

Tinjauan yuridis terhadap ketentuan transaksi repurchase agreement surat berharga syariah negara (SBSN) menurut hukum islam = Judicial review over the terms of sharia government securities repurchase agreement transaction according to islamic law

Marlisa Elpira, author

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Abstrak

[ABSTRAK

Tesis ini membahas tentang akad yang digunakan dalam transaksi repurchase Agreement (repo) SBSN berdasarkan ketentuan yang terdapat dalam peraturan SEBI No. 14/32/DPM 7 November 2012 perihal Tata Cara Transaksi Repurchase Agreement (Repo) Surat berharga Syariah Negara (SBSN) dengan Bank Indonesia Dalam Rangka Operasi Pasar Terbuka Syariah. Repo adalah transaksi keuangan yang biasanya dilakukan oleh para pelaku pasar keuangan untuk mendapatkan pinjaman dana dengan menjaminkan surat berharga miliknya dalam bentuk jual beli, baik di pasar modal maupun di pasar uang. Tujuan penelitian ini adalah untuk menganalisis jenis akad jual beli yang terdapat dalam peraturan tersebut apakah sesuai atau justru bertentangan dengan Hukum Islam, baik dari sifat janji (wad) jual beli SBSN maupun mekanisme penyelesaian transaksi repo SBSN. Penelitian ini menggunakan metode penelitian hukum normatif yang menggunakan data sekunder yang dianalisis secara kualitatif. Dengan menggunakan pendekatan maqashid syariah, fiqh prioritas dan istihsan, penulis menyimpulkan bahwa sifat wad yang terdapat dalam peraturan tersebut tidak mengikat secara hukum selama bank syariah yang bersangkutan belum melakukan penjualan SBSN pada saat BI membuka waktu lelang repo SBSN. Sehingga kedudukan wad dalam transaksi repo SBSN adalah sebagai syarat untuk melakukan repo SBSN dengan BI. Transaksi repo SBSN tidak bisa dikatakan sebagai transaksi jual beli menurut hukum Islam, karena akad jual beli yang terdapat dalam transaksi ini hanyalah terminasi yang digunakan untuk mendapatkan pinjaman dengan agunan surat berharga yang umumnya dipraktekkan oleh perbankan konvensional, di mana penentuan besaran accrued repo dan marjin repo SBSN yang ditentukan dalam peraturan ini masih mengacu kepada sistem bunga yang menjadikan satuan waktu sebagai komponen perhitungan harga.

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ABSTRACT

This thesis discusses the contract used in SBSN repurchase agreement (repo SBSN) based on the provisions contained in SEBI No. 14/32/DPM set on November 17, 2012 concerning the Procedures for Syariah Government Securities Repurchase Agreement (Repo SBSN) with Bank Indonesia in the framework of

Syariah Open Market Operations. Repo is a financial transaction that is usually practiced by financial market participants to obtain load by pledging securities owned in the form of buying and selling, either in the capital market and money market. The purpose of this study is to analyse the type of purchase contract contained in the regulation is appropriate or even contrary to Islamic law, both from the nature of the promise (wad) in SBSN purchase and settlement mechanism of repo SBSN transaction. This study uses the normative legal research using secondary data were analyzed qualitatively. By using maqashid syariah, fiqh priority, and istihsan approaches, the researcher conclude that the nature of the promise (wad) contained in this regulation is not legally binding as long as Islamic banks in question have not been selling SBSN during opening times for repo SBSN auction. So that the position of wad in repo SBSN transaction is as a requirement to undertake repo SBSN with BI. Repo SBSN transaction can not be regarded as sale and purchase transactions according to Islamic law, because the sale and purchase agreement contained in this transaction only a termination used to present a load with collateral securities that is usually practiced in conventional banking, where the determination of the amount of accrued repo and repo margin determined in this regulation still refers to the concept of interest that include the time as a component unit in calculating the price.;

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