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## IMPLEMENTATION OF STATE SUKUK BASED ON STATE ASSETS

## IMPLEMENTASI NEGARA SUKUK BERDASARKAN ASET NEGARA

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## ABSTRACT

*This study aims to analyze of Sukuk development based on underlying of State Own Property (BMN, Barang Milik Negara) in Indonesia with Islamic Perspective. The data used in this study is the secondary data and the method used Strong Weakness Opportunity Threat Reflexivity Religiosity (SWOTR2) analysis with the help of some literature as sources and interviews conducted during the study. The results of this study indicate that by the end of 2016, the value of Sukuk emission has reached 20,425.4 Billion Rupiah (USD 1,520) with the total of State Budget (APBN) Rp 2,152,695 Billion (USD 159,700), the market share of Sukuk in Indonesia in 2016 reaches 0.95%. To make Sukuk more growing, Indonesia has a new breakthrough by using state assets as an underlying asset in its issuance. However, the use of such underlying assets is only limited to state property (BMN), so it is necessary to extend the state assets used as underlying. Because the wealth of the state is not limited to the existence of a thing in the form of buildings, but also includes all the natural wealth attached to the asset.*

**Keywords:** *sukuk, underlying asset, state assets, state budget.*

## ABSTRAK

Penelitian ini bertujuan untuk menganalisis pengembangan Sukuk yang menjadi dasar bagi Barang Milik Negara di Indonesia berdasarkan perspektif Islam. Data yang digunakan dalam penelitian ini adalah data sekunder dan metode yang digunakan analisis Strong Weakness Opportunity Threat Reflexivity Religiosity (SWOTR2) dengan bantuan beberapa literatur sebagai sumber dan wawancara yang dilakukan selama penelitian. Hasil penelitian menunjukkan bahwa pada akhir 2016, nilai emisi Sukuk telah mencapai 20.425,4 Miliar Rupiah (USD 1.520) dengan total Anggaran Pendapatan dan Belanja Negara (APBN) Rp 2.152.695 Miliar (USD 159.700), pangsa pasar Sukuk di Indonesia pada 2016 mencapai 0,95%. Untuk membuat Sukuk lebih berkembang, Indonesia memiliki terobosan baru dengan menggunakan aset negara sebagai aset dasar dalam penerbitannya. Namun, penggunaan aset dasar tersebut hanya terbatas pada barang milik negara (BMN), sehingga perlu untuk memperpanjang aset negara yang digunakan sebagai underlying. Karena kekayaan negara tidak terbatas pada keberadaan benda dalam bentuk bangunan, tetapi juga mencakup semua kekayaan alam yang melekat pada aset.

**Kata kunci:** *sukuk, aset dasar, aset negara, anggaran negara.*

## A. PRELIMINARY

Sukuk in the structure of national economy becomes an important issue in various countries. There is a challenge to adjust the model of the Islamic economy to the local state economic structure that practices Islamic economic transactions. In general, Islamic and conventional financial institutions are organized into mainstream economic structures. More than 200 Islamic Banks operate in over 70 countries, both Muslim and western countries. In addition, there are more than 50 Islamic insurance institutions operating in 22 countries, not to mention investment agencies, leasing agencies, and commodities companies.

In 1946, the State issued a national bond or also called a national loan. Subsequently, the State issued two types of bonds, bonds with a gift in 1950, and consolidated bonds in 1959. Then in 2002, Indonesia began to recognize the existence of bonds with the sharia system issued by PT Indosat.<sup>1</sup> Bonds derived from conventional concepts are then transformed into bonds organized on the base of Islamic values called sharia bonds. Then in 2008 was born an instrument called the State Sukuk or the SBSN (UU No. 19 of 2008).

In the short-term period, the foreign debt must be acknowledged to have significantly contributed to the financing of national economic development. However, in the long term accumulation of foreign debt, the government still has to pay through the state budget. In the long run, foreign debt repayment is to reduce the prosperity of the Indonesian people in the future. Finally, Sukuk becomes one of the alternative sources of state financial income. In Sukuk, schemes can be developed for financing on government development projects. In the future, the government is no longer dependent on foreign debt as state finance.

Sukuk has a fundamental difference with bonds. The different characteristics of this Sukuk bring its own attraction to society because it is part of the wealth ownership evidence. But what needs to be considered is the underlying transaction in each Sukuk. By supplement, on each Sukuk result must be available on clear transactions based on Islamic principles including Ijarah, Mudarabah, Musyarakah, and Istishna'.

In the SBSN Act, using underlying assets in the form of state Sukuk is only limited to State Own Property (BMN), so it needs to be expanded to the other state assets used as underlying that will expose the country's own wealth. Since the wealth of the state is not limited to the existence

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<sup>1</sup> Jaka E. Cahyono. (2004). *Langkah Beinvestasi di Obligasi*. Jakarta: Media Komput Indo. hlm. 150.

of a matter of building, such as regionalization, which also includes all the natural wealth attached to the asset. This study could explore the possibility of the term BMN to State Assets on the development of Sukuk as an effort to prosper the people.

## B. THEORETICAL BASIS

### 1. Sukuk

#### a. Sukuk Outlook

The Sukuk is often associated with "Islamic Bond". Sukuk is known in two forms, Islamic Bond and Islamic Asset Securitization. Sukuk is closely related to a proprietary investment certificate, the Sukuk represents a proportion to an asset combination.

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines the Sukuk as follows: "Investment Sukuk is certificates of equal value in the ownership of the assets of certain projects or special investment activity the closing of subscription and the employment of funds received for the purpose of which the Sukuk was issued.

From the above definition, it can be concluded that Sukuk is a certificate of equal value representing an integral part in the ownership of a tangible asset, a benefit or service, or the ownership of project assets or investment activity, which occurs

after receipt of the Sukuk funds. The closing of reservations and funds received is utilized in accordance with the purpose of Sukuk issuance.

#### b. Sukuk in Fiqh Views

The information on Sukuk is only slightly reviewed in the jurisprudence of Hanafi and Syafii thought where Sukuk was known as a Sakk. In Hanafi's view of fiqh, as stated by his disciple Abu Yusuf, there is no barrier to sakk before it is owned by the seller. He thought it does not need to be explained in detail because it has become a habit in the activities of the transfer of property. Imam Hanafi has allowed such a thing to do.<sup>2</sup> While Syafii madzhab mentions that sakk not different from hawalah, because related to debt settlement done in the form and amount and the same size, while settlement of debt which is done not on the basis of help included in the category of usury. The role of the hawalah is closely related to the handling bonds although fundamentally it is used for currency exchange.

The National Sharia Council (DSN, Dewan Syariah Nasional) of the Indonesian Ulema Council (MUI, Majelis Ulama Indonesia) has not used the term Sukuk and still uses the term sharia bonds. Defined as follows: "long-term security

<sup>2</sup> Nazaruddin Abdul Wahid. (2010). *Sukuk: Memahami dan Membedah Obligasi pada Perbankan Syariah*. Yogyakarta: Ar-Ruzz Media. hlm. 98.

based on sharia principles issued for issuers of sharia bonds obliging issuers to pay revenues to sharia bondholders in the form of profit/margin/ fee and repay fund sharia bonds at maturity".

## 2. Characteristics and Types of Sukuk

There are several characteristics of Sukuk which distinguish it from conventional financial instruments similar to bonds, as follows:

- a. Constitute a proof of ownership of tangible or beneficial property (benefit)
- b. Revenues in the form of rewards (coupon), margin, or profit-sharing according to the type of contract used
- c. Free from elements of usury, gharar, and maysir
- d. Issuance through special purpose vehicle (SPV)
- e. Require underlying assets
- f. The use of proceeds shall be in accordance with Islamic principles.

As for various types of Sukuk structures that have been recognized internationally and who have received an endorsement from The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), such as:

### a. Sukuk Ijarah

Sukuk Ijarah is divided into two forms, Ijarah Muntahiyah Bittamlik (Sale and Lease Back) and Ijarah

Headlease and Sublease. Ijarah Muntahiyah Bittamlik Sukuk or so-called tangible assets is a Sukuk where investors have a share of related assets and revenues with an Ijarah contract. While Sukuk Ijarah Head lease and Sublease is the benefit for investors to get the lease rights on assets, based on the contract Sukuk benefit Ijarah.<sup>3</sup>

### b. Sukuk Mudharabah

It is a Sukuk issued under an agreement whereby one party provides capital and the other provides labor and expertise. The benefits of such cooperation will be divided on the basis of a previously approved comparison, and the losses incurred will be borne entirely by the party providing the capital.<sup>4</sup>

This type of Sukuk uses a profit-sharing contract when the issuer's earnings are clearly known. The technical arrangement regarding this transaction is regulated in the National Sharia Board Fatwa No 33 / DSN-MUI / 10/2002 on Mudharabah Syariah Bonds. In its development also issued the National Sharia Board Fatwa No. 59 / DSN-MUI / V / 2007 on Mudharabah Convention.

### c. Musyarakah Sukuk

<sup>3</sup> Roikhan Mochammad Aziz. (2008). *Sukuk Comparison between Indonesia and Malaysia*. Kuala Lumpur: IRTI.

<sup>4</sup> Roikhan Mochammad Aziz. (2008).

It is a Sukuk issued under an agreement whereby two or more parties cooperate to combine capital to build a project, either existing or newly built, or finance business activities. The gains and losses incurred are mutually superseded by the amount of capital participation of each party.<sup>5</sup>

d. Istishna Sukuk

That is a Sukuk issued under a contract or Istishna contract in which the parties agree on the sale and purchase in the framework of financing a project/goods. The price, delivery time, and specifications of the project/goods are determined first by agreement.<sup>6</sup> This type of Sukuk is a form of a booking contract that is usually used for medium-term financing where the seller will provide goods in accordance with the characteristics and specifications demanded by the buyer.<sup>7</sup>

### 3. Theory of Benefit Rights

The beneficial theory used in this research is the theory of benefits related to property as understood in Islamic jurisprudence. Benefits are the benefits obtained from an object, such as a house as

a residence, a car as a vehicle, and so forth. A similar definition is given by Zaharuddin Abd Rahman, that what is meant by the benefits is what can be availed of a'yan, as material things, such as occupying a house or guiding a train. Zamir Iqbal and Abbas Mirakhor define beneficial as "benefit flowing from durable commodity or asset". While Noripah Kamso defines benefit as "benefit ownership or usufruct associated with a given property, especially in leasing transaction". Based on some of these definitions, the benefit theory used in this study is a benefit attached to an object.

In the opinion of the Hanafi school of thought, the benefits do not include property and can not be inherited.<sup>8</sup> The Hanafi school holds that property belongs only to physical objects. All benefits will end in ownership with the death of the owner, for example on the contract of lease, the agreement will be automatically canceled if the owner of the lease object has died. Meanwhile, according to jumhur ulama benefit is a treasure, therefore can be inherited. Lease contract will not automatically cancel because the owner of the leased goods died. The contract of lease may be continued by his heirs.<sup>9</sup>

Scholar gives the definition of the right as an ikhtishash which by hinders

<sup>5</sup> Roikhan Mochammad Aziz. (2008).

<sup>6</sup> Ahmad Ifham Sholihin. (2010). *Buku Pintar Ekonomi Syariah*. Jakarta: Gramedia Pustaka Utama. hlm. 799.

<sup>7</sup> Roikhan Mochammad Aziz. (2008).

<sup>8</sup> Wahbah Az-Zuhaili. (1985). *Fiqh dan Perundangan Islam Jilid V*. Syiria: Dar El Fikr. hlm. 45.

<sup>9</sup> Wahbah Az-Zuhaili. (1985). hlm. 45.

others from it and the owner is free to do tasharruf directly unless there is a shariah obstacle.<sup>10</sup> Zuhaili further mentioned that the right is a power or a burden. What is meant by power can mean relating to power over people, such as the rights of hadhanah and custody rights. It may also be the power that relates to certain things, such as property, land, or so on. In addition, the right can also take the form of a taklif which is an obligation that relates to an object or property such as paying off debt or relating to realizing certain goals, such as the execution of work by a workforce.

In the concept of Islamic economics, the object of property belongs to not only things that are visible, but also to other objects forming separate categories. In addition to objects as substances, there are benefits to other categories separately which are in certain respects viewed as objects. As an object, the benefits of being used as a transaction object can be transferred to others.

#### 4. State Assets

The wealth of the state is all or all of the natural wealth in Indonesia as mentioned in the 1945 Constitution Article 33 paragraph (3) that "the earth, water, and natural resources contained therein are controlled by the state and used for the

greatest prosperity of the people". In the wealth of the country includes the property of the country. Therefore, State Own Property (BMN) falls into the category of state assets (Susanto).

The assets of the state are divided into two, namely the public domain of state assets that can be utilized in general by the public, and private domain which is a wealth attached to the state property. State-owned wealth is a private domain that is the right to own a good or service. While the state property is not separated in the form of State or regional assets which is the whole goods derived from the State Budget / Expenditure / Regional Revenue or other legitimate acquisition.

In Islam, property rights are known as milk or malikiyat, while objects as subjects of ownership are called المال (maal) or الأموال (al-amwal). Based on the definition of Hanafi School, the concept of treasure must meet two elements. First, it is possible to be mastered or stored. It does not include everything that can not be mastered physically, such as science, health, and others. Second, the benefits can be obtained as usual. Therefore, it does not include items that can not be taken advantage of, such as expired food, rotten meat, and so forth.

Based on its ownership, property or goods are grouped into three:

<sup>10</sup> Wahbah Az-Zuhaili. (1985). hlm. 9.



(i) Individual ownership (al milkiyyat al fardhiyyah) or private property

(ii) Public ownership (al milkiyyat al ammah) or public property

(iii) State ownership (al milkiyyat ad dawlah) or state private.

## 5. Underlying Assets

Underlying assets can be interpreted as financial instruments that are the goals of the contract. In other definitions submitted by Nofie Faith, the underlying asset is the assets that make up the mutual funds/securities. The underlying asset referred to in this research is the asset used to back up the Sukuk transaction or which is used as the basis by the Sukuk transaction. Underlying asset here is the object of buying and selling assets conducted by the originator to SPV in the issuance of Sukuk.<sup>11</sup>

Assets that can be used as underlying assets of Government Sukuk country are the object of Sukuk financing and State property which has economic value. And in every Sukuk issuance, the government will also establish the underlying asset through the Minister of Finance Decree on the determination of State Property as SBSN asset.

After the enactment of the SBSN law, state property not only has property rights

but also has a right to benefit. The provisions of the SBSN law have made it clear that the use of a state property as an SBSN asset is made by selling or leasing the right to use the goods, with a requirement of the government to repurchase the goods as underlying at maturity, something that belongs to the state to SBSN investors or other parties.

## C. RESEARCH METHODOLOGY

### 1. Research Paradigm

A fundamental thing in research as a scientific activity is the process of analysis that includes methods, systematics, and certain thoughts that aim to study certain symptoms, then seek solutions to problems that arise. Judging from the type of research, this study includes normative research conducted by reviewing secondary data. This normative research includes research of library decision (library research) or document studies. This research is conducted by studying and analyzing various literature related to Sukuk, ownership, and management of state assets.

The discussion on Sukuk country has many dimensions of study, such as economy, sharia, or social. To understand the flow of thoughts and perspectives of research needs to be reviewed the first paradigm adopted so that the mapping of thinking patterns and constructs of ideas

<sup>11</sup> Sigit Parmono. (2008). *Obligasi Syariah (Sukuk) untuk Pembiayaan Infrastruktur: Tantangan dan Inisiatif Strategis*. Jakarta: Sekolah Tinggi Ekonomi Islam (SEBI).

given will be easily understood. Research is essentially a method of finding and discovering the truth in a scientific frame. The effort to get the truth was done by the researchers through a certain model and form. The form or model in the world of research is known as the paradigm.

The paradigm used in this research is the positivist paradigm. As proposed by Hart who explains the existence of primary and secondary rules. The primary rule consists of standards for behavior that impose duties, which state what to do and what is forbidden to do,<sup>12</sup> while the second rule is the requirement of the principle of primary as well as the requirement as a modifier of primary rules.

## 2. Data Source

Judging from the data source of this study consists of two kinds, namely primary data and secondary data. Primary data is data obtained directly from the main source. Primary data collection conducted by researchers on the research objectives. While the secondary data is data collected, processed, and presented by other parties such as central Bank Indonesia, Financial Services Authority (OJK, Otoritas Jasa Keuangan), Statistic Centre Bureau (BPS, Badan Pusat Statistik), Ministerial of Finance (Kemenkeu, Kementerian

Keuangan). Both the form and the contents of the secondary data have been formed and filled by the previous study.

## 3. Data Collection Techniques

Data collection in this research is using literature study technique and interview. A professional study ideally uses a combination of literary and field research, or with emphasis one of them. Therefore, data collection in this study combines a literature study to obtain secondary data as primary data supported by primary data. The primary data source was obtained by interview technique. The data collection used in this study is adapted to the type of data required.

The first data collection technique is a literature study, is a data collection technique by conducting a review study of books, literature, records, and reports relating to the problem solved. The study of literature will be conducted on all primary and secondary materials that have relevance to the discussion in this study.

The second data collection technique is by interview. The types of interviews used in this study are semi-structures that have been included in the category of in-depth interview, the implementation is more open and the parties who invited the interview asked his opinion. In conducting the interview, the researcher needs to listen carefully and record what the informant says.

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<sup>12</sup> Andrea Ata Ujan. (2009). *Filsafat Hukum: Membangun Hukum, Membela Keadilan*. Yogyakarta: Kanisius. hlm. 70.



#### 4. Data Analysis Method

The analysis in this research is compiled on the document data which is analyzed critically and explained the meaning and the implication to the economic subject of Islam. The data obtained in the next study is described in accordance with the subject matter to be studied. The description is done on the content and economic structure related to the use of state assets as underlying assets in the issuance and development of Sukuk in Indonesia.

To perform the above analysis, three stages of interactive model analysis procedure consisting of:

##### a. Data reduction

Data reduction is intended as a selection process, focusing on simplification, abstraction, and transformation. At this stage selected data in accordance with the purpose of research, while for other data that is not required will be ruled out. Sorting and selection is an attempt to simplify the data so that the data obtained will be more focused on the discussion.

##### b. Presentation of data

The next stage is the presentation of data or display data. This stage is intended to organize the information to be neatly arranged to facilitate the conclusion and taking action. This is done to facilitate for researchers to see

the overall picture or certain parts of the research data so that the data can be drawn conclusions. The presentation of this data is done descriptively in accordance with the type of research that is qualitative.

##### c. Conclusion

The third stage is to draw conclusions, this is an activity with a complete configuration during the study took place. While verification is a rethinking activity that passes through the thinking of the informant as long as the researcher records or a review of the recorded records obtained. The verification in the research is carried out continuously throughout the research by the researcher in question to analyze and search the meaning of the information collected from the informant.

#### 5. Swotr 2 Method

What is meant by SWOTR2 analysis is a way of analyzing internal, external, and feedback factors into strategic steps in more profitable business optimization? In the analysis of internal and external factors determining the aspects of the Strength, Weakness, Opportunities, Threat, Reflexivity, and Religiosity (Consciousness). That way, it will be

determined by various possible alternative strategies that can be executed.<sup>13</sup>

The purpose of this SWOTR2 analysis is to examine and determine in terms of: Strong (so it can be optimized), Weak (so that it can be fixed soon), External opportunities (to be used), External threats (to be anticipated), Feedback as Reflexivity (to be prospected), and Feedback as Religiosity (to be consciousness).

In this research, the steps of data analysis are done as follows which explains how the analysis is done, starting from the existing raw data to the result of the research achieved:

- a. Conduct the classification of data, strengths, and weaknesses as internal factors, as well as opportunities and threats as external factors. This classification can then generate SWOTR2 information.
- b. Conduct a SWOTR2 analysis that is to compare between the external factors Opportunities (Threats) and the internal factors Strengths and Weakness.
- c. From the results of the analysis then interpreted and developed into a strategy selection decision that allows being implemented. The

chosen strategy is usually the most likely (most positive) outcome with the least risk and threat.

#### D. ANALYSIS AND DISCUSSION

In this chapter, we will discuss the use of State assets as the structure of Sukuk issuance. As an underlying asset, the State's wealth will be the principal transaction that provides the shari'ah's authenticity of the Sukuk product. Due to the existence of this underlying asset will differentiate Sukuk with a conventional scheme in the form of bonds.

In this chapter will also be analyzed the existence of the right to benefit as an underlying Sukuk in terms of maqashid sharia related to property. Also, the role of the birth of the right to benefit from the State's wealth is increasing production. Then analyzed the role of Sukuk as an interest-free investment scheme and in accordance with sharia principles.

The birth of the right to benefit as an underlying asset of Sukuk issuance can support the efforts of community needs as a group, as well as individual needs individually. The analysis of maysir aspect and economic risk in Sukuk transaction with Ijarah rights agreement, gharar aspect analysis in Sukuk transaction with Ijarah rights agreement is discussed. And last will be discussed about the protection of State property as a state asset.

<sup>13</sup> Freddy Rangkuti. (2005). *Analisis SWOT: Teknik Membedah Kasus Bisnis*. Jakarta: PT Gramedia. hlm. 19.

### 1. Analysis of the Use of State Assets as Underlying Assets in the Structure of the Sukuk Issuance Agreement

Purpose Vehicle (SPV) is a popular term since the international financial scandal involving ENRON multinationals in the United States in 2001. SPV is a legal entity formed to facilitate the issuance of Sukuk. SPV is basically formed by a bond or a third party or a mixture of obligors and third parties.

Technically the role of SPV in the Sukuk issuance depends on the respective contracts used. In the issuance of Sukuk, Ijarah SPV has four keys, namely as a buyer, publisher, leasing agent, and as a seller. In the first position, SPV is a buyer of assets from the government. Then in another position stage, SPV acts as a Sukuk issuer, where SPV is based on assets purchased from the government issuing Sukuk and collecting funds from the public. Another role of SPV is as a renderer of underlying assets of Sukuk to the government as a tenant. Lastly, at maturity, SPV acts as a seller who transfers the asset in full to the government as a buyer.<sup>14</sup>

In the issuance of Sukuk using Mudharabah contracts, SPV has only two important roles, namely as a Sukuk issuer and as a mudharib. As a Sukuk publisher, SPV collects funds from the community.

As a mudharib, SPV manages and invests the funds accumulated in a particular project.

Whereas in Musyarakah Sukuk, SPV has many roles as an administrator in charge of preparing Musyarakah contract between government and investors. To raise funds from the public, SPV also acts as a Sukuk publisher.<sup>15</sup> While the rights of SPV as Sukuk publishers are as follows:

- a. Get cash from Sukuk proceeds
- b. Benefit

The use of the contract on the issuance of Sukuk is closely related to the structure of Sukuk. In general, the contract which is the basis of the issuance will be used to name the Sukuk. Specifically, article 3 of the SBSN Law refers to four types of contracts in the issuance of Sukuk, namely Ijarah, Mudharabah, Musyarakah, and Istishna'.

#### a. Sukuk with Akjarah Ijarah

Issuance of Sukuk using Ijarah contract is similar to the use of Ijarah contract in general. Only at the end of the lease will be transferred ownership through a sale or a gift. This model Sukuk is proof of the joint ownership of the Sukuk holder of the leased asset, in which the Sukuk holder collectively owns the rights and obligations to

<sup>14</sup> Nazaruddin Abdul Wahid. (2010). hlm. 159-160.

<sup>15</sup> Nazaruddin Abdul Wahid. (2010). hlm. 141.

the lessor. Thus, the Sukuk investor has a proportion of capital ownership in the asset for a predetermined period of time. Almost all use of Ijarah contracts in the issuance of Sukuk is done in three stages, namely issuance, lease, and repurchase.

b. Sukuk with Akad Mudharabah

Mudharabah in fiqh literature is a contract between two parties, where one party called *rob al-maal* (investor) entrusts money to a second party called *mudharib* to run a business. Whereas in the rule of jurisprudence, Mudharabah is the contract of capital delivery by the owner of capital to the manager to be traded and the mutual profit is shared between the two according to the agreement they make.

State bonds with Mudharabah contracts can be instrumental in increasing public participation in investment activities of an economy. This type of certification represents a project or activity managed under the Mudharabah principle by appointing a partner or other party as *mudharib* or business management.

There are seven steps taken to issue Sukuk with Mudharabah contract. As for the first step, the Sukuk

issuer process the issuance of Mudharabah Sukuk for the purpose of capital mobilization with a certain level. The second step, the Sukuk issuer as *mudharib* and the investor as *shohibul maal* make Mudharabah contract with the agreed profit agreement. Based on the contract that has been made, collected a number of Mudharabah capital, which is the third stage. Then in the fourth stage, Sukuk publishers invest in projects that are considered to have good business prospects. The fifth step, the investment made *mudharib* can produce certain benefits. In the next stage, the profits derived from the trading activities are distributed between the *shohibul maal* of X% and the final step of payment of profit for *mudharib* of Y%.

c. Sukuk with Akyar Musyarakah

The verses of the Qur'an which became the rest of Musyarakah's musyarakah are in the Letter of Shaad Verse 24:

...وإن كثيرا من الخلطاء ليبغي بعضهم على بعض إلا الذين ءامنوا وعملوا الصلحت وقليل ما هم وظن داود أنما فتنه فاستغفر ربه وخر راكعا وأناب ﴿٢٤﴾

It means "... And most of them that are united, some of them do wrong to others, save those who believe

*and do righteous deeds; and very little of them. "And David knew that We tested him, so he asked God's forgiveness and then fell down in prostration and repent."* (Surah Shaad: 24)

In the above verse, the word *khulatho'* is meant to be those who cooperate. This verse indicates the permeability of the doping, and the prohibition to oppose the partnership partners. It also explains that the union that occurs between each party is on the basis of the contract (*ikhtiyari*).

The application of *Musyarakah* contracts generally begins with the merger of two modalities between the owners of capital.

In the first step, the state as the first party contributes capital in the form of land or physical assets as the participation of the *shirkah*. On the other hand, SPV issues Sukuk to raise capital from investors, from the proceeds of this proceeds to be paid as part of *syirkah* from SPV. On the results of the cooperation will be given profit sharing in accordance with the agreed portion, for example, 20% for the company and 80% for SPV. The share of profits received by SPV is then to

be given periodically to the Sukuk investors as a profit share.

#### d. Sukuk with *Istishna'*

*Istishna'* contract is a contract that exists between the customer as the first party with a producer of a good or the like as a second party, in order for the second party to make an item as desired by the first party with the agreed price between the two.

The basis of *Istishna'*'s permissibility in the issuance of Sukuk is contained in the hadith of the Prophet Muhammad which reads:

عن أنس رضي الله عنه أن النبي ﷺ كان أراد أن يكتب إلى العجم ف قيل له إن العجم لا يقبلون إلا كتابا عليه خاتم. فاصطنع خاتما من فضة قال كأني أنظر إلى بياضه في يده. (رواه مسلم)

Meaning: "From Anas ra. that the Prophet Muhammad (PBUH) was about to write a letter to a non-Arab king, then it was reported to him that non-Arab kings would not accept a letter that was not stamped. So he ordered that he be made stamp ring of silver material. Anas recounts: 'As if now I can see the white glow in his hands'."

In the first phase, SPV publishes Sukuk to the public, and from the proceeds of the sale will be obtained some funds to be owned

by SPV. The budget obtained from the issuance of the Sukuk will be used to pay the contractor with Istishna 'contract. On the contract made an agreement to build orders according to agreed specifications. The third stage is the sale of completed assets built by the contractor to SPV.

Then in the fourth stage carry out the sale and transfer of ownership to the last buyer. At this stage, the monthly fee will also be paid to SPV, which with the budget will be used to pay for the results to investors.

## 2. Country Asset Development Analysis as an Underlying Asset in Sukuk Development and Its Implementation in Indonesia

In Indonesia, the first Sukuk that appears in the market is a Sukuk corporation issued by PT. Indosat Tbk, namely Indosat Mudharabah sharia bonds. The Sukuk was issued on October 30, 2002, with an emission value of Rp 175 billion and has a fame period of approximately five years.<sup>16</sup> The Indonesian government officially publish Sukuk retail country on 25 February 2009 to support the 2009 State Budget. The growth of Sukuk in Indonesia can be seen in the graph below.



Source: Sukuk Statistics November 2014, Financial Services Authority. 2014

The development of Sukuk emission value in Indonesia from year to year has increased significantly. This condition was prompted by the issuance of the SBSN Law in 2008. At the beginning of the issuance of Sukuk in 2002, the total number of issuers and total Sukuk emission value was only 1 with a total emission value of 175 billion. In November 2014, the value of Sukuk emissions reached 12,727.4 billion rupiahs.

Issuance of Sukuk countries in Indonesia generally uses the aqad Iqarah sale and leaseback structure with the underlying asset of State property in the form of land or building currently being used by the Ministry of Finance. The initial published state Sukuk has a maturity of 3 years with a nominal per unit of Rp 1 million with a minimum purchase of Rp 5 million or its multiplication and no maximum purchase limit. The rate of return will be determined one day before the offer date, which is 12% to be paid monthly. Demand for Sukuk of retail country 1 reached Rp 5.56 trillion, this

<sup>16</sup> Sofyan Syafri Harahap. (2008). *Analisis Kritis Atas Laporan Keuangan*. Jakarta: PT RajaGrafindo Persada. hlm. 218.



exceeds 313.9% of the government's initial target.

The law states that the underlying asset in the issuance of the state Sukuk is BMN itself. Therefore, can it be expanded into state property? When the state wants to change the underlying asset of the issuance of Sukuk, there is nothing wrong, okay, because the regulator itself decided, but will go through a very long process (Susanto).

The natural resources or other things which include the State Assets, such as gas oil, forests, etc., must be through the initial recording of the value of its assets. So it takes time and a rather long process to make the country's own wealth as an underlying asset. And the government itself does have a plan to make the country's wealth as a whole BMN, so it will have an asset record as BMN. For the recording or measurement of the value of the state's own wealth is done by the ministry of finance (Susanto).

The provisions of the SBSN Law have clearly stipulated that the use of state assets as SBSN assets shall be done by selling or leasing the right to use the assets of the country, with a requirement of the government to repurchase the SBSN assets that become underlying at maturity.

UU No. 19 Article 12 of 2008 on State Sharia Securities:

1. The Minister must repurchase the SBSN assets, cancel the lease contract, and terminate the issuance of other SBSN contracts when SBSN matures.
2. In the framework of repurchasing SBSN assets, cancellation of the lease contract, and termination of other SBSN issuance contract as referred to in paragraph (1), the Minister shall pay the nominal value of SBSN or other payment obligations in accordance with the issuance of SBSN to the SBSN holder.

Another rule in the SBSN law requires that every Sukuk issue be approved by the House of Representatives (DPR, Dewan Perwakilan Rakyat):

1. The issuance of SBSN must first be approved by the House of Representatives at the time of ratification of the State Revenue and Expenditure Budget which is calculated as part of the maximum net worth of Government Securities to be issued by the government within one budget year.
2. The Minister has the authority to determine the composition of Government Securities in rupiah and foreign currencies, as well as to determine the composition of Government Securities in the form

of Sovereign Debt Instruments as well as SBSN and other matters necessary to guarantee the issuance of Government Securities with caution.

3. In certain cases, SBSN may receive more than what has been approved. Paragraph (1), which subsequently constitutes the amendment of the State Budget of Revenue and Expenditure.

### 3. Verses and Hadits as Platform Philosophy, Acquisition, Production, and Asset Development

Looking for a treasure that is one of the things set in the teachings of Islam. Islam calls for people to be always productive in developing wealth. Men also just get the treasure along with what he has earned.

وَأَنْ لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَى

*"and that a man does not produce what he has earned." (Q.S. An-Najm: 39)*

This verse gives encouragement for people to always work and make efforts to get the treasure. Indirectly the verse explains it in the absence of effort, man will not produce property or objects.

God also guarantees all efforts made by men, both men, and women. As stated in Surah An-Nisa Verse 32:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضُكُمْ عَلَى بَعْضٍ  
لِّلرِّجَالِ نَصِيبٌ مِّمَّا كَتَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا

اَكْتَسَبْنَ وَسَلُوا لِلَّهِ مِنْ فَضْلِهِ إِنَّا اللَّهُ كَان بَكْل شِيء  
عليما 32

Meaning: *"And do not be jealous of what Allah has granted to some of you more than others. (For) for men, there is a part of what they earn, and for women, there is part of what whom they seek and ask Allah of some of His gifts: for Allah is Knower of all things." (Q.S. An-Nisa: 32)*

In the verse, it is explained that the difference to the work done by man is part of the wisdom of Allah S.W.T. Basically, Allah S.W.T. does give rizki from the work that is not always the same magnitude. This verse also reminds people not to envy the difference in the work that has been attempted.

In addition to some verses above, there are also hadiths that show how the spirit of Islam in regulating the economic problems of the ummah. In a hadith, the Messenger of Allah (PBUH) calls that work as a firewood searcher is higher in degree than the beggars.

حدثنا عبد الله ابن يوسف أخبرنا مالك عن أبي الزناد عن الأعرج عن أبي هريرة رضي الله عنه أن رسول الله ﷺ قال: والذي نفسي بيده لأن يأخذ أحدكم حبله فيحتطب على ظهره خير له من أن يأتي رجلا فيسأله أعطاه أو منعه.

It means *"..... For the sake of my soul is in his hand, it is really one of you who takes the rope then he seeks the firewood and is brought with his back*

*better for him than he goes to someone and he asks him, or reject "*.

**(Narrated by Bukhari)**

The hadith shows that Islam gives a strong spirit in encouraging its people to seek wealth. Asking from others is not part of the teachings of Islam. Someone must

keep working and get the treasure to meet the needs of his life.

It can be summarized in the table below some analyzes of Strengths, Weaknesses, Opportunities, and Threats related to the issuance of Sukuk, among others:

**Table 4.1 Sukuk in SWOTR2 Analysis**

| Indica<br>tor  | Strenght  | Weaknes<br>s   | Opportu<br>nity   | Treatment   | Reflexivity                                 | Religiosity   |
|--|---|--|---|---|---|---|
| Suku<br>k  | as an alternative to another financing to avoid debt    | Have not got the full confidence from the public   | The yield of the assets used as the underlying  | Conventio<br>nal Bonds                                      | Investmen<br>t stimulus                     | Supporting the implementat<br>ion process of fiscal decentraliza<br>tion. |
| <i>Shari<br/>ah<br/>syste<br/>m</i>                          | A system free of usury, no speculation in property, and | A system that is not well known to the public.   | Indonesi<br>an society is predomi<br>nantly Muslim.                                     | The existence of a more profitable interest system.         |   | A business that is not contrary to Islamic values.                        |
| In<br>Shari<br>a<br>Capit<br>al<br>Mark<br>et<br>Shari<br>ah | Islamic Bond  | Non-Shares   | Priority of Financin<br>g   | Liquidity Rescue  |   |   |
| <i>Unde<br/>rlying<br/>Asset</i>                             | To develop infrastructure in Indonesia.                 | The quality of the assets that is not obtained in the event of the negligence of the party in the settleme | The more assets that comply with the specified standards , the greater for countries to | Market risk, where the price is likely to drop at maturity. | Get financing from international investors. |   |

|                 |   |  |  |   |   |  |
|-----------------|---|--|--|---|---|--|
|                 |   | nt.  |  |   |   |  |
| State Assets    | UU No. 19 of Article 12 concerning SBSN, concerning the | Limitations of State assets that can be used as underlying assets. | In every Sukuk issuance, there are projects that can develop the State Assets. | Unavailability of a globally applicable system.       | Protection of assets used as underlying assets. |  |
| Coupon          | <i>Fixed Yield</i>                                      | There is a risk opportunity if using floating or floating model.   | -  | No rewards if payment is made not in a timely manner. |   |  |
| Ijarah Contract | <i>Fixed-rate</i>                                       | Still contains aspects of maysir and gharar.                       | Most interested investors  | Ups and downs in interest rates                       |   |  |

Source: processed from various sources, 2017

## E. CONCLUSIONS

Based on the discussion in the previous chapter, some conclusions can be formulated as follows:

1. Sukuk is a very strategic financial instrument to encourage national development in a country. The presence of Sukuk attracts many investors worldwide. Sukuk creates the participation of many parties in the financing of public and private sector projects that include infrastructure in Indonesia which has been only relying on debt as financing. The state needs

Sukuk because of the increasingly limited capacity of the state budget to build the economic sector. Due to the development of an evolving economic sector is one of the things that must be achieved to obtain the welfare of society.

2. The use of State assets as underlying assets in the issuance of Sukuk is a form of increasing the productivity of State assets. Because of the existence of infrastructure generated by the issuance of Sukuk is believed to affect

regional growth, income, until employment growth.

3. The use of the right to benefit born from the state's assets in the issuance of Sukuk is the realization of the obligation to seek property. In addition, the use of state assets as underlying assets of Sukuk issuance can encourage production activities. On the other hand, the use of Sukuk structure can guarantee the acquisition of assets in sharia.
4. In general, the issuance of Sukuk has many things that can provide benefits for the State and society. However, Sukuk is a certificate of ownership of fixed assets, which must have become a common understanding that fixed goods or fixed assets never experience a price reduction, but in practice, there is a market risk where the resale price of the asset may be decreased. And there are some other risks that could happen in the issuance of the Sukuk. The strength (Strength) in the issuance of Sukuk with state assets as underlying assets is an alternative to develop infrastructure in Indonesia. The weakness (Weakness) is that if there are negligence parties in the settlement, then the quality of assets can be lost or reduced. The

opportunity in the issuance of this Sukuk is the more assets that meet the specified standards, the greater for the country to get financing from international investors. Then the threat is the existence of market risk, where the price is likely to fall at maturity.

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