

# APPLICATION OF STATE SHARIA SECURITIES IN THE BAI AD-DAYN AGREEMENT AND GOVERNMENT PROJECT FINANCING

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**Abstract:** This paper aims to provide an overview of the implementation of *bai ad-dayn* agreements on State Sharia Securities and State Sukuk or State Sharia Securities and government project financing with State Sharia Securities. State Sharia Securities, abbreviated as SBSN or State Sukuk, are state securities issued based on Sharia principles, as evidence of a share in SBSN assets, both in rupiah and foreign currency. The methodology used in this study is a qualitative descriptive analysis method. Qualitative analysis is used to process existing data into systematic, structured, and meaningful data. Descriptive analysis is carried out by examining theory, information, and data through literature studies from books, scientific publications, and laws and regulations. The data used is secondary data derived from government project implementation reports through SBSN. PBS at the Ministry of Religion for the 2013-2021 period. Reports on project implementation in the form of ceilings and project realization, both obtained from APBN implementation reports submitted by the Ministry of Finance and from DGT applications from the Ministry of Finance. This study concludes that the *ad-dayn bay* contract can be interpreted as the sale of receivables rights to the debtor himself or a third party. Sales may be for immediate or deferred payment. Trade debt with direct payments is fine as long as it is paid in full and does not provide an advantage for purchases with the rationalization that a financial transaction involving debt will never allow payments to negate the term of the loan. If that happens then it is usury.

**Abstrak :** Tulisan ini bertujuan memberikan gambaran tentang pelaksanaan perjanjian *bai ad-dayn* pada Surat Berharga Syariah Negara dan Sukuk Negara atau Surat Berharga Syariah Negara serta pembiayaan proyek pemerintah dengan Surat Berharga Syariah Negara. Surat Berharga Syariah Negara yang disingkat SBSN atau Sukuk Negara adalah surat berharga negara yang diterbitkan berdasarkan prinsip syariah, sebagai bukti adanya bagian penyertaan dalam aset SBSN, baik dalam rupiah maupun valuta asing. Metodologi yang digunakan dalam penelitian ini adalah metode analisis deskriptif kualitatif. Analisis kualitatif digunakan untuk mengolah data yang ada menjadi data yang sistematis, terstruktur dan bermakna. Analisis deskriptif dilakukan dengan mengkaji teori, informasi, dan data melalui studi literatur dari buku, publikasi ilmiah, dan peraturan perundang-undangan. Data yang digunakan adalah data sekunder yang berasal dari laporan pelaksanaan proyek pemerintah melalui SBSN. PBS di Kementerian Agama periode 2013-2021. Laporan pelaksanaan proyek berupa pagu dan realisasi proyek, baik yang diperoleh dari laporan pelaksanaan APBN yang disampaikan oleh Kementerian Keuangan maupun dari aplikasi DJP Kementerian Keuangan. Penelitian ini menyimpulkan bahwa Akad *ad-dayn bay* dapat diartikan sebagai penjualan hak piutang kepada debitur sendiri atau kepada pihak ketiga. Penjualan mungkin untuk pembayaran langsung atau tangguh. Hutang perdagangan dengan pembayaran langsung baik-baik saja selama dibayar penuh dan tidak memberikan keuntungan bagi pembelian dengan rasionalisasi bahwa transaksi keuangan yang melibatkan hutang tidak akan pernah memungkinkan pembayaran untuk meniadakan jangka waktu pinjaman. Jika itu terjadi maka itu adalah riba.

**Kata Kunci :** *Bai Ad-Dayn* Agreement, Sharia Bonds, State Sukuk/SBSN, Underlying Assets, Government Project Financing Through SBSN.

## **Introduction**

Nowadays sukuk arises against the background of efforts to avoid the practice of usury in conventional bonds and in looking for alternatives to the use of financing for entrepreneurs or countries that are in accordance with Sharia.

At this time, of course, there are significant developments regarding the development of the mindset of Muslims. That is, the beginning of the awareness of Muslims that the Islamic system is a solution to the problems that occur in the world. Among the indications that lead to it is the beginning of many Muslims who change their economy from a conventional economic system to an economic system based on shari'a. Therefore, we are familiar with the terms shari'a bank, shari'ah cooperative, shari'ah capital market, and others.

Then on the emergence of ulama fatwas that prohibit conventional bonds, such as the Fatwa Majma' al-Fiqh al-Islâmî march 20, 1990 and the Fatwa of the National Sharia Council of the Indonesian Ulema Council No. 32 / DSN-MUI / IX / 2002 and the need for long-term investment, experts and practitioners of Islamic economics have the opportunity to create a new application or financial instrument called sharia bonds or sukuk.

As part of Islamic finance, the contracts contained in the sukuk structure must also be considered. Basically, sukuk is also a supporting part of business activities, and in the business world the contract has a very important role because the sustainability of business activities in the future will depend on how well and detailed the contract is made to maintain and also regulate the rights and obligations of both parties who make the contract. An agreement is an agreement that binds the relationship between the two parties now and in the future. The determination of the contract will reflect how much risk and benefit the two parties have, especially for the financier and the party who manages the business or between the buyer and the seller.

In the field of Islamic science itself, namely jurisprudence, it offers various details and determination of the basics of business agreements. Thus, the knowledge can realize the goals and interests of the right. In addition, jurisprudence, especially the science of jurisprudence, will answer problems and make rules in carrying out business activities in accordance with sharia principles and give birth to rules and views used for business transactions that have just emerged and are increasingly diverse in today's modern era. The clearer, more careful and detailed in making the contract, the less likely there will be conflicts between the two parties in the future, because they have understood their respective rights and obligations. Some of the main principles in financial transactions in accordance with Sharia include an emphasis on fair agreements, recommendations for a profit-sharing system, and prohibitions on usury, gharar, and maysir.

As we know That Indonesia is the largest Muslim-populated country in the world, it is certain that sharia instruments will be easily accepted in the Indonesian capital market, including sharia bonds (sukuk). In addition, Islamic bonds are the most powerful instrument to attract investors from the Middle East to invest, both internationally and at the national level. This instrument is growing rapidly in line with the growth and development of other conventional financial instruments.

If the issuance of savings sukuk uses the structure of bai' ad-dayn agreement. The proceeds from the issuance will be used for investment activities in the form of purchasing

benefits rights for State Property as well as procurement of projects to be leased to the government. The reward comes from the profit from the investment activity.

In addition, the realization of project financing through SBSN can be carried out by the Ministry or SBSN project initiating institution, which in 2020 has shown a fairly good performance achievement of 91.0 percent. As for the realization of the FY 2021 SBSN project, until July 2021, the realization was 31 percent, which is the highest achievement compared to previous years for the same period. This shows that in the midst of the Covid-19 pandemic, the implementation of project development financed through SBSN continues to run well and contributes to national development and also as part of efforts to recover the country's economy through infrastructure spending.

Based on the above background, researchers are interested in conducting research with the title "Application of State Sharia Securities in the Bai Ad-dayn Agreement and Government Project Financing."

## **Research Methods**

The methodology used in this study is a descriptive qualitative analysis method. Qualitative research is a method to explore and understand the meaning derived from social or humanitarian problems. The instrument in it is the researcher himself, and aims to obtain in-depth and meaningful data.

Qualitative analysis is used to process existing data into systematic, structured and meaningful data. Descriptive analysis is carried out by examining theory, information, and data through literature studies from books, scientific publications and laws and regulations. The data used is secondary data derived from reports on the implementation of government projects through SBSN. PBS at the Ministry of Religious Affairs between 2013-2021. The project implementation report is in the form of ceilings and project realizations, both obtained from the state budget implementation report submitted by the Ministry of Finance and from the DGT application of the Ministry of Finance.

Furthermore, the secondary data was confirmed by data from interviews with state budget project managers at the Ministry of Finance. This in-depth discussion is expected to provide diverse information and in-depth analysis of problems. The Ministry of Finance in this case acts as a unit that issues SBSN as a source of financing for the state budget and at the same time as a unit that monitors and evaluates the implementation of state budget projects at ministries/institutions.

## **Results and Discussion**

### ***Akad Bai Ad-Dayn***

*Bai Ad-Dayn* is a sale and purchase agreement with the object of buying and selling in the form of receivables / bills (Dayn). Some of the fundamental problems associated with this contract are whether it is permissible to sell "receivables" known as factoring products below the face value (at par) of the receivables or at discounts.

In this principle, financing is made based on buying and selling trade documents and the financing is used for the purpose of spending, trading, and service. The decision of the Sharia Supervisory Board (DPS) at the beginning of the operation of Islamic banks was based on an emergency with Islamic banks still as the sole player. Islamic banks are allowed to take advantage of excess or idle funds by using al dayn (ad dayn) devices. Al Dayn's terms are as follows:

- Customers who have received buying and selling facilities from Islamic banks will issue debt securities (promissory notes). Meanwhile, Islamic banks themselves cannot issue debt securities. Then the endorsed promissory note will be an underlying transaction to receive from a conventional bank.
- The compensation from placing funds and receiving funds (taking) is still focused on the calculation set by the counterpart (conventional bank) with Islamic banks (at that time) must optimize the purchase of funds and enter as a newcomer with a system that is not yet known by conventional banks.<sup>1</sup>

In the modern economic perspective Bai' Ad-Dayn has the meaning: an agreement to provide financing for the sale and purchase of goods by issuing trade bonds or other securities based on a pre-agreed price. This financing is short-term (less than one year) and only includes securities that have a good investment rating value.

Especially in its development, the economic crisis that continues until now and is strengthened by the global financial crisis, which has resulted in unstable financial conditions of individuals and families. As a result, many people suddenly become poor or suddenly become rich. The next result is empirically many people who sell their receivables to others with cash because they are pressed by needs that must be met immediately.<sup>2</sup>

The concept of bay' al-dayn actually refers to debt financing, which is the allocation of financial resources needed by financing units, trade and services, by selling or buying papers or trade documents. The form of buying and selling debt is classified into three, namely:

1. The form of buying and selling debts by the creditor to the debtor (debtor) is closer to the hiwâlah contract. This kind of debt buying and selling was justified by the Hanâfi scholars, because it was not included in the buying and selling of gharar. The Maliki School held the same that buying and selling debts to the debtor was permissible.
2. A form of buying and selling debts by creditors to third parties at cash prices. The sale of this kind of debt is not allowed by the Hanafi and Hambali Schools, because the seller of the debt is not able to give up the debt in time. However, the Mâliki School justifies buying and selling debts to third parties on certain terms.
3. Sale of debt to a third party or debtor but by way of deflected payment. According to Ibn Taimiyah, buying and selling debts like this is not justified and the previous class of scholars called it bay' al-kali bi al-kali, which is an agreement for buying and selling debts with debts.<sup>3</sup>

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<sup>1</sup> <https://sharianews.com/kamus/bai-al-dayn> Accessed 31 May 2022

<sup>2</sup> Dictionary Banking Sharia

<sup>3</sup> First Nuraini Rachmawati & From Mumin bin Ab Ghani, *Occur Sell Buy deep Perspective Jurisprudence and Practice in the Capital Market Indonesian*, (Lampung : Al-'Be, 2015) thing. 790

## Sharia Bonds

Sharia bonds are statements of debt from the issuing agency to bondholders along with a promise to repay the principal of the debt accompanied by a coupon of interest when payment is due, but its application follows the provisions of sharia. Sukuk is a sharia bond, aka both are the same. Sukuk was also explained by Bareksa and the Fatwa of the National Sharia Council (DSN) 2002 as follows.

- Bareksa: Islamic bonds are bonds that calculate yields using profit sharing calculations.
- Fatwa of the National Sharia Council (DSN) 2002: Sharia bonds are long-term securities with sharia principles and issued by issuers to bondholders in the form of profit sharing and repayment of bond funds at a certain maturity.<sup>4</sup>

Obstacles in the development of Islamic bonds include the following:

- Not many people understand the existence of sharia obligas, let alone the system it uses. This is inseparable from the socialization space for Islamic bonds which is conditioned to be limited by financiers who have more than enough funds.
- Society in storing its funds tends to be based on pragmatic considerations. This makes the trend of interest rates that tend to be certain in the future makes investors prefer conventional bonds over Islamic bonds.
- At a relatively young age and a different system, Islamic bonds are conditioned to deal with people who lack confidence in the existence of a system that they are not yet familiar with.<sup>5</sup>

Characteristics of Islamic Bonds:

We must know that, there are several characteristics in Islamic bonds that distinguish them from other investment instruments, including:

- Sharia bonds are carried out based on the sharia concept and only provide income to sharia bond holders in the form of profit sharing and make payment of principal debt at maturity.
- The type of industry managed or the income of the bond issuing company must be free from the elements of usury, gharar, and maysir.
- The implementation of Sharia bonds is supervised by the Sharia Supervisory Board or by a Sharia Expert Team appointed by the MUI National Sharia Council from the time of issuance until the end of the bond issuance period. With the aim of none other than to apply the principle of prudence and carry out protection to investors.
- If the issuer commits negligence or violates the terms of the agreement, it is mandatory to refund the investor or the investor can withdraw the funds.<sup>6</sup>

Currently, on the Indonesia Stock Exchange, new financial instruments are traded, namely Islamic bonds, to be precise, starting from 2002. This Islamic bond is issued in addition to covering working capital needs, it can also be used for infrastructure development either by companies or the government.

Thus, Islamic bonds can be used as an alternative source of funding for companies. Islamic bonds as a source of funding for companies will be more competitive than conventional

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<sup>4</sup> <https://lifepal.co.id/media/obligasi-syariah/> Accessed 31 May 2022

<sup>5</sup> Abdul Manan, *Bond Sharia*, (Jakarta: Academia.edu,2010) thing. 17

<sup>6</sup> <https://alamisharia.co.id/id/kamus-keuangan-syariah/obligasi-syariah/> Accessed 31 May 2022

bonds. However, investors' tendencies do vary because the point of view used to analyze and predict the investments they will make is also carried out differently.

In its implementation, Islamic bonds are almost the same as conventional bonds, but what distinguishes them is that these Islamic bonds are applied based on sharia law. This law is what spurred the difference in such bonds. As for its application, namely:

- In all activities, sukuk issuance must be based on sharia principles.
- A certificate is proof of ownership of an asset.
- In earnings there are revenue shares, rewards, and margins.
- The repayment term is from short to long.
- Mandatory use of funds in accordance with sharia.
- The OJK collection is taken 0.05% of the emission value or a maximum of 150 million
- Requires additional documentation in explaining Sharia financing transactions.<sup>7</sup>

### **Application of Bai' Ad-Dayn Agreement in Sharia Bonds and State Sukuk (State Sharia Securities /SBSN)**

The issue of bai' ad-dayn arises when bonds or sukuk are traded on the skunder market at a discount rate. It is appropriate to say that buyers in the secondary market are speculators who do not plan to store bonds with the aim of long-term investment. Their main goal is to get capitalgain quickly based on market liquidity and interest rate movements. In any case, there is no controversy regarding bay' ad-dayn if the bonds are sold at par value. Precisely what will be studied here is the nature of bay' ad-dayn in the Islamic view.

Bay ad-dayn may be interpreted as the sale of receivable rights to the indebted themselves or to a third party. The sale may be for direct or tough payments. Trading debt with direct payments is fine as long as it can be paid in full and does not provide benefits to the buying person with the rationalization that financial transactions involving debt will never allow repayments to counteract to the length of the loan period. If that happens then it can be interpreted as usury.

If it is associated with sukuk in Malaysia which uses the principle of bay' ad-dayn, then the practice of such sukuk trade is still doubtful of its conformity with sharia. The reason is the existence of speculators in the second market where bay' ad-dayn is traded.<sup>8</sup>

As is generally known that bonds are debt securities. Where the holder is entitled to a fixed interest and the principle of Islamic bonds does not recognize the existence of debt.

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<sup>7</sup>[https://www.kompasiana.com/cdn.ampproject.org/v/s/www.kompasiana.com/amp/itsmedllh/5e9db097d541df07d32f4d42/obligasi-syariah?amp\\_js\\_v=a6&amp\\_gsa=1&usqp=mq331AQKKAFAQrABIIACA%3D%3D#aoh=16383426406200&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=Dari%20%251%24s&ampshare=https%3A%2F%2Fwww.kompasiana.com%2Fitsmedllh%2F5e9db097d541df07d32f4d42%2Fobligasi-syariah](https://www.kompasiana.com/cdn.ampproject.org/v/s/www.kompasiana.com/amp/itsmedllh/5e9db097d541df07d32f4d42/obligasi-syariah?amp_js_v=a6&amp_gsa=1&usqp=mq331AQKKAFAQrABIIACA%3D%3D#aoh=16383426406200&referrer=https%3A%2F%2Fwww.google.com&amp_tf=Dari%20%251%24s&ampshare=https%3A%2F%2Fwww.kompasiana.com%2Fitsmedllh%2F5e9db097d541df07d32f4d42%2Fobligasi-syariah) Accessed 31 May 2022

<sup>8</sup>[https://ngajiekonomiislam.wordpress.com/cdn.ampproject.org/v/s/ngajiekonomiislam.wordpress.com/2017/09/11/bay-al-inah-dan-bay-al-dayn-perdagangan-obligasi-syariah-di-malaysia-23-januari-2011/amp/?amp\\_js\\_v=a6&amp\\_gsa=1&usqp=mq331AQKKAFAQrABIIACA%3D%3D#aoh=16380609456717&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=Dari%20%251%24s&ampshare=https%3A%2F%2Fngajiekonomiislam.wordpress.com%2F2017%2F09%2F11%2Fbay-al-inah-dan-bay-al-dayn-perdagangan-obligasi-syariah-di-malaysia-23-januari-2011%2F](https://ngajiekonomiislam.wordpress.com/cdn.ampproject.org/v/s/ngajiekonomiislam.wordpress.com/2017/09/11/bay-al-inah-dan-bay-al-dayn-perdagangan-obligasi-syariah-di-malaysia-23-januari-2011/amp/?amp_js_v=a6&amp_gsa=1&usqp=mq331AQKKAFAQrABIIACA%3D%3D#aoh=16380609456717&referrer=https%3A%2F%2Fwww.google.com&amp_tf=Dari%20%251%24s&ampshare=https%3A%2F%2Fngajiekonomiislam.wordpress.com%2F2017%2F09%2F11%2Fbay-al-inah-dan-bay-al-dayn-perdagangan-obligasi-syariah-di-malaysia-23-januari-2011%2F) Accessed 07 June 2022

However, it recognizes the existence of obligations that only arise due to transactions on assets or products and services that are not cash, so that financing transactions occur.

Islamic bonds are fund-sharing that is based on the principle of profit sharing. The transaction is not a receivables debt contract, but in the form of participation. In its simple form, Islamic bonds are issued by a company (issuer) as a manager (mudharib) and purchased by investors (shahib maal). In the offering price, the maturity of the principal bond, the maturity, and the rating between Islamic bonds and conventional bonds have no difference.

The difference between Islamic and conventional bonds lies in income and returns. The most basic difference between Islamic bonds and conventional bonds lies in the determination of interest whose amount has been set or determined at the beginning of the transaction. Meanwhile, in Islamic bonds, when a transaction is made, what is the proportion of the distribution of profits if you get profits in the future. Sukuk as a form of financing as well as investment allows in applying contracts to modern financial transactions.

There are 4 principles in sharia agreements that need to be considered, namely:

1. Not all contracts are binding on both parties (aqad is common), because there are contracts that are only binding on one party (aqad jaiz).
2. In carrying out the contract, responsibilities related to the trust given to parties deemed qualified to hold full trust (amen) with parties who still need to fulfill their obligations as guarantors (dhamin).
3. Prohibition on exchanging obligations (dayn) through sales transactions so as to give rise to new obligations (dayn) or the so-called bay' al dayn bi al dayn.
4. Contracts that differ according to the level of obligation that is still a promise (wa'd) with the level of obligation in the form of an oath (ahd).<sup>9</sup>

## **Definition of State Sukuk/ State Sharia Securities (SBSN)**

Sukuk (صكوك) is a term of Arabic origin and is a plural of the word 'Sakk' (صك) meaning document or certificate. In medieval times, sukuk was commonly used by Muslim traders as a document showing financial obligations arising from trade and other commercial activities.

Based on the Sharia Standard The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) No. 17 concerning Investment Sukuk (Investment Sukuk), Sukuk is categorized as a certificate of equal value which is evidence of an undivided share of ownership of an asset, benefit rights, and services, or for ownership of a project or investment activity determined "Investment Sukuk are certificate of equal value representing undivided shares in ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity".

Based on the decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency (Bapepam – LK) Number KEP-181 / BL / 2009, Sukuk is defined as Sharia Securities in the form of certificates or proof of ownership of the same value and represents an inseparable or undivided share of participation:

- Ownership of certain tangible assets.
- The value of benefits and services on the assets of a particular project or a particular investment activity, or

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<sup>9</sup> Ali Muhayatsyah, *Aspects Sharia on Instruments Sukuk : Analysis Application Sukuk Waqf in Indonesia*, (Jakarta : Academia 2020) Pp.77-78

- Ownership of certain project assets or certain investment activities.

Based on the Fatwa of the National Sharia Council – Indonesian Ulema Council (DSN-MUI) No. 32/DSN-MUI/IX/2002 concerning Sharia Bonds, Sukuk (Sharia Bonds) is defined as long-term securities based on sharia principles issued by the Issuer to sharia bondholders which requires the Issuer to pay income to sharia bondholders in the form of profit sharing or margin or fee and repaying bond funds at maturity.

Based on the Fatwa of the National Sharia Council – Indonesian Ulema Council (DSN-MUI) No. 69/DSN-MUI/VI/2008 concerning State Sharia Securities, SBSN or State Sukuk is defined as Government Securities issued based on sharia principles, as evidence of the share (حصة) of ownership of SBSN assets, both in rupiah and foreign currencies.<sup>10</sup>

Here are the characteristics of Sukuk:

- Requires an underlying asset in the issuance. The assets used as underlying can be tangible goods such as land, buildings, development projects, or intangible assets such as services, or benefit rights to assets.
- Is proof of ownership of underlying assets.
- The returns given are in the form of wages or rent (ujrah), the difference in excess price (margin), and profit sharing, according to the type of contract used in the issuance. There are several types of contracts, namely ijarah, mudharabah, wakalah, istishna, musyarakah and kafalah.
- Free from the elements of usury, uncertainty (gharar) and / or gambling (maisir).
- The use of funds must be in accordance with sharia principles<sup>11</sup>

Sukuk has several characteristics, including:

- Is proof of ownership of an asset, benefit rights, services or certain investment activities;
- The income provided is in the form of rewards, margins, profit sharing, according to the type of contract used in the issuance;
- Free from the elements of usury, gharar and maysir;
- Requires an underlying asset issuance;
- The use of proceeds must be in accordance with sharia principles.

A sukuk issued can be said to meet sharia principles if all sukuk issuance activities, including contracts or issuance agreements, do not conflict with sharia principles, namely, among other things, transactions carried out by the parties must be fair, halal, thayyib, and maslahat. Sukuk must also be avoided from various elements of prohibition, including usury, maysir, and Gharar. For this reason, the issuance of Sukuk requires a declaration of sharia compliance from a generally recognized sharia expert or from an institution that has expertise in the field of sharia, stating that the sukuk issued has met sharia principles.<sup>12</sup>

The legal basis for issuing SBSN is Law Number 19 of 2008 concerning State Sharia Securities, which was passed on May 7, 2008, which regulates Sukuk issued by the Central

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<sup>10</sup> D Siamat, Book : Ask Answer Letter Valuable Sharia State ( Sukuk Negara) "Instruments Finance Based Sharia. (Jakarta: Director Financing Sharia June 2010) P. 8

<sup>11</sup> <https://www.schroders.com/id/id/investasi-reksadana/edukasi/tips-dan-artikel/obligasi-syariah-sukuk/> Accessed 07 June 2022

<sup>12</sup> D Siamat, Book : Ask Answer Letter Valuable Sharia State ( Sukuk Negara) "Instruments Finance Based Sharia. (Jakarta: Director Financing Sharia June 2010) P. 9



Government. Other regulations that support the implementation of the issuance of SBSN are regulated in Government Regulations (PP) and Minister of Finance Regulations (PMK).

Based on Law Number 19 of 2008 concerning State Sharia Securities, the Central Government has the authority to issue SBSN and is implemented by the Minister of Finance. The purpose of issuing SBSN is to finance the State Budget (APBN), including also financing the construction of projects (such as infrastructure projects in the energy, telecommunications, transportation, agriculture, manufacturing industry, and public housing sectors).<sup>13</sup>

The concept of sukuk was first introduced by OIC Fiqh Academy in February 1988. In 1990 the first corporate sukuk was published in Malaysia, ironically the one that issued sukuk for the first time was a nonmuslim institution. This first sukuk was issued in fractions of the ringgit (local currency) with a value of RM 125 million. Meanwhile, the State sukuk (Sovereign sukuk) was first issued by the Bahraini government in 2001, with a value of USD 100 million with the Ijarah contract.

Malaysia is the most active country and the largest sukuk issuer in the world. Malaysia's sukuk market reaches USD 68 billion, or equivalent to 67% of the total domestic sukuk market in the world (IIFM report, 2009). In comparison, the domestic market of sukuk in the Gulf states is only USD16 billion. The figure is still very small compared to Malaysia. In the gulf states, Bahrain is the country that is most active in issuing sukuk. Bahrain was the first State to issue a state sukuk (sovereign sukuk). In a period of seven years, from 2002 to 2009, sukuk issuance in Bahrain reached 77 sukuk.

In the gulf states except Bahrain, sukuk is relatively less actively issued fractions of the local currency. Saudi Arabia and the United Arab Emirates publish global sukuk in the form of a mix of sovereign, quasi-sovereign and corporate sukuk, while domestic sukuk only comes from Qatar issued by corporate parties. The first sukuk issued in Singapore was quasi-sovereign sukuk, which was published in June 2001. Pakistan began to actively issue sukuk from the beginning of June 2002, there are 30 sukuk that have been published in the form of State sukuk and corporate sukuk. The German federated state of Saxony-anhalt once published a State sukuk in July 2004. This is the first sukuk issued by a non-Muslim country, worth 100 million Euros (equivalent to USD123 million) with the Ijarah contract. Germany entered the Islamic financial industry and successfully obtained funds through their real estate portfolio. Investors from this sukuk include from the United States, England, Saudi Arabia, Bahrain, Malaysia, Japan, Hong Kong and Germany. Perhaps this is the sukuk that has the most diversified investors to date.

Although sukuk began to be widely published in non-Muslim countries, sukuk practices among non-Muslims need to be considered. Just as Islamic law requires away from the practice of usury, honest trade activities, away from speculative activities, and away from businesses and activities that harm the public such as pornography, alcohol, tobacco and weapons. The practice of this practice is generally not strictly prohibited among non-Muslims, so it is feared that the sukuk practice carried out is definitely not in accordance with sharia recommendations.<sup>14</sup>

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<sup>13</sup> D Siamat, Book : Ask Answer Letter Valuable Sharia State ( Sukuk Negara ) "Instruments Finance Based Sharia. (Jakarta: Director Financing Sharia June 2010) P. 15-16

<sup>14</sup> Angrum Pratiwi, Dedy Mainta, Rizky Holy Ramadayanti, *Role State Sukuk deep Financing Infrastructure*, (Samarinda : Al-Tijary 2017) P. 163-167

The parties involved in the issuance of sukuk are:

- Obligor, is the party responsible for the payment of rewards and the face value of sukuk issued until maturity. In terms of sovereign sukuk, the obligor is the government.
- Special Purpose Vehicle (SPV) is a legal entity established specifically for the issuance of sukuk with the function of being an issuer of sukuk, being a counterpart (spouse) of the government with asset transfer transactions, acting as a trustee (trustee) to represent the interests of investors.
- Investors, are sukuk holders who have the right to rewards, margins, and the face value of sukuk according to their respective participation.

The main principles in the sukuk issuance mechanism are:

- The contract or contract is set forth in the trust agreement.
- The ratio or percentage of profit sharing (ratio) can be determined based on the components of income (revenue) or profit (profit).
- The ratio can be set constant, increasing, or decreasing, taking into account the projected income, and set at the beginning of the contract.
- Revenue sharing income means the amount of income divided by income that becomes the right and therefore must be paid by the issuer to the sukuk holder.
- The distribution of the proceeds of this income can be carried out periodically (annually, semesterly, quarterly, or monthly).<sup>15</sup>

## Underlying Asset

In order to issue sukuk, a certain number of assets are needed that will be the object of the agreement (underlying assets). Assets as objects of the agreement must have economic value with data in the form of tangible assets and intangible assets. The underlying function of this asset itself is:

- To avoid usury
- For prerequisites in trading sukuk in the secondary market
- For determinants of the type of sukuk structure

Underlying asset can be interpreted as a financial instrument of a contract where underlying asset is a goal. In another definition, underlying assets are assets that form mutual funds or securities. The underlying asset referred to in this study is an asset that is used to back up sukuk transactions or those that are used as the basis for sukuk transactions. The underlying asset here is the object of buying and selling assets used by the originator to the SPV in the issuance of sukuk.

Assets that can be used as underlying assets for state sukuk are objects of sukuk financing and state wealth that have economic value. In each sukuk issuance, the government will also determine the underlying asset through the Decree of the Minister of Finance on the determination of State Assets as SBSN assets.

After the passage of the SBSN law, the country's wealth not only has rights but also benefits. The provisions of the SBSN law have clearly stipulated that the use of state property as an asset of SBSN is carried out by selling or leasing the beneficial rights to the goods,

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<sup>15</sup> Ali Muhayatsyah, *Aspects Sharia on Instruments Sukuk : Analysis Application Sukuk Waqf in Indonesia*, (Jakarta : Academia 2020) P.79

provided that the government is obliged to buy back the goods that are used as underlying at maturity. So it is not possible to transfer something that belongs to the state to SBSN investors or to other parties.<sup>16</sup> Article 12 of Law No19 of 2008 concerning State Sharia Securities:

- The Minister is obliged to repurchase SBSN's assets, cancel the lease agreement, and terminate other SBSN issuance contracts when SBSN matures.
- In order to repurchase SBSN assets, cancellation of lease contracts and termination of other SBSN issuance contracts as referred to in paragraph (1).
- The Minister pays the normal value of SBSN or other payment obligations in accordance with the SBSN issuance agreement to SBSN holders.<sup>17</sup>

## **Government Project Financing Through SBSN**

Apart from being a general financing for the State Budget, SBSN is also used directly in financing spending on the construction of Government projects in various Ministries or Institutions (earmarked) since 2013. In its development, the Government's project financing through SBSN has increased significantly from year to year, both in terms of the number of Ministries or Institutions that are the initiators of the SBSN project, the number of projects built, the value of the financing allocated, and based on the distribution of the SBSN project implementing task force and the location of the SBSN project being carried out.

The value of the SBSN project has increased from the original amount of IDR 800.0 billion in 2013, to IDR 27,576.1 billion in 2021, with accumulated financing from 2013 to 2021 reaching IDR 145,841.6 billion. From what initially started with one project, namely the construction of the Cirebon - Kroya Railway Double Track, in 2021 SBSN financed 847 projects, with an accumulated total number of projects from 2013 to 2021 of 3,447 projects. The main sectors financed include transportation infrastructure such as airports, railway infrastructure, port and crossing facilities, roads and bridges, higher education infrastructure, madrasahs, hajj dormitories, KUA, water resource infrastructure, and laboratories.

In 2020, the realization of project financing through SBSN carried out by the Ministry or SBSN project initiating agency has shown a fairly good performance achievement of 91.0 percent. As for the realization of the FY 2021 SBSN project, until July 2021, the realization was 31 percent, which is the highest achievement compared to previous years for the same period. This shows that in the midst of the Covid-19 pandemic, the implementation of project development financed through SBSN continues to run well and contributes to national development and also as part of efforts to recover the country's economy through infrastructure spending.

The performance of project financing through SBSN is quite good, inseparable from the design of the SBSN financing model, including:

- The business process of project planning and execution is simple, easy, and secure. But it is still possible to carry out the project properly, prudently, and produce high-quality output.
- The quality of output is good because there is monitoring and evaluation by both ministries or institutions, Bappenas, and the Ministry of Finance.

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<sup>16</sup> Roikhan Mochamad Aziza, Anukharija Yaumbi, *Application Sukuk By Assets Wealth Country in Indonesia*. (Jakarta: Symposium National Finance Country,2020) P. 8

<sup>17</sup> Article 12 Law No 19 Year 2008

- The completion of the project prioritizes the use of domestic resources (raw materials, technology, and experts).
- There is flexibility for ministries or institutions to choose the term and contract system to be used, which can be in the form of single year or multi-year according to their respective capabilities and capacities.
- The existence of an advanced mechanism or slide to ensure the completion of the project.
- The administrative system for implementing the SBSN project includes a relatively easy and simple procedure for payment or withdrawal of funds.

**TABLE 1.1**  
**AMOUNT OF SBSN PROJECTS**  
**PER MINISTRY OF STATE/INSTITUTION IN 2022**

No.	Ministry of State/Institutions	Number of Projects
1.	Ministry of Transportation	70
2.	Ministry of Public Works and Public Housing	218
3.	Ministry of Religion	425
4.	Ministry of Environment	2
5.	Ministry of Education, Culture, Research and Technology	27
6.	Ministry of Defense	36
7.	Indonesian Police	23
8.	Ministry of Agriculture	5
9.	Ministry of Industry	2
10.	Meteorology, Climatology and Geophysics Agency	1
11.	National Nuclear Power Agency	1
12.	Indonesian Institute of Sciences	6
13.	National Institute of Aeronautics and Space	2
Sum		818

Source: Financial Symmetry

In the 2022 state budget, the value of the issuance of SBSN financing activities or projects is planned to reach IDR 29,645.9 billion to finance 818 activities or projects in thirteen Ministries or Institutions, with details as shown in Table 1.1.

In the SBSN planning for project financing in 2022, there are points of allocation policy, including: (1) ensuring the continuation of multiyears activities that are running (on-going) in each Ministry or Institution; (2) new activities in 2022 are focused on the direct achievement of the development agenda in accordance with the 2020-2024 RPJMN, especially Major Projects, and take into account the execution capacity of Ministries or Institutions and the readiness of their implementation, including land aspects, technical or administrative requirements, as well as governance of project implementation by Ministries or Institutions, especially aspects of procurement, control, and supervision; (3) exercise sliding or advanced control by limiting new allocations to Ministries or Agencies with large sliding or advanced value; and (4) implement a moratorium policy to low-performing Ministries or Agencies in 2020, namely in the form of non-allocations for certain security forces, regions, or programs for 2022.

By looking at the performance of the SBSN project so far, the Government is optimistic and hopes that this project SBSN in the future can become one of the main pillars of the state budget instrument for national infrastructure development, and at the same time also become the main instrument in the development of the national financial market. Along with efforts to accelerate infrastructure development, the Government will at the same time be able to develop and realize the ideals of developing the Islamic financial economy in the country. Therefore, project financing through sukuk is expected to increase while still paying attention to project readiness, achievement of priority development targets, and financial market conditions. In addition, the implementation of project financing through sukuk is expected to increase the sense of community ownership of the development program being implemented by the Government.

## **Conclusion**

After discussions on the implementation of state sharia securities in the bai ad-dayn agreement and government project financing, it can be concluded as follows:

1. Bay's ad-dayn contract can be interpreted as the sale of receivables rights to the debtor himself or to a third party. The sale may be for direct or tough payments. Trading debt with direct payments is fine as long as it is paid in full and does not provide benefits to the buying with the rationalization that financial transactions involving debt will never allow repayments to counteract to the length of the loan period. If that happens then it is usury. If it is associated with sukuk in Malaysia which uses the principle of bay' ad-dayn, then the practice of such sukuk trade is still doubtful of its conformity with sharia. The reason is the presence of speculators in the second market where bay' ad-dayn is traded.
2. Islamic bonds are fund-sharing based on the principle of profit sharing. The transaction is not a debt receivables contract, but an inclusion. In its simple form, Islamic bonds are issued by a company (issuer) as a manager (mudharib) and purchased by investors (shahib maal). In the offering price, the maturity of the principal bond, the maturity, and the rating between Islamic bonds and conventional bonds have no difference.
3. The sukuk issued can be said to comply with sharia principles if all sukuk issuance activities, including the contract / issuance agreement, do not conflict with sharia principles, namely, among other things, transactions carried out by the parties must be fair, halal, thayyib, and maslahat.
4. Underlying asset can be interpreted as a financial instrument that is the purpose of a contract. In another definition, underlying assets are assets that form mutual funds / securities. The underlying assets referred to in this study are assets used to back up sukukat or even transactions that are used as the basis for sukuk transactions. Underlying assets here are objects of buying and selling assets used by the originator to SPV in the issuance of sukuk.
5. In its development, government project financing through SBSN has increased significantly from year to year, both in terms of the number of Ministries or Institutions that are the initiators of SBSN projects, the number of projects built, the value of financing allocated, and based on the distribution of SBSN project implementing staff and the location of the SBSN project carried out.

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