



Transfer of Ownership in State Retail Sukuk: Shariah Review Based on DSN-MUI Fatwa and AAOIFI Sharia Standards

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ABSTRACT

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Underlying Assets of Retail State Sukuk are State Property which in reality cannot be easily transferred. Although the DSN-MUI has given an opinion on the suitability of the Retail State Sukuk contract with Islamic law, the DSN-MUI fatwas do not broadly regulate the Underlying Assets of Sukuk. The issuance of the Exposure Draft of Shari'ah Standard No. 62 on Sukuk by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) on November 6, 2023 will have an impact on the sukuk industry that is given asset collateral because it requires a real transfer of ownership of the Underlying Asset to investors. This study will complement the discussion regarding the suitability of sharia for the Underlying Assets of Retail State Sukuk from the perspective of the DSN-MUI fatwa, AAOIFI Sharia Standards, and the similarity of sale and purchase approaches. This study uses a qualitative research method. Primary data is taken directly from the official publication of sukuk from the Government. The results of this study can be summarized as follows. Underlying Assets of Retail State Sukuk are State Property (BMN) that do not experience a transfer of ownership. Based on DSN-MUI fatwas, Retail State Sukuk does not conflict with sharia. The provisions of Underlying Assets of Retail State Sukuk do not meet AAOIFI Standards because there is no transfer of ownership from the Government to investors. The Underlying Asset Contract of Retail State Sukuk has several similarities with the al-Wafa' contract which is prohibited by the majority of scholars because it is not free from usury.

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1. Introduction

1.1. Background

The issuance of State Sharia Securities (SBSN) such as sukuk requires Underlying Assets which will become the investor's ownership of the assets. This functions as a real transaction of the Ijarah (rent) contract. The existence of Underlying Assets is also a differentiator between sukuk and debt securities in general [1]. Underlying Assets of Retail State Sukuk or SBSN Assets are State Property in the form of land and/or buildings or other things and government projects that have economic value (Indonesia K. K. a, 2024). Because it is a State Property, in reality the asset cannot be transferred easily. The compensation/coupon paid by the government in the form of rent, profit sharing, margin, or other forms of payment also means that it is not a return for the use of investor assets by the government, so it still needs to be criticized. DSN-MUI in the Statement of Sharia Compliance of Retail State Sukuk Series SR018 and SR019 Year 2023 dated February 27, 2023, after considering the contract scheme, underlying assets (BMN and Projects), and documents related to the issuance of the sukuk, stated that Retail State Sukuk Series SR018 and SR019 Year 2023 do not conflict with sharia principles [2]. Fatwa No. 137/DSN-MUI/IX/2020 concerning Sukuk does not broadly regulate the Underlying Asset of Sukuk. One of the provisions that Sukuk Assets (Ushul al-Shukuk) belong to the sukuk holder, needs to be re-criticized whether it is in accordance with the Underlying Asset of Retail State Sukuk.

In early November 2023, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) issued an Exposure Draft of Shari'ah Standard No. 62 on Sukuk [3]. This new standard is actually still waiting for feedback until July 31, 2024 [4]. The emergence of this standard will have an impact on the sukuk industry that is guaranteed by assets because it requires a real transfer of ownership of the Underlying Asset to investor [5]. This guideline comprehensively regulates the Underlying Asset. In addition to the requirements for the transfer of ownership, the Standard also emphasizes avoiding pseudo-buy-sell. In paragraph 6-3-2-1, it is explained that, when a repurchase, promise is made, the Underlying Asset may not be bought back at the price at the time of issuance, but must be bought back at market price or similar. Of course, this provision has not been fulfilled by Retail State Sukuk.

Furthermore, this Retail State Sukuk scheme is similar to al-'Inah, al-Wafa', and pawn contracts. The al-'Inah contract is prohibited according to the majority of scholars [6]. Malikiyah, Hanabilah, and previous scholars from the Hanafiyah and Syafi'iyah circles are of the opinion that the contract of al-Wafa' is invalid [7]. The essence of the contract in Retail State Sukuk is a mortgaged debt, not a valid sale and purchase contract, because there are no consequences of transferring ownership. In line with this, the Underlying Asset of Retail State Sukuk is a vital object that cannot be transferred, so the contract that occurs is a debt contract with a guarantee of a vital object which is a government asset [8].

1.2. Problem Statement

The research problems in this paper are as follows:

- a. What are the characteristics of the Underlying Asset of Retail State Sukuk?
- b. What is the sharia review of the Underlying Asset of Retail State Sukuk Based on the DSN-MUI Fatwa?
- c. What is the sharia review of the Underlying Asset of Retail State Sukuk Based on the AAOIFI Sharia Standard?

1.3. Research Gap

Previous research related to the sharia review of sukuk, in general, still views it from the perspective of the DSN-MUI fatwa, for example research conducted by: [9], [10], [11], [12], [13], [14], [15], [16], [17], [18], [19], [20], [21], [22]. However, research by: [23], [24], [25], and [26], in addition to viewing it from the perspective of the DSN-MUI fatwa, also mentions similarities with other contracts, such as: al-'Inah and/or al-Wafa'. Research that focuses on the sharia compliance of

the Underlying Asset of Retail State Sukuk from the perspective of the DSN-MUI fatwa, AAOIFI Sharia Standards, and the approach of similarity of buying and selling at the same time, does not yet exist. Therefore, in addition to discussing the sharia review of the Underlying Assets of Retail State Sukuk, this study will contribute to complement the discussion regarding the sharia compliance of the Underlying Assets of Retail State Sukuk from the Exposure Draft of Shari'ah Standard No. 62 on Sukuk, which has just emerged.

2. Method

This study uses a qualitative research method. This method emphasizes a deep understanding of a context or event. The approach used is a descriptive explanation and analysis of a topic. There is no variable manipulation in this approach [27]. The data used is primary data taken directly from the site: <https://www.djppr.kemenkeu.go.id/sukukritel> which is an official publication of the Directorate General of Financing and Risk Management (DJPPR), Ministry of Finance. After the characteristics of the research object have been studied, an analysis is then carried out by comparing it with the perspective of DSN-MUI fatwa and AAOIFI standards.

The data analysis method includes three stages, namely: reduction, presentation, and drawing conclusions [28], as follows:

- a. The data related to Sukuk obtained will be selected for relevance to its Underlying Asset.
- b. The selected data will be presented to provide a complete picture of the characteristics of the Underlying Asset.
- c. Conclusions are drawn regarding the perspective of the DSN-MUI Fatwa, AAOIFI Sharia Standards, and the approach to the similarity of the sale and purchase agreement to the Underlying Asset of Retail State Sukuk.

3. Results and Discussion

3.1. Characteristic of Underlying Asset of Retail State Sukuk

Before discussing the characteristics of the Underlying Asset of Retail State Sukuk, it is necessary to know the scheme or activities contained in the issuance of Retail State Sukuk (Asset to be Leased Ijarah Contract Structure), namely:

- a. The government orders the contract object to the SBSN Issuing Company (as the provider of the object)
- b. The SBSN Issuing Company enters into a *wakalah* contract with the Government to provide the object as the basis for issuing sukuk.
- c. The SBSN Issuing Company purchases the contract object in the form of BMN from the Government which is used as the basis for issuing Retail State Sukuk
- d. The SBSN Issuing Company issues Retail State Sukuk whose proceeds will be used to provide the contract object. Investors will also own the object.
- e. The government rents the contract object to the SBSN Issuing Company.
- f. The government is obliged to maintain the contract object rented from the SBSN Issuing Company until the end of the contract period.
- g. The SBSN Issuing Company promises to sell the contract object to the Government at maturity [29].

SBSN Assets are Underlying Assets of Retail State Sukuk which are used as the basis for Sukuk issuance. SBSN Assets have the following characteristics. SBSN Assets are State Property (BMN) in the form of land and/or buildings or other than both and SBSN financing objects in the form of government projects that have economic value. The type, value, and specifications of SBSN Assets

are listed in the asset transaction document agreed upon by the Government and the SBSN Issuing Company. SBSN Assets are not collateral. Investors (Sukuk owners), both individually and in groups, cannot claim SBSN Assets. SBSN Assets are a single entity (cannot be divided). Trading of SBSN Assets reflects trading of ownership of them. The nominal value of SBSN Asset ownership units is one million rupiah each. This value is equivalent to the ownership of each unit of Retail State Sukuk [29], [30].

BMN used as Sukuk Underlying Assets, actually does not experience a transfer of ownership rights. This can be seen in the following explanation.

- a. In Article 49 section (5) of Law Number 1 of 2004 on State Treasury, it is stated that BMN may not be mortgaged or used as collateral to obtain loans [31]. This provision is then specifically specified in Article 11 section (1) of Law Number 19 of 2008 on SBSN, that the use of BMN as SBSN Assets (collateral/basis for issuance) is carried out by selling or leasing Benefit Rights over the BMN. The explanation of this section further emphasizes that there is no transfer of BMN ownership rights. Physical transfer is also not carried out, so that it does not interfere with the implementation of government duties. In this law, Benefit Rights are the rights to own and obtain utilization of an Asset [32]. So, in the issuance of Sukuk, only the Beneficial Rights are transferred, not the ownership rights (legal title) of the BMN. Ownership of the SBSN Assets (Underlying Asset Sukuk) remains in the hands of the government.
- b. The Directorate of Sharia Financing, Directorate General of Financing and Risk Management, Ministry of Finance, stated that the sale or lease of BMN in the context of the issuance of SBSN, is only for the Beneficial Rights (beneficial title) and is not accompanied by the transfer of ownership (legal title) of the BMN [33].
- c. The Constitutional Court, in decision number: 143/PUU-VII/2009 rejected the plaintiff's application stating that BMN is public property used for the public interest, so it cannot be used as an object of trade. The Constitutional Court stated that the BMN used as the SBSN Asset is not used as an object of trade, but only as an object of collateral or guarantee to obtain Beneficial Rights. The Constitutional Court also firmly stated that only SBSN was transferred, not BMN. Furthermore, the Constitutional Court also stated that the applicant who purchased Sukuk could not use BMN Assets because he was not an agency that used the Goods. This Constitutional Court decision refers to Law No. 1 of 2004 and Law No. 19 of 2008 [34].
- d. Based on the Regulation of the Minister of Finance of the Republic of Indonesia (PMK) number: 111 / PMK.06 / 2016 concerning Procedures for Implementing the Transfer of State Property as amended by PMK number: 165 / PMK.06 / 2021, there are procedures that must be passed for the transfer of BMN, so it can take a long time. In Article 4 of the regulation, there is a provision that BMN that can be transferred is BMN that is no longer needed for the implementation of government duties [35]. In reality, SBSN Assets are still used by the Government, so there is no transfer to sukuk investors.

According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement by which one party binds himself to deliver an item, and the other party to pay the promised price. The delivery is a transfer of ownership, as stated in Article 1459, that the ownership of the goods sold does not transfer to the buyer as long as the goods have not been delivered. Based on this, it can be concluded that the main element of a sale and purchase agreement is the transfer of ownership of an item and payment must be in money. In connection with the absence of transfer of ownership of SBSN Assets, there is actually no sale and purchase of SBSN Assets in the issuance of Sukuk.

3.2. Sharia Review of Underlying Assets of Retail State Sukuk Based on DSN-MUI Fatwa

Based on Statement Number: 0149/DSN-MUI/II/2023 dated February 27, 2023, the SR018 and SR019 State Sukuk Series of 2023 do not conflict with sharia. DSN-MUI has considered the documents obtained from DJPPR, Ministry of Finance, including: Sale and Purchase Contract of State-Owned Goods in the Framework of Issuance and Sale of Retail State Sukuk in Rupiah Currency; Asset To Be Leased Ijarah Agreement in the Framework of Issuance and Sale of 'Retail State Sukuk

in Rupiah Currency with Fixed Returns; and Sale and Purchase Contract of Return of Retail State Sukuk Assets in the Framework of Termination of Retail State Sukuk Ijarah Contract in Rupiah Currency with Fixed Returns. In stating the conformity of the sharia, DSN-MUI has referred to DSN-MUI Fatwa Number: 10/DSN-MUI/IV/2000, 69/DSN-MUI/VII/2008, 70/DSN-MUI/VI/2008, 76/DSN-MUI/VI/2010, 85/DSN-MUI/XII/2012, 112/DSN-MUI/IX/2017, and 137/DSN-MUI/IX//2020 [2].

If we look at the contents of the DSN-MUI fatwas related to Sukuk (SBSN) Ijarah Sale and Lease Back (72/DSN-MUI/VI/2008) and Ijarah Asset To Be Leased (76/DSN-MUI/VI/2010) and other DSN-MUI fatwas related to Sukuk Underlying Assets, it is not stated that only Beneficial Rights are transferred during the issuance of Sukuk. From these DSN-MUI fatwas, it can be understood that the SBSN Asset sale and purchase agreement is used at the time of Sukuk issuance. The BMN assets that are sold are then leased by the Government, so that they become the object of Ijarah. This is not in accordance with the fact that Sukuk Assets which are BMN, ownership does not transfer during the issuance of Sukuk. Furthermore, not a single DSN-MUI Fatwa discusses the transfer of fictitious ownership during the issuance of Sukuk. In fact, it is understood that one of the consequences of buying and selling is the transfer of ownership.

3.3. Sharia Review of Underlying Assets of Retail State Sukuk Based on DSN-MUI Fatwa

In the Exposure Draft of Shari'ah Standard No. 62 on Sukuk, AAOIFI requires a real transfer of ownership of the Underlying Asset to investors. Based on the description above, in the issuance of Retail State Sukuk, there is no transfer of ownership from the Government to investors. Therefore, in general it can be said that the provisions of the Underlying Asset of Retail State Sukuk do not meet the AAOIFI Standard. In more detail, it is described below.

Table 1. Comparison between Provisions in Exposure Draft of Shari'ah Standard No. 62 and Practices in the Retail State Sukuk

No	Exposure Draft of Shari'ah Standard No. 62	Practices in the Retail State Sukuk
1	Paragraph 5-1-5. In the issuance of Sukuk, the basis for purchasing the Underlying Asset by the certificate holder from the originator (obligor) is carried out at the market price or close to the market price, so that there is no pseudo-purchase.	In the Retail State Sukuk Information Memorandum Series SR021T5, it is stated that the nominal value of the Retail State Sukuk issued will be determined based on the implementation of the sale. The nominal value per unit is 1 million rupiah. The SR021T5 offering period is from August 24, 2024 to September 18, 2024. Investors can make investment orders and payments between these dates. Thus, it can be concluded that the nominal value of Retail State Sukuk is not based on the selling price of the SBSN Assets used as collateral (Underlying), but based on whatever sales proceeds are received or desired by the government [9]. <i>The provisions of 5-1-5 are not fulfilled by Retail State Sukuk.</i>
2	Paragraph 5-2-1. The transfer of ownership of the Sukuk Underlying Asset to the certificate holder must be acceptable according to sharia and law. If the transfer of ownership is not acceptable, then it is not	As explained above, there is no transfer of ownership of the Retail State Sukuk Underlying Asset to investors. <i>The provisions of 5-2-1 are not fulfilled by Retail State Sukuk.</i>

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- permissible to sell the Underlying Asset to the certificate holder.
- 3 Paragraph 5-2-5. Among the requirements for documenting the transfer of ownership of the Underlying Asset to the certificate holder is to transfer the asset from the originator's balance sheet. In connection with the absence of transfer of ownership of BMN which is a SBSN Asset, the BMN will remain listed in the BMN report of the Goods User agency.
The provisions of 5-2-5 are not fulfilled by Retail State Sukuk.
 - 4 Paragraph 5-2-5-2. A legally valid deed must be made stating that the certificate holder has ownership rights to the Underlying Asset. In reality, there is no such document in the issuance of Retail State Sukuk. Investors actually only have Beneficial Rights to SBSN Assets
The provisions of 5-2-5-2 are not fulfilled by Retail State Sukuk.
 - 5 Paragraph 5-2-5-5. Sukuk documentation does not include matters that have implications for the elimination of ownership of the certificate holder over the Sukuk Underlying Asset or the possibility that the certificate holder is not the owner of the Sukuk Underlying Asset. In terms of investment documentation, there is no elimination of ownership of the Sukuk Underlying Asset. However, legally, the Constitutional Court Decision Number: 143/PUU-VII/2009 above shows that there is no investor ownership of BMN Assets.
The provisions of 5-2-5-5 are not fulfilled by Retail State Sukuk.
 - 6 Paragraph 5-2-5-6. Stating in the financial report notes of the lender that the Sukuk Underlying Asset is owned by the certificate holder. In connection with the continued ownership of the SBSN Asset by the Government, investors cannot record the SBSN Asset in their financial report.
The provisions of 5-2-5-6 are not fulfilled by Retail State Sukuk.
 - 7 Paragraph 5-2-5-7. This paragraph contains provisions that the release of the Underlying Asset is carried out at the market value [Underlying Asset], unless the certificate holder agrees otherwise. The Information Memorandum states that the Government can make a buyback before the maturity date at the market price. The market price here is of course understood as the market price of the Sukuk, not the SBSN Asset, because as previously mentioned, the Government sells Sukuk based on the nominal value, not the market price of the SBSN Asset. From the beginning, the market value of the SBSN Asset has not been assessed by the Government. Therefore, at the time of the buyback or at other times other than the time of issuance (if something like the above occurs), the value paid by the government is the same as the market value of the Sukuk.
The provisions of 5-2-5-7 are not fulfilled by Retail State Sukuk.
 - 8 Paragraph 6-3-2-1. It is permissible for a purchase promise to be made In the Information Memorandum, upon settlement (maturity), the Government will pay 100% of the
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based on the net value of the Sukuk Underlying Asset, market value, fair value, or price agreed upon at the time of purchase [36].

nominal value. This is clearly inconsistent with the principle above that a purchase promise is made at market value or similar.

The provisions of 6-3-2-1 are not fulfilled by Retail State Sukuk.

The absence of transfer of ownership of the Sukuk Underlying Asset also results in the failure to fulfill Sharia Standard No. 58 concerning Buyback. Several statements that need to be underlined, described below.

Table 2. Comparison between Provisions in Sharia Standard No. 58 and Practices in the Retail State Sukuk

No	Sharia Standard No. 58	Practices in the Retail State Sukuk
1	Paragraph 3-1. The sale is real, namely there is a transfer of ownership in accordance with sharia and has consequences, for example the buyer has the right to property development and bears the risk of price changes and damage to its control.	There is no transfer of ownership of the SBSN Asset which is BMN from the Government to the investor, so the investor will not bear the consequences of profit or risk of damage to the asset. <i>The provisions of 3-1 are not fulfilled by Retail State Sukuk.</i>
2	Paragraph 3-3. The second contract is not required in the first contract.	The promise to buy back at maturity is stated in the Information Memorandum. Article 12 paragraph (1) of Law Number: 19 of 2008 states that the Government is obliged to buy back the SBSN Asset, cancel the lease agreement, and terminate the SBSN issuance agreement at maturity. <i>The provisions of 3-3 are not fulfilled by Retail State Sukuk.</i>
3	Paragraph 3-4. There is no binding agreement between the two parties to complete the second contract [37].	In reality, the unilateral buyback promise by the Government is a contract that investors cannot cancel. <i>The provisions of 3-4 are not fulfilled by Retail State Sukuk.</i>

3.4. Similarity Approach to Sale and Purchase Contract

After the description of the characteristics of Retail State Sukuk in Sub-Chapter 3.1, the sharia review of the Underlying Assets of Retail State Sukuk based on the approach of similarity of sale and purchase contract is carried out through the stages of *takyif fiqh*, *takhrij fiqh*, and conclusions and explanations.

3.4.1. Takyif fiqh

At this stage, it is necessary to understand the rules of fiqh:

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which means that the actual meaning is in accordance with its intent, not the words used in the contract [38].

The Retail State Sukuk Contract along with the characteristics of the Retail State Sukuk Underlying Asset, have similarities in the scheme and goods traded in the al-‘Inah, al-Wafa’, and pawn contracts, which can be explained below.

a. Al-‘Inah

In Raddul Mukhtar, it is stated that al-‘Inah is selling goods at a higher price on a deferred basis (not in cash), then buying them back at a lower price in cash to pay (part of) the debt. Ar-Rofi’i defines al-‘Inah as selling something to someone else at a deferred price, handing it over to the buyer, then buying it back at a cash price that is less than the deferred price. This definition is similar to the definition in the Hanbali school of thought. The scholars from the Malikiyah group, as defined in Syarh al-Kabir, define it as: selling an item to another person, then buying it back before the person owns it [7]. AAOIFI explains that al-‘Inah includes two forms, namely:

1) Selling goods in a non-cash manner (delayed) then buying them from the first seller at a lower price in cash or with a certain period of time; and

2) Selling goods in cash then buying them back at a higher price and non-cash (delayed) [37].

This sale and purchase is a debt-credit transaction as a ploy to deceive usury, because in reality the person is selling money in the present to get money in the future. The goods sold are only used as a tool to trick usury. If this sale and purchase were true, then the buyer should have full rights to the goods, so that they can be sold to someone else after being purchased [39]. Al-‘Inah sale and purchase agreement is prohibited according to the majority of scholars [6].

Retail State Sukuk issuance scheme, namely: The Government, as the party in need of money, sells SBSN Asset to investors, then after a certain period (at maturity), the Government buys back the SBSN Asset. The Government pays a certain percentage of compensation/coupon every month for a certain period. Thus, investors get money in the amount of the Sukuk nominal value plus compensation/coupon every month. This is similar to al-‘Inah sale and purchase where the seller gets money in cash then in the future returns the money in a larger amount after returning the goods. This is a fraudulent usury. The sale and purchase contract is fictitious because the goods are required to be returned to their owners [40].

b. Al-Wafa’

In terms of Islamic jurisprudence, al-Wafa’ contract is a sale and purchase contract that contains a requirement that when the seller returns the money received to the buyer, the buyer must also return the goods purchased to the seller. This contract is called al-Wafa’ because the buyer must fulfill this requirement. Hanabilah calls this sale and purchase as Amanah sale and purchase [7]. The law of this sale and purchase is similar to the law of pawning [41].

Scholars have different opinions regarding the law of al-Wafa’ sale and purchase.

1) Malikiyah, Hanabilah, and previous scholars from the Hanafiyah and Syafi’iyah circles are of the opinion that this sale and purchase is defective (invalid), because the condition stipulated (the seller takes the goods that have been sold when returning the money to the buyer) is contrary to the consequences and laws of sale and purchase, namely the transfer of ownership from the seller to the buyer. This kind of sale and purchase is essentially not intended to sell goods. In fact, this sale and purchase leads to the forbidden act of usury, namely providing assets on a delayed basis, while the additional benefits obtained by the buyer are included in usury.

2) Recent scholars from the Hanafiyah and Syafi’iyah circles are of the opinion that this sale and purchase is permissible and beneficial because the conditions mentioned are already known to the buyer and seller and they are mutually pleased.

3) Abu Syuja’, Ali as-Saghdy, and al-Qadhy Abul Hasan al-Maturidy from the Hanafiyah community are of the opinion that buying and selling al-Wafa’ is essentially not a sale and purchase,

but a pawn, so that all pawn laws apply, because the buyer does not have ownership of the goods purchased and cannot use them. Their argument is in accordance with the rules of fiqh:

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as stated earlier. This sale and purchase have a requirement that the seller of the goods will take the goods sold to the buyer when the seller can return the money received is a form of pawn agreement. In fact, the return of the goods is due to the payment of the debt [7].

The al-Wafa' contract is a form of pawn because there is no real transfer of ownership from the seller to the buyer [8]. The goods used as a means of transaction are only collateral for the debt agreement made by the seller and buyer.

The Retail State Sukuk contract is similar to the al-Wafa' scheme. The government will return the money from the Sukuk issuance to investors, so that investors will also return the Sukuk Underlying Asset. However, in the Retail State Sukuk contract, there is an additional lease agreement, namely the Government rents the Underlying Asset by paying rent [42].

c. Ar-Rahn (Pawn)

In terms of sharia, pawning is making an asset as collateral for a debt, so that the asset can be used to pay off the debt if the debtor cannot pay it off [43]. The main evidence for the permissibility of pawning is QS. Al-Baqarah: 283).

The provisions after the handover of the pawned goods are as follows:

1) The pawned goods are in the hands of the creditor (murtahin) who must be guarded because they are a mandate.

2) The maintenance costs and benefits of the pawned goods are the responsibility of the owner (the debtor/rahin). Murtahin may not use the pawned goods so as not to fall into usury. Islam has forbidden all profits derived from debt transactions, as explained by scholars in the famous fiqh rule:

كل قرض جر نفعا فهو ربا

“(Every receivable that brings benefits is usury)” [44].

3) When it is due, the pawned goods do not automatically transfer ownership from the rahin to the murtahin, unless the rahin is unable to pay the debt. If the rahin is unable to pay off the debt, then the pawned goods are sold. If there is a surplus, then the remaining money (after paying off the debt) is returned to the rahin, while if there is still a yard to pay off the debt, then the rahin is still responsible for the remaining debt [45], [46].

The Retail State Sukuk Agreement is also similar to a pawn. The government owes investors by handing over SBSN Assets as collateral. There is no transfer of ownership of the assets. Furthermore, investors receive benefits in the form of compensation/coupons from the Government for leasing the assets.

3.4.2. Takhrij fiqh

The contract and characteristics of the Underlying Asset of Retail State Sukuk have similarities with the al-‘Inah contract in terms of excess returns by the Government (as the party in need of funds) to investors. In addition to receiving a return on the nominal value of the Sukuk, investors also receive a fixed reward/coupon every month. In addition, in the al-‘Inah contract there is also no transfer of ownership of goods in essence as with the Underlying Asset in the Retail State Sukuk contract. In other words, even if an agreement can be reached, investors will not be able to use the assets. Investors will not be able to sell, donate, or endow them to parties they want other than the Government. The sale of Sukuk as narrated in the Information Memorandum is merely a formality. The government argues that what is transferred is the Benefit Right, not the ownership right. However, there is a slight

difference if we refer to the definition that has been mentioned that in *al'inah*, excess debt repayment by the party in need of money is caused by a delayed repurchase at a higher price.

Furthermore, the contract and characteristics of the Underlying Asset of Retail State Sukuk have more similarities with the al-Wafa' contract. In addition to there being no real transfer of ownership, the occurrence of excess benefits taken by investors is an act of usury according to the opinions of the Malikiyah, Hanabilah, and previous scholars from the Hanafiyah and Syafi'iyah circles as mentioned earlier. Ibn Taimiyah also has the following illustration which shows that the Retail State Sukuk contract is similar to the al-Wafa' contract. There are two people who agree on the sale and purchase of a house. After the house is sold, the homebuyer will rent the house to the seller for a certain period of time and if the seller can return the buyer's money, then the buyer is obliged to return the house. The essence of this transaction is to take advantage of the loan in the form of compensation for house services, so everything is forbidden [42].

The contract for the issuance of Retail State Sukuk is also similar to the pawn contract, because there is no transfer of ownership of SBSN Assets. The difference is, investors get compensation/coupons per month on the issuance of Retail State Sukuk. SBSN assets are also not in the hands of investors (buyers), so if the Government defaults on its maturity (although this will not happen), then the SBSN Assets cannot be sold.

By considering the above, the issuance scheme for Retail State Sukuk along with its Underlying Assets in the form of BMN, is most appropriately approached and judged with the al-Wafa' contract, as illustrated by Ibn Taimiyah. The excess benefits received by investors (under the pretext of compensation for leasing assets), are included in usury. The law is the same, whether the approach is taken to the al-'Inah, al-Wafa', or pawn contracts. The Underlying Asset Sukuk in the form of BMN can be judged as pawned goods, because they are collateral for the debt made by the Government to investors.

3.5. Conclusions and explanations

Based on the description above, the study concludes that the agreement contained in the issuance of Retail State Sukuk is only an attempt to absorb funds from the public by means of engineering that are considered to be in accordance with sharia to avoid usury [24]. In the case of Retail State Sukuk, the deception of usury is increasingly clear because of the following.

- a. There is no transfer of BMN ownership rights from the Government to investors, as mentioned.
- b. At maturity, the SBSN Assets must also be re-owned by the Government through a purchase agreement, at the nominal value at the time of issuance, as mentioned. In fact, after several years have passed, the value of the property (land or building/structure) tends to increase. This more clearly shows that the asset is only a tool to obtain debt as a debt instrument accompanied by collateral in general.
- c. The compensation/coupon paid each month is a fixed amount (flat) based on a certain percentage. As we know, the amount of rent for property tends to increase, adjusted to market prices. If the amount of the rent is measured based on the market value of the SBSN Asset, the amount will certainly change every month, so the Government should also pay a different amount of compensation/coupon every month.

Furthermore, the issuance scheme for Retail State Sukuk is similar to the al-Wafa' contract because there is no transfer of ownership. The compensation/coupon received by investors is usury because it is included in the principle: "Every receivable that brings benefits is usury". The prohibition of such a contract, in addition to being the opinion of the majority of scholars, was strengthened by the decision of the Organization of Islamic Cooperation (OIC) through The Council of The Islamic Fiqh Academy in the 7th congress in Jeddah, Saudi Arabia, in 1992, in Resolution number 66/4/7. After discussing the al-Wafa' contract, the council is of the opinion that the contract is actually a sale of money for money, namely when the seller returns the money in the amount of the selling price of the goods sold, the buyer also returns the goods purchased. The council decided that:

- a. in essence, the agreement is a debt-credit agreement that generates profit, so it includes usury deception, so this agreement is invalid according to the majority of scholars;
- b. The Council decided that this agreement is prohibited by sharia [47].

As for the Underlying Asset Sukuk in the form of BMN, as mentioned above, it can be ruled as a pawn, so it cannot be used by investors, in this case SPV by renting it to the Government to get compensation/coupons.

Among the solutions so that the sale of the Sukuk Underlying Assets actually occurs, the Sukuk Underlying Assets should not be State Property, so that the transfer of ownership from the Government to investors can occur [48].

4. Conclusion

Underlying Assets of Retail State Sukuk are State Property (BMN) in the form of land and/or buildings or government projects. There are various procedures that must be passed for the transfer of BMN. Underlying Assets of Sukuk, actually do not experience a transfer of ownership rights, one of which is based on the Constitutional Court decision Number: 143/PUU-VII/2009, so it will not interfere with the implementation of government.

Based on the DSN-MUI statement, Retail State Sukuk does not conflict with sharia, including its Underlying Assets. The provisions of Underlying Assets of Retail State Sukuk do not meet the AAOIFI Standard because there is no transfer of ownership from the Government to investors. The contract and characteristics of Underlying Assets of Retail State Sukuk have several similarities with the al-Wafa' contract. This contract is forbidden by the majority of scholars because it is not free from usury. Underlying Assets of Sukuk in the form of BMN can be ruled as pawned goods, so that buyers (investors) are not allowed to benefit from it by renting it back to the Government.

The government and DSN-MUI should re-examine the conformity of the contract and Underlying Asset of Retail State Sukuk with sharia related to the transfer of ownership of the asset. The sale transaction of SBSN Assets must be real, not fictitious. The government can use non-State Property for Sukuk Underlying Assets, so that the transfer of ownership from the government to investors can occur. The market value of the asset should also be the basis for the sukuk issuance value and the repayment value when due. The public as investors must study the sale and purchase contracts according to Islamic law so as not to fall into the practice of usury contained in the issuance of Retail State Sukuk.

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