

SYARIAH OBLIGATION: PROSPECTS AND ITS CHALLENGES IN INDONESIA

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Abstract

This writing is designed to investigate prospects and challenges facing Syariah Obligation (sukuk) in Indonesia. In this study, we found Syariah obligation (sukuk) development have good prospect. There are factors supporting Syariah obligation (sukuk) in Indonesia, some of which are significant population, government support, and domestic economic stability over percent per year, flow of fresh fund by Middle East, and making complete regulatory framework, as well as the rise of global Syariah market. Notwithstanding sukuk potential, some challenges are exist, for examples, drawback of regulation, uncertainty of taxation, most of Syariah financial products are “debt-based” or “debt-likely”, less investor understanding of Syariah obligation instrument, and not quite conducive investment climate and complicated bureaucracy.

Tulisan ini bertujuan untuk mengkaji prospek dan tantangan obligasi syariah (sukuk) di Indonesia. Pada penelitian ini, ditemukan bahwa prospek pengembangan obligasi syariah (sukuk) di Indonesia cukup baik. Terdapat beberapa faktor yang mendukung keberadaan obligasi syariah (sukuk) di Indonesia, antara lain: jumlah penduduk yang banyak, dukungan dari pemerintah, Stabilitas perekonomian dalam negeri, di atas persen pertahun, mengalirnya dana segar dari timur tengah, dan regulatory farmework yang cukup memadai, serta bangkitnya pasar global syariah. Meskipun potensi sukuk cukup baik, tetapi tetap saja memiliki sejumlah tantangan, antara lain: adanya kelemahan dari aspek regulasi, ketidakpastian dari segi perpajakan, kebanyakan produk keuangan syariah bersifat “debt-based” atau “debt-likely, kurangnya pemahaman oleh investor terhadap instrumen obligasi syariah, dan iklim investasi yang kurang kondusif serta birokrasi yang berbeli-belit.

Keywords: Syariah Obligation (sukuk), Prospect, and Challenge.

A. Introduction

Syariah (*sukuk*) obligation is a universally accepted capital market instrument. In some countries, Syariah (*sukuk*) obligation was important state budget funding instrument. Currently, several countries were regular issuers of sukuk, for example, Malaysia, Bahrain, Brunei Darussalam, Arabic Emirate Union, Qatar, Pakistan, and Indonesia. The expansion of sukuk is not only in Middle East countries whose majorities of populations are Muslims, it is also in European countries with majorities of populations are non-Muslims, such as States of Saxony Anhalt-Germany. Publication of sovereign sukuk generally is aimed at general funding requirement or certain projects funding requirement, for examples, electric power station unit development, irrigation, port, airport, hospital, and tollroad. In addition, sukuk may be used for cash-mismatch funding, using Syariah (*sukuk*) obligation in short-range requirement¹.

As Syariah funding instrument, the Syariah (*sukuk*) obligation today was growing in global capital market. Syariah (*sukuk*) obligation is inseparable part of global financial system. It is fact that Syariah (*sukuk*) development is initiated by the existence of sovereign sukuk. By 2003, sovereign sukuk was dominating 42 percent of global market and sukuk issued by financial institution is 58 percent. Since that, the composition of sukuk has constantly growth and even, in 2007, corporation sukuk was dominating global sukuk market at 71 percent, financial institution, 26 percent, and government just 3 percent².

In Indonesia, the development of sukuk is initiated by private sector in sukuk issue of PT. Indonesia Satellite Corporation (Indosat), a first corporate publishing Syariah (*sukuk*) obligation on September 2002 at Rp175 billion. This action was followed by other corporate. Although high Indonesian people interest in issue of Syariah obligation (*sukuk*), it is not accepting direct support of Indonesia government. As a consequence, Indonesia sukuk in that time has slowly growth.

Despite of Syariah obligation (*sukuk*) growth is, initially, languid in Indonesia; there is time-to-time increase in response of Indonesian people to Syariah obligation (*sukuk*). It is true of more and more large number of demands for Syariah obligation (*sukuk*) or of corporation issuing Syariah obligation (*sukuk*). Indonesia government gives right response to the presence of Syariah obligation (*sukuk*) inclining to rise by completing regulation on State Syariah Obligation (*sukuk*). Corporations having been issuing Syariah obligation (*sukuk*)

¹Muhammad Ayub (2005), Securitization, Sukuk and Fund Management Potential to be Relazied by Islamic Financial Institutions. Paper Presented at 6th Internasional Conference on Islamic Economic and Finance. Jakarta. 21-24 November 2015.

²http://www.standardandpoors.com/spf/upload/Ratings_EMEA/IslamicFinanceOutlook_2014.

are: Perusahaan listrik Negara (PLN), Muamalat Bank, PT. Aneka Gas Industri, PT. Berlian Laju Tanker, PT. Matahari Putra Prima, Berlian Laju Tanker, Mata Hari Putra, PT. Bakreland, and so on. The amount of Syariah obligation (*sukuk*) emission and outstanding Syariah obligation (*sukuk*) value in Indonesia Capital Market from 2002 to 2014 is shown in table below³:

Table 1: total value and number of sukuk emission and outstanding sukuk in periode of 2001-2014

| Year | Sukuk Emission | | Outstanding Sukuk | |
|------|-------------------------|--------------|-------------------------|--------------|
| | Total Value (Rp Miliar) | Total Number | Total Value (Rp Miliar) | Total Number |
| 2002 | 175,0 | 1 | 175,0 | 1 |
| 2003 | 740,0 | 6 | 740,0 | 6 |
| 2004 | 1.424,0 | 13 | 1.394,0 | 13 |
| 2005 | 2.009,0 | 16 | 1.979,4 | 16 |
| 2006 | 2.282,0 | 17 | 2.179,4 | 17 |
| 2007 | 3.174,0 | 21 | 3.029,4? | 20 |
| 2008 | 5.498,0 | 29 | 4.958,4 | 24 |
| 2009 | 7.015,0 | 43 | 5.621,4 | 30 |
| 2010 | 7.815,0 | 47 | 6.121,0 | 32 |
| 2011 | 7.915,4 | 48 | 5.876,0 | 31 |
| 2012 | 9.790,4 | 54 | 6.883,0 | 32 |
| 2013 | 11.994,4 | 64 | 7.553,0 | 36 |
| 2014 | 12.727,4 | 68 | 7.391,0 | 36 |

Source: Directorate of Syariah Capital Market – Financial Service Authority

Based on table 1, it may be stated that people have right response to Syariah obligation (*sukuk*) in Indonesia Capital Market. Such indication is reinforced by increase in sukuk offer from early issue of 2002 to 2014. This condition is strengthening more gratifying prospect of sukuk in Indonesia, and the future potential remains particularly significant. Such indication is reinforced by increase in numbers of emittens, transactions, and time-to-time demands for sukuk in both Indonesia Capital Market and global capital market.

Currently, issue of corporation sukuk as of 2011 is Rp 7,915.4 billion and outstanding sukuk is Rp 5,876.0 billion and the number of emitten is 40 corporations. Furthermore, from 2012 to 2013 the number of sukuk issued in Indonesia Capital Market is Rp 11,994.4 and outstanding sukuk is Rp 7,553.0 and of emitten is 64 corporates. Subsequently, on November 2014 suku value is Rp 12,727.4 billion and outstanding suku is Rp 7,391.0 billion, the number of emitten is 48 corporates. The sukuk structure being used is Mudharabah and

³ Statistik Direktorat Pasar Modal Syariah – Otoritas Jasa Keuangan, 2014, h. 1-5.

Ijarah contract. Data on development of coporation sukuk in Indonesia Capital Market from 2011 to November 2014 is shown in Table 2 below⁴:

Tabel 2: The number of Syariah (*sukuk*) obligation issued from 2011 to November 2014

| No. | Name of Emiten | Structure / Contract | Date of Effect | Expir ation Date | Nominal Value (Rp) |
|-----|--|----------------------|----------------|------------------|--------------------|
| 1 | PT. Adira Dinamika Multi Finance Tbk. Tahap II 2014. Seri A. | Mudharabah | 21-Feb-2013 | 12-Nop 2017 | 88.000.000.000 |
| 2 | PT. Adira Dinamika Multi Finance Tbk. Tahap II 2014. Seri B | Mudharabah | 21-Feb-2013 | 12-Nop 2017 | 45.000.000.000 |
| 3 | PT. Sumarecon Agung I dan II Tbk. 2014 | Mudharabah | 03-Des-2013 | 10-Okt-2019 | 300.000.000.000 |
| 4 | PT. Bank Internasional Indonesia Tbk. 2014 | Mudharabah | 30-Jun-2014 | 08-Jul-2017 | 300.000.000.000 |
| 5 | PT. Sumarecon Agung I dan I Tbk. 2013. | Ijarah | 03-Des-2013 | 11-Des2018 | 150.000.000.000 |
| 6 | PT.Listrik Negara (PLN) tahap II 2013 seri A | Ijarah | 27-Jun-2013 | 10-Des-2018 | 321.000.000.000 |
| 7 | PT.Listrik Negara (PLN) tahap II 2013 seri B | Ijarah | 27-Jun-2013 | 10-Des-2018 | 108.000.000.000 |
| 8 | PT.Listrik Negara (PLN) tahap I 2013. | Ijarah | 27-Mar-2013 | 07-Apr-2020 | 121.000.000.000 |
| 9 | PT. Tiga Pilar Sejahtera Food Tbk. Tahap I 2013 | Ijarah | 28-Mar-2013 | 05-Apr-2018 | 300.000.000.000 |
| 10 | PT. Adira Dinamika Multi Finance Tbk. Tahap I 2014. Seri 3 | Mudharabah | 21-Feb-2013 | 01-Mar-2015 | 27.000.000.000 |
| 11 | PT. Adira Dinamika Multi Finance Tbk. Tahap I 2014. Seri C. | Mudharabah | 21-Feb-2013 | 01-Mar-2016 | 286.000.000.000 |
| 12 | PT. Aneka Gas Indutri II Tahun 2012 | Ijarah | 05-des-2012 | 18-Des-2017 | 200.000.000.000 |
| 13 | PT Sumberdaya | Ijarah | 24-Nov- | 30- | 200.000.000.000 |

⁴ Ibid

| | | | | | |
|----|---|------------|-------------|-------------|-----------------|
| | Sewatama | | 2012 | Nov-2017 | |
| 14 | PT. Adhi Karya Tbk. (persero) Tahap II 2013 | Mudharabah | 27-Jun-2012 | 15-Mar-2018 | 125.000.000.000 |
| 15 | PT. Adhi Karya Tbk. (persero) Tahap I 2012 | Mudharabah | 27-Jun-2012 | 03-Jul-2017 | 125.000.000.000 |
| 16 | PT. Bank Muamalat Tbk. Indonesia Tahap II, 2013 | Mudharabah | 22-Jun-2012 | 28-Mar-2023 | 700.000.000.000 |
| 17 | PT. Bank Muamalat Tbk. Indonesia. Tahap I, 2012 | Ijarah | 22-Jun-2012 | 29-Jun-2022 | 800.000.000.000 |
| 18 | PT. Indosat Tbk. V, 2012 | Mudharabah | 19-Jun-2012 | 27-Jun-2019 | 300.000.000.000 |
| 19 | PT. Mayora Indah Tbk. Tahun 2012 | Mudharabah | 01-May-2012 | 09-May2017 | 250.000.000.000 |
| 20 | PT. Bank Pembangunan Daerah Sulselbar, 2011 | Mudharabah | 29-Apr-2011 | 12-May-2016 | 100.000.000.000 |

Source: Directorate of Syariah (*sukuk*) Obligation Capital Market – Financial Service Authority, 2014.

Along with increase in Syariah (*sukuk*) obligation in Indonesia, it is necessary to be accompanied by improvement of aspects, especially aspects of formal law and appropriate Syariah rule in regulation of Syariah (*sukuk*) obligation in Indonesia. The regulation need to be reviewed and complete reform is made. Its purpose is to eliminate various regulations that considered contrary to principle of Syariah, for example, most of Syariah financial products are “debt-based” or “debt-likely”. Ideally, the Islamic finance is "profit-loss sharing". This condition is visible from the composition of sukuk coupon rate paid is based on a particular interest rate, so it is not surprising that the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) argue that about 85 percent of the sukuk is not in accordance with Syariah.

Furthermore, there is no certainty of tax issues in relation to transactions involving sukuk investors, so it is considered quite detrimental for investors concerned with double tax event that are often encountered by sukuk investors. It is particularly stressed to do repairs because in addition to contrary to the principle of syariah, the event are very detrimental for investors, so many syariah compliance issues are associated with the event. It is representing the

weakness of the principles of syariah applied to the financial market in Indonesia⁵.

Improvement of the formal legal aspect is urgent something to do because it involves the sustainable Syariah obligation issue in the future Indonesia. Given the promising development of sukuk in Indonesia, the Indonesian government attempted to publish law governing Syariah Obligation passed by the House on April 9, 2008. Law No. 19 of 2008 settles the Sharia Obligation or State Sukuk Act (sovereign sukuk). The publication of Act is evidence of Indonesian government's commitment to develop Syariah (sukuk) in Indonesia. Although it is too late, we still have to appreciate that Indonesian government's commitment has proved. As it is expressed in several supporting studies that Syariah (sukuk) obligation legal tool is indispensable for economic developmental instrument.⁶

After State Sukuk Act has been ratified, the Indonesian government immediately issue premier sukuk of Rp15 trillion. The sukuk is issued by the Indonesian government in order to cover the budget deficit of 2008. The value of sukuk equal to the underlying assets owned by the government, Rp15 trillion. The first sukuk is issued in and outside the country. At the sukuk issue, the Indonesian government use collateral in the form of state-owned assets, such as land and buildings⁷.

Most recently, on 3 September 2014, the Indonesian government was re-entering the international Syariah financial market through Global sukuk issue of 1.5 billion US Dollars. The Global sukuk is issued in order to cover the budget revenue and expenditure deficit in 2014 which is part of the financing strategy set by the government. In addition, the Global sukuk issue is expected to provide benefits that can strengthen Indonesia's position in the financial market and to support the development of Syariah finance in the world, particularly Asia region⁸.

The ratification of SBSN Act is referring to sukuk development as important financial instrument in Indonesia. This is evidenced by successful first retail sukuk issue by Indonesian government in 2009 to extend diversification of deficit funding instrument by using base of retail investor. The

⁵Ketetapan konferensi No. 10 *the Islamic Jurispudence Council* (IJC) bekerja sama dengan IRTI-IDB, 1988; Robert Gray, 2007; Simon Archer dan Rifaat Ahmed Abdel Karim, 2007; Muhammad Arif, 2007; Muhammad Ayyub, 2006.

⁶Undang-Undang No. 19 Tahun 2008 mengatur tentang Surat Berharga Syariah Negara (SBSN) atau Undang-Undang Sukuk Negara (sovereign sukuk).. <http://www.dmo.or.id>

⁷ Ibid

⁸ Departemen Keuangan. Mengenal *Sukuk*: Instrumen Keuangan Berbasis Syariah, Direktorat Jenderal Pengelolaan Utang, Direktorat Kebijakan Pembiayaan syariah. <http://www.dmo.or.id>.

retail sukuk have tenure of three years and expiration date on 25 February 2012. Nominal value of suku per unit is Rp 1 million. Type of retail sukuk contract having been issued is *ijarah sele* and lease back and underlying asset of state property, i.e. land and buildings under use by Department of Finance today⁹.

Based on the description of the backdrop, the research problems can be formulated as follows: What are the prospects of Syariah Obligation in Indonesia. What are the challenges faced in developing Syariah Obligation in Indonesia. The method used is descriptive method.¹⁰

B. Definition of Syariah Obligation (Sukuk)

Syariah Obligation (Sukuk) is not a new term. The term has been known since the middle Ages, where Muslims use it in the context of international trade. Sukuk is originating in Arabic language, the *sakk* (single). Sukuk is plural *sakk* word that means certificate or note. In a practical sense, the sukuk is evidence (claim) of ownership¹¹.

Meanwhile, in instructions of Indonesian Council of Religious Scholars No. 32/DSN-MUI/X/2002, the sukuk is a long-term obligation based on the principles of Syariah issued by emitten to the holders. Syariah Obligation (sukuk) requires the emitten to pay income to the holders in profit sharing of margin/fee, and repay the obligation fund at maturity.

Syariah obligation (sukuk) is, in principle, similar to conventional obligation. Nevertheless, there is particularly significant difference between syariah obligation and conventional obligation. Syariah obligation (sukuk) used concept of repayment and profit sharing in return for interest, the presence of underlying transaction in a certain number of assets as a base of sukuk issue, and of contract or agreement between parties that is organized based on the principles of syariah. In addition, the syariah obligation (sukuk) have to be put in syariah structure to make this financial instrument safe and free of excessive interest, *gharar*, and *maysir* elements. Whereas, conventional obligation is evidence of emitten obligation that is insured by guarantor containing other promises of interest payment or other conditions and repayment of principal loan made on maturity date.

⁹ Dewan Syariah Nasional majelis Ulama indonesia, Himpunan Fatwa Dewan Syariah Nasional, Jakarta: Bank Indonesia, 2003, hal 200.

¹⁰*Ibid.*

¹¹ Anonim (2009), Defenisi/Pengertian Sukuk. <http://navyu2.blogspot.com/2009/10/defenisi-pengertian-sukuk.html> (12/07/2009).

C. Characteristics of Syariah Obligatin (Sukuk)

Syariah obligation has some characteristics (Department of Finance, 2010) as follows¹²:

1. It is proof of a tangible asset ownership or beneficial title.
2. Income in the form of remuneration (coupon), margin, and profit sharing based on contract in use.
3. Being free of usury, gharar, dan mashir elements.
4. Publication through Special Purpuse Vehicle (SPV).
5. Require the underlying asset.
6. Use of proceeds (sale proceeds) must be within principles of syariah.

D. Parties involved in the issue of Syariah Obligation (Sukuk).

Several parties involved in the issue of Syariah Obligation (sukuk), are as follows¹³:

1. Obligator is the party responsible for the payment of remuneration and the nominal value of Syariah Obligation (sukuk) until the obligation matures.
2. Special Purpose Vechile (SPV) is a legal entity established specifically for the issue of Syariah Obligation (sukuk) with functions:
 - a. As the issuer of sukuk;
 - b. Being counterpart (peer/friend, remuneration) in the transfer of assets;
 - c. Acting as trustee to represent the interests of investors.
3. Investor is the holder of Syariah Obligation (sukuk) having the right to return, margin, and the nominal value of each corresponding participation.

E. Types of Islamic Bonds (Sukuk)

Based on the type and structure of Syariah Obligation (sukuk) that is internationally recognized and has received endorsement from the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) and adopted in Law No. 19 of 2008 about SBSN, the sukuk is divided into¹⁴:

1. Sukuk Ijarah. The sukuk is issued under the agreement or contract of Ijarah, where one party acting alone or through a representative to sell or lease the right to benefits of an asset to another party based on price and the agreed period, without being followed by the transfer of ownership of the asset itself. Sukuk Ijarah is distinguished into two: Ajarah Muntahiya Bittamlik (Sale and Lease Back) and Ijarah Headlease and Sublease.

¹²Gunawan Widjaja dan Jono, *Penerbitan Obligasi dan Peran Serta Tanggung Jawab Wali Amanat dalam Pasar Modal*, (Jakarta: Kencana Prenada Media Group, 2006), h. 13-17.

¹³*Ibid.*

¹⁴Kementerian Keuangan. *Mengenal Sukuk: Instrumen Keuangan Berbasis Syariah*, Direktorat Jenderal Pengelolaan Utang, Direktorat Kebijakan Pembiayaan syariah. <http://www.dmo.or.id>.

2. Sukuk Mudharabah. The sukuk is issued under the agreement or mudharabah in which one party provides capital (rob al mal) and others provide labor and expertise (mudharib), keuntungan of such cooperation will be divided based on a pre-agreed ratio. Losses incurred will be borne by the party capital providers.
3. Musharaka sukuk. The sukuk is issued under Musharaka agreement or contract in which two or more parties to cooperate combine capital to build new projects, develop the existing projects, or finance business activities. Profits and losses arising are shared according to the amount of capital participation by each party.
4. Istishna sukuk. The sukuk is issued under the istishna agreement or contract, where the parties agreed to the sale in order to finance project/goods. As for price, delivery time, and specification of goods/project are determined in advance by agreements.

F. Type of Syariah Obligation (Sukuk) Based on Revenue Sharing

Based on the distribution or payment for results, the Syariah Obligation (sukuk) can be divided into three types¹⁵:

1. Margin Sukuk.
Margin sukuk is revenue payments sukuk originating from the purchase contract profit margins. It is consisting of mudaraba sukuk, greetings sukuk, and istishna sukuk.
2. Fee Sukuk.
Fee sukuk is Syariah Obligation Sukuk paying fixed incomes because it comes from fixed income from atai rental fee, the sukuk Ijarah.
3. Sukuk Sharing.
Sukuk for the results is that the payment sukuk revenue based on the outcome of the results obtained in the operations that are financed, namely mudaraba sukuk and musharaka sukuk.

G. Syariah Obligation (Sukuk) by Area Base Financing

Based on the asset base, Syariah Obligation (Sukuk) can be divided into two¹⁶:

1. Assets Sukuk.
Assets Sukuk is the asset-based financing. The sukuk included in the asset are: 1) greeting sukuk. For example, for the purpose of financing agricultural production; 2) istishna sukuk. For example, for purposes of the construction

¹⁵ *Ibid.*

¹⁶ *Ibid.*

project and residential buildings; 3) Mudharabah Sukuk. For example, for trade, finance production materials. Sukuk Ijarah, Example, leasing activity.

2. Investments and Equity Sukuk

Inclusion and Equity Sukuk is a financing based on equity. The sukuk included in Equity are mudaraba sukuk or better known as business financing (business financing) and musharaka sukuk or also known as the cooperation.

H. Benefits that can be obtained from Syariah Obligation (Sukuk)

The benefits that would be obtained if the government develops instruments of Islamic bonds (sukuk) are expanding source of state financing. Development of Islamic bonds to be one of the alternative financing could be used to cover the deficit of the state budget (APBN) which has been widely funded using foreign debts. These instruments are not only used by the state, but also be used by the private sector. If the company requires additional financing, then they can issue Islamic bonds (sukuk) for additional mendapatkan funds. At present, these instruments are already cukuk growing in Asia, especially in Malaysia which today is far more advanced.

If the government and the private sector active in issuing syariah-based financing instruments (sukuk), it will have direct impact on the progress and development of the capital markets Islam in Indonesia. In addition, the development of Islamic bonds (sukuk) in Indonesia will also have a direct impact on the national economy due to increased sources of financing, so that the need for financing activities can be met, and utilizing public funds are not reached by conventional financial system.

A further benefit is to increase fiscal financing instruments, expanding and diversifying the investor base, promote the growth and development of Islamic capital market in the country, developing alternative investment instruments, creating a benchmark in Islamic financial markets, and optimizing the use of State Property.

I. Risks of Islamic Bonds (Sukuk)

In general, the risk of Islamic bonds (sukuk) is almost the same as the risk of conventional bonds, both of which are instruments in the capital markets. According to the Chartered Financial Analyst (2007), the risks facing investor sukuk are as follows¹⁷:

1. Rate of Return Risk

¹⁷Ahmad Hidayat Buang, *Studies in The Islamic Law of Contracts: The Prohibition of Gharar*, (Kuala Lumpur: International Low Book Services, 2000), h. 17-19.

No risk rate of return on all types of sukuk with a fixed return (fixed rate). Yield refers to the LIBOR or other conventional benchmarks make return on sukuk interest. While on *mudharabah*, the yield depends on the performance of companies that can go up and down.

2. Risk Credit rating (Credit Risk)

The credit risk of *Ijarah* sukuk facing investors is due to failure of payment (default) on rent underlying asset. Default is higher propensity because the mechanism on debt rescheduling with the yield. Higher interest rates are not allowed in Islamic law. Credit risk should be assessed independently sukuk especially on the lender has other replacement alternative, when the underlying assets can not cover the losses incurred.

3. Foreign Exchange Risk (Foreign Exchange Rate Risk)

Foreign exchange risk may occur if the return on an underlying asset management diberika in foreign currencies. Publishers can calculate and provide guarantees for such risk in order to protect investors from exchange rate movements.

4. Risk of Price/Collateral Risk

The risk of price levels occur when the specification assets are reflected in the value of the proposed issuance of obligation differ from the actual market value and report on the value of the underlying asset. The *Ijarah* obligation is the most vulnerable, as the leased asset may depreciate to below the market price. Proper management of assets is an important factor in dealing with these risks.

5. Liquidity Risk

The gradual development of secondary market led to investors of *Syariah* obligation met the liquidity risks. Propensity for buy and hold the majority investor of *Syariah* obligation has made mechanisms of ownership transfer obligation to be inefficient. By the situation, it can also occur in *Salam* obligation; the contract is asset containing farm commodity, thus trading in these securities may rise to the element of speculation. Zero coupon obligation such as and *Murabaha* and *Istisna* also can not be traded in the secondary market as the similar practice of buying and selling debt (*bai ad-dayn*) which is banned by the majority of scholars.

6. *Syariah* Compliance Risk

The market developments growing rapidly allow for obligation structures that do not meet the *Syariah* aspects. Standardization and attention to the *Syariah* regulation on obligation were made in order to protect Muslims investors from inconsistent practices with the principles of Islam.

J. Prospects of *Syariah* Obligation in Indonesia

Even if the total obligation in Indonesia is small relatively if compared to the conventional portfolio, the prospects and potential is promising in the future. The optimism supported by several factors, as follows:¹⁸

First, the potential of obligation in Indonesia is supported by a considerable people, which is the fifth most populous in the world today. Of these, the majority are Muslims, and the obligation is also not limited to the Muslim community, but it can also be transacted by non-Muslim population today is precisely obligation investors predominantly non-Muslim. The situation indicating that future prospects of obligation good enough to see the public response tends to increase over time, as seen at this time in the Indonesian Stock Exchange has formed two groups of index-based portfolios *Syariah*. Secondly, Indonesia has a lot of infrastructure projects, and could be financed by using the obligation instrument.

Secondly, the regulatory framework is adequate. In current, the issuance of *Syariah* obligation, by both government or corporate, have had a legal foundation that the publication of the Law on the obligation, by the issuance of Law No. 19/2008 on *Syariah* Securities (SBSN) or the National Obligation Act, even if left behind. The abundance of fresh funds from the Middle East looking for investment objects in the developing countries. Fifth, domestic economic conditions is stable with growth rates are high, above 6 percent annually.¹⁹

Third, the global obligation market has experienced a resurgence of post-decline due to the financial crisis in the United States and Europe and default obligation in Dubai. Increasing interest and demand for obligation will certainly influence every country to issue obligation. At this time, many non-Muslim countries with a population of just heavily promoting and issuing obligation. Moreover, the state of Indonesia's largest Muslim population in the world and stable economic conditions.

K. Challenges of *Syariah* Obligation in Indonesia.

Even if the obligation development tends to increase in Indonesia, obligation also will continue to meet any challenges as follows:

Firstly, *Syariah* financial market in Indonesia do not very liquid. It is because the market shares small relatively. The condition is caused by the Indonesian people is lack in knowledge of benefits and mechanisms in the portfolio transaction instruments based on *Syariah*, such as *Syariah* obligation.

¹⁸Muhammad Ayub, Securitization, Sukuk and Fund Management Potential to be Relazied by Islamic Financial Institutions. *Paper* Presented at 6th Internasional Conference on Islamic Economic and Finance. Jakarta. 21-24 November 2005.

¹⁹Iggi H. Achsien, Potensi Pengembangan Obligasi *Syariah* di Indonesia, *Bahan Presentasi Seminar ISEI*, tanggal 17 November, 2005.

It is also, to the involvement in the portfolio transaction. At present, investors who bought the obligation is still dominated by conventional institution. Obligation institutions issued by the government of Rp.47 trillion, 90 percent of investors come from conventional financial institutions. By the situation, it is confirms that the participation of *Syariah* financial institutions in the monetary sector do not proper yet.²⁰

Secondly, there is no certainty in tax issues associated with a transaction involving obligation investor. The problem do not only correlated to the obligation, but *Syariah* transaction comprehensively. The most prominent issue is the double taxation in *Syariah* transaction.

Third, most *Syariah* financial products is “debt-based” or “debt-Likely”. In fact, ideally, the *Syariah* financial is be “profit-loss sharing”. The situation can seen by composition of obligation coupon rate paid is based on a particular interest rate, so it is not surprising that the Accounting and Auditing Organization for *Syariah* Financial Institution (AAOIFI) gave assessment that about 85 percent of the obligation do not suitable to the *Syariah*. Thus, it is expected that the Indonesian government, as well as with the private sector to continue to develop innovative and more obligation structures diverse and free from assumptions that allegedly contrary to the concept of *Syariah*. Furthermore, the policy is that there is must be global obligation market to be opened as a benchmark for other global obligation issuance, sovereign or corporate obligations.²¹

Fourth, there is no standardization statement regarding the structure of the products of *Syariah* instruments that will be a factor inhibiting the development of *Syariah* obligation in Indonesia. Standard of AAOIFI has not been used by all Muslim countries, including Indonesia. These conditions resulted in people from other countries and their governments, as several countries in the Middle East are reluctant to make the investment through a portfolio of obligation (*Syariah*) in Indonesia. As for the principle reason is that there are any issuers using of *Ba'i al-Inah* contract on issuing *Syariah* obligation that disallowed in *Syariah* investment system. The situation also experienced by Malaysia.

Fifth, the difference in the technical process and stock screening as a result of *Syariah* investment instruments are different in each country, making it difficult to unify the vision and mission for the products of *Syariah* investment instruments which can be accepted by all countries. The next obstacle is the problem of the lack of understanding by the people of Indonesia will be the presence of *Syariah* obligation.

Sixth, the low understanding of investors on *Syariah* obligation

²⁰Muhammad Ayub, *op.cit.*

²¹Muhammad Ayub, *ibid.*

resulting in the tendency of people (investors) to invest in profit oriented has to be offer, so they are still often compare the benefits to be gained when conducting transactions with the advantages of conventional obligation that would be obtained if the transaction *Syariah* obligation. Under these conditions, it is also exacerbated by the lack of clarity in the operational aspects that currently no clear standards and provisions for the operational aspects of accounting. It is, of course create uncertainty practitioners to support the development of instruments. Moreover, there is incompatible in *fiqh* versus formal legal provisions.

Seventh, there is a weakness of ASSN Act which is considered very inclusive in market segments. The weaknesses of the laws: First, the inability of legislators to reach arrangements obligation issued by the Local Government and Corporation, so that the government seemed only themselves without obligation accommodate other actors, especially corporations; secondly, legislation governing the obligation has not inter-party dispute resolution mechanisms including management of obligation issuing. In general, *Syariah* economic actors, including obligation in the event of a dispute, then in general be resolved by way of non-litigation, such as negotiation, mediation, and arbitration; thirdly, the law still has potential obligation multiple interpretations, such as a problem that can not be pried traded contract that depicted on Article 2, Paragraph 2. Explanation SBSN Act did not specify in detail the nature of the contract which can not be traded. It is, quite reasonable, because the explanation of Article 3 letter f exemplified contract some form of combination, resulting in less proportionally when another chapter significantly more content and implications are not described; Fourth, the problem on taxation aspect which is still unfinished so result in confusion and doubt for investors.²²

Eighth, there are no conducive investment climates, any cumbersome bureaucracy and a lack of good governance and transparency, so that will influences the interest of investors to transact. It is similarly, the Regulation of Bank Indonesia (PBI) No. 5/12 of 2004. In the regulation, banks have to hold it to fell due. Even if the regulation is important to keep *Syariah* aspects of the banks, this regulation needs to be revised in order not to hamper the obligation market liquidity.

L. Conclusion

The Indonesia government and common responded well the existence of *Syariah* obligation in Indonesia. The indication can be seen from the increasing total number of *Syariah* obligation in the Indonesian capital market and in global capital markets. Moreover, the success of the government issued Law No. 19/2008 which regulates *Syariah* Securities (SBSN) or the Act

²²*Ibid*

Obligation.

The existence of *Syariah* obligation in Indonesia is supported by several factors: First, the total of the largest Muslim population in the world; Second, Indonesia has a lot of infrastructure projects; Third, the situation of domestic economic is stable in high level; Fourth, the flow of fresh funds from the Middle East looking for investment objects in countries that are developing.

Although the *Syariah* obligation in Indonesia has a good prospect, obligation will also continue to meet many challenges and obstacles, among others: the constraints on aspects of legislation that had been considered as imperfect and the *Syariah* financial market do not very liquid as the market share is small relatively, at less than 5% of the entire financial system in Indonesia, and the lack of certainty in terms of taxation relating to transactions involving obligation investors. The most prominent issue is the double taxation in *Syariah* financial transactions.

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