may impose administrative sanctions such as fines or restrictions and temporary suspension of business activities, either independently or simultaneously.⁸⁴ Additionally, if a party deliberately aims to deceive, harm, or mislead others, they could face a maximum of three years imprisonment and a fine of up to IDR 5.000.000.000 (five billion rupiah).⁸⁵

In addition to these two protection mechanisms, Chapter VII of POJK GB specifically regulates the “Change of Status of Environmentally Friendly Debt Securities (Green Bond),” which addresses protection in cases of material changes in KUBL. For instance, if a planned KUBL project for environmentally friendly transportation proves unfeasible in practice, this provision obligates issuers to report and requalify the KUBL while offering repatriation to investors if the bond fails to meet requalification standards.

In this context, investors are granted the right to request issuers to buy back the green bonds and/or provide compensation in the form of increased bond coupons under certain conditions, with some exceptions. This provision is somewhat regrettable as it

⁷⁸ Pasal 6 POJK GB

⁷⁹ Pasal 7 POJK GB

⁸⁰ Pasal 10 POJK GB

⁸¹ Pasal 11 POJK GB

⁸² BAB VII POJK GB

⁸³ Pasal 19(1) POJK GB

⁸⁴ Pasal 19(3) POJK GB

⁸⁵ Pasal 109 UUPM

could create the perception that issuers do not need to make substantial efforts to ensure the environmental integrity of the KUBL. While it provides a form of protection to investors in case of material changes that render the green project ineligible, it is certainly not a situation that anyone hopes to happen.

It can be said that the POJK GB provides a form of repressive protection, with the implementation of administrative and criminal sanctions, as well as mechanisms for buybacks and compensation, to safeguard investor rights. Specifically, the rights of green bond investors include guarantees that their invested capital is used for the environmental purposes promoted. Unfortunately, the sanctions imposed do not fully ensure the environmental benefits of KUBL due to gaps in definitions, categories, and reporting documents as explained earlier.

CONCLUSION

The growing green bond market plays an increasingly important role in meeting funding needs to achieve Indonesia's climate and sustainable development goals. However, this growth is hindered by credibility issues surrounding green bonds, which heighten the risk of greenwashing. Greenwashing occurs when there is inaccurate or misleading reporting of green activities. With the issuance of POJK GB, it is expected to provide legal certainty that can protect green bond investors.

There are two forms of investor protection against the risk of greenwashing: preventive and repressive. POJK GB provides preventive protection from Articles 5 to Article 13 by requiring issuers to meet KUBL criteria, obtain assessments from Environmental Experts, and conduct disclosures and reporting. POJK GB also provides repressive protection which is outlined from Article 19 to Article 21 through administrative sanctions, applicable criminal provisions in the capital market, and mechanisms for repurchase or compensation. Transparency is further ensured through mandatory document submission and reporting, integrated with OJK regulations on Realization Reports and Disclosures.

Despite these measures, the protection is not strong enough to shield investors from the risk of greenwashing. This is because POJK GB has unclear green criteria standards and the required qualifications of environmental experts are not verified. Moreover, this regulation requires only a minimum of 70% of green bond funds to be allocated for KUBL, allowing for potential use of funds on projects that are not entirely environmentally friendly. Although the 2022 Indonesian Green Taxonomy provides thresholds and classifications for green activities, its use remains voluntary. As a result, KUBL assessments rely entirely on Environmental Experts whose objectivity is not guaranteed. These four weaknesses leave investors vulnerable to the risks of greenwashing, even though there are recourse mechanisms if material changes occur in KUBL projects.

POJK GB provides a strong starting point for the green bond market in Indonesia by encouraging issuers to begin participating in environmentally sustainable economic activities. It is hoped that POJK GB will enhance substantive requirements by integrating Indonesia's Green Taxonomy or other green criteria standards as the foundation for Environmental Expert assessments. Additionally, OJK as the institution mandated to develop sustainable finance in Indonesia, should implement selection or verification processes for Environmental Experts to ensure high-quality and objective assessments of green projects. Without strong protection mechanisms for the use of green bond funds, achieving the NDC target will remain a mere aspiration. Climate change demands the realization of impactful low-carbon projects on the ground, not just reports and recorded achievements on paper.

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