



# Legal Protection For Investors Of Government Bonds Whose Clauses Do Not Have A Maturity Period

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## ABSTRACT

*In running its Government, the state needs funds for national development and for maintaining the stability of the country's economy. One of the funds obtained is through debt instruments, both domestic debt and foreign debt. The Government avoids foreign debt, thus optimizing domestic debt with Consideration so that the public can participate in raising funds for national development. With this goal, the Government issued government bonds, or bonds (SUN). Government Bonds are securities in the form of debt recognition letters in rupiah and foreign currencies guaranteed by the payment of interest and principal by the Republic of Indonesia following the validity period. However, the SUN, issued in 1950 by the Government, has no perpetual bond. Unlike the SUN issued today, there is a maturity period guaranteed by interest and principal payers as stipulated in Law Number 24 of 2002 concerning Government Bonds. Meanwhile, the SUN issued in 1950 has no period, so it does not provide legal certainty and protection to holders of the 1950 SUN, even though the same Government issued the SUN.*

## 1. Introduction

The Government needs many funds to raise funds for national development and maintain economic growth stability. For that purpose, one of the government policies is issuing government bonds, which is called Surat Utang Negara (from now on referred to as SUN). The purpose of the Government issuing SUN is to raise funds for national development and maintain economic growth stability because the success indicator of a country is its economic growth. The definition of SUN as stipulated in Article 1 point 1 of Law Number 24 of 2002 concerning Government Bonds (from now on referred to as the SUN Law) is securities in the form of debt recognition letters in rupiah and foreign currencies guaranteed by the payment of interest and principal by the Republic of Indonesia, under the validity period. Through the Ministry of Finance, the Government issued SUN in 1950 to collect funds for national development and maintain economic stability. The legal basis for the issuance of SUN Year 1950 is Emergency Law Number 13 of 1950 concerning Emergency Loans through the Decree of the Minister of Finance No. PU / 2 dated March 19, 1950. The emergency law gives the Minister of Finance the power to issue policies so that the Government can raise funds in through SUN Year 1950. <sup>1</sup>

<sup>1</sup> Supratikno Raharjo. (2023). *et al., Saving to Build the Nation*, <[https://repositori.kemdikbud.go.id/19998/1/Menabung\\_Ebook-small.pdf](https://repositori.kemdikbud.go.id/19998/1/Menabung_Ebook-small.pdf)>, accessed January 25, 2023.

Some SUN was issued before 1950 but has not been able to lead to good economic conditions. So in 1950, Sjafruddin Prawingara, as Minister of Finance, issued a steering policy to overcome the high budget deficit and reduce the money supply. The steering policy stipulates that all notes above the Netherlands Indies Civil Administration (NICA) five-rupee denomination and De Javasche Bank banknotes to half of the value. The right part was exchanged for 1950 Republic of Indonesia Bonds, valid as Government loans with an interest rate of 3% per year, and the left part of the cut banknotes were exchanged for new De Javasche Bank banknotes.

There is a difference between SUN and bonds; the difference is who issues it and the maturity period. The first difference is from the publisher, namely: <sup>2</sup>

1. Corporate Bonds issued by a corporation or legal entity are known as corporate bonds. Corporate bonds are medium-long-term bonds that guarantee certain assets from the issuing company. Usually, the interest given is relatively high by the company's bonds.
2. A government Bond issued by the state is the Government Bond. The purpose of issuing government bonds is to raise funds for development finance. Government bonds have a long maturity, that is, a range of 10 years, 20 years, and even more than 30 years<sup>3</sup>. This Bond does not provide collateral such as wealth or specific assets. However, the security aspect of the bonds is included in the highest quality bond category because the issuer of the bonds is the Government, so government representatives are considered able to pay interest and principal on government bonds.
3. Municipal Bond issued by local governments or particular autonomous regions is generally not taxed, but there is a risk to local government bonds. However, the risk to local government bonds is smaller than that to the typical bondholder. The Regional Government issues the Bond to provide funds for the public interest (public utility).
4. Foreign Bonds are issued by foreign corporations or legal entities but traded in various countries using the country's currency. Foreign Bonds have risks in the form of foreign currency.

The second difference is the period; the period on SUN is usually more extended than bonds; vulnerable time can be 15 (fifteen) years or even more, while bonds based on their period are divided into three, namely: <sup>4</sup>

1. A long-term bond has a maturity period of more than 5 (five) years.
2. Medium-term Bond is bonds that have a maturity period in the range of 2 (two) to 5 (five) years.
3. Short-term bonds have a maturity period of up to 1 (one) year.

The maturity period on SUN is relatively more extended when compared to bonds. So that people prefer SUN because it gets a fixed interest rate even though it is relatively minor than bonds, and the state guarantees the payment. The existence of guarantees from the state is essential in paying off the SUN that the Government has issued. The aim is to provide public confidence in SUN or government-owned bonds that have been circulating in the country. So that the Government, through the Ministry of Finance, issued the Decree of the Minister of Finance of the Republic of Indonesia Number 466a / KMK.011 / 1978 concerning the Lump Sum Repayment of 3% of Bonds of the Republic of Indonesia 1950, 6% of Prize Bonds of 1959, 3.5% of Consolidated Bonds of 1959 and

<sup>2</sup> A. Setiadi, (1996) *Bonds in Indonesian Legal Perspective*, Citra Aditya Bakti, Bandung, 1996, p. 25-26.

<sup>3</sup> Abdul Malik, (2023) . *Types of Bonds, Their Benefits and Risks*, < <https://www.bareksa.com/berita/belajar-investasi/2021-02-18/yuk-kenal-lebih-jauh-jenis-jenis-obligasi-keuntungan-dan-risikonya> > accessed June 10, 2023.

<sup>4</sup> Gunawan Widjaja and Jono. (2006). *Bond Issuance and the Role and Responsibilities of Trustees in the Capital Market*, Jakarta:Kencana Prenada Media Group, p. 52.

Receptionist of 6% Development Bonds 1964 (from now on referred to as KMK No. 466a / KMK.011 / 1978). The existence of KMK No. 466a / KMK.011 / 1978 requires the Government to buy back or pay off SUN or government bonds issued by the Government. The provisions of KMK No. 466a / KMK.011 / 1978 also stipulate an expiry limit; if SUN holders after exceeding the maturity period of 5 (five) years from the date of repayment, bondholders cannot withdraw their money because it is considered expired.

This problem arose when the holder of SUN, Lim Tjiang Poan, a spice entrepreneur, gave debt to the Government by purchasing SUN in 1950. It is proved by a receipt of loan money signed by Sjafruddin Prawiranegara as Minister of Finance in 1950, amounting to Rp 80,300.00 (eighty thousand three hundred rupiah) with an interest rate of 3% per year. Lim Tjiang Poan, during his lifetime, never took interest or principal loans because he did not know the regulation of the Minister of Finance, namely KMK No.466a / KMK.011 / 1978 because, at that time, everything was still minimal, so that information about the repayment provisions did not reach all people. Finally, Lim Tjiang Poan passed away in 2011, so Lim Tjiang Poan's inheritance was given to his son, Hardjanto Tutik. Hardjanto Tutik only learned about SUN's existence, published in 1950.

The issuance of the SUN did not have a period, so Hardjanto Tutik asked for debt payment to the Government but was rejected because the SUN had expired as stipulated in the provisions of KMK No.466a / KMK.011 / 1978, stating that SUN has exceeded 5 (five) years from the determination of the repayment date but is not disbursed will become expired, starting from the entry into force of KMK No.466a / KMK.011 / 1978. Hardjanto Tutik finally sued the Government through the Padang District Court with a lawsuit against the Law.

Amar Padang District Court Decision Number 158/Pdt.G/2021/PN Pdg states that granting part of the lawsuit filed by the plaintiff, where the Government committed unlawful acts and stated that the 1950 Republic of Indonesia Loan in 1950 amounting to Rp 80,300 (eighty-three hundred rupiahs) was valid. Even though SUN is a debt recognition letter guaranteed by the payment of principal and interest by the state, according to the provisions of the maturity period. With the expiration limit determined through KMK No.466a / KMK.011 / 1978, problems arise because it conflicts with the SUN Law. Therefore, the problem formulation from the explanation above is; first, the characteristics of SUN issued before and after 1950 and, secondly, Legal protection for SUN holders who do not have a maturity period.

## 2. Method

The research method to be used is doctrinal research; this research explains the structured rules that govern a specific type of Law, connects existing legal rules, exposes obstacles, and knows the alleged future developments. This study leads to laws and regulations. This study is the Law on SUN and KMK No. 466a / KMK.011 / 1978. This study discusses the characteristics of SUN issued by the Government before and after 1950 and legal protection for SUN holders whose clauses do not stipulate the maturity period. The study applied, conceptual, historical, case and comparative approaches are used. A statute approach is an approach that analyzes laws and regulations related to the legal issues handled. <sup>5</sup>The regulations used in this study are Civil Code, Commercial Code and, Law Number 9 of 1946 concerning Regulations to Amend Law Number 4 of 1946 concerning National Loans 1946, Emergency Law of the Republic of Indonesia No 13 of 1950 concerning Emergency Loans, Law of the Republic of Indonesia Number 24 of 2002 concerning Government Bonds, Decree of the Minister of Finance of the Republic of Indonesia Number 466a/KMK.011/1978 concerning Lump sum Repayment of 3% of Bonds of the Republic of Indonesia 1950, 6% of Prize Bonds of 1959, 31/2% of Consolidated Bonds of 1959 and Reception of 6% of Development Bonds of 1964, Regulation of the Financial Services Authority Number 1 / POJK.05 / 2016 concerning Investment of Government Securities for Non-Bank Financial Service Institutions and related laws and regulations.

<sup>5</sup> Peter Mahmud Marzuki. 2005). *Legal Research Revised Edition*, Jakarta: Kencana Prenadamedia Group, p. 133.

A conceptual approach is an approach that studies various views and doctrines that develop in legal science so that this research gets ideas that trigger various legal definitions, legal principles, and appropriate legal concepts related to the issues faced. So that researchers can make legal statements to provide solutions to legal issues faced,<sup>6</sup> namely regarding legal protection for SUN holders issued by the Government, do not have a maturity period, and there is a clause stating that the debt is considered paid off if it is paid. The historical approach is an approach that studies the development of the regulation of legal issues faced.<sup>7</sup> A discussion is needed to understand the problem related to the publication of SUN in 1950 and SUN published by the Government and whether it still has relevance in the present.

The case approach analyzes various cases related to the issue undertaken as a court decision with permanent legal force. This research case study uses District Court Decision Number 158/Pdt.G/2021/PN Pdg with an Unlawful Acts lawsuit between the Government as a cassation application and Hardjanto Tutik as a cassation respondent, especially regarding legal protection for investors holding SUN issued by the Government and the clause has no maturity period. A comparative approach is a comparison between the laws of a country with the laws of one or more countries regarding the equality of rules. The comparison used is the British law regulations in issuing Consol with Indonesian Laws as the basis for the issuance of SUN Year 1950, which has no due date.

### 3. Analysis of Discussion

#### 3.1. Overview of Government Bod

Government Bonds or SUN is securities regulated outside the Commercial Code. There are 2 (two) definitions of securities: securities in the broad sense and securities in the narrow sense. In a broad sense, the definition of securities is a letter that gives definite/fundamental rights to its holders over a specific right expressly mentioned in the letter. In the narrow sense, securities have a price or value, money or goods that can be traded or transferred to others.<sup>8</sup> In proving their rights according to Law, holders of securities prioritize formal ratification of rights (formal legitimacy), so whoever holds/controls securities is legally considered entitled to the securities. If someone else denies his right, then that other person is burdened with proof; he must be able to prove that he is the natural/material right.<sup>9</sup>

In addition to being mentioned as securities SUN also meets the characteristics of securities. There are 4 (four) characteristics of securities, namely:<sup>10</sup>

1. It was issued to be the means of payment for its essential engagement. The primary engagement in question can be an agreement between one or several people who owe (creditors), in this case, the Government, and a debtor (debtor), namely the holder of SUN.<sup>11</sup> The primary engagement provides a position for the parties, namely the Government of Indonesia as the issuer of SUN and the holder of SUN as an investor. It is impossible to issue securities without a primary engagement, so the issuance of securities is not a stand-alone act apart from the essential engagement.<sup>12</sup> The relationship between bond issuers and bondholders involves lending and borrowing money. The SUN issuer borrows money from

<sup>6</sup> *Ibid.*, p. 135-136.

<sup>7</sup> *Ibid.*, p. 134.

<sup>8</sup> Budi Kagramanto *et al.*, (2011) *Textbook of Commercial Law*, Department of Civil Law, Faculty of Law, Airlangga University, Surabaya, 2011, p.80.

<sup>9</sup> *Ibid.*, p. 82.

<sup>10</sup> James Julianto Irawan. (2014). *Securities A Juridical and Practical Review*, Jakarta: Kencana, p. 5-6.

<sup>11</sup> Ikhsanti Aulia Komara, Budiharto, Agung Basuki Prasetyo, (2019). *Juridical Analysis of Expired Old Bondholders*, Diponegoro Law Journal, 8 (2), p.1231.

<sup>12</sup> Abdulkadir Muhammad, (2013). *Commercial Law on Securities*, Bandung: Citra Aditya Bakti, p. 14.

the SUN holder so that the obligation of the SUN issuer arises where the proof of the obligation is contained in the SUN as proof of debt. Holders of SUN issued in 1950 have proof in the form of SUN sheets and written nominal money given as a loan to the Government and signed by the Minister of Finance as the issuer.

2. Easily transferable or transferable, there is a "transferable" nature, so securities are equipped with clauses that make it easier for holders to transfer these securities to other parties by transferring securities rights to appointees and replacements.<sup>13</sup> One of the functions of securities is as a tool to transfer billing rights, meaning that they can be traded or transferred to the next holder at any time if desired by the holder.<sup>14</sup> SUN can also be inherited by the holder of the SUN to his heirs.
3. It is proof of billing rights for those who hold it. Security is a letter of legitimacy, meaning that it is self-proof to the holder that he is the person who is entitled to the rights stated in the letter or legitimizes for the holder of the price letter. Securities are not only evidence to the holder when there is a dispute but also help the holder to demand payment to which he is entitled. Suppose the check is shown to the interested, i.e., the bank must pay.<sup>15</sup> As stipulated in the SUN Law, SUN is security in the form of a debt recognition letter, as mentioned in Article 1. At this moment, it gives legitimacy to its holder as the person entitled to the bills contained therein. That is, everyone who holds SUN is considered to have the right to collect payment of a sum of money to another person or party, in this case, the issuer or involved, simply by showing and handing over the securities to the issuer or stuck without any other obligation.<sup>16</sup>
4. Specific regulations determine the form of securities. The form of SUN as stipulated in Article 11 of the SUN Law, namely:

Each Government Bond shall include at least the following:

- a) Face value,
- b) Due date,
- c) Date of interest payment,
- d) Interest rate (coupon),
- e) Frequency of interest payments,
- f) How interest payments are calculated,
- g) Provisions on the right to repurchase Government Bonds before maturity,
- h) Provisions on the transfer of ownership.

As stipulated in the SUN Law, the SUN issued today is the same form as the SUN issued in 1950. It is just that there is a difference in the maturity date because the 1950 SUN held by Liem Tjian Poan does not have a maturity date.

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<sup>13</sup> *Ibid.*, p. 6.

<sup>14</sup> *Ibid.*, p. 8-9.

<sup>15</sup> *Ibid.*, p. 21.

<sup>16</sup> James Julianto Irawan, *Op.Cit.*, 6.

### 3.2. Characteristics of Government Bond issued before and after 1950

INFORMATION	OLD SUN	NEW SUN
Legal Basis	Emergency Law of the p. Republic of Indonesia No. 13 of 1950 concerning Emergency Loans	Law of the Republic of Indonesia Number 24 of 2002 concerning Government Bonds, State Gazette of the Republic of Indonesia of 2002 Number 110, Supplement to the State Gazette of the Republic of Indonesia Number 4236
Characteristic	Borrow and Borrow	Borrow and Borrow
Guarantee	Not guaranteed by the Act, the payment of principal and interest.	Law Number 24 of 2002 guarantees the principal and interest payments of the Government Bonds.
Payment Term	No payment due period	There is a payment due period based on the type of SUN regulated in the SUN Law; there are two types, namely: <ol style="list-style-type: none"> <li>1. Government bonds have a maturity of more than one year.</li> <li>2. The State Treasury is less than one year term.</li> </ol>
Coupon or Interest	Fixed Rate Interest	There are 2 (two) types of flowers offered, namely: <ol style="list-style-type: none"> <li>1. <i>Fixed Rate</i>, SBN products with <i>fixed rate</i> yield schemes are ORI and S.R.</li> <li>2. <i>Variable Rate / Floating</i>, SBN products with <i>floating rate with floor</i> yield scheme are SBR and S.T.</li> </ol>
Purchase	There is no Agent; the purchase is still manually/traditionally.	There is an agent, Bank Indonesia, and the purchase is all online. It is tradable on an <i>organized Over Counter (OTC)</i> through an <i>Electronic Trading Platform (ETP)</i> . It means trading can be through exchanges and/or outside the exchange, commonly called OTS.

		SUN is traded in the Secondary Market, both at home and abroad. Untraded SUN is SUN that is not traded in the Secondary Market and is usually explicitly issued for financiers of specific institutions, both domestic and foreign.
The Parties	Parties in the issuance of SUN, namely: <ul style="list-style-type: none"> <li>- Government</li> <li>- Investor</li> </ul>	Parties in the issuance of SUN, namely: <ul style="list-style-type: none"> <li>- Government</li> <li>- Investors, and</li> <li>- Bank Indonesia (agent to conduct auctions in the Primary Market, payment of interest and principal of government bonds, and administration of government bonds).</li> </ul>
Collateral/Guarantee	It can function as collateral or collateral.	Can be lent or pledged (collateral) to other parties (under the policies of each Distribution Partner).
Shape	In the form of a show card	Issued in unwarranted form or its ownership is electronically recorded.

The legal basis for Government Bonds (SUN) issued in 1950 by the Government of Indonesia through the policy of the Ministry of Finance as provided in the Emergency Law of the Republic of Indonesia No. 13 of 1950 concerning Emergency Loans to collect funds in the context of national development and maintain the stability of the country's economy. The Government then only issued SUN and did not issue various types of SUN offered or traded, unlike the current SUN, which is regulated in the SUN Law, which has 2 (two) types of SUN, namely State Treasury Letters and Government Bonds. The period of SUN issued in 1950 is not determined, so it differs from the SUN regulated in the SUN Law. The term SUN is determined based on its type; the first type of SUN is the State Treasury Letter has a maturity period of 12 (twelve) months at a discount in interest payments. The second type of SUN is Government Bonds with a maturity of more than 12 (twelve) months with coupons and discounted interest payments.

In issuing SUN in 1950, the Government issued 2 (two) types of interest offered based on the type of SUN, namely:<sup>17</sup>

1. Retail Government Bonds (from now on referred to as ORI) are Government Securities (SBN) instruments traded for Indonesian Citizens (WNI) at Distribution Partners in the primary market. There are several characteristics of ORI, namely; in the form of *scriptless* (without warrants), can be traded in the secondary market, *fixed-rate bonds* (fixed interest) means bonds

<sup>17</sup> Ministry of Finance of the Republic of Indonesia, *About ORI*, <https://www.kemenkeu.go.id/ori>, accessed May 27, 2023.

with a fixed interest rate every period; this has the possibility of *capital gain/loss*, with a minimum purchase of IDR 1,000,000 (one million rupiah) and a maximum of IDR 5,000,000,000 (five billion rupiahs), where Law guarantees coupons and principal. ORI can be traded on *organized Over Counter OTC* through an *Electronic Trading Platform (ETP)* and can be used as collateral (according to the policy of each Distribution Partner).

2. Retail Saving Bond has the characteristic that it is explicitly traded for Indonesian Citizens (WNI). With a minimum order of IDR 1,000,000 (one million rupiah), SBR is a *variable rate* bond. This means bonds with variable rate bonds (inflated interest rate), which are determined based on a reference, for example, the interest rate of Bank Indonesia Certificates. The state guarantees SBR payments and it is without warrants. SBR cannot be traded because SBR cannot be disbursed until the maturity period, except for the *Early Redemption* feature. The *Early Redemption* feature is a facility for investors to receive part of the principal repayment of SBR. Investors can use this facility if they have ownership of at least IDR 2,000,000 (two million rupiahs) in each Distribution Partner and have the highest amount of ownership that can be submitted for *Early Redemption* is 50% of the investor's total ownership.

Government Bond Trading has two types of markets used as trading places for SUN: the *Primary Market* and the *Secondary Market*. The *primary market* is the first offering of securities to investors within a certain period before the securities are listed on the exchange.<sup>18</sup> The Government first sold and offered SUN in the domestic primary market through auctions attended by bidders who had met the requirements. The bidder is a Bank or Securities Company appointed by the Minister of Finance as the Main Dealer. SUN issued at this time as stipulated in the SUN Law has a guarantee of the payment of interest and principal by the state under the specified time. SUN holders 1950 received SUN in the form of a letter of appointment, meaning that the owner's name is not included in the SUN until everyone who controls it is the legal owner. Meanwhile, the issuance of SUN based on the SUN Law is issued in *scriptless* or recorded ownership electronically so that SUN holders no longer hold physically but have been replaced in electronic form.

### 3.3. Government Bond without Maturity Date

Government bonds without maturity, known as perpetual bonds, were issued by the Government in 1950, known as the 1950 Republic of Indonesia Bonds. Previously, the British State had also issued perpetual bonds known as Consol. The U.K. issued Consol to increase the source of government funds; this Law authorizes the Government to issue bonds and raise funds from financial markets in the form of sovereign debt. Its purpose was to finance war and obtain the necessary funding sources to finance government activities, including infrastructure projects, defense, and other public expenditures. The Consol was regulated in the National Debt Act of 1870. In addition to the British State that issued Consol previously, there were bonds without maturity first issued by the Netherlands, namely The Dutch Water Authority Stichtse Rijnlanden in the 17th century. Understanding Perpetual bonds, according to the Corporate Finance Institute, are a perpetual bond is an unusual type of Bond that does not have a maturity date. A perpetual bond works much like a bond with a maturity date. However, it has the potential to pay returns indefinitely. While it has no redemption date, the issuer may redeem it at some point, as most perpetual bonds have a call feature.<sup>19</sup>

This means the issuer can terminate the loan and pay back the bondholder.<sup>20</sup>

<sup>18</sup> Adrian Sutedi.(2009). *Legal Aspects of Bonds and Sukuk*, Jakarta: Sinar Grafika, , p. 40.

<sup>19</sup> THE BALANCE, "What Is a Perpetual Bond?", <https://www.thebalancemoney.com/what-is-a-perpetual-bond-5214945>, retrieved May 17, 2023.

<sup>20</sup> BNP PARIBAS FORTIS, "*what are Perpetual bonds or Perpetuals*", <https://www.bnpparibasfortis.com/>, retrieved May 17, 2023.



This is a unique bond, so it is different from general bonds with a grace period. Perpetual bonds have the following characteristics: <sup>21</sup>

1. No Maturity Date

Perpetual bonds have no maturity date, meaning they have an indefinite term. The issuer is not obligated to repay the Bond's principal amount at any specific time.

2. Fixed Interest Payments

Perpetual bonds pay a fixed interest to bondholders at regular intervals, typically annually or semi-annually. The interest rate is predetermined and remains fixed throughout the Bond's life.

3. No Obligation To Redeem

The issuer is not obligated to redeem or buy back the perpetual Bond from the bondholders. The Bond pays interest indefinitely until a specific redemption event occurs, such as the issuer exercising an optional call provision.

4. Call Option

Some perpetual bonds may have a call option, allowing the issuer to redeem the Bond before maturity. The call option usually comes with certain conditions, such as a specific date or a premium paid to bondholders.

5. Higher Risk

Due to their indefinite term and lack of principal repayment obligation, perpetual bonds are generally considered riskier than bonds with fixed maturities. The issuer's creditworthiness, market conditions, and other factors can impact the risk associated with perpetual bonds.

Bonds without maturity, in addition to having characteristics, also have the risk of investing in bonds without a maturity, namely: <sup>22</sup>

1. Interest Rate Risk: Perpetual bonds are sensitive to changes in interest rates. If interest rates rise, the fixed interest payments on perpetual bonds may become less attractive than newly issued bonds with higher yields. This can result in a decline in the market value of existing perpetual bonds.
2. Credit Risk: Perpetual bonds are typically issued by corporations or governments. Investors bear the risk of the issuer defaulting on interest payments or not redeeming the Bond when allowed. The issuer's creditworthiness is crucial in assessing the credit risk of perpetual bonds.
3. Liquidity Risk: Perpetual bonds may have lower liquidity than other bonds, making buying or selling them at desired prices difficult. The limited trading volume and market participants can result in wider bid-ask spreads, potentially impacting the execution price.
4. Call Risk: Some perpetual bonds come with call options that allow the issuer to redeem the bonds before maturity. This introduces risk for investors, as the issuer may call the bonds if market conditions become favorable for refinancing at lower rates. Investors may lose out on future interest payments if the Bond is due date.
5. Inflation Risk: Inflation can erode the purchasing power of fixed-interest payments received from perpetual bonds over time. If the inflation rate exceeds the fixed interest rate, the real return on the investment can diminish.

<sup>21</sup> Matthew D. Gelfand, "Consol Are Forever: U.S Treasury Obligations of Perpetual Maturity", *Journal of Taxation of Investments*, Vol. 37 Issue 3, p.17.

<sup>22</sup> Standard Chartered, *Know Your Investment Risk (Kyir) Bonds and Preferred Perpetuals*, <https://www.sc.com/global/av/bn-merged-kyir-bonds-perpetuals>, diakses pada 10 Juni 2023.

6. Market and Regulatory Risks: Changes in market conditions, regulatory environments, or legal frameworks can impact the value and performance of perpetual bonds. These factors can include changes in tax laws and accounting standards.

Perpetual bonds pose a risk to bondholders without maturity or issuers of bonds without maturity. Without a period, bond issuers are not obligated to pay back the principal debt bondholders give. Even though it does not pay the principal debt of the Bond, the issuer of bonds without a period is obliged to pay coupon (interest) bonds without a period whose interest amount has been determined at the beginning of the bond issuance without a period, and interest payments can last forever.

The interest given by bond issuers without a fixed period is fixed interest. The interest coupon rate on maturing bonds is higher than on maturing bonds, making bondholders more interested in investing in maturity bonds than in maturing bonds because bondholders without maturities benefit from paying larger bond interest coupons. The buyback option is the issuer's right to buy the Bond without the term it issued by paying off its principal debt. The momentum can be said to be a maturity for bondholders. The advantage for the issuer is that the issuer may decide to withdraw the Bond, if market conditions are favorable for exercising the option to repurchase at a lower interest rate.

### 3.4. Forms of Legal Protection for Holders of Government Bonds No Maturity Date

A SUN protected in the SUN Law is SUN that has a period, in contrast to SUN without a period issued by the Government in 1950. There are no specific rules governing legal protection for holders of SUN Year 1950 issued by the Government to provide repayment or payment of interest upon issuance of SUN Year 1950, so there is a need for legal protection for holders of SUN Year 1950 issued by the Government without that period. Legal protection efforts for SUN holders in 1950 can be carried out, namely:

#### 1. Unlawful Acts by the Government (Onrechtsmatige Overheidsdaad)

Unlawful acts were first recognized through the so-called Osterman Case (H.R. November 20, 1924, NJ 125 No.89); The Supreme Court revealed that if someone commits an act or does not commit an act, whether it violates laws and regulations, it can be said to be an act of violating the Law, regardless of the Act either civil Law or public Law. The definition of Unlawful Acts is regulated in Article 1365 of the Civil Code). Unlawful Acts by the Government are an extension of the concept of Unlawful Acts, so the provisions governing Unlawful Acts by the Government still use Article 1365 of the Civil Code.<sup>23</sup> There are elements of Unlawful Acts regulated in Article 1365 of the Civil Code, namely:

1. There are deeds
2. His actions were unlawful
3. Fault presence
4. The Act caused harm
5. There is a causal relationship between actions and losses.

Unlawful acts stipulated in Article 1365 of the Civil Code provide for the possibility of several types of prosecution, one of which is compensation in the form of:<sup>24</sup>

1. Money;
2. Indemnity for losses in equivalent form or return of the state to its original state;

<sup>23</sup> Bagus Otafian Abrianto *et all.* (2020). "Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca Undang-Undang Nomor 30 Tahun 2014", *Negara Hukum Journal*, 11 (1), p. 49.

<sup>24</sup> MA. Moegni Djojodirjo. (1982) *Perbuatan Melawan Hukum*, Jakarta: Pradnya Paramita, p.102.

3. A statement that the Act committed is unlawful;
4. Eliminate something that is unlawfully;
5. Announcement rather than a decision on something that has been fixed.

Submission of Unlawful Acts by the parties since the entry into force of the Law No. 5 of 1965 regarding The Land, the objects, and subjects of the State Administration dispute are expanded. Government Administration Decisions or Actions, positive fictitious decisions, and requests for abuse of authority assessments are extensions of objects in State Administration disputes, according to the Land Law. While the subject of the Plaintiff or Applicant of the State Administration dispute in the Land Law a citizen, and the defendant or respondent is the State Administrative Agency/Officer who issued the Decision/Action. Article 53, paragraph (1) of the Administrative Justice Law contains the basis of the lawsuit for the party who filed the lawsuit. The paragraph says that: " a person or civil law entity who feels a State Administrative Decision harms his interests soon may file a written lawsuit with the competent Court demanding that the disputed State Administrative Decision is declared null and void with or without a claim for compensation and/or rehabilitation."

A lawsuit can be filed by a person or civil law entity who has the right to sue who disagrees with a State Administrative Decree issued by a State Administrative Agency or Officer who feels that he is aggrieved so that he can file a lawsuit in the State Administrative Court. To obtain a court decision declaring the State Administrative Decision void or invalid.<sup>25</sup> While Article 1 number 11 of the Law on State Administrative Court defines a lawsuit as follows, "an application containing a claim submitted to the court against a state administrative agency or official to obtain a decision."

The filing of an Unlawful Action lawsuit in Supreme Court Decision Number 241K / SIP / 1969 states that at the beginning of establishing the State Administrative Court, the District Court had the authority and decide the lawsuit against the Government of Indonesia.<sup>26</sup> Since the enactment of Law Number 30 of 2014 concerning Government Administration, the competence of the State Administrative Court on Government Decisions and Actions has expanded. The expansion of competence resulted in the settlement of the Government's unlawful Act previously resolved by the General Court to be transferred to the State Administrative Court.

The enactment of the Supreme Court Regulation or SEMA Number 2 of 2019 confirms that Unlawful Acts by the government become the authority of the State Administrative Court, as stipulated in the Consideration considering letter b of the PERMA stating; That unlawful acts by government bodies and officials) are government actions so that they become the authority of the state administrative court based on Law Number 30 of 2014 concerning Government Administration. Moreover, the authority of the State Administrative Court is affirmed through Article 2 paragraph (1) of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Prosecute Unlawful Acts by Government Bodies and/or Officials. Therefore, disputes in which there are claims to declare invalid and void the actions of Government Officials or have no binding legal force along with compensation following the provisions of laws and regulations.

Based on the above provisions, legal protection for citizens through the General Court of the official unlawful act disputes passes to the State Administrative Court.

## 2. Citizen Law Suit

The mechanism of the Citizen Law Suit (citizen lawsuit) began to exist and develop in various countries that used the Anglo-Saxon system, then adopted by various countries that implemented the

<sup>25</sup> Indroharto, (2003). *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara*, Jakarta: Pustaka Sinar Harapan, Jakarta, 2003, p. 68.

<sup>26</sup> Rachmat Setiawan. (1991). *Tinjauan Elementer Perbuatan Melanggar Hukum*, Bandung: Bandung, p.. 72.

Civil Law System. <sup>27</sup>The basis for filing a Citizen Law Suit lawsuit is Article 1 paragraph (2) of the Constitution of the Republic of Indonesia, Year 1945, which states that "sovereignty is in the hands of the people and is exercised according to the Basic Law." Citizen Law Suit is an attempt to file for citizens to challenge state administrators' responsibility for failing to fulfill citizens' rights or potentially harming citizens' rights. This fault can be said to be against the Law, in the proposition must be described about negligence and what rights are not fulfilled by the state and must also be proven.<sup>28</sup> The Citizen Law Suit lawsuit is categorized as a civil lawsuit, but the lawsuit has different characteristics from civil lawsuits. The characteristics of the Citizen Law Suit are: <sup>29</sup>

1. The defendant in the Citizen Law Suit lawsuit is a state official, such as the president or state officials in the field, who are alleged to have caused negligence in fulfilling the rights of their citizens.
2. Unlawful acts were postulated in the lawsuit as state administrators' negligence in fulfilling citizens' rights. The lawsuit must also describe the rights that are not or have failed to be fulfilled.
3. The plaintiff is an Indonesian citizen acting on behalf of a citizen. So that the interests defended are not direct interests but the interests of society in general.
4. In a lawsuit, the Citizen Law Suit provides notification in the form of a subpoena to the state administrator. <sup>30</sup>
5. The petition in a citizen's lawsuit only contains a request for the state to issue a specific policy/regulation so that negligence in fulfilling the rights of citizens will not be repeated in the future.
6. In the claim of the lawsuit, the Citizen Law Suit may not seek material damages because the citizens who sued are not materially harmed.
7. The petition of the Citizen Law Suit must not contain the annulment of a State Administrative Decision (State Administrative Decision), which is final, concrete, and individual because it is the domain of the State Administrative Court.
8. The petition in a Citizen Law Suit lawsuit may not contain an application to annul a law because it is the authority of the Constitutional Court (M.K.), nor should a citizen lawsuit request to cancel a law under the Law because it is the authority of the Supreme Court.

The Citizen Law Suit lawsuit is a legal action that is not only based on fulfilling one's rights but prioritizes fulfilling community rights. There are parties to the Citizen Law Suit mechanism that places the Government as a defendant because the Government as a state organizer in running its Government, has issued policies that violate the rights of citizens to make their citizens feel disadvantaged. While citizens, as plaintiffs of the Citizen Law Suit, are citizens who represent citizens and are considered worthy, they are Indonesian citizens. The plaintiff does not have to prove perceived material harm as the suit's basis. <sup>31</sup>

The object of the lawsuit in the Citizen Law Suit mechanism is government action within the scope of unilateral legal actions that are generally binding which are considered to have harmed the rights of citizens, and if the Government does not take the legal actions or obligations required of it, it can also

<sup>27</sup> Muhammad Adiguna.B,( 2020) "Merekonstruksi Paradigma Gugatan Citizen Lawsuit di Indonesia Sebagai Sengketa Administrasi", *Jurnal Hukum & Pembangunan*, 5 (1), p. 232.

<sup>28</sup> Willa Wahyuni, "Gugat Pemerintah Lewat Penerapan Citizen Lawsuit", [www.hukumonline.com](http://www.hukumonline.com), 9 September 2022, h. 1, dikunjungi pada tanggal 13 Februari 2023.

<sup>29</sup> Susanti Adi Nugroho, (2010) *Class Action dan Perbandingan dengan Negara Lain*, Jakarta, p. 387.

<sup>30</sup> Ahmad Afandi *et al.*, (2023) "Telaah Kristis Relevansi Citizen Law Suit (Gugatan Warga Negara) Sebagai Bentuk Kedaulatan Rakyat Di Indonesia", *Jurnal Ilmu Hukum dan Humaniora*, 6 (1), p. 10.

<sup>31</sup> Willa Wahyuni, (2022). *Gugat Pemerintah Lewat Penerapan Citizen Law Suit*, , <https://www.hukumonline.com/berita/a/gugat-pemerintah-lewat-penerapan-citizen-lawsuit-lt62d544448c877/?page=all>, diakses pada 15 Juni 2023.

be sued with a Citizen Law Suit. Generally, when viewed from the mindset of dividing the authority to adjudicate absolutely in the judicial body under the Supreme Court of the Republic of Indonesia, it is based on the residual dispute mindset,<sup>32</sup> namely that all disputes can be tried by the General Court unless regulated by laws and regulations as the absolute authority of other judicial bodies. It has become a permanent jurisprudence followed in Indonesia that the Citizen Law Suit lawsuit case becomes the authority of the General Court, which in this case becomes the authority of the civil judge to try it. One jurisprudence used is the decision of the Citizen Law Suit lawsuit, namely the abandonment of migrant workers in Nunukan, which Munir filed at the Central Jakarta District Court with Case Number: 28/PDT. G/2003/PN. JKT. PST obtained permanent legal force based on the decision of the DKI Jakarta High Court with Decision Number 480 / PDT / 2005 / P.T. DKI.

The basis for the Citizen Law Suit lawsuit is the existence of unlawful acts by government officials under Article 1365 of the Civil Code. Citizens can file a lawsuit with the District Court because the Government has committed an Unlawful Act based on Article 1365 of the Civil Code. The elements contained in Article 1365 of the Civil Code, namely:

#### 1. Existence of Unlawful Acts

Unlawful acts mean acts or actions of perpetrators who violate or violate the Law. Prior to the Dutch Supreme Court Decision on the Cohen-Lindenbaum case (H.R January 31, 1919), the definition of breaking the Law was narrowly defined as only a violation of the written Law (Law), but after the decision, the definition of unlawful was not limited to violating the written Law (Law) but also a violation of the unwritten Law. An act is categorized as an Unlawful Act if:

- a) Violating the rights of others, that is, violating the subjective rights of others, means a special right granted by Law to a person. The subjective rights form is freedom, good name, honor, and property.
- b) Contrary to the legal obligation of the maker, the legal obligation can be interpreted as a legal obligation, whether written or unwritten. However, the Supreme Court decision limits only to written laws, both laws and regulations.
- c) Contrary to good decency, it violates moral norms that have been accepted as legal norms in society.
- d) Contrary to the propriety in society towards self or the goods of others, an act is declared contrary to another person if the Act is very detrimental to others without proper interests and worthless acts that cause harm to others, which according to ordinary people, should be observed.

#### 2. Fault

There are 2 (two) forms of fault: intentionality and negligence. Intentionality occurs when one is aware that an average person knows the consequences of his actions will harm others. At the same time, negligence means that there are actions that ignore something that should be done or are not careful or careful to cause harm to others.

#### 3. Cause and Effect Relationship between Loss and Action

There is a causality relationship. There is a cause and effect between legal actions and losses caused.

#### 4. Loss, Is a loss arising from Unlawful Acts, both material and non-material.

SUN, without a period issued in 1950 by the Government, is a security that can be transferred or inherited as in the case of one of the holders of SUN in 1950, namely Lim Tjian Poan, who had died, and his heirs, namely Harjannto Tutik, inherited the SUN in 1950. However, the Government refused

<sup>32</sup> Muhammad Adiguna Bimasakti, *Onrechtmatig Overheidsdaad Oleh Pemerintah Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan*, Jurnal Hukum Peratun Vol. 1 No. 2, Agustus 2018, h. 275.

to pay when Harjanto Tutik asked for interest and principal payments in 1950. Harjanto Tutik can file a legal remedy by suing the Government through an Unlawful Act by the Government lawsuit and filing a Citizen Law Suit. The purpose of an Unlawful Acts lawsuit by the Government is to obtain a decision that declares invalid and/or void the Actions of Government Officials or has no binding legal force along with compensation under the provisions of laws and regulations. At the same time, the purpose of filing a Citizen Law Suit lawsuit is for the state to issue a specific policy/regulation due to negligence in fulfilling citizens' rights.

#### 4. Conclusion

The characteristics of the 1950 SUN with the SUN published today are the same. It is just that the difference lies in the period. The issuance of SUN in 1950 has no period; on the contrary, the current SUN issued under the SUN Law has a period. So it must be determined what conditions are the maturity period for debt securities issued by SUN issuers without that period. One of them is by exercising the buyback option, that is, the issuer's right to buy back SUN without a period by paying off the principal debt of SUN. The momentum is classified as maturing for SUN holders without maturity. Legal Protection for SUN holders who do not have a period to obtain fulfillment of rights and the same case does not occur again. Efforts can be made, namely through claim on unlawful acts by the Government (Onrechtsmatige Overheidsdaad) to obtain a decision that declares null and void the actions of Government Officials or has no binding legal force along with compensation following the provisions of laws and regulations. The debtor can also get Protection through the Citizen Law Suit. This effort is carried out with the intention that the state issues a specific policy/regulation as a result of negligence in fulfilling the rights of citizens.

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#### References

*Books:*

- Abdulkadir, Muhammad. (2013). *Commercial Law on Securities*, Bandung: Citra Aditya Bakti.
- Djodjodirjo, MA. Moegni. (1982). *Unlawful Acts*, Jakarta, Pradnya Paramita.
- Indroharto (2003), *Efforts to Understand the Law on Administrative Justice Negara*, Jakarta: Pustaka Sinar Harapan.
- Irawan, James Julianto (2014). *Securities A Juridical and Practical Review*, Jakarta: Prenadamedia Group.
- Kagramanto, Budi et al. (2011), *Textbook of Commercial Law*, Surabaya, Department of Civil Law Faculty of Law, Airlangga University.
- Marzuki, Peter Mahmud. (2005). *Legal Research Revised Edition*, Jakarta, Kencana Prenadamedia Group.
- \_\_\_\_\_ (2018), *Introduction to Legal Science Revised Edition*, Jakarta: Kencana Prenadamedia Group.
- Nugroho, Susanti Adi. (2010). *Class Action and Comparison with Other Countries*, Jakarta: Kencana.
- Setiawan, Rachmat. (1991). *Elementary Review of Unlawful Acts*, Bandung: Binacipta. Kencana.

*Journal articles:*

- Aarne Poisto & Hamed Alavi (2016). Abuse of Dominant Market Position by Predatory Pricing; The Valio Case. *Hasanuddin Law Review*, 2(1), 24-37. Doi <http://dx.doi.org/10.20956/halrev.v1n1.212>.
- Ahmad Afandi et al. (2023), "Christian Study of the Relevance of the Citizen Law Suit State) as a form of people's sovereignty in Indonesia," *Journal of Science Law and Humanities*, 6(1), 10. doi: <https://jurnal.saburai.id/index.php/THS/article/view/2071>.
- Bagus Otafian Abrianto et al. (2020), Development of Unlawful Acts Lawsuit by the Government After Law Number 30 of 2014, *State of Law Journal*, 11(1), 49. doi: <https://jurnal.dpr.go.id/index.php/hukum/article/view/1574>
- Diah Utari, G.A et al.(2017), "The Impact of Domestic SUN Issuance on Development Banking Sector," *BPPK Journal*, 4(2), 45. doi: <https://jurnal.bppk.kemenkeu.go.id/jurnalbppk/article/view/55>
- Komara, Ikhsanti Aulia, Budiharto (2019), Agung Basuki Prasetyo, "Juridical Analysis Against Expired Old Bondholders", *Diponegoro Law Journal*, 8 (2), 1231. doi: <https://ejournal3.undip.ac.id/index.php/dlr/article/view/24586>
- Matthew D. Gelfand (2020), Consol Are Forever: U.S Treasury Obligations of Perpetual Maturity, *Journal of Taxation of Investments*, 37(3), 17. doi: <https://web.s.ebscohost.com/ehost/detail/detail?vid=0&sid=0d1235b1-64d2-4711-bc42-099dfb932283%40redis&bdata=JnNpdGU9ZWhvc3QtG2ZQ%3d%3d#AN=143626509&db=bth>
- Muhammad Adiguna. B (2020), "Reconstructing the Paradigm of Citizen Lawsuit in Indonesia as an Administrative Dispute," *Journal of Law & Development*, 5(1), 232. doi: <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1149&context=jhp>

*Dissertation:*

- Hari Sugiharto (2017), *Legal Protection Against Public Legal Actions By Government in the State Administrative Justice System*, Dissertation, Program Doctor of Law Studies, Faculty of Law Airlangga Surabaya.

*World Wide Web:*

- British Broadcasting Corporation. (2012). *Noken Papua Mendapat Pengakuan UNESCO*. Available online from: [http://www.bbc.co.uk/indonesia/berita\\_indonesia/2012/12/121205\\_noken\\_unesco](http://www.bbc.co.uk/indonesia/berita_indonesia/2012/12/121205_noken_unesco). [Accessed May 16, 2015].
- Ministry of Finance of the Republic of Indonesia. (2020). *About ORI*. Available online from: <https://www.kemenkeu.go.id/ori>
- THE BALANCE. *What Is a Perpetual Bond?* Available online from: <https://www.thebalancemoney.com/what-is-a-perpetual-bond-5214945>, [accessed May 17, 2023].
- BNP PARIBAS FORTIS. *What are Perpetual bonds or Perpetual?* Available online from: [www.bnpparibasfortis.be](http://www.bnpparibasfortis.be), [accessed May 20, 2023].
- Standard Chartered. *Know Your Investment Risk (Kyir) Bonds and Preferred Perpetuals*, Available online from: <https://www.sc.com/global/av/bn-merged-kyir-bonds-perpetuals>, [accessed on June 10, 2023].
- Willa Wahyuni. *Contoh Perbuatan Melawan Hukum dan Dasar Gugatannya*. Available online from: <https://www.hukumonline.com/klinik/a/contoh-perbuatan-melawan-hukum-lt631ae19d07879>. [accessed on June 10, 2023].