

Promotion of Sustainable Social Bonds Base on Indonesia's Constitutional Perspective

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ABSTRACT

Social bonds are one of the types based on available themes regulated in POJK No 18 of 2023. The drafting of POJK 18/2023 did not consider regulations from a theoretical or constitutional perspective, which should be the primary consideration for any legislative regulation. This article results from research aimed at finding arguments and constitutional rationality. The research method used in this study is normative exploratory legal research with a constitutional approach and a conceptual approach. According to universal legal principles, laws and regulations subordinate to the Constitution must not contradict higher laws. This is where the concept of legal hierarchy and regulations becomes necessary so that regulations do not conflict with those above them, including the highest point, the Constitution. This article will closely examine several areas of social bond regulation from the perspective of the Indonesian Constitution. The research findings reveal juridical arguments and rationality that, as a welfare-oriented state in its constitution and born from its collectivist cultural background, social bond regulation aligns with the principles of the constitution applicable in Indonesia.

1. Introduction

The Government of Indonesia regulates the capital market sector through the Financial Services Authority (OJK), which has issued POJK No.18 of 2023 concerning the Issuance and Requirements for Sustainable Debt Securities and sustainability-based *sukuk* (sharia-compliant bonds). This replaced POJK No.60 of 2017 concerning the Issuance and Requirements for Environmental-Centric Debt Securities (Green Bonds).¹ This regulation (POJK No. 18 of 2023) intends to realise realise realise sustainable development and maintain national economic stability, prioritisingrealize sustainable development, and maintain national economic stability, prioritisingrealize sustainable development and maintaining national economic stability prioritizing harmony between sustainable economic, environmental, and social aspects. One of the newly regulated capital market instruments is social bonds.

According to Article 1 (4) of POJK No.18 of 2023, a social bond is a debt security whose proceeds are used for financing or refinancing socially oriented business activities. Furthermore, according to Article 1 (11), a socially oriented business activity aims to mitigate social problems and benefit the target population. Formulating social bond regulations complements other thematic bond instruments in the capital market, such as green bonds, sustainable bonds, and sustainability-linked bonds.²

1 Regular Sharia et al., "Regulasi , Penerapan Dan Peluang Inovasi Produk Keuangan Berkelanjutan Pada Lembaga Keuangan Syariah Indonesia," no. November (2023).

2 International Platform and Finance Ipsf, "International Platform on Sustainable Finance Strengthening Clarity in Social Finance : Scaling up Social Bonds December 2023," no. December (2023): 1–57.

After the issuance of POJK No.18 of 2023, several companies have issued social bonds. The first was PT Bank KB Bukopin Tbk (KB Bank)³ In collaboration with the International Finance Corporation (IFC), an Indonesian private sector bank has issued its inaugural social bond. The social bond is dedicated to funding social initiatives that focus on handling the socio-economic impacts of COVID-19 and financing social segments such as micro, small, and medium enterprises (MSMEs), affordable change, healthcare, education, and infrastructure.⁴ Furthermore, PT Sarana Multigriya Financial (SMF), supported by the Asian Development Bank (ADB), issued a social bond instrument worth IDR 8 trillion, which will be used to support government-subsidized homeownership loans (KPR) for low-income people.⁵ This stems from the need for more home ownership (backlog) in Indonesia, reaching 12.7 million homes.⁶ From these two companies (KB Bank and SMF), one can see the involvement of international institutions (IFC and ASB) in issuing social bonds.

This is very reasonable because, according to the general explanation of POJK No.18 of 2023, the issuance of social bonds in Indonesia refers to the standards for issuing debt securities based on sustainability published by the International Capital Market Association (ICMA), which issued voluntary guidelines for issuing social bonds.⁷ In addition to the ICMA, the ASEAN Capital Markets Forum (ACMF) also issued the ASEAN Social Bond Standards (ASEAN SBS). Although voluntary, they have been implemented and have become a standard for social bond issuance in several countries, including Indonesia.

However, there are no regulatory considerations, neither from a theoretical nor a constitutional point of view, which ideally should be the primary consideration of each legislative regulation. As a result, research on the constitutional analysis of Indonesia's social bond securities regulation is crucial, considering that the constitution is the source of legitimacy or the basis of authorization for the laws and regulations under it. By universal legal principles, rules, and regulations whose levels are below the constitution, their enactment must not contradict higher laws. This is where the concept of the hierarchy of laws and rules is needed so that regulations are consistent with those that are hierarchically higher above it or even the highest point in the hierarchy, which is the Constitution.

According to several studies conducted in various countries, constitutional issues regarding social bond regulations have yet to be extensively explored, although research on social bonds from multiple perspectives has been undertaken. Diletta Lenzi, the first researcher on this topic, analysed the legal aspects of corporate social bonds.

From a legal perspective, Lenzi emphasizes the risk of social washing when issuing social bonds.⁸ In addition, Lenzi identifies the implicit legal "Achilles heels" of social bonds and offers implicit legal remedies to guarantee that issuers and heirs analyze their scores to achieve social impact. Considering the ongoing work on the European Union's position regarding social investment and sustainable finance, it would be a misstep if the EU's interest in sustainable finance were limited to green fiscal products, leaving social bonds out of the debate. In the same way, it seems necessary to clarify the relationship between social impact and environmental impact.⁹

Second, in his paper "Social Bonds for Sustainable Development: A Human Rights Perspective on Impact Investing," Stephen Kim Park posits that a framework is needed to evaluate human rights factors as an impact of investing in social bonds. This paper explains the integral role in enabling the fulfillment of sustainable development

3 Khoirul Anam, "KB Bukopin Jadi Pionir Obligasi Sosial Bank Swasta Di RI," CNBC Indonesia, accessed March 27, 2024, <https://www.cnbcindonesia.com/market/20220901170133-17-368572/kb-bukopin-jadi-pionir-obligasi-sosial-bank-swasta-di-ri>.

4 Sri Devi Apriani and Lousiani Mansoni, "Pengaruh CAR, LDR Dan NPL Terhadap Profitabilitas Pada Bank Yang Terdaftar Di Bursa Efek Indonesia (BEI) (Studi Kasus PT.Bank Bukopin Tbk Tahun 2005-2018)," *JEMPER (Jurnal Ekonomi Manajemen Perbankan)* 1, no. 2 (2019): 86, <https://doi.org/10.32897/jemper.v1i2.227>.

5 Asian Development Bank (ADB), "ADB Dukung Penerbitan Perdana Obligasi Dan Sukuk Sosial Oleh Indonesia," More on ADB's Work in Indonesia, accessed April 1, 2024, <https://www.adb.org/id/news/adb-supports-indonesia-first-social-bond-and-sukuk-issuance>.

6 Louis O'Sullivan and Lena Rethel, "Financial Globalization, Local Debt Markets and New State Financial Activism in Middle-Income Countries," *Development and Change* 54, no. 2 (2023): 304–30, <https://doi.org/10.1111/dech.12757>.

7 Elena Sidorenko, "Social Bonds as a Tool for Financing Concession Projects in the Housing and Communal Services Sector in Rostov Oblast, Russia," *E3S Web of Conferences* 281 (2021): 1–8, <https://doi.org/10.1051/e3sconf/202128108009>.

8 Diletta Lenzi, "Corporate Social Bonds: A Legal Analysis," *European Company and Financial Law Review* 18, no. 2 (2021): 291–320, <https://doi.org/10.1515/ecfr-2021-0014>.

9 Lenzi.

and the improvement of human rights. Due to the size of their means and their sheer number, institutional investors have considerable influence over commercial conduct and, in some instances, even over states. By analyzing the nascent and rapidly growing demand for social bonds, this paper shows how impact investing can advance sustainable development to maximize improving human rights. From a conventional perspective, this paper underscores the critical need for the human rights community to engage with actors investing in social bonds about these new and innovative instruments and strategies. This paper reveals that current norms and practices don't adequately consider the impacts of social bonds on human rights. Grounded on compliance with human rights, this paper recommends reforms to the requests for social bonds that could ameliorate investors regarding valuations and external guarantees and influence the maximization of impact.¹⁰

The third is the study by Alessandro Rizzello and Abdellah Kabli entitled "Sustainable Financial Partnerships for the SDGs: The Case of Social Impact Bonds." In this paper, an exploratory analysis of social impact bonds (SIBs) is provided to (i) understand how numerous instruments are suitable for involving sustainable, profitable actors in SDG-grounded partnerships and (ii) determine the interplay between SIBs and SDGs. Grounded on the results, SIBs are completely biddable with SDG-based fiscal cooperation structures, and their framework shows a high degree of SDG investment readiness. This exploration is original because it analyses SIBs as new fiscal tools for achieving the SDGs and expands it into how they work towards the assumptions underpinning the goals, which is at the center of SDG 17. Their study fills a significant gap in the current exploration related to the issues of backing sustainable development and fiscal sector instruments on sustainability¹¹.

Fourth, a study by Yuliya Yelnikova and Irina Nicolay Golochalova entitled "Social Bonds as an Instrument of Responsible Investment." Their research explored structuring social bonds as an instrument for responsible investment in the scientific sphere. As a tool for achieving social influence and impacts on development, social bonds are understood empirically to be a tool for public-private partnerships. The review is based on an analysis of modern information and bibliometrics, and their study features a discussion of the scientific trends related to SIBs. Regarding scientific publications, social bonds became the most studied category during the second half of the 20th century, including social sciences, economics, econometrics, finance, accounting, and business. Based on the significant clustering of keywords in publications about social bonds, most research on this topic is associated with impact investment and social policy. These perspectives on social bonds are new in scientific circles and are being considered alongside sustainable development, green bonds, and corporate green bonds.¹²

Fifth, a study by Juan David Gonzalez Ruiz et al. entitled "Gender Social Bonds in the Latin American Market." While global admeasurements of sustainable debt are increasing, a deficit of explorations allows for a better understanding of social bond admeasurements, particularly those with a gender focus, directly tied to achieving the SDGs. The study's findings reveal that gender social bonds have surfaced as an essential fiscal tool in the field of sustainable finance, with an emphasis on promoting gender equivalency and closing the big gap. This study found that demand for gender social bonds surfaced in the Latin American region in 2019. This kind of bond has been the catalyst for the promotion of different enterprises through the development of fiscal products linked to the SDGs related to equity, particularly SDG 5 (gender equivalency), SDG 8 (decent work and economic growth), SDG 9 (assiduity, invention, and structure), and SDG 10 (reduced inequality)¹³.

In contrast to the above five studies, this study's fundamental difference is that the authors will examine more specific aspects of the regulation of social bonds from the perspective of the Indonesian Constitution. Thus, this study is novel compared to previous studies. The results of this study are expected to provide juridical arguments related to the constitutional basis for regulating social bonds in Indonesia.

Compared to these five studies, this study has quite a fundamental difference. This article will consider more specific aspects of regulating social relations from the perspective of the Indonesian Constitution. Therefore, this study has something new compared to previous studies. The results of this study are expected to provide legal arguments regarding the constitutional basis for regulating social relations in Indonesia. Therefore, legal questions arise and are essential to study, namely, the characteristics of the regulation of social relations and their

10 O'Sullivan and Rethel, "Financial Globalization, Local Debt Markets and New State Financial Activism in Middle-Income Countries."

11 Alessandro Rizzello and Abdellah Kabli, "Sustainable Financial Partnerships for the SDGs: The Case of Social Impact Bonds," *Sustainability (Switzerland)* 12, no. 13 (2020), <https://doi.org/10.3390/su12135362>.

12 Yuliya Yelnikova and Irina Golochalova, "Social Bonds as an Instrument of Responsible Investment," *Financial Markets, Institutions and Risks* 4, no. 4 (2020): 119–28, [https://doi.org/10.21272/fmir.4\(4\).119-128.2020](https://doi.org/10.21272/fmir.4(4).119-128.2020).

13 Juan David González-Ruiz, Nini Johana Marín-Rodríguez, and Alejandro Valencia-Arias, "Gender Social Bonds in the Latin American Market," *Sustainability* 15, no. 20 (2023): 15144, <https://doi.org/10.3390/su152015144>.

relationship in achieving the SDG goals and the regulation of how to regulate social relationships to achieve social justice and welfare. This research differs significantly from the five previous studies. It can be seen that this study will consider more specific aspects of regulating social welfare from the perspective of the Indonesian Constitution. Therefore, this research introduces something new compared to previous studies. The results of this research are expected to provide legal arguments regarding the constitutional basis for regulating social welfare in Indonesia.

Social welfare regulations are crucial in achieving Sustainable Development Goals (SDGs) in the evolving global context. However, despite various regulations, there remains a gap between the policies set and their implementation in the field. This inconsistency often results in the low effectiveness of social welfare programs in addressing poverty, inequality, and social injustice. Furthermore, social bonding regulations to strengthen community networks and public participation are often overlooked, thus not fully maximizing social justice. The question that arises is: how do the characteristics of social welfare regulations contribute to achieving SDGs, and to what extent can social bonding regulations be optimized to enhance well-being and social justice within society? This issue is crucial to research so that existing policies can be improved and their implementation can be more effective in achieving the common goals set by the international community.

This article results from research to find arguments and constitutional rationality for regulating social, sustainable, and sustainability-related bonds. Social bonds, as one type of bond, are regulated under POJK No. 18 of 2023. However, the drafting of POJK 18/2023 did not consider theoretical or constitutional aspects, which should be the main focus of any legislative regulation. Furthermore, stakeholder involvement must explicitly include public participation in the decision-making process, which can be a weakness. Oversight and evaluation of policies also need to sufficiently emphasize the importance of monitoring implementation. Existing provisions do not specifically address service accessibility for vulnerable groups, indicating that this regulation may not be holistic.

As a result, research on the constitutional analysis of Indonesia's social securities regulation becomes essential, considering that the constitution serves as the source of legitimacy or the foundation of authorisation for laws and regulations beneath it. According to universal legal principles is the concept that there are norms and legal values that apply globally and are recognized by all countries, including human rights, justice, and respect for human dignity, regardless of cultural, political, or social differences, laws and regulations that are subordinate to the constitution must not contradict higher laws. This is where the concept of legal hierarchy and regulations becomes necessary so that regulations do not conflict with those above them in the hierarchy, including the highest point, which is the constitution. This article will closely examine several areas of social bond regulation from the perspective of the Indonesian Constitution. The research method used in this study is normative exploratory legal research with a constitutional approach and a conceptual approach. The research findings reveal juridical arguments and rationality that, as a welfare-oriented state in its constitution and born from its collectivist cultural background, social bond regulation aligns with the principles of the constitution applicable in Indonesia.

Bonds are necessary financial instruments governments and companies use to raise funds in the capital market. In Indonesia, regulations regarding bonds are governed by several laws, including the P2SK Law (No. 4/2023) and the Capital Market Law. The P2SK Law aims to strengthen and protect the financial sector, including issuing and trading bonds. Some key points in this law include stricter supervision by the Financial Services Authority (OJK), which now has greater authority to ensure that all bond issuance processes meet established standards to protect investors. Furthermore, this law requires bond issuers to provide accurate and timely information regarding the risks and returns of the issued bonds. Financial instrument innovations under the P2SK Law also encourage issuing various types of bonds, including green bonds and sukuk, that align with sustainability principles and responsible investment¹⁴.

2. Method

This study employs a normative legal research methodology with an exploratory focus; it investigates a novel phenomenon that has yet to be frequently or extensively studied. Social bonds are a new topic of study in financial law and the Indonesian capital market. The approach used in this research is a statute approach that will study the object of research in the form of norms regulated in the legislation which is applied in Indonesia and several conventions or international treaties and agreements; these include Presidential Regulation No.59 of 2017

14 Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan," *Negara Republik Indonesia* 1, no. 163979 (2023): 1–527.

concerning Implementing and Achieving the Sustainable Development Goals, POJK No.18 of 2023 concerning Issuance and Requirements for Sustainable Debt Securities and Sustainability-Based *Sukuk*, by linking the Social Bond Principles (SBP) in the guidelines published by the ICMA, and the ASEAN Social Bond Standards (ASEAN SBS) issued by the ASEAN Capital Markets Forum (ACMF).

Social bonds in Indonesia will be subject to a legal hierarchy that includes the 1945 Constitution of the Republic of Indonesia, Government Regulations, Financial Services Authority Regulations, and relevant implementing provisions or regulations. Currently, although there is no specific regulation for social bonds, there are efforts and guidelines that can serve as a basis for further development in this field. In the future, more initiatives and regulations will support Indonesia's social bond market's growth and sustainability.

This research also uses a constitutional approach that will examine how the object of this research relates to the 1945 Constitution of the Republic of Indonesia as the highest law in the country to explore the basic principles relevant to this research. The constitutional approach is used to test and analyse the regulatory arguments in POJK No.18 of 2023 in light of the principles of the 1945 Constitution of the Republic of Indonesia, especially those related to economic and social justice.¹⁵

The critical legal materials examined in this study are international treaties that Indonesia has ratified, laws and regulations, and secondary legal materials in the form of legal journals and textbooks related to the topic in this study. The collection of legal materials is obtained through a literature study. All legal materials are selected, described, and analysed to be further linked to laws and regulations and formulated systematically by the subject matter through the approaches used in this study.

The legal materials examined in this study consist of laws and regulations and secondary legal materials such as legal journals and textbooks related to the topic. The collection of legal materials was obtained through a literature review. All legal materials were selected, explained, and analysed, then systematically connected to laws and regulations formulated by the subject matter through the approach used in this research.¹⁶

3. Findings and Discussion

This study distinguishes itself from previous research by focusing on specific issues related to social bond regulations from the perspective of the Indonesian Constitution. Some identified problems include regulatory uncertainty and weaknesses, resulting in a need for more understanding and implementation, as well as ambiguity regarding the rights and responsibilities of society in a social context. It is essential to assess the extent to which current social bond regulations align with the principles of the Indonesian Constitution, especially regarding human rights and social justice. Unlike previous research, this study will uncover issues that have yet to be thoroughly examined, thus identifying gaps in existing literature. Strong legal arguments are needed to support the constitutional basis of socially binding regulations, which may have yet to be comprehensively discussed in previous research. The findings from this study are expected to provide recommendations that will influence public policy, although there are challenges in integrating these findings into existing regulatory practices.

This study is expected to provide legal arguments on the constitutional basis for social bond regulations in Indonesia. To achieve this goal, this article is divided into two sub-discussions. The first sub-discussion will address the characteristics of social bond regulations and their relationship to attain Sustainable Development Goals (SDGs) and compare the characteristics of social bonds with other types of bond instruments. Furthermore, the second subsection will analyse the regulation of social bonds in the context of efforts to achieve social justice and welfare, which is the primary goal of the Indonesian state as mandated in the constitution. This research explores the relationship between social bond regulation and constitutional efforts in achieving social justice and welfare, in addition to achieving the SDGs.

3.1 Characteristics of Social Bond Regulations and their Relationship with Achieving SDGs

Global social bond instruments became well developed during the COVID-19 pandemic when there was a considerable need for alternative funding sources to cope with the outbreak. On the other hand, the pandemic caused economic and social growth to decrease dramatically.¹⁷ Several studies show that the issuance of social

15 Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi Cet-11* (Jakarta: Kencana Prenada Media Group, 2019).

16 Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mirra Buana Media, 2020).

17 Fajar B Hirawan, *Indonesia Dan Covid-19: Pandangan Multi Aspek Dan Sektoral* (Centre for Strategic and International Studies, 2020).

bonds was necessary to meet the funding needs resulting from declining economic conditions and the social effects of the pandemic crisis.¹⁸ In addition, the issuance of social bonds was also oriented towards achieving the SDGs.

SDGs have become a commitment worldwide; development programs in 193 United Nations Member States now refer to the SDGs, a long-term global program initiated by the U.N. to optimise all the potential and resources owned by each country. The SDGs comprise 17 goals and 169 underlying targets, with the strategic plan being summarised as follows: “To end extreme poverty, fight inequality and injustice, and protect our planet.”¹⁹ The idealistic goals formulated and stipulated in the SDGs serve as guidelines for global development to end extreme poverty, fight inequality and injustice, and protect the earth’s sustainability.

The Indonesian government also committed and participated in efforts to achieve the SDGs by enacting Presidential Regulation No.59 of 2017 concerning Implementing and Achieving the Sustainable Development Goals.²⁰ According to the 2022 SDG Index Scores, Indonesia ranked 97th out of 165 countries, indicating an improvement in the country’s attainment of the SDGs. In its journey, the SDG concept also affects the financial industry required to develop a sustainable economic system. One of the things formulated in the sustainable financial system has been the roadmap for finance, where the Financial Services Authority (OJK) in Indonesia had to develop a work program known as the sustainable finance framework.²² The Roadmap for Sustainable Finance includes four main principles: risk management principles, sustainable priority economic sector development principles, environmental and social governance and reporting principles, and capacity enhancement and collaborative partnership principles²³.

These four main principles are primarily oriented towards sustainable development. For this reason, a follow-up is needed in the form of regulations related to a more specific sustainable financial system instrument known as thematic bonds. The definition of thematic bonds refers to the opinion of World Bank official Banu Turhan Kayaalp that green, social, sustainability and sustainability-linked bonds are examples of sustainable financial instruments. These are capital-raising fixed-income securities issued to generate funds for initiatives and endeavours associated with a particular topic, like ocean and marine conservation, education, housing, climate change, and the SDGs²⁴. From this understanding, it can be seen that social bonds are one part of the thematic bonds, which, according to Elena Sidorenko, collect money to support initiatives that should have a beneficial social impact, assist issuers in addressing social injustices, where the social project categories include creating inexpensive basic infrastructure (clean drinking water, energy, and sanitation), helping with access to financial, health, and educational services, building affordable housing, and creating jobs and food security.

Since social bonds became a popular capital market instrument, several non-bank companies have issued them. For example, the Asian Development Bank (ADB) and the Credit Guarantee and Investment Facility (CGIF) assisted Thailand’s Thai Foods Group in launching the first social bond to be issued by a non-financial corporate issuer by the social bond guidelines the Association of Southeast Asian Nations (ASEAN)²⁵ The Thaifoods Group utilises the bond’s profits to fund initiatives and assets linked to job development and the advancement of local economies through loans to its subsidiaries. This deal will be a valuable example of how private businesses can support social sustainability.

The success story of the Thaifoods Group issuing social bonds as a private company was followed in 2023 by PT SMF, an Indonesian company engaged in secondary financing. PT SMF has successfully raised IDR

18 Sophie Peeters, Maud Schmitt, and Ariane Volk, “Social Bonds Can Help Mitigate the Economic and Social Effects of the COVID-19 Crisis,” *EMCompass Emerging Markets*, 2020, 1–8, <https://www.ifc.org/wps/wcm/connect/ec548185-5e62-4f34-86db-b4d92872cd8e/EMCompass-Note-89-Social-Bonds-COVID-19.pdf?MOD=AJPERES&CVID=ngSZy60>.

19 UN Global Compact, “Corporate Finance - A Roadmap to Mainstream SDG Investments,” 2019, <https://www.unglobalcompact.org/library/5712>.

20 Fahmi Irhamsyah, “Sustainable Development Goals (SDGs) Dan Dampaknya Bagi Ketahanan Nasional Dampaknya Bagi Ketahanan Nasional,” *Jurnal Kajian LEMHANNAS RI* 38 (2019): 45–54.

21 Irhamsyah.

22 Neneng Hayati, Erwin Yulianto, and . Syafdinal, “Peranan Keuangan Berkelanjutan Pada Industri Perbankan Dalam Mendukung Sustainable Development Goals,” *Jurnal Akuntansi Bisnis Dan Ekonomi* 6, no. 1 (2020): 1633–52, <https://doi.org/10.33197/jabe.vol6.iss1.2020.473>.

23 Nadiyah Amatul Haq, Alvina Syafira Fauzia, and Anggun Puspita Khoirunnisa, “Promoting Sustainable Financial System in Indonesia Towards Sri-Kehati Index,” *SSRN Electronic Journal*, 2019, <https://doi.org/10.2139/ssrn.3347681>.

24 Lourdes Casanova and Anne Miroux, *Building the Future on Esg Excellence Emi Report 2021*, 2021.

25 Lenzi, “Corporate Social Bonds: A Legal Analysis.”

500 billion through social bonds and IDR 200 billion through social (sharia-compliant bonds). This innovative transaction shows that ADB is committed to promoting inclusive social development in Indonesia and supporting the development of sustainable capital markets.²⁶ The two companies that have issued social bonds further emphasise the capital market's future orientation towards sustainable finance through developing capital market instruments with a sustainable character, as stated in the "Strengthening Ecosystem for Sustainable Finance" section in the ASEAN+3 document.

A social bond is one of the thematic bonds, and it has specific characteristics, both in terms of the use of proceeds or equivalent amounts, which will be exclusively applied to finance or re-finance, in part or in full, new and aligned with the four core components of the Social Bond Principles.²⁷ The Use of Proceeds, Processes for Project Evaluation and Selection, Management of Proceeds, Reporting, and Social Impact.²⁸

In addition to the Social Bond Principles published by ICMA, the ACMF is a forum that comprises market regulators from ASEAN countries whose primary task is to promote greater integration and connectivity of regional markets. The ACMF also issued the ASEAN Social Bond Standards, which stipulate the four components of the Social Bond Principles. The element of social bond issuance that differs between the two organisations is the impact of social bonds, which is only found in the regulations issued by ICMA. Thus, it should be noted that the success of social bond issuance is framed in terms of the achievement of social impact, which is goal-oriented²⁹. Of course, this must be the main parameter besides other principles of social bond issuance. Lenzi goes on to say that three key differences could help form various kinds of social ties. Social bond categories may primarily rely on the answers to these questions:

1. Who is responsible for achieving social impact (issuers or beneficiaries), and on what legal basis?
2. What definition is given to the achievement of the social impact?
3. What is the remuneration for investors?³⁰

The previous description shows that the regulation of social bonds in Indonesia results from accepting or adopting a set of rules or standards that have been agreed upon according to international conventions. In general, the application in the context of the regulations of a particular country is commonly referred to as legal harmonisation or unification. The legal instruments used for unification or harmonisation can be international conventions and model laws. What is meant by model law here is the work produced by international organisations in specific legal fields that can be used as a reference for legislation in each country to create or modify its national legislation.

Currently, in Indonesia, there is no specific regulation governing social bonds. However, efforts and directions have been related to developing social bonds in Indonesia. Overall, although there is no particular regulation for social bonds in Indonesia, the steps taken by the OJK and the Government demonstrate a commitment to supporting sustainable and socially impactful financial market development in the future. With the proper framework and collaboration, it is hoped that more opportunities can be created for social bonds to grow and contribute positively to society and the social economy in Indonesia.

If it is viewed from the aspect of the legal subjects to which they are applied, international conventions between states are subject to the 1969 Vienna Convention on the Law of Treaties. However, suppose the legal application is between international or international and internal organisations. In that case, they comply with the 1986 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations. In its development, this demonstrates quite progressive thinking, which is contained in the 1986 Vienna Convention, according to which the subjects of international law are no longer limited to the states only. Still, international organisations are also considered subjects of the law. This is expressly formulated in the preamble of the 1986 Vienna Convention: "International organisations are parties as subjects of international law distinct from states." About this provision, international organisations such as the ICMA and the ACMF can be considered legal subjects. Therefore, the Social Bond Principles issued by ICMA and the ASEAN Social Bond Standards formulated by ACMF can be adopted through harmonisation and unification.

26 A(ADB), "ADB Dukung Penerbitan Perdana Obligasi Dan Sukuk Sosial Oleh Indonesia."

27 Peeters, Schmitt, and Volk, "Social Bonds Can Help Mitigate the Economic and Social Effects of the COVID-19 Crisis," 2020.

28 Peeters, Schmitt, and Volk.

29 Lenzi, "Corporate Social Bonds: A Legal Analysis."

30 Lenzi.

Legal harmonisation is a process undertaken to avoid conflict and produce balance. Harmonisation is more directed at changing existing rules so that harmony is established. Harmonization can be achieved through international agreements among states or through the mandate of supranational institutions. The primary purpose of legal harmonization is to seek uniformity or common ground based on the fundamental principles of various existing legal systems.³¹

Meanwhile, unification can be accomplished across nations through international agreements, tradition, international practice, or international treaties. George A. Zaphiriou's definition reads: "International unification means the adoption of an agreed-upon set of rules, standards, or guidelines for application to transnational transactions." According to Cenuk Widiyastrisna Sayekti, this arrangement is accomplished in international trade by custom, international practice, international agreements between nations through an international convention, or international agreements within the framework of a professional organization. The scope of unification includes eliminating and replacing an existing legal system with a new one.³² What is interesting is Taufiqurrahman's view, which states that the concept of unification can also be carried out by issuing legal rules that become rules by non-state actors.³³

According to this view, with the ICMA and the ADB being non-state actors, the regulations developed are also objects of legal unification in their member countries. Thus, as organizations are categorized as non-state actors, the voluntary guidelines for issuing social bonds issued by the ICMA and the ASEAN Social Bond Standards and ADB can be used as a reference for the regulation of POJK No.18 of 2023³⁴.

Furthermore, SDG-oriented development has become a juridical reference for growth in Indonesia by being stipulated based on Presidential Regulation No.59 of 2017 concerning Implementing and Achieving Sustainable Development Goals. This also applies laws and regulations based on international treaties and conventions. SDGs also impact the financial industry, which is developed through the idea of a sustainable economic system. The relationship between the SDGs and the regulation of social bonds, which is part of the sustainable financial system, is in line with the main objectives of the SDGs, namely "to end extreme poverty, fight inequality and injustice, and protect our planet." In other words, in terms of the ideological goal of global development to end extreme poverty, fight inequality and injustice, and protect the sustainability of the earth, one of whose implementations requires the concept of a sustainable financial system that can be realized through the development of social bond financing³⁵.

From the previous discussion, it can be explained that both the regulations regarding the implementation of achieving sustainable development goals based on Presidential Regulation No.59 of 2017 and the rules related to social bonds based on POJK No.18 of 2023, are the result of legal harmonisation of international practices based on international treaties or international conventions. Harmonisation is more directed at changing existing rules to establish harmony and seek uniformity or common ground based on the fundamental principles of various existing legal systems. This differs from the concept of unification, which is more directed towards eliminating and replacing an existing legal system with a new one. However, it should be noted that the harmonisation process must consider national interests. This means that legal harmonisation is necessary, but national interests must also be paid attention to, which must be protected and pursued in harmony with the constitution, which is the source of legitimacy or the basis of the authorisation of all the laws and the regulations under them. Although there are no specific regulations for social bonds, the Green Bond Regulation issued by the OJK POJK No.18 of 2023 can provide a relevant initial framework. This guide primarily focuses on green bonds, but its principles can be applied to social bonds to achieve social welfare.

This is also an effort to prioritize national interests as the first filter and primary orientation while keeping international interests in mind as the second filter and second orientation. This mindset is known as the universalist particularism paradigm. In other words, when determining a rational paradigm for applying international law in Indonesia, two sides must be carefully and adequately considered: inward-looking or national interests and outward-looking needs and interests from external or international sources.

31 Muhammad Reza Syariffudin Zaki, *Hukum Perdagangan Internasional* (Jakarta: Kencana, 2021).

32 Budi Endarto, Nur Hidayatul Fithri, and Fikri Hadi, *Karakteristik, Arah Kebijakan & Politik Hukum Pengembangan Green Bond Di Indonesia* (Yogyakarta: Kyta Jaya Mandiri, 2022).

33 Irhamsyah, "Sustainable Development Goals (SDGs) Dan Dampaknya Bagi Ketahanan Nasional Dampaknya Bagi Ketahanan Nasional."

34 OJK, "Otoritas Jasa Keuangan Republik Indonesia POJK Nomor 18 2023," <https://www.ojk.go.id>, 2023.

35 Jatna Supriatna, *Pengelolaan Lingkungan Berkelanjutan* (Yayasan Pustaka Obor Indonesia, 2021).

Overall, despite Indonesia having a constitutional solid foundation to support social welfare, challenges in its implementation still exist. Strategic and coordinated steps are crucial to ensure that the commitment to social welfare is not just a slogan but is realized in tangible policies and practices for all citizens.

3.2 Social Bond Regulation as an Effort to Realize Social Justice and Welfare

Every country aims to create a welfare state. This can be achieved if the state can bring social justice to its citizens. John Rawls argues that two main principles underpin a just society: (1) equality in the enjoyment of liberty (this concept entails compliance) and (2) affirmative action (in effect, action for the "most disadvantaged"). This is accomplished by providing opportunities for people experiencing poverty and allocating a relatively larger piece of the economic pie to them through the distribution of wealth. From John Rawls' point of view, social justice can be interpreted as the state's guarantee of social equality in the enjoyment of freedom and special treatment for the most disadvantaged groups. It is also argued that social justice is achieved by ensuring that low-income people have equal opportunities and a larger share of wealth and income when the economy is more significant. Furthermore, Peter Corning offers three normative policy principles, equality, equity, and reciprocity, combined and balanced to achieve social justice goals. The three guiding principles are described as follows:

1. Each person must receive goods and services based on their basic requirements (equality);
2. Anything left over after meeting our fundamental requirements has to be allocated based on "merit" (equity);
3. In exchange, each of us has a responsibility to provide a proportionate, ability-based contribution to the communal survival endeavor (reciprocity) ³⁶.

The three principles offered by Peter Corning should be applied in a balanced manner to realize a just society. Plato referred to a just social structure as social justice, the primary key to achieving a harmonious and stable social structure.

However, the development of the social welfare state concept must pay attention to the culture of the community as viewed by Harry C. Triandis, who states that people who live in collectivist cultures perceive themselves as a part of their in-group, which offers them a secure social environment that they must learn to adapt to. On the other hand, individualists believe that the social environment is flexible and the self is stable. Thus, they often mold it to suit their personalities. Referring to this view, Indonesian society is more typically a collectivist culture and not a society with an individualist culture.

From the perspective of the constitution in Indonesia, Jimly Assiddiqie outlines that as a state based on law,^{37,38} Indonesia not only adheres to the concept of a welfare state, but its constitution is more likely to carry the spirit of a social welfare state that becomes the soul or spirit of all constitutional policies regarding the economy.³⁹ Especially the results of the Second Amendment to the 1945 Constitution of the Republic of Indonesia in 2002, which combined Article 33 with Article 34 and changed it into a Chapter on the National Economy and Social Welfare. Thus, it can be viewed explicitly as containing ideas not only about social welfare but also about the constitution of the social welfare state, which can also be called the social welfare constitution and the economic constitution.⁴⁰ In the socio-economic context, as a means of realizing social welfare and implementing the social welfare constitution, it must refer to the values of Pancasila as Indonesia's *weltanschauung* or *philosophische grondslag* (national philosophy), where the economic system in Indonesia is a people-centered economy based on cooperative and kinship. Furthermore, a study by Aurora Jillena Meliala and Jonathan Andre Woods finds that Indonesia's inherent economic system has yet to be implemented in the nation's legal life, dramatically impacting the nation's notions of prosperity.⁴¹

Therefore, even though the OJK does not have explicit regulations regarding social welfare as mandated in the constitution, there is room for further development in how the principles of social welfare can be implemented in existing financial regulations. This can be done through strengthening financial inclusion, improving consumer

36 Peter Corning, *The Fair Society: The Science of Human Nature and the Pursuit of Social Justice* (University of Chicago Press, 2011).

37 Habibul Umam Taqiuddin, "Gagasan UUD 1945 Sebagai Konstitusi Politik, Konstitusi Ekonomi, Dan Konstitusi Sosial," *Econetica* Vol. 3 No., no. November (2021): 38–54.

38 Taqiuddin.

39 M. Tasbir Rais, "Negara Hukum Indonesia: Gagasan Dan Penerapannya," *Jurnal Hukum Unsulbar* 15, no. 2 (2022): 1–20, <https://ojs.unsulbar.ac.id/index.php/j-law/article/view/1854>.

40 Taqiuddin, "Gagasan UUD 1945 Sebagai Konstitusi Politik, Konstitusi Ekonomi, Dan Konstitusi Sosial."

41 Aurora Jillena Meliala and Jonathan Andre Woods, "The Synthesis of Indonesian Socialism According to The Constitution," *Constitutionale* 3, no. 2 (2022): 97–116, <https://doi.org/10.25041/constitutionale.v3i2.2694>.

protection, and considering the social impact of applied financial policies. Despite Indonesia's solid constitutional principles of social welfare, their implementation of OJK regulations and government policies often faces challenges. It is crucial to continue enhancing coordination between relevant institutions and developing rules explicitly supporting social welfare principles in the financial sector and government policies.

Relevant to this study and referring to some of these views, there seems to be a contradiction where, on the one hand, the capital market is an individualist and liberalist product. Still, on the other hand, it is encouraged to provide space for aspects of collectivism. When we face these two conflicting choices, we should look at the 2030 Agenda, whose sustainable development concept emphasizes five elements, namely:

1. Individuals. We are committed to eradicating hunger and poverty in all of its instantiations and to guaranteeing that everyone has access to a healthy, stable, and indifferent terrain in which to fulfill their implicit rights;
2. Earth. We are committed to ensuring that the earth meets the needs of both current and future generations and preventing environmental degradation. This includes responsibly managing the earth's natural resources, consuming and producing sustainably, and acting quickly to combat climate change;
3. Wealth. We are devoted to ensuring that everyone may live happy, prosperous lives and that developments in technology, society, and frugality are done in a way that respects the environment;
4. Calm. We are committed to fostering societies that are inclusive, just, and free of violence and fear because there can't be sustainable development without peace;
5. Collaboration. With the participation of all nations, all stakeholders, and all people, we are committed to reviving the Global Partnership for Sustainable Development and mobilizing the resources necessary to carry out this agenda. This partnership will be built on a foundation of strengthened global solidarity, emphasizing the needs of the world's poorest and most vulnerable citizens.⁴²

Essentially, the SDGs are development concepts that support the continuous improvement of people's economic welfare, development that preserves the quality of the environment, development that guarantees justice, and the application of governance that can maintain the improvement of people's quality of life from one generation to the next.⁴³

Therefore, social bonds are issued as capital to raise funds for projects and activities relating to a particular theme, such as ocean and marine conservation, education, housing, climate change, and the SDGs. Social bonds are one of the tools of the sustainable financial system. Thus, if we pay attention to global economic development, there is an apparent dichotomy between people in collectivist and individualist cultures. This means that social bonds are not only profit-oriented, but they also raise funds for projects with expected positive social outcomes, helping issuers address social inequalities in line with the constitution of the Unitary State of the Republic of Indonesia, which aims to realize society's social and economic welfare.⁴⁴

Presidential Regulation No. 59 of 2017 regarding the Implementation and Achievement of Sustainable Development Goals demonstrates the Indonesian Government's commitment to supporting and actively participating in efforts to achieve Sustainable Development Goals (SDGs)⁴⁵Sustainable social bonds are financial instruments to finance or support projects with positive social or environmental impacts. In Indonesia, sustainable social bonds aim to create positive societal change through fundraising from the capital market.

Sustainable Social Bonds in Indonesia aims to finance social and environmental projects. One of the main goals of sustainable social bonds is to fund projects that focus on sustainable development; examples include green infrastructure projects, ecosystem restoration, and health and education programs. By encouraging corporate social responsibility by issuing social bonds, companies in Indonesia can demonstrate their commitment to social and environmental responsibility. This helps strengthen the company's reputation and expand its positive impact on the local community. Thirdly, improving access to financing for non-profit organizations and social bonds can also serve as a new funding source for non-profit organizations and other entities working for social and environmental welfare. This helps enhance their capacity to implement beneficial programs for the community.

42 Pertumbuhan Hijau Berkelanjutan, Bagi Indonesia, and Forum, "Pertumbuhan Hijau Berkelanjutan Bagi Indonesia Di Forum Internasional," *Policy Brief* 7, no. 3 (2022).

43 Berkelanjutan, Indonesia, and Forum.

44 Taqiuddin, "Gagasan UUD 1945 Sebagai Konstitusi Politik, Konstitusi Ekonomi, Dan Konstitusi Sosial."

45 "Peraturan Presiden Republik Indonesia Nomor 59 Tahun 2017 Tentang Pelaksanaan Pencapaian Tujuan Pembangunan Berkelanjutan," no. 1 (2017): 1–12.

The benefits of Sustainable Social Bonds in Indonesia, firstly, the positive Social and Environmental Impact: Funds obtained from sustainable social bonds are used to finance projects that directly impact society and the environment, such as the development of social infrastructure, carbon emission reduction, or ecosystem protection. Secondly, diversifying the funding sources of social bonds provides new options for companies and organizations to diversify their funding sources beyond conventional bank loans or internal revenue. Thirdly, promoting innovation and sustainable development by financing sustainable projects, social bonds encourage innovation in green technology and new approaches to sustainable development.

The main expectation regarding sustainable social bonds in Indonesia is that the Indonesian government provides adequate policy support for developing the social bond market. This includes fiscal incentives, transparent regulations, and assistance to enhance awareness and market participation. Secondly, investors and the public expect social bond issuers in Indonesia to provide transparent reports on the use of funds and the social and environmental impact of funded projects. Thirdly, increasing awareness and education are essential for enhancing investors' and bond issuers' understanding and knowledge regarding the benefits and objectives of sustainable social bonds. This education can help boost interest and participation in this market. By integrating the principles of economics, society, and environment in developing sustainable social bonds, Indonesia can strengthen its commitment to sustainable development and improve the overall welfare of Indonesian culture.

The state dominates every aspect of citizens' lives to realize social welfare. This is a concept in a welfare state that focuses on government policy in the form of Social Security, Health, Education, and Housing. The idea of a Welfare State is intended to provide the best possible social services to all citizens to achieve prosperity and welfare. Related to this, the concept of a Welfare State is that the state and its equipment or apparatus serve the interests, wealth, and welfare of the community, including providing Social Security.⁴⁶

The beginning of the concept of a welfare state was the state's efforts to manage its resources to improve the standard of living of its citizens. The economy built by the state must have a relationship between the welfare and prosperity of its citizens. This mandate must be realized in the concept of a welfare state because a welfare state cannot be separated from economic development, which impacts every citizen's becoming more prosperous.

One of the sociologists, Esping Anderson, gave his opinion about the Welfare State, which refers to the active role of the state in managing and organizing the economy, including the state's responsibility to guarantee the availability of essential welfare services at a certain level for its citizens. Furthermore, a country can be categorized as an adherent of the Welfare State system if the country has four essential pillars, namely: (1) social citizenship; (2) full democracy; (3) modern industrial relation systems; (4) rights to education and the expansion of modern mass education systems. In a Welfare State system, these four pillars are part of the social rights conveyed through social policies to its citizens.⁴⁷

The Indonesian government also committed and participated in efforts to achieve the SDGs by enacting Presidential Regulation No.59 of 2017 concerning Implementing and Achieving the Sustainable Development Goals. The Presidential Regulation No. 59 of 2017 regarding the Implementation and Achievement of Sustainable Development Goals demonstrates the Indonesian Government's commitment to support and actively participate in efforts to achieve the SDGs. The SDGs are a set of global goals established by the UN to end poverty and ensure everyone has a peaceful and prosperous life by 2030. With the issuance of this Presidential Regulation, the Indonesian Government provides a legal basis and implementation guidelines to achieve various SDG targets at the national level. This encompasses multiple sectors: health, education, environment, economic empowerment, and gender equality. It is important to note that achieving the SDGs requires collaboration between the government, private sector, civil society, and international institutions. Through Presidential Regulation No 59 of 2017, Indonesia aims to contribute to this collective effort.

The Law No. 4 of 2023 concerning Strengthening and Protection of the Financial Sector (UU P2SK) has introduced several significant and influential new regulations for the bond market in Indonesia. By providing a more robust legal framework for bond market regulation and supervision, this law aims to create a safer and more sustainable environment for all stakeholders in the financial sector. The P2SK Law emphasizes three main aspects: transparency, investor protection, and innovation. In this context, transparency is crucial to ensure that information

46 Cipta Indralestari Rachman, "Korelasi Konsep Negara Kesejahteraan Menurut Gøsta Esping-Andersen Dengan Pancasila Dalam Pengaturan Otonomi Daerah Di Indonesia," *Jurnal Aktualisasi Pancasila* 1, no. 1 (2023): 1–13, <https://journal.univpancasila.ac.id/index.php/jap/article/view/5841>.

47 Tareq Jati Pamungkas and Achmad Hariri, "Tanggung Jawab Negara Dalam Pemenuhan Jaminan Sosial Persepektif Welfare State," *Media of Law and Sharia* 3, no. 4 (2022): 270–83, <https://doi.org/10.18196/mls.v3i4.15198>.

related to issued bonds is available and accessible to all relevant parties so investors can make informed decisions. Investor protection is established as a priority to safeguard the rights and interests of bondholders.⁴⁸

Furthermore, the P2SK Law grants the Financial Services Authority (OJK) greater authority in overseeing the issuance and trading of bonds. This increased authority aims to ensure that all practices in the bond market comply with applicable regulations and to protect investors' interests from potential risks. Thus, the P2SK Law is expected to enhance the integrity and efficiency of the bond market in Indonesia while also promoting economic growth through the development of more diverse and innovative financial instruments.

Table 1. CBI Global State of the Market 2022



Source: https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance_en, 30 Augustus 2024

From an investor perspective, motivations for funding social projects vary and influence the selection of sectors or Sustainable Development Goals (SDGs). Capital providers, including governments, multilateral development banks, financial institutions, and private investors, increasingly view social investments as diversifying portfolios, enhancing risk management, achieving economic and social goals, and meeting regulatory obligations and disclosure requirements.

One of the state's authorities is the power to establish goals in communal life. The state also provides regulations regarding the procedures for using this power, both individually, in groups, and within the context of the state itself. In this regard, the state can organize its citizens' social activities towards common aspirations by regulating and controlling power conflicts between parties so as not to create dangerous situations and to organize citizen activities to achieve shared goals. The control exercised by the state over its citizens is based on the prevailing legal system.

The issuance of Social Bonds, one of the alternative sources of long-term financing, is one way the state can realize the Welfare State. Social bonds are expected to accelerate economic growth to support Sustainable Development Goals with the mission of poverty alleviation and reducing inequality among its citizens.⁴⁹

By their purpose of issuance, social bonds are oriented towards profit and projects with expected positive social outcomes. This helps issuers address social inequality in line with the concept of social and economic welfare, a fundamental principle mandated by Article 33 and Article 34 of the 1945 Constitution of the Republic of Indonesia In implementing this constitutional mandate to achieve social and economic well-being.

48 Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan."

49 By Sophie Peeters, Maud Schmitt, and Ariane Volk, "Social Bonds Can Help Mitigate the Economic and Social Effects of the COVID-19 Crisis," 2020, 1–8.

4. Conclusion

Based on the previous discussion, there are several conclusions: First, regulations regarding social bonds in Indonesia are carried out through the harmonisation process of laws from international practices based on international agreements and conventions oriented towards achieving sustainable development goals. Harmonization is an effort to achieve alignment and consistency, or a convergence point of the Sustainable Development Goals (SDGs) leading to the 2030 Agenda through the implementation of social bonds as an instrument of sustainable finance in line with the principles underlying the 1945 Constitution of the Republic of Indonesia. Second, by the purpose of their issuance, social bonds are profit-oriented and for projects with expected positive social outcomes. This helps issuers address social inequalities that are arguably in line with social and economic welfare, a fundamental principle mandated by Articles 33 and 34 in the 1945 Constitution of the Republic of Indonesia. To carry out this constitutional mandate to realize social and economic welfare, it is necessary to accelerate social bond-based financing in development in Indonesia. However, it is also essential to strengthen the application of social bond principles regarding the use of proceeds, project evaluation and selection processes, management of proceeds, reporting, and social impact to minimize the potential for social washing.

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