

Pengaturan badan hukum special purpose vehicle dan pemindahtanganan barang milik negara di dalam undang-undang nomor 19 tahun 2008 tentang surat berharga Syariah Negara dan menurut hukum Islam = Regulation of special purpose vehicle legal entity and alienation of state owned asset in law number 19 year 2008 on sovereign Syariah securities and according to Islamic law

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Abstrak

Undang-Undang Nomor 19 Tahun 2008 tentang Surat Berharga Syariah Negara menghasilkan conflict of law atas beberapa pengaturannya dengan hukum positif Indonesia. Pokok permasalahan terkait conflict of law tersebut ialah bagaimana UU SBSN mengakomodir status badan hukum SPV dan pemindahtanganan Barang Milik Negara yang juga diatur di KUH Perdata dan UU Perbendaharaan Negara, serta kesesuaian keduanya menurut hukum Islam. Penelitian ini

menganalisis kedudukan hukum SPV sebagai Perusahaan Penerbit SBSN dan keabsahan Barang Milik Negara sebagai Underlying Asset, serta pelaksanaannya dalam akad ijarah Asset To Be Leased. Metode yang digunakan adalah yuridis normatif analitis deskriptif, didukung hasil wawancara dengan narasumber.

Berdasarkan metode yang digunakan, didapati bahwa SPV adalah Badan Hukum khusus yang diadakan oleh kekuasaan umum untuk melaksanakan rangkaian kegiatan penerbitan SBSN yang tugas, fungsi, peran, pendirian dan pertanggungjawabannya diatur dalam Peraturan Pemerintah tersendiri. Selain itu, keabsahan Barang Milik Negara sebagai Underlying Asset dikarenakan UU SBSN memiliki kekhususan dari UU Perbendaharaan Negara, yaitu aset SBSN bukanlah jaminan melainkan dasar penerbitan berupa bukti penyertaan pemilikan hak manfaat atas aset SBSN yang tidak terdapat pemindahan kepemilikan secara hak milik. Selain itu, pengaplikasiannya dalam SBSN ijarah Asset To Be Leased seri SR-005 telah sesuai syariah compliance.

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Indonesian Law Number 19 Year 2008 on Sovereign Syariah Securities (Law on SBSN) is a legal breakthrough which leads conflict of laws to some arrangement with Indonesian laws. The conflict of laws relates on how Law on SBSN accommodate the legality of SPV and how the alienation mechanism of State-Owned Asset which also regulated on Indonesian Civil Code and Law on State Treasury (Law Number 1 Year 2004), also the suitability of both according to

Islamic law. This Research analyzes the legal standing of SPV as corporate issuer of SBSN and validity of State-Owned Asset as an Underlying Asset, as well as its implementation on the contract of Ijarah Asset To Be Leased. The method use a juridical normative descriptive analytical, supported by interviews to sources. Based on used method, found that SPV is a special legal entity held by the sovereign authority to issues SBSN. Its tasks, functions, roles, and the establishment of accountability further stipulated by Government Regulation.

Therefore, the validity of the Underlying Asset is allowed, because Law on SBSN is a lex specialist against the Law on State Treasury, that stipulated the underlying asset is not a collateral for SBSN issuance, which

mean it only an underlying of beneficiary ownership over the asset without a transfer of ownership. Moreover, its applicability in product SBSN ijarah To Be Leased Asset SR-005 series was complied to the syariah compliance.