

CHAPTER I

INTRODUCTION

A. Research Background

Actually, the capital market is an inter-mediation institution between the investor (sahib al-mal) and issuers as the user funds. Based on article 1 (13) Law no 8 of 1995 on Capital Market, the Capital Market is the activities concerning with the public offering and trade effects, public company pertaining to the effect of that issuance, and institution concerning with the effects¹. But the definition of stock (efek) is securities as debt accusation letter, commercial securities, shares, and obligation, finance evidence, attaching collective investment of contract unit, contract terms of share, and every derivative of share².

However, from the previous explanation it can be understood that it is the general definition of conventional Capital Market, because it does not explain what kind of transaction it is and what stock of the trade is halal or haram. Then the only thing that we can use to analyze the truth of *halal* or *haram* is using *Sharia* determination.

Sharia Capital Market is a capital market activity based on Islamic principle. The meaning of sharia principles in capital market is the principles of Islamic law in capital market activity based on *fatwa* of

¹Undang-Undang RI No 8 Tahun 1995 Tentang Pasar Modal pasal 1 ayat 13

²Undang-Undang RI No 8 Tahun 1995 Tentang Pasar Modal pasal 1 ayat 5

Dewan Syariah Nasional-Majlis Ulama Indonesia (DSN-MUI), both fatwa DSN-MUI contained in Bapepam regulation and LK and fatwa DSN-MUI published before (Bapepam decreeNo: KEP-130/BL/2006 on the shariah share publication), as long as that fatwa is not contradicting with rules and or the other Bapepam and LK based on fatwa of DSN-MUI.

The activity in Sharia Capital Market relates to the commercial Securities that have been offered to the society in the form of share ownership or publication of sharia bond (sukuk). Based on fatwa No 40/DSN-MUI/X/2003, the definition of sharia share is contained on rule of law in capital market on contract, business management, although the method of publication is qualified on shariah principle.

Thus, Sharia Capital Market and conventional Capital Market are different. Generally, the difference can be seen on the contract used in the transaction or issuance. In Sharia Capital Market, if a corporation wants to get financing through stock, the corporation should have qualified criteria on requirement of Sharia share publisher.³

According to Sofyan S. Harahap, The activity of capital market relates to the commerce of securities offered to public, will be issued by issuers related to the investment or loan money in long or middle term/ middle including the derivative instrument.

³Burhanuddin S, 2008, Pasar Modal Syariah (Tinjauan Hukum), Yogyakarta, UII Press, hlm.10-11.

Then, the definition of Sharia Capital Market is the capital market applying the sharia principle. These are the principles:

- 1) Forbidden to do transaction with unclear aspect.
- 2) The commercial instrument or share should qualify on halal criteria.

Sharia Capital Market is not only running to improve the society participation on business activities in order to get the benefits and share the risk, but also for the stockholders possible to sell their stocks to get liquidity.⁴

In the development, Sharia Capital Market does not only exist in the countries with the majority of Muslim citizen, but also exist in other countries such as America. New York Stock Exchange published Dow Jones Islamic Market index on February 1999.

Sharia Capital Market was also built in Indonesia signed in Jakarta Islamic Index (JII). On 14th Maret 2003, the government through the Ministry of Finance, Boediono, Bapepam and MUI officially declared the Sharia trade finance. Before 2000 PT Bursa Efek Jakarta (BEJ) cooperating with PT Dana Reksa Invesment Management (DIM) has launched Jakarta Islamic Index. In addition, the first sharia mutual fund

⁴Sofiniyah Ghufron, 2005, *Sistem Kerja Pasar Modal Syariah*. Renaisan, Jakarta, hlm 17.

(Reksa Dana Syariah) has been built in 1997, and Sharia Bond Mudhorabah Indosat was published in 2002.⁵

The Capital Market is one of modern economic activities conversed in economic sharia institution as a part of Islamic economic system. The Capital Market is a place to sell the securities as a long term financial instrument. To become a sharia economy, the capital market needs improvement both from the transaction aspects (akad) and from product related corporations. One effort of improvement from the transaction aspect is related to the instrument used in its capital market.

Sharia Capital Market instrument is all securities that run commerce in stock exchange, thus it has difference forms. But from all of the variation, there are two common forms, stock and obligation. Then, each stock will be conversed as Sharia Capital Market instrument, and both of securities use Sharia transaction in stock exchange. Only the qualified instrument on Sharia requirement that commerce in Sharia Capital Market, such as stock, obligation, and shariah mutual fund. Then, to make sure that all instruments are qualified on sharia principal, it needs to be conversed through screening to Capital Market activity.⁶

In this research, the researcher focuses on Sharia Bond (sukuk) as the Capital Market instruments in the form of certificate and ownership evidence of specific aspect or in the form of assets. Based on Article 1 (1)

⁵*Ibid*, hlm. 19.

⁶Burhanuddin S, 2008, *Op. Cit.*, hlm. 47

Law 19, 2008 on State Sharia Securities (SBSN), State Sharia Securities (SBSN), or called Sukuk is the state sharia securities that are issued based on the sharia principle, as the evidence on partof SBSN asset both in the form of money and foreign exchange.⁷

According to Zamir Iqbal and Abbas Mirakhor, sukuk or Sharia Bond is the representation of proportional ownership from asset for specific term of period including the risk and benefit related to the cash flow through underlying asset of investor.⁸

Furthermore, Fatwa Dewan Syariah Nasional (DSN) defines sukuk or sharia bond as long term securities based on sharia principle created by issuers to pay the income to the owner of Sharia Bond in the form of profit sharing, margin, and fee, and repayment of the bond on the specified time.⁹

B. Research Question

Based on the research background, this research will discuss about:

1. How is the process of sharia bond (Sukuk) issuance in Sharia Capital Market?
2. How is the supervising system on sharia bond (Sukuk) product in Sharia Capital Market?

⁷Undang-Undang RI Nomor 19 tahun 2008 tentang *Surat Berharga Syariah Negara*

⁸Zamir Iqbal & Abbas Mirakhor, *an Introduction to Islamic Finance*, Singapura: John Wiley & Son Asia Pte. Ltd, 2007, hlm. 177.

⁹Dewan Syariah Nasional Majelis Ulama Indonesia, *Himpunan Fatwa Dewan Syariah Nasional*, (Jakarta: Bank Indonesia 2003), hlm. 200.

C. Research Purpose

A. Objective purpose

1. To explore the mechanism of sharia bond (sukuk) issuance in Sharia Capital Market.
2. To find out the controlling system on sharia bond product in Sharia Capital Market.

B. Subjective purpose

1. This research was conducted to find data or information as a matter of writing the thesis and as a final assignment in the completion of a thesis in order to complete the requirements for obtaining a law degree at the University of Muhammadiyah Yogyakarta.
2. To contribute to the development of the science of commercial law, especially regarding the issuance of sukuk in the Islamic capital market.

D. Research Benefit

This research can confidently give contribution in every scientific and practical aspect, the followings:

1. Scientific benefit

This research will give benefits to extend people perception and knowledge on the development and growth of sharia bond (Sukuk) in Indonesian Sharia Capital Market.

2. Practical benefit

This research is expected to give practical understanding from researcher especially, and society commonly to understand about the supervision of sukuk (sharia bond) product in Sharia Capital Market.