

Utilization of State-Owned Goods as Assets Sharia Bank Certificate National (SBSN) in Financing Infrastructure Development Indonesian Tourism

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Abstract: Indonesia is blessed with a wealth of human resources, biological and non-biological resources, which are a major asset in the development and improvement of national tourism. The amount of funding to support tourism development amid the limitations of the State Revenue and Expenditure Budget (APBN), is supported through the mobilization of National Sharia Bank Certificates (SBSN) as sharia-based financial instruments that are guaranteed through the use of State Property (BMN) as *underlying assets*. However, there is a view of *Underlying* State-Owned Assets as a form of violation of the national SBSN. The method of normative juridical approach, descriptive analysis research specifications, data sources come from secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials, and qualitative data analysis. Research results: First, the magnitude of the contribution of the tourism sector to national economic growth placing the tourism sector as a national strategic program in order to improve the welfare and prosperity of the people; Second, SBSN participates in financing tourism infrastructure in the midst of limited government budget funding; and Third, *Underlying* State-Owned Assets does not interfere with the implementation of government duties because the sale or lease is carried out only on the Benefit Rights of State-Owned Goods, there is no transfer of ownership rights (*legal title*) of State-Owned Goods. This research provides positive implications where BMN can be optimized in financing national development.

Keywords: Tourism, Infrastructure, SBSN, *Underlying Assets*, BMN

1. Introduction

Indonesia is an archipelagic country inhabited by more than 300 ethnic groups, and has 742 languages and dialects as well as all their cultural expressions and traditions, enormous biodiversity, and is supported by a number of works and cultural heritages that are recognized worldwide as *world cultural heritage sites*. 8 cultural heritage become a big capital for the development of Indonesian tourism.

The tourism sector has played an important role in Indonesia's national economic development. In the 2015-

2019 period, the achievement of the national tourism sector experienced consistent and significant growth, although there was a decline in 2016. The contribution of the tourism sector to the national GDP continued to increase, so that tourism as the *leading sector* was recorded as a contributor to foreign exchange with the support of foreign tourists and foreign tourists. the achievement of domestic tourists (wisnus) which continues to exceed the set targets, including its contribution as a sector that is quite large in absorbing employment, as can be seen in the table below [1].

Table 1. Targets and Achievements of the National Tourism Sector.

Indicator	2015			2016			2017			2018			2019		
	T	R	C	T	R	C	T	R	C	T	R	C	T	R	C
Contribution to National GDP	4.32 %	4.25 %	100.47 %	4.50 %	4.13 %	91.78 %	5.00 %	5.00 %	100.00 %	5.25 %	5.25 %	100.00 %	5.50 %	*4.8 %	87.27 %
foreign exchange (trillions of Rp)	144	175.71	122.02 %	172	176.23	102.46 %	200	202.13	101.07 %	223	224	100.45 %	280	*197	70.36 %
Number of workers (Million of people)	11.4	10.36	90.88 %	11.8	12.28	104.07 %	12	12.6	105.00 %	12.6	12.7	100.79 %	13	*12.9	99.23 %
Competitiveness index	#50	#50	100 %	n.a	n.a	n.a	#40	#42	95.24 %	n.a	n.a	n.a	30	40	75.00 %
International tourists	10	10.41	104.10 %	12	12.02	100.17 %	15	14.04	95.24 %	17	15.81	93.00 %	20	16.1	80.50 %
Domestic tourists (million)	255	256.42	104.56 %	260	264.33	101.67 %	265	270.82	93.60 %	270	303.5	112.41 %	275	*290	105.45 %

Source: Kemenparekraf/Baparekraf Strategic Plan 2020-2024

T-Target; R-Realization; C - Achievement

However, based on the measurement of the *Travel and Tourism Competitiveness Index (TTCI)* which is based on three main sub-indices, namely first, the regulatory framework; second, the business environment and infrastructure; and third, human, cultural, and natural

resources, in 2019 Indonesia's national tourism performance has only reached 40th rank out of 140 countries assessed with a TTCI value of 4.3 [2]. The ranking is still low compared to ASEAN countries such as Singapore, Malaysia, and Thailand, as illustrated in the table below.

Table 2. TTCI Rating of Asean Countries.

No	Country	Rating			TTCI Score		
		2015	2017	2019	2015	2017	2019
1	Singapore	11 (141)	13 (136)	17 (140)	4.9	4.9	4.8
2	Malaysia	25	26	29	4.4	4.5	4.5
3	Thailand	35	34	31	4.3	4.4	4.5
4	Indonesia	50	42	40	4.0	4.2	4.3
4	Vietnam	75	67	72	n/a	n/a	3.8
5	Brunei Darussalam	n/a	n/a	72	n/a	n/a	3.8
6	The Philippines	74	79	75	3.6	3.6	3.8

Source: Kemenparekraf/Baparekraf Strategic Plan 2020-2024.

Based on the table above, although Indonesia experienced an increase *TTCI*, it experienced a decline or stagnation in the assessment in the 2019 assessment period against the 2017 assessment period [3]. Therefore, to increase tourism competitiveness, Indonesia needs to improve several other tourism sub-indices such as *ICT Readiness*, *Air Transportation Infrastructure*, *Environmental Sustainability*, *Ground and Port Infrastructure*, and *Tourist Service Infrastructure* [4].

High commitment from the Government in increasing the competitiveness of Indonesian tourism, is carried out by placing the tourism sector supported by infrastructure development as one of the national strategic programs through the 2020-2024 Medium Long Term Plan (RJPM) [5]. According to the Deputy for Development Funding from the Ministry of National Development Planning/Bappenas Leonard Tampubolon, the funding needed by the government to build 10 new tourist destinations reaches Rp. 161 trillion from the APBN, Government and Business Entity Cooperation (PPP), BUMN, and private investors [6]. In addition, according to Bappenas data, Indonesia's infrastructure investment needs for 2020-2024 are estimated to be around Rp. 6.445 trillion, but the Government's capacity to cover this amount of funding is only one third, the

remaining 42 percent optimizing the role of the private sector.

The large amount of funding needed for tourism infrastructure development amid the limitations of the APBN or APBD, is a joint task in addition to the government as well as the involvement of private sector participation through various financing policies, one of which is the National Sharia Precious Sukuk / SBSN, known as the State Sukuk as a sharia-based financial instrument that has security because it is guaranteed. with *underlying assets* as regulated in Article 10, Article 11 and Article 12 of Law Number 19 of 2008 concerning State Sharia Securities [7].

One of the guarantee objects for the *underlying asset* of the State Sukuk is State-Owned Goods (BMN) to avoid the occurrence of '*money for money*' which can be categorized as usury which is prohibited under Islamic law [8], which has been implemented since 2008 with a total accumulation of up to Rp 680.21 trillion, and has been repaid as of 19 May 2017 worth IDR 490.9 trillion. However, the growth of Indonesian State Sukuk is still relatively small. Globally, of the 29 countries that issued Sukuk in 2017, Indonesia is still in 4th place with a share of 8.1% below Malaysia (55%), Saudi Arabia (14%), and the United Arab Emirates (9%). In addition, there are still misunderstandings about the use of

BMN as the *underlying asset* 1945 Constitution. The above, it is interesting to study comprehensively in a study through the identification of the following problems: (1) What is the Indonesian Government's Policy in the field Tourism; (2) The function and role of State Sukuk in financing Tourism Development; and (3) Pros and Cons of State Property (BMN) As *Underlying Assets* SBSN.

2. Method

The approach method used in this research is normative juridical by examining legal principles, especially positive legal rules that are related to the object under study. The research specification is descriptive analysis aimed at providing a complete and comprehensive picture of the object being studied which is supported by data sources derived from secondary data [9]. Secondary data, is a source of research data obtained by researchers indirectly sourced from (1) primary legal materials, namely statutory regulations and court decisions [10], (2) secondary legal materials, namely materials that clarify legal materials or have links to authentic legal sources such as research results, or relevant articles/journals; and (3) tertiary legal materials, namely legal materials that support both primary legal materials and secondary legal materials such as dictionaries. Finally, the data analysis was carried out qualitatively, namely a research method that was carried out without using numbers or formulas.

3. Discussion

3.1. Indonesian Government Policy in Developing the Sector Tourist

Tourism activity is a multidimensional and cross-sectoral industry, requires the involvement of all parties, and is influenced by major changes at the local, national and international levels so that it is *borderless*. Therefore, to introduce and exploit tourist attractions and destinations in Indonesia, the government establishes a tourism development policy as one of the national strategic priorities as stated in the RPJMN 2020-2024.

James Anderson put forward the Policy Implementation Theory that: "Policy implementation is the application of the policy by the government's administrative machinery to the problem" [11]. In addition, it summarizes the views of several scholars that public policy is a program formulated by the government in solving a certain problem to achieve a certain goal that can affect lives [12-14].

This government policy is implemented by ratifying Law Number 10 of 2009 concerning Tourism which is further elaborated in Government Regulation Number 50 of 2011 concerning the Master Plan for National Tourism Development as the basis for government regulations that serve as guidelines for Indonesia's national tourism development.

Based on Article 1 paragraph (1), (3), and (4) of Law

Number 10 of 2009 concerning Tourism, there are three tourism terminology which is a combination of the words tourism, tourism and tourism [15]. Tourism is a travel activity carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or studying the uniqueness of tourist attractions visited for a temporary period. Then, tourism is various kinds of tourism activities and supported by various facilities and services provided by the community, businessmen, government, and local government. Furthermore, tourism is the overall activity related to tourism and is multidimensional and multidisciplinary in nature that appears as a manifestation of the needs of each person and country as well as interactions between tourists and local communities, fellow tourists, government, local governments, and entrepreneurs [16, 17].

Tourism Society in Britain in 1976, as quoted by Nyoman, defines "tourism as the temporary short-term movement of people to destinations outside of their usual places of residence and work and activities during their stay at these destinations." which includes departures for various purposes, including day trips or excursions [18]. Then, James J. Spillane defines tourism as a journey from one place to another, temporary in nature, carried out individually or in groups, as an effort to find balance or harmony and happiness with the environment in the social, cultural, natural and scientific dimensions [19].

The Government's policy to ratify the Tourism Law has the aim of increasing economic growth; improve people's welfare; eradicate poverty; overcoming unemployment; conserving nature, environment, and resources; promote culture; raise the image of the nation; foster a sense of love for the homeland; strengthen national identity and unity; and strengthen international friendship.

Referring to one of the objectives of the enactment of the Act In tourism, there are similarities between Indonesia and European and Latin American countries, including in several Asean countries such as Singapore, Malaysia, and Thailand where tourism has become a well-managed sector, there is a positive correlation indicating that tourism development has a major influence on tourism development. increased economic growth. Therefore, based on Government Regulation Number 50 of 2011, the National Tourism Development Master Plan for 2010 – 2025, is carried out comprehensively covering: (1) The tourism industry, is a collection of tourism businesses that are interrelated in order to produce goods and/or services for the fulfillment of needs tourists in the implementation of tourism; (2) National Tourism Destinations, abbreviated as DPN, are tourism destinations on a national scale; (3) Tourism marketing as a series of processes to create, communicate, deliver tourism products and manage relationships with tourists to develop Tourism and all its stakeholders; and (4) institutions, namely the unity of elements and their networks that are developed in an organized covering the Government, Regional Governments, the private sector and the community, human resources, regulations and operational mechanisms that are sustainable in order to produce changes towards achieving

goals in the tourism sector [20].

Referring to the Government Regulation of the Republic of Indonesia Number 50 of 2011 concerning the National

Tourism Development Master Plan 2010-2025, there are 88 National Tourism Strategic Areas (KSPN) spread throughout Indonesia, as can be seen from the image below [21].

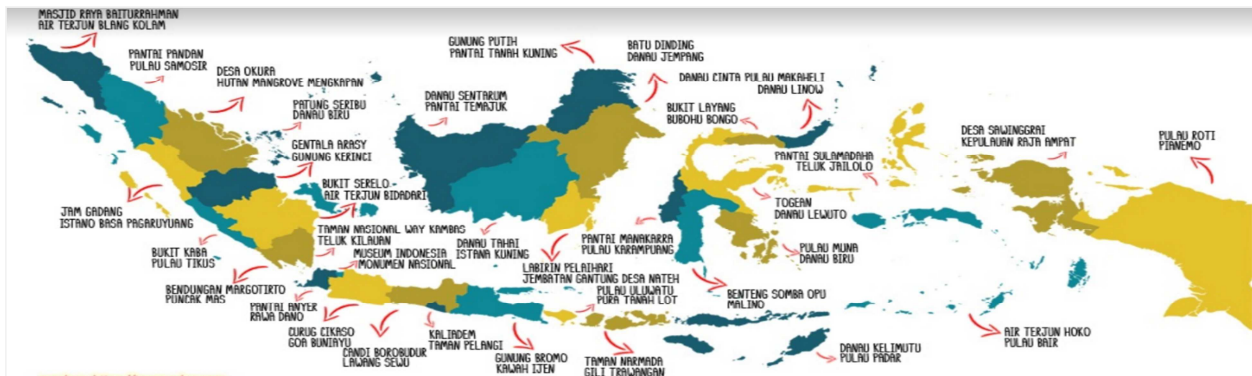


Figure 1. Distribution Map of 88 National Tourism Strategic Areas.

Through the 2015-2019 Ministry of Tourism Strategic Plan, of the 88 KSPNs, the Ministry of Tourism prioritizes the development of tourism areas in 25 KSPNs until 2019. Furthermore, from 25 KSPNs, the focus is on 10 Priority KSPNs, namely Lake Toba (North Sumatra), Tanjung Kelayang (Bangka Belitung), Tanjung Lesung (Banten), Pulau Seribu (DKI Jakarta), Borobudur (Central Java), Bromo,

Tengger, Semeru (East Java), Mandalika (NTB), Labuan Bajo Komodo (NTT), Wakatobi (Southeast Sulawesi), and Morotai (North Maluku) which are called the "10 New Balis" as specific geographical areas and are equipped with the availability of tourist attractions, public facilities, tourism facilities, accessibility, and interrelated communities, which can be seen from the image below [22, 23].



Figure 2. Locations of 10 Priority Tourism Destinations.

However, there are budget constraints to carry out the construction of the 10 tourism infrastructures, based on the Letter of the Coordinating Minister for Maritime Affairs and Resources Number S 54/Menko/Maritim/VI/2016 dated June 29, 2016 5 KSPN has been assigned.

Priority until finally became 3 KSPN Priority until 2019, namely Lake Toba, Mandalika, and Borobudur. The purpose of the development of the new tourist destination is a breakthrough effort to create a "New Bali" in Indonesia, in order to attract foreign tourists to visit Indonesia other than

the island of Bali. In addition, so that the tourism sector grows into a leading sector with the fastest growth in the world and becomes a locomotive for foreign exchange earnings, business development, infrastructure development, and employment [23].

3.2. Functions and Roles of State Sukuk in Financing Development Tourism Infrastructure

The availability of adequate tourism infrastructure is the key to success in accelerating the development of 10 national

priority tourist destinations. The word infrastructure is defined as “facilities”, which can be defined as technical facilities, physical, systems, hardware, and software needed to provide services to the community and support the network structure so that the economic and social growth of the community can run well.

Tourism infrastructure has two dimensions, namely the service dimension and the physical dimension, one of which is accommodation/transportation infrastructure, both sea, land and air. Therefore, through Government Regulation No. 50 of 2011 concerning the National Tourism Development Master Plan 2010-2025, the government makes a policy of providing and developing transportation facilities to provide easy access, movement, comfort, and security of tourists to tourist destinations/objects [24].

In an effort to improve and catch up with Indonesian tourism from other Asean countries such as Singapore, Malaysia, Brunei Darussalam, and Thailand [25], infrastructure development of 10 Priority Tourism Destinations (DPP) and National Tourism Strategic Areas (KSPN), requires support financing of Rp 500 trillion, but the national economic capacity available in this APBN is very limited and is estimated to only be able to meet around Rp 170 trillion with the support of private investment of Rp 35 trillion. *funding order* to fill the gap, *lentes* Tourism financing of Rp. 295 trillion is carried out through a *BFinancing mechanism*, namely financing from Government Financial Institutions such as Non-Government Budget Investment Financing (PINA), including guarantee mechanisms by PT Penjaminan Infrastruktur Indonesia (PII), PT Sarana Multi Infrastruktur (SMI). PT the Indonesian Export Financing Agency (LPEI) of IDR 10 trillion, and *private investment* IDR 285 trillion through the support of the Bank Financial Industry of IDR 230 trillion, the Non-Bank Financial Industry of 10 Trillion, and the Capital Market of IDR 45 Trillion.

As a country that has the largest Muslim population, it is lagging behind Indonesia's tourism infrastructure encourages the government to optimizing the financing of the Islamic financial sector, known as State Sharia Securities, hereinafter referred to as SBSN, or referred to as Sukuk Country. Linguistically, Sukuk is translated from Arabic "*sakk*" (singular) or "*Sukuk*" (plural) which means document [26], which according to a number of Western writers with an interest in the history of Islam and the Arabs, that *sakk* is the root of the word *ℓheque* in Latin, which commonly used in contemporary banking transactions [27].

In an effort to guarantee legal certainty, transparency, and accountability of State Sukuk financing, the government ratified Law Number 19 of 2008 concerning State Sharia Securities which abbreviated as SBSN or called State Sukuk, namely state securities that are issued based on sharia principles as evidence of the participation share against SBSN Assets, both in rupiah and foreign currencies. Meanwhile, according to the *Accounting and Auditing Organization for Islamic Finance Institution (AAOIFI)*, Sukuk is defined as a certificate that represents proof of an

undivided share of ownership of a tangible asset, value benefits, services, or ownership of assets of a particular project or investment activity [28].

Bapepam LK in regulation No. IX. A. 13 concerning Issuance of Securities Sharia, defines sukuk as Sharia Securities in the form of certificates or evidence ownership that has the same value and represents an indefinite part (no inseparable or undivided) (*syuyu'* or *undivided share*) on: a) Assets certain form (*a'yan maujudat*); b) The value of the benefits of tangible assets (*a'yan existence*); c) existing or future services (*al kadamat*); d) Assets certain projects (*majudat masyru' mu'ayyan*); and/or e) Investment activities which has been determined (*nasyath istismar Khashah*) [29, 30].

As an Islamic finance concept, the operational basis of SBSN or Sukuk Countries other than based on Law no. 19 of 2008, too sourced from the Qur'an and Hadith as well as Ijma, so that transactions that are carried out by the parties must be fair, lawful, *thayyib*, and beneficial. Besides Therefore, transactions in Islamic finance must be free from the following prohibited elements: (1) *Riba (usury/interest)* is an element of interest or *return* obtained from the use of money to get money (*money for money*); (2) *Maysir, (Speculation)* namely the elements of speculation, gambling, and the attitude of chance; and (3) *Gharar (Uncertainty)* is an element of uncertainty which is related to, among other things, delivery, quality, quantity, and so on. Based on the issuance, there are 3 types of sukuk, namely: (a) Government sukuk or state sukuk (*sovereign sukuk*) are securities debt issued by the state for the purpose of financing the state budget or projects countries such as infrastructure development; (b) Corporate Sukuk are securities debt sharia issued by the company or issuer for the purposes of finance the company's funding needs or company projects; and (c) Global sukuk are issued debt securities by other countries internationally.

There are several contracts that underlie the issuance of State Sukuk, which adjusted to the designation of the said State Sukuk, namely:

1. *Ijarah* is a contract in which one party acts alone or through the representative leases the rights to an asset to another party based on agreed rental price and rental period;
2. *Mudharabah* is a cooperation agreement between two or more parties, namely one parties as providers of capital and other parties as providers of energy and expertise, the benefits of the cooperation will be divided based on pre-agreed ratio, while the losses incurred will be fully borne by the capital provider, except for losses caused by negligence of the provider of manpower and expertise;
3. *Musyarakah* is a cooperation agreement between two or more parties to combine capital, either in the form of money or in other forms, with the aim of obtaining profits that will be distributed according to the pre-agreed ratio, while the losses incurred will be shared in accordance with the amount of capital participation of each party; and

4. *Istishna'* is an asset sale and purchase contract in the form of a financing object between the parties where the specifications, method and time of delivery, and price The assets are determined based on the agreement of the parties.

The implementation of tourism infrastructure development financing through SBSN involves the following parties: (1) The Government as SBSN/*Obligor* namely the party responsible for the principal payment and yield of the issued Sukuk; (2) SBSN (*Special Purpose Vehicle/SPV*) as a legal entity is specially established to issue Sukuk domiciled within the jurisdiction of the Republic of Indonesia; (3) Investors, namely sukuk holders who have interest in the *underlying assets* through *SPV*; (4) *Sharia Advisor*, namely the Indonesian Ulema Council or other institution appointed by the Government as a party which provides a fatwa or statement of conformity with sharia principles on the issued sukuk; and (5) Trustee, namely a financial institution that has obtained permission from the competent authority and other institutions that can perform the function as a Trustee representing the interests of the Sukuk holders in accordance

with the agreement.

The legal relationship between the parties in the issuance of State Sukuk is one of them through the *Ijarah (Sale and Lease Back)* contract scheme, which is as follows: State Sukuk issuer (*Issuance*) sells government-owned assets from the *Ministry of Finance (MoF) Government of Indonesia (GoI)* to *SPV* as *underlying assets* Sukuk *SPV* issues Sukuk which show the investor's share of government-owned assets. Furthermore, the funds are processed to be submitted to the Government from the Investor through *SPV* and the funds are forwarded by *SPV* to the Government. Then, the government as the *lessee (Mustajir)* leases assets to be used in daily operational activities, and as a counter-achievement the government makes rental payments to investors as *lessors (Mu'jir)* through payment agents. After the maturity of the sukuk, the government through *SPV (Bai')* buys back assets from investors, the payment of which is made through payment agents. An illustration of the scheme of the legal relationship of the parties in financing sukuk through the *Ijarah contract scheme (Sale and Lease Back)* can be seen from the picture below:

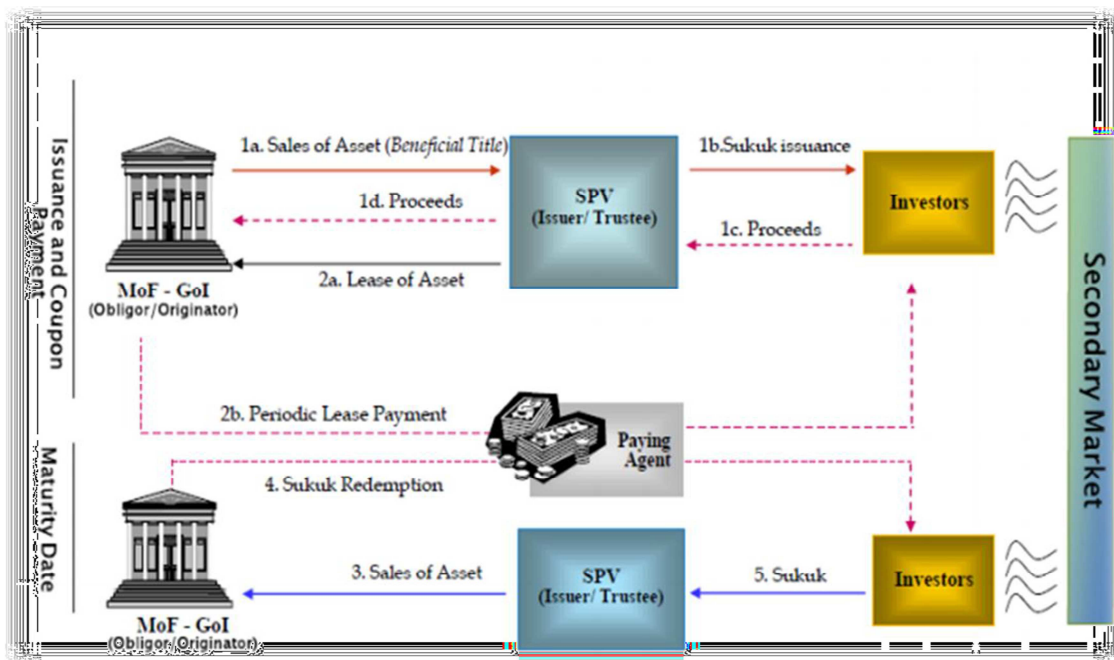


Figure 3. Sukuk Scheme With Sale And Lease Back Ijarah Contract.

For the government, financing for the development of the tourism sector sourced from State Sukuk has an important role as a *diversified funding source* that provides alternative sources of funds in financing the APBN including financing the development of projects that are not debt-based and *comply* with sharia, as well as creating *benchmarks* of sharia financial instruments that can be offered to investors in domestic and international sharia financial markets with contracts tailored to their needs. For investors, state sukuk provide choices (*choices*) to get investment products according to sharia and have security because they have *underlying assets* real.

3.3. Pros and Cons of State Owned Assets as Underlying Assets SBSN

State Sharia Securities are a source of financing development of the national economy which has great opportunities for optimally utilized in order to improve social welfare for all Indonesian people.

State Sharia Securities is a financial system/ an economy that is regulated and managed based on Islamic sharia, which prohibit the application of interest (*usury/usury*), elements of gambling/speculation (*maysir*), uncertainty/fraud (*gharar*), as well as the production of goods and services that contrary to

Islamic sharia (*bathil*). Other characteristics of publishing Islamic financial instruments that require supporting transactions (*underlying transaction*) is an asset that is used as the object or basis of the transaction in relation to the issuance of Sukuk / SBSN to avoid the occurrence of 'transactions money for money which can be categorized as usury, so that governance the method and mechanism of its issuance are special, different from the financial transactions in general.

Referring to Article 1 point 3 of Law no. 19 of 2008 About National Sharia Securities, it is stated that SBSN Assets are objects financing of SBSN and/or State-Owned Goods that have a value of economically, in the form of land and/or buildings or other than land and/or building, for the purpose of issuing SBSN, it is used as the basis for issuance SBSN.

In general, there are five forms of state property, namely: (1) Goods immovable, including land, roads and bridges, buildings, signs, monuments/boundary signs (fences), and other immovable property; (2) Items mobile, includes large tools, transportation equipment, workshop tools and measuring tools, office and household, studio equipment, laboratory equipment, collection library/books/reports, computers, exploration tools, drilling tools, tools exploration aids, work safety tools, other movable assets; (3) Items inventory, including consumables, non-consumables and goods used; (4) Construction in progress includes land, equipment, machinery, buildings, roads, bridges, and other fixed assets; and (5) intangible assets tangible assets, including *software*, copyrights, results of studies/research and other intangible assets.

Referring to Article 1 number 10 and 11 of Law Number 1 of 2004 Regarding Property State Property Treasury, what is meant by State (BMN), namely all goods purchased or obtained at the expense of the State Budget or derived from other legal acquisitions, namely: (1) goods obtained from grants/donations/the like; (2) obtained as the implementation of the agreement/contract; (3) obtained under the provisions of the law; and (4) obtained based on a court decision that has obtained permanent legal force. Of the various types of state property above, the criteria for BMN that can be obtained are: become the *underlying asset* in the form of land and/or buildings or other than land and/or buildings, have economic value, are not symbols of the state or tools main weapon system (defense equipment), and must obtain approval from The House of Representatives (DPR). DPR approval is required because SBSN is part of State Securities which aims to fulfill state budget financing. Through the ratification of the APBN, the DPR gives approval to SBSN as part of the maximum net value of Government Securities issued by the Government in one fiscal year.

The use of State-Owned Goods as SBSN Assets is carried out by the Minister by selling or leasing the Benefit Right to State Property or other methods that are in accordance with the contract used in the context of issuance to SBSN. The SBSN assets can be leased back by the Minister based on a contract. In the event that State Property is being used by the agency Government and will be used as SBSN Assets, the

Minister first notify government agencies using State Property. The period of rental of SBSN Assets by the Government to the Company The SBSN issuer as intended is set at a maximum of 60 (sixty) years.

In accordance with the provisions of the SBSN Law, the transfer of property State (BMN) as the *underlying asset* SBSN, for example with the *Ijarah structure Sale and Lease Back*, then the sale/rental of the BMN is only for the right benefits (*beneficial title*) of BMN, not accompanied by physical delivery or transfer of ownership rights (*legal title*) from the government to the *SPV* or to investors. The government will lease back the BMN, so that there is no physical transfer of BMN and does not reduce the authority the government in using the BMN and there is no problems from the accounting side considering that the ownership of BMN does not move so that it remains listed in the balance sheet or *on balance sheet*.

Then, based on the asset management agreement (*servicing agency agreement*), the Government as the party that rents and uses the assets of SBSN, has the responsibility to maintain SBSN Assets up to SBSN due date. Furthermore, when the SBSN matures, the Government is obliged to: buy back/cancel the lease on assets SBSN and *SPV* are required to sell SBSN assets to the Government at the nominal value of SBSN.

Transfer of State Property in the context *Underlying Assets* SBSN as regulated in Article 10 paragraph (1) and paragraph (2) letter a and letter b and Article 11 paragraph (1) of Law no. 19 of 2008 About SBSN has been provisions of a special nature that are different from the transfer of Goods State-owned as regulated in Law no. 1 Year 2004 About the State Treasury. This was legally corroborated by Constitutional Court decision no. 143/PUU-VIII/2009 dated 7 May 2010 regarding the Material Test on the use of BMN as the *underlying asset* SBSN that BMN as the basis for issuing SBSN is not used as an object of trade but only as a dependent object in the form of the right to obtain benefit. BMN as the basis for issuing SBSN (*underlying asset*) is not a collateral (*collateral*) that can be transferred, while only the SBSN can be transferred. Transferability referred to, among others: (1) sales and/or rentals are carried out only for: State Property Benefit Rights; (2) there is no transfer of rights ownership (*legal title*) of State-Owned Goods; and (3) no transfer Physical State Property so as not to interfere with the implementation of tasks government.

Issuance of BMN as the *underlying asset* of SBSN does not harm the State, but instead the State can optimize its assets to finance limitations of the state budget so that it benefits the state. BMN that is used *underlying* fixed assets can be used by the relevant agency because: only the right to the benefit is used as the *underlying asset*, there is no transfer ownership rights (*legal title*) and no physical transfer of goods is carried out, so there is no interfere with the function of carrying out the duties of the Government. By decision The Constitutional Court Number 143/PUU-VII/2009, legally the use of BMN as SBSN Asset does not conflict with the 1945 Constitution [31].

4. Conclusions and Recommendations

The Government of Indonesia's policy places tourism as a program national strategy through the development of 10 new destinations apart from Bali considering that The magnitude of the contribution of the tourism sector to national economic growth to expand and equalize business and employment opportunities, encourage regional development, increase national income in order to improve the welfare and prosperity of the people as well as to foster love for the homeland, enrich the national culture and strengthen its development in order to strengthen national identity and strengthen international friendship.

The high cost of developing tourism infrastructure in the middle limited national economic capacity available in the APBN is facilitated through the issuance of SBSN/State Sukuk financing as evidence of the share of participation in SBSN Assets, both in rupiah and foreign currencies whose security is guaranteed because it is supported by *underlying assets* as the basis for issuing SBSN.

SBSN assets are SBSN financing objects and/or State-Owned Goods which have economic value, in the form of land and/or buildings or other land and/or buildings whose nature of transfer is either sale or leasing is carried out only on State Property Benefit Rights does not occur transfer of ownership rights (*legal title*) of State-Owned Goods so that it does not interfere with the implementation of government duties, and do not conflict with the 1945 Constitution.

In optimizing state property as the object of SBSN financing, it is necessary to conduct research related to data collection on state assets in supporting national development financing.

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References

- [1] Arianti, D. (2016). Pengaruh sektor pariwisata terhadap perekonomian dan keuangan kota bukittinggi (pendekatan analisis input output). [The influence of the tourism sector on the economy and finances of the city of Bukittinggi (input output analysis approach)]. Jurnal Pembangunan Wilayah dan Kota, 12 (4), 353, DOI: 10.14710/pwk.v12i4.13502.
- [2] Administrator, Wisata Indonesia di Mata Dunia, [Indonesian Tourism in the Eyes of the World]. Kamis, 21 Maret 2019, <https://indonesia.go.id/ragam/pariwisata/pariwisata/wisata-indonesia-di-mata-dunia>, diunduh pada hari Minggu, 9 Mei 2021, pukul 17.36.
- [3] Kusubandio, Wisnutama. (2020) Rencana Strategis 2020-2024, [Strategic Plan 2020-2024], Jakarta: Kementerian Pariwisata dan Ekonomi Kreatif, 18.
- [4] Kusumawardhani, Yuviani. (2019). Analisis pengukuran daya saing destinasi wisata berbasis tourism and travel competitiveness index. [Analysis of measuring the competitiveness of tourist destinations based on the tourism and travel competitiveness index]. Journal FAME, 2 (41), 54.
- [5] Rozzy, Edwin Fahrur. dan Koswara, Arwi Yudhi. (2017). Karakteristik infrastruktur pendukung wisata pantai sanggar kabupaten tulungagung. [Characteristics of supporting infrastructure for coastal tourism in the Tulungagung district studio]. JURNAL TEKNIK ITS, 6 (2), 651, DOI: 10.12962/j23373539.v6i2.25197.
- [6] Cahyana, Ludhy. Triliunan Untuk Bangun 10 Bali Baru, Ini yang Didapat Pemerintah, [Trillions to Build 10 New Balis, This Is What The Government Gets]. <https://travel.tempo.co/read/1312474/triliunan-untuk-bangun-10-bali-baru-ini-yang-didapat-pemerintah/full&view=ok>, diunduh pada hari Selasa, 01 Februari 2022, jam 21.00 wib.
- [7] Farah, M. Miftahul. Abubakar, Lastuti dan Mulyati, Ety. (2019). Telaah yuridis sukuk sebagai instrumen investasi syariah, [Sukuk jurisdiction as an instrument sharia investment]. Justitia Jurnal Hukum Fakultas Hukum Universitas Muhammadiyah Surabaya, 3 (2), 289.
- [8] Erlindawati, Mira Misissaifi. (2019). Investasi syariah melalui surat berharga syariah negara (teori dan implementasi), [Sharia investment through state sharia securities (theory and implementation)]. JAS (Jurnal Akuntansi Syariah), 3 (2), 230, DOI: 10.46367/jas.v3i2.186.
- [9] Budiantoro, Risanda Alirastra. Sasmita, Riesanda Najmi. Widiastuti, Tika. (2018). Sistem ekonomi (islam) dan pelarangan riba dalam perspektif historis. [The economic system (Islam) and the prohibition of usury in a historical perspective]. Jurnal Ilmiah Ekonomi Islam, 4 (1), 9, DOI: <http://dx.doi.org/10.29040/jiei.v4i1.138>.
- [10] Malo, Marnasse. Trisningtias, Sri. (1997). Metode penelitian masyarakat. [Community research methods]. Jakarta: Pusat Antara Universitas Ilmu-Ilmu Sosial Universitas Indonesia, 19.
- [11] Ibrahim, Johnny. (2006). Teori dan metodologi penelitian hukum normatif. [Normative legal research theory and methodology]. Malang: Bayu Media Publishing, 302.
- [12] Qodriyatun, Sri Nurhayati. (2018). Implementasi kebijakan pengembangan pariwisata berkelanjutan di karimunjawa. [Implementation of sustainable tourism development policies in Karimunjawa]. Aspirasi: Jurnal Masalah-Masalah Sosial, 9 (2), 246-247.
- [13] Adhikari, B. dan Lovett, J. (2006). Institutions and collective action: Does heterogeneity matter in community-based resource management? Journal of Development Studies. 42 (3), 426-445.
- [14] Easton, David. (1965). A System analysis of political life. New York: Willey, 212.
- [15] Anderson, James. (2000). Public policy making. Boston: Houghton Mifflin, 4.
- [16] Wilopo, Khusnul Khotimah. Hakim, Luchman. (2017). Strategi pengembangan destinasi pariwisata budaya (studi kasus pada kawasan situs trowulan sebagai pariwisata budaya unggulan di kabupaten Mojokerto). [Strategy for developing cultural tourism destinations (case study in the Trowulan site area as a leading cultural tourism in Mojokerto district)]. Jurnal Administrasi Bisnis (JAB), 41 (1), 58.

- [17] Zaenuri, Muchamad. (2021). Perencanaan strategis kepariwisataan daerah konsep dan aplikasi. [Regional tourism strategic planning concept and application]. Yogyakarta: e-gov Publishing, 47-48.
- [18] Soedarso, Muchammad Nurif. Windiani. (2014). Potensi dan kendala pengembangan pariwisata berbasis kekayaan alam dengan pendekatan marketing places (studi kasus pengembangan pariwisata di kabupaten bojonegoro). [The potential and constraints of natural wealth-based tourism development with a marketing places approach (a case study of tourism development in Bojonegoro district)]. JSH Jurnal Sosial Humaniora, 7 (2), 139.
- [19] Pendit, Nyoman S. (2002). Ilmu pariwisata sebuah pengantar perdana. [The science of tourism, an introductory introduction]. Jakarta: PT Pradnya Paramita, 33.
- [20] Spillane, James J. (1991). Ekonomi pariwisata sejarah dan prospeknya. [The historical tourism economy and its prospects], Yogyakarta: Kanisius, 21.
- [21] Isharyanto. Madalina, Maria. (2019). Hukum kepariwisataan & negara kesejahteraan (antara kebijakan dan pluralisme lokal). [Tourism law & welfare state (between policy and local pluralism)]. Bogor: Moeka Publishing, 100.
- [22] Moerwanto, Arie Setiadi. dan Junoasmono, Triono. (2017). Strategi pembangunan infrastruktur wisata terintegrasi. [Integrated tourism infrastructure development strategy]. Jurnal HPJI, 3 (2), 68.
- [23] Moerwanto, Arie Setiadi. Junoasmono, Triono. (2017). Strategi pembangunan infrastruktur wisata terintegrasi. [Integrated tourism infrastructure development strategy]. Jurnal HPJI, 3 (2), 67.
- [24] Yuliawati, Eny. dan Nurhayati, Yati. (2017). Dukungan bandara sekitar terhadap pengembangan candi borobudur sebagai destinasi wisata prioritas utama. [The support of the surrounding airport for the development of the Borobudur temple as a top priority tourist destination]. Warta Ardhia Jurnal Perhubungan Udara, 43 (1), 64.
- [25] Mun'im, Akhmad. (2022). Penyempurnaan pengukuran kontribusi pariwisata: alternatif percepatan pertumbuhan ekonomi indonesia. [Improvement on the Measurement of Tourism Contribution: An Alternative to Accelerating Indonesia's Economic Growth]. Jurnal Kepariwisata Indonesia 16 (1), 2.
- [26] Fauziah, Syifa. Nurwahidin. (2020). Pembiayaan infrastruktur dengan sukuk negara di indonesia: prosedur dan struktur. [Infrastructure financing with state sukuk in Indonesia: procedures and structures]. JIMEA, Jurnal Ilmiah MEA (Manajemen, Ekonomi, dan Akuntansi), 4 (1), 30.
- [27] Pratiwi, Angrum. dan Mainata, Dedy. (2017). Peran sukuk negara dalam pembiayaan infrastruktur. [The role of state sukuk in infrastructure financing]. Al-Tijary Jurnal Ekonomi dan Bisnis Islam. 2 (2), 158.
- [28] Beik, Irfan Syauqi. (2011). Memperkuat peran sukuk negara dalam pembangunan ekonomi indonesia, [Strengthening the role of state sukuk in Indonesia's economic development]. Jurnal Ekonomi Islam Al-Infaq, 2 (2), 65.
- [29] Laila, Nisful. (2019). Pengembangan sukuk negara di indonesia, analisis komprehensif dalam menggali alternatif solusi dan strategi pengembangan sukuk negara indonesia, [Development of state sukuk in Indonesia, comprehensive analysis in exploring alternative solutions and strategies for developing Indonesian state sukuk], Surabaya: Nizamia Learning Center, Surabaya, 2.
- [30] Indriasari, Ika. (2014). Sukuk sebagai alternatif instrumen investasi dan pendanaan. [Sukuk as an alternative investment and funding instrument]. BISNIS, 2 (1), 62-63.
- [31] Mersilia, Elsi. „Investasi Syariah: Perkembangan Obligasi Syariah di Indonesia,” [Sharia Investment: Development of Sharia Bonds in Indonesia],” 2014, diakses 6 Maret 2022, <http://elsimh-feb11.web.unair.ac.id/profil.html>. Desember 2014.