Telaah Obligasi Dalam Tinjauan Hukum Ekonomi Syariah
Review of Sharia Bonds in Sharia Economic Law Review

Anwar Hafidzi[1*], Fuad Luthfi[2], Sa'adah[3]Layalia Faza Ahda Sabila[4]
[1,2,3] Kolaborasi Dosen dan [4]Mahasiswa Fakultas Syariah, Universitas Islam Negeri Antasari, Banjarmasin, Kalimantan Selatan
[*]*E-mail*: anwar.hafidzi@gmail.com

ABSTRAK

Penelitian ini ingin mereview tentang penggunaan dan fungsi obligasi serta surat berharga berjangka dalam tinjauan hukum ekonomi Syariah. Peneliti melihat ada celah yang datang dari praktik ini dalam penggunaan Akad yang dapat digunakan dalam penerbitan obligasi syariah meliputi mudharabah, musyarakah, salam, istisna, dan ijarah. Metode yang digunakan dalam penelitian ini kajian pustaka terhadap review artikel tentang obligasi dan surat berharga berjangka. Penelitian ini membuktikan bahwa Pendapatan (hasil) yang diperoleh pemegang obligasi syariah sesuai akad yang digunakan. Pemindahan kepemilikan obligasi syariah juga mengikuti akad-akad yang digunakan. Perbedaan obligasi syariah dan obligasi konvensional adalah penggunaan konsep imbalan dan bagi hasil sebagai pengganti bunga.

Kata kunci: *Obligsi,syariah, surat berharga, hukum, ekonomi*

ABSTRACT

This study wants to review the use and function of bonds in a review of Islamic economic law. we see that there is a gap that comes from this practice in the use of Akad that can be used in the issuance of Islamic bonds including mudharabah, musharakah, salam, istisna, and ijarah. The method used in this study is a literature review of review articles on bonds and futures securities. This study proves that the income (yield) obtained by Islamic bondholders is by the contract used. The transfer of ownership of Islamic bonds also follows the contracts used. The difference between Islamic bonds and conventional bonds is the use of the concept of reward and profit sharing instead of interest.

Keywords: *bonds, sharia, securities, law, economy*

A. INTRODUCTION

According to Faizah (Faizah, 2019), the development of investment has shifted from being only concerned with the elements of profit and financial satisfaction to being an investment that is also concerned with various social aspects. Conventional investments are considered to have a lot of negative impacts compared to positive impacts, besides that conventional investments contribute a lot to social losses with a high element of speculation (Nizar & Syu'aibi, 2020, pp. 1–3; Oroh et al., 2019). The element of speculation in conventional investment is believed to have contributed to the world financial recession that caused the world economy to shake (Fadilla, 2018).

Sharia bonds or sukuk (Azizi & Hidayatullah, 2021) are increasingly preferred because there are efforts by investors, especially the Middle East, to attract capital collected in western banking institutions back to Islamic financial institutions. This solidarity support for Islamic capital market activities is based on the ideological-spirit similarities of the countries that are members of the OIC (Pramono, 2018). The sharia modal market has also begun to be generally accepted by the entry of non-Muslim investors in the Sukuk market. Sukuk is seen as a new, more profitable target. The popularity of this Sukuk is also inseparable from global access to capital so that cross-border liquidity management occurs (Kustiyaningrum et al., 2017).

Indonesia as one of the countries with the largest Muslim population in the world has enormous potential for the entry of funds from the Middle East which has high financial liquidity. With a population of more than 200 million people and long-term investment projects, Indonesia is a country that has the potential for the dynamic development of the Islamic economy. Seeing such great potential, Malaysia hopes to become a gateway for the flow of funds from the Middle East to Indonesia. This can be seen from the entry of Malaysian investors into the Indonesian banking world (Iskandar, 2018, p. 150).

The issuance of sukuk in Indonesia is currently based on the development of sharia institutions such as sharia banking, sharia insurance, and sharia mutual funds that require alternative investments in sharia bonds. Government sukuk is expected to develop with the entry into force of Law No. 19 of 2008 concerning sharia securities.

B. BONDS

Bonds come from the Dutch language, namely "*obligatie*" which in Indonesian is called "bond" which means a contract (Hasan & Utsmani, 2017). In the Presidential Decree of the Republic of Indonesia Number 775/KMK 001/1982 it is stated that bonds are types of securities in the form of a debt acknowledgment letter for borrowing money from the public in a certain form, for at least three years with the promise of interest rewards in which the amount and time of payment have been determined in advance. previously by the issuer or the Capital Market Implementing Agency (Azizi & Hidayatullah, 2021).

The above understanding can be seen that bonds are debt securities issued by issuers (can be legal entities or companies, it can also be from the government) that require funds for operational needs and expansion in advancing the investments they carry out. Investment by issuing bonds has the potential for greater profits than banking products. The advantage of investing by issuing bonds will earn interest and the possibility of *capital gains* (profits obtained from buying and selling shares on the capital market or stock exchange).

When viewed from the party issuing the bonds (issuers), bonds can be issued by the central government, regional governments, State-Owned Enterprises (BUMN), or can also be issued by[1]private parties such as: *first, participating bonds*, namely bond owners in addition to obtaining fixed interest, also gets a share of the profits achieved by the company; *second, client bonds*, namely bonds given to company customers to

[1] Abdul Manan, *Sharia Economic Law in the Perspective of the Authority of the Religious Courts,* Jakarta: Kencana, 2012. h. 325

develop ownership of securities to the public; *Third, debenture bonds are* bonds that are not guaranteed or without a guarantee. When viewed based on the period, the bonds are *limited*, because all bonds are generally limited by a certain time (Hasan & Ottoman, 2017, p. 20). But there are also bonds *unlimited* (without limits), bond owners will receive benefits from these bonds because these bonds are a means of providing funds, while funds are needed for business facilities and other interests related to business development (Pramono, 2018). Bonds are useful for investing their capital by investing in the capital market or specified banking institutions (Kustiyaningrum et al., 2017).

Bonds are one type of securities. However, in contrast to shares whose ownership signifies partial ownership of a company that issues shares, bonds indicate debt from the issuer. Thus, the bondholder has the right and position as the creditor of the bond issuer. Bonds are long-term debt instruments, which are generally issued in terms ranging from five to ten years. There are also maturities of one year. The shorter the term of the bond, the more attractive it is to investors because it is considered a small risk. At maturity, the bond issuer is obliged to pay off the principal investment in the bond.

In general, the types of bonds can be seen from the issuer, namely corporate bonds, and state bonds. State bonds consist of several types, namely: *first*,, recapitalization bonds namely bonds issued in the context of the banking recapitulation program. *Second*, government bonds (SUN), namely bonds issued to finance the APBN deficit; *third*, retail bonds, namely bonds that are the same as government bonds (SUN), issued to finance the state budget deficit, but the nominal value is made small so that it can be bought in retail by middle to lower investors; and *fourth*, sukuk bonds, the same as government bonds, but this sukuk are issued based on sharia principles.

As security, bonds are tradable in the capital market. There are two types of bond markets, namely: *first*, the primary market, namely the market where bonds are traded when they are issued. One of the requirements of the provisions of the capital market, bonds must be listed on the stock exchange to be offered to the public. In this case, it is usually listed on the Surabaya Stock Exchange (BES). *Second*, the secondary market is a place where bonds are traded after being issued and listed on the Surabaya Stock Exchange (BES), trading will be carried out *over the counter (OTC)*. This means that there is no physical trading place. Bondholders and parties who want to buy them will interact with the help of electronic securities such as e-mail, *online trading*, or telephone (Hartati, 2021, p. 31).

From this description, it can be seen that bonds fixed *income securities* , like others, have several characteristics, among others: *first*, bonds are securities that have legal force; *second*, having a certain time or maturity as stated in the bonds; *third*, bonds can provide periodic fixed income and the percentage of payments given periodically is based on the payment of a certain percentage of the nominal value or called coupon payments; and *fourth*, there is a nominal value called *par-value*, *stated value*, *face value*, or coupon value (Pramono, 2018, p. 68; Purwanti & Purwidianti, 2017, p. 15; Situmorang, 2017).

Procedure for Making Bond Investments

Profits in investing with bonds are influenced by many things. One of them is knowledge about the opportunities for individuals to see opportunities and learn the intricacies of the investment vehicle itself. In achieving various family financial goals, a variety of investment products are available, it is up to investors to choose which alternative products are the mainstay of investment, whether mutual funds, stocks, gold, and investment in the property sector in the capital market. In addition to these products, the capital market also offers investments through long-term debt securities or bonds (Purwanti & Purwidianti, 2017, p. 20).

If the choice of investors falls on bonds, then several stages need to be passed so that the investment objectives through bonds provide maximum results and according to plan. The stages are as follows (Ala'uddin, 2020):

a. Opening an account
b. Understanding bond products
c. Conducting analysis
d. Providing purchase orders
e. Preparing funds
f. Completing payment of bonds

The National Sharia Council (DSN) Fatwa Number 32/DSN-MUI/IX/2002 explains, what is meant by sharia bonds is securities long term based on sharia principles issued by issuers to sharia bondholders that require issuers to pay income to sharia bondholders in the form of profit-sharing/margin/*fee*, and repay bond funds at maturity (Fitriani et al., 2020).

As explained earlier that bonds are debt securities, where the holder is entitled to fixed interest, the principle of Islamic bonds does not recognize the existence of the debt, but recognizes the existence of obligations that only arise as a result of transactions on assets/products or services that are not cash, resulting in financing transactions. . Islamic bonds are more of a fund participant based on the principle of profit sharing. The transaction is not a debt agreement, but an investment. This kind of bond is commonly called a *muqaradhah bond*, where *muqaradhah* is another name for *mudharabah.* In its simple form, Islamic bonds are issued by a company as a manager (*mudharib)* and purchased by investors (*shahib maal*) (Widyanto, 2018).

In the offering price, principal maturity of bonds, at maturity, and *rating* There is no difference between Islamic bonds and conventional bonds. The difference is in income and *return.* The most basic difference between Islamic bonds and conventional bonds lies in the determination of the interest, the amount of which has been determined at the beginning of the transaction. As for Islamic bonds, when the transaction (sale and purchase) is made, the amount of interest has not been determined. What is determined is the proportion of profit sharing if you get profits in the future.

However, Islamic bonds are more competitive than conventional bonds because: *first, the* possibility of earning from revenue sharing is higher than conventional bonds.

Second, Islamic bonds are safe because they are used to fund prospective projects. *Third*, if there is a loss (out of control), the investor still gets the asset. *Fourth*, the paradigm breakthrough, no longer debt securities, but investment letters.

Forms of Sharia Bonds Sharia

Bonds (Faradilla et al., 2017)can be issued using the principles of *mudharabah*, *musyarakah*, *ijarah*, *istisna'*, *salam*, and *murabahah*. But among the principles of this bond instrument, the most widely used are bonds with the principles as instruments *mudharabah* and *ijarah* (Afifah et al., 2018).

1. Bonds *Mudharabah*

Sharia bonds *Mudharabah* are Islamic bonds, which use *mudharabah*. contract *Mudaraba* is an agreement of cooperation between the owners of capital*(shahibul maal* / investor) to the managers*(mudharib*/issuer).

Several reasons underlie the choice of a bond structure *mudharabah*, including:

1. Mudharabah sharia *bonds* are the most suitable form of funding for investments in large amounts and for a relatively long period.
2. Mudharabah sharia *bonds* can be used for general *financing*, such as working capital funding or capital expenditure.
3. Regional and global trends, from the use of *murabaha* and *bai bi'thaman ajil structures* to *mudharabah* and *ijarah*.

The provisions/mechanisms of sharia *mudharabah bonds* include (Marsi & Wardani, 2020):

1. The Contract/contract is *mudharabah* stated in the trusteeship agreement.
2. The ratio/percentage of profit sharing (ratio) can be determined based on the components of income (*revenue sharing)* or profit (*profit sharing)*.
3. The profit sharing ratio can be set constantly, increasing, or decreasing by considering the issuer's projected income, but it has been determined at the beginning of the contract

2. Bond *Ijarah*

Bonds *Ijara* is based on the principles Islamic *of Ijarah Bonds*. contract *Ijara* is a type of contract in order to benefit by way of replacement. That is, the owner of the property gives the right to utilize the object being transacted through temporary control or borrowing the object with certain benefits by paying compensation to the owner of the object. The contract is *ijarah* accompanied by a transfer of benefits but there is no transfer of ownership. The provisions of the contract *ijarah* : The Include objects can be in the form of goods (moving physical property, immovable property, trading property) or in the form of services, (B) the benefits of the object and the value of the benefits are known and agreed upon by both parties, (C) the scope and period of use must be specifically stated.

Constraints and Strategies for Developing Sharia Bonds

Obstacles in developing sharia bonds include (Fitriani et al., 2020):

a. Not many people understand the existence of Islamic bonds, let alone the system they use.
b. People in saving their funds tend to be based on pragmatic considerations.
c. At a relatively young age and a different system, Islamic bonds are conditioned to deal with people who do not believe in the existence of a system that they are not familiar with.

The efforts that need to be made to answer the constraints of Islamic bonds are as follows (Lubis & Sari, 2019; Siswantoro, 2018):

a. Socialization steps are carried out to build a public understanding of the existence of Islamic bonds in the community. The involvement of practitioners, academics, and scholars is very much needed in sharia bond businesses.
b. There is comparatively less effort to attract the emotional market than the rational market. Therefore, Islamic bonds cannot just wait until there is a paradigm shift, at least Islamic bonds can capture the existing conditions as opportunities that can be used to increase their productivity.
c. To increase public trust, efforts to improve professionalism, quality, capability, and efficiency are always carried out by sharia bonds.

The requirements for issuing Islamic bonds are as follows:

a. The main activity (*core business)* is halal, and does not conflict with the substance of Fatwa No.20/DSN-MUI/IV/2001. The fatwa explains that the types of business activities that are contrary to Islamic sharia include:
    1. Gambling and gaming businesses are classified as gambling or prohibited trade.
    2. Conventional financial institution business (ribawi) includes conventional banking and insurance.
    3. Businesses that produce, distribute, and trade illegal food and beverages.
    4. Businesses that produce, distribute and/or provide goods or services that damage morals and are harmful.
b. Investment-*grade rating:*
    1. Have strong business fundamentals.
    2. Have strong financial fundamentals.
    3. Have a good image for the public.

CONCLUSION

Sharia bonds are long-term securities based on the principles issued by issuers to sharia bondholders that require issuers to pay income to sharia bondholders in the form of profit-sharing/margin/fees and repay bond funds at maturity. Contracts that can be used in the issuance of Islamic bonds include mudharabah, musyarakah, salam, Istishna, and ijarah. The income (yield) obtained by the sharia bond holder is by the contract used. The transfer of ownership of Islamic bonds also follows the contracts used. Sharia bonds are based on the Qur'an, Hadith, Fiqh rules, and Majma Fiqh. The procedure for investing in bonds includes opening an account, understanding bond products, conducting analysis, providing purchase orders, preparing funds, and completing bond payments. Parties involved in Sukuk are obligors, SPV (*Special purpose vehicles)*, and investors. The difference between Islamic bonds and conventional bonds is the use of the concept of reward and profit-sharing instead of interest.

REFERENCES

Afifah, L. M., Budi, S., & SEI, M. (2018). Analisis Pengaruh Pembiayaan Murabahah, Istishna', Mudharabah, Musyarakah dan Ijarah Terhadap Profitabilitas Pada Bank Umum Syariah Di Indonesia. *Skripsi Jurusan Perbankan Syariah Fakultas Ekonomi Dan Bisnis Islam Institut Agama Islam Negeri Surakarta*.

Ala'uddin, M. (2020). Bank Syariah, Saham Syariah, Obligasi Syariah dan Inflasi Terhadap Pertumbuhan Ekonomi. *Jurnal Qiema (Qomaruddin Islamic Economics Magazine)*, *6*(2), 234–254.

Azizi, A., & Hidayatullah, M. S. (2021). SPEKULASI DALAM TRANSAKSI PASAR MODAL SYARIAH (POTENSI KEBERADAAN DAN SOLUSI PENANGANAN). *Yurisprudentia: Jurnal Hukum Ekonomi*, *7*(1), 35–55.

Fadilla, F. (2018). Pasar Modal Syariah dan Konvensional. *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah*, *3*(2), 45–56.

Faizah, Y. L. N. (2019). Pengaruh Laverage Maturity dan Size Perusahaan Terhadap Yield Obligasi Dengan Peringkat Obligasi Sebagai Variabel Intervening. *Journal of Economic, Management, Accounting and Technology (JEMATech)*, *2*(1), 43–54.

Faradilla, C., Arfan, M., & Shabri, M. (2017). Pengaruh pembiayaan murabahah, istishna, ijarah, mudharabah dan musyarakah terhadap profitabilitas bank umum syariah di indonesia. *Jurnal Administrasi Akuntansi: Program Pascasarjana Unsyiah*, *6*(3).

Fitriani, P. R., Andriyanto, I., & Ridwan, M. (2020). Pengaruh Rasio Keuangan dan Pertumbuhan Perusahaan Terhadap Peringkat Obligasi Syariah. *AKTSAR: Jurnal Akuntansi Syariah*, *3*(1), 103–118.

Hasan, N. F., & Utsmani, M. M. (2017). Rekonstruksi Obligasi: Investasi Dalam Perspektif Syariah. *Qawānīn: Journal of Economic Syaria Law*, *1*(1), 1–25.

Iskandar, I. (2018). Islamic Economics as A New Current of Economic Development in Indonesia. *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah*, *9*(2), 150–158.

Kustiyaningrum, D., Nuraina, E., & Wijaya, A. L. (2017). Pengaruh Leverage, Likuiditas, Profitabilitas, Dan Umur Obligasi Terhadap Peringkat Obligasi (Studi Pada

Perusahaan Terbuka Yang Terdaftar Di Bursa Efek Indonesia). *Assets: Jurnal Akuntansi Dan Pendidikan*, *5*(1), 25–40.

Lubis, D. E. S., & Sari, M. (2019). The Influence Of Sharia Bond Issuance And Capital Adequacy Ratio Towards Return On Asset In Indonesian Sharia General Banks. *Prosiding CELSciTech*, *4*, 6–12.

Marsi, G. G., & Wardani, D. T. K. (2020). The Influence of Sharia Capital Market, Sharia Bonds (Sukuk), and BI Rate on Gross Domestic Products (GDP) in Indonesia. *Journal of Economics Research and Social Sciences*, *4*(2), 149–162.

Nizar, M., & Syu'aibi, M. M. (2020). Komparasi Kinerja Instrumen Investasi Berbasis Syariah dengan Konvensional pada Pasar Modal di Indonesia. *MALIA: Jurnal Ekonomi Islam*, *12*(1), 1–16.

Oroh, F. N., Moningkey, S. A., & Lumenta, I. D. (2019). Kajian kriteria investasi konvensional dan lingkungan peternakan babi di Kota Tomohon. *ZOOTEC*, *39*(1), 171–183.

Pramono, C. (2018). Analisis Faktor-Faktor Harga Obligasi Perusahaan Keuangan Di Bursa Efek Indonesia. *Jurnal Akuntansi Bisnis Dan Publik*, *8*(1), 62–78.

Purwanti, P., & Purwidianti, W. (2017). Pengaruh Peringkat Obligasi, Tingkat Suku Bunga Sertifikat Bank Indonesia, Rasio Leverage, Ukuran Perusahaan, Umur Obligasi, dan Tingkat Inflasi pada Imbal Hasil Obligasi Korporasi di Bursa Efek Indonesia (Studi pada Semua Obligasi Korporasi di Bei Periode Tahun 2012-2014). *Media Ekonomi*, *17*(1), 13–24.

Siswantoro, D. (2018). Sharia accounting standard for sukuk (Islamic bond) accounting in Indonesia. *Journal of Islamic Accounting and Business Research*.

Situmorang, B. (2017). Pengaruh Peringkat Obligasi, Debt to Equity Ratio Dan Ukuran Perusahaan Terhadap Yield to Maturity Obligasi Korporasi Dengan Tingkat Suku Bunga SBI Sebagai Variabel Moderating. *Jurnal Terapan Manajemen Dan Bisnis*, *3*(1), 195545.

Widyanto, H. (2018). Analisis Faktor Penyebab Gagal Bayar Obligasi Syariah Sukuk Ijarah PT Berlian Laju Tanker. *Majalah Ilmiah Bahari Jogja*, *16*(1), 65–89.