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Derivative Transactions on Sharia Hedging (Al-Tahawwuth Al-Islami Era 5.0 Perspective of Sharia Economic Law

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Abstract.
Derivatives generally involve unlimited liability. The decline in traditional activities implies the future of the banking industry and creates new challenges for regulators. In other cases, Sharia hedging is a breakthrough for Indonesia to be based on the Qur'an and sunnah, which are considered to violate Islamic law. This study aims to study the transactions that we know very little about so that we can run them by existing regulations. This study uses qualitative methodology with descriptive research and an empirical juridical approach. The results in this study were related to regulations that are only listed in Fatwa DSN-MUI No. 96 of 2025 regarding sharia hedging, which is not clearly explained. Hedging is implemented so that there are gharar, maisie dan riba' in it, but this becomes a polemic because it should be a form of application of Sharia principles in Indonesia.

Keywords: derivative transactions, Sharia hedging, regulation

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1. Introduction

Derivative transactions are familiar to us to hear and talk about in line with economic developments in a country that occur in various parts of the world such as in Europe the most important markets of futures and options in Europe are EOE (European Options Exchange), LIFFE (London International Financial Futures Exchange), LTOM (London Traded Options Market) and MATIF (Marche a Treme des Instruments Financiers). Derivative transactions are very exciting transactions as well as this type of transaction cannot be separated from containing large business risks by increasing the number of transactions involved by technological sophistication to transactions requiring technical knowledge and adequate analysis. And this transaction if allowed causes a lot of concern from the supervisory authorities and regulators of the financial industry in Indonesia. [1] In Indonesia in the last ten years there have been many breakthroughs related to developments that occur both with fundraising products, fund distribution

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products, and financial service products we have witnessed growth from the use of derivative transactions so it is rife. Often this transaction becomes a risk management tool that is usually widely used by people whose income is large enough.

Then what is very interesting in such transactions is that derivative transactions can allow the parties to trade lower with speculation of profit income which is very tempting for business actors. Given the business world, every transaction becomes important if it stabilizes the value of the currency, it will automatically maintain very rapid economic development, sometimes it decreases or may increase. In this case, the value of the currency will be stable, it can benefit very highly from the use of derivative transactions as a hedging tool, it can be seen from the turnover in the fields, especially trading and financing. However, any mechanism may not run smoothly, while it can be known that over time derivative transactions have occurred in many cases of extraordinary and unexpected financial losses. [2], Value protection is one very important way to be implemented in controlling a business or investment because with hedging that we can take care of possible risks that occur in the present or the future so as not to experience very large losses and can minimize losses that will be borne and can also ensure the profits obtained so that they are not affected by losses that will occur. With a protection mechanism like this, at least we can protect a business and the investment we run so that it does not experience losses that can bring down the business being carried out.

According to al-Suwailem, hedging is commonly used to limit and reduce risk. This hedge is also needed to be able to protect existing assets from price changes that will occur. The meaning of sharia that is being used in hedging adds to the marketing of this transaction so that it can go to a more recognized and appreciated arena to simultaneously apply sharia principles by sharia stated in Fatwa DSN-MUI No. 96 of 2015 concerning sharia hedging as a basis for the development of the 5.0 era in the future to be juxtaposed with sharia principles. [3]

2. Methods

According to Sugiyono, the research method is a scientific way to obtain data to be described, proven, developed, and found knowledge and theory to be able to understand, solve and anticipate problems in people's lives. [4] Then in this study researchers use a focus type of descriptive research with an empirical juridical approach which is carried out by looking for primary data information obtained directly in the field aimed at the application of law accompanied by their respective examples, therefore analyzed using qualitative research methods.

3. Results and Discussion

In a more specific sense, a derivative is a financial contract between two or more parties in order to fulfill a promise to buy or sell assets/commodities that are used as objects traded at a time In a more specific sense, a derivative is a financial contract between two or more parties to fulfill a promise. To buy or sell assets/commodities that are used as objects traded at a time and price that is a mutual agreement between the seller and the buyer. The future value of the traded object is strongly influenced by its parent instrument in the spot market in the derivative transaction. [5] The derivative itself is a contract or payment agreement whose value is a derivative of the value of the underlying instrument such as interest rates, exchange rates, commodities, equities, and value indices either followed by movement or without movement of funds or instruments, but is not included in credit derivative transactions.

An understanding of the meaning or nature of derivative transactions is very necessary to determine the appropriate legal treatment of derivative transactions. From various derivative transaction cases that entered the courts in Indonesia, there were doubts, both from the plaintiff/defendant's lawyer and the judge himself in determining the definition of derivative transactions in the context of Indonesia's positive law. Such doubts seem to be experienced by experts in the field of finance, as seen in various literature on derivative transactions.

According to experts in the field of derivative transactions, it turns out that they have not reached an agreement on what is meant by derivative transactions. The opinion of author George Crawford of Bidyut Sen even states that any attempt to generalize about derivatives is in some way inappropriate. So according to him, it would be more useful if the discussion was carried out for certain hedging or investment strategies. [6] In the case of derivative transactions, legal regulations should focus on efforts to eliminate confusion arising as a result of unclear and even conflicting legal arrangements and frameworks, both nationally and internationally without ignoring situational differences. However, there is a need for comparable and consistent regulation of derivative transactions in each country. In addition, coordination among regulators needs to be improved again because it is often mentioned as macroeconomic deficiencies often related to foreign exchange and offshore transactions which are very closely related to derivative transaction activities so mutual trust is needed among regulators in various countries.

Regarding banking regulations, including derivative transactions, at least must meet the following characteristics: a). Ensure legal certainty, b). Can protect the interests of the community, c). Be responsive to various banking and economic developments,

d) By internationally applicable legal principles and standards or at least in line and comparable to international best practices, e). Encourage a sound, stable, efficient, and competitive banking system, f). Sectoral/industry specific. Derivative transactions or agreements are investment activities that have a legal basis so that security is guaranteed. Following are some of the legal bases related to the implementation of derivatives:

(a) Government Regulation No. 45 of 1995 concerning the Implementation of Activities in the Capital Market Sector.

(b) Law No. 8 of 1995 concerning Capital Markets.

(c) SE Chairman of Bapepam dated 25 February 2002 No. SE-01/PM/2002 concerning Index Futures Contracts in Securities Companies' MKBD Reporting.

(d) SK Bapepam dated 20 February 2003 No. Kep.07/PM/2003 concerning Stipulation of Futures Contracts on Index Securities as Securities.

(e) Bapepam Regulation dated 31 October 2003 No. III. E. 1 concerning Futures Contracts and Options on Securities or Securities Indexes.

(f) Bapepam written approval dated 18 February 2004 No. S-356/PM/2004 concerning KBIE-LN Approval (DJIA & DJ Japan Titans 100).

Once again, derivatives are a safe investment instrument. If you are interested in investing through derivatives, you need to prepare your funds immediately and understand what types of derivatives are suitable for achieving your investment goals going forward. Furthermore, you also need to know the implementation of taxes on derivative instruments. Referring to the legal basis of derivatives is RI Government Regulation No. 17 of 2009 concerning Income Tax on Income from Derivative Transactions in the Form of Futures Contracts Traded on the Exchange. In the PP, it is explained that the tax imposed on derivative transactions is classified as final PPh. The rate of the final PPh is 2.5% based on the initial margin.

Derivative transactions are investment products that are created to hedge the value or price of a commodity in the future. Looking back at history and its origins, the emergence of derivatives was to protect wheat prices in Chicago at that time. For example, in Indonesia itself, Bank Indonesia in 2017 helped BUMN to be able to take advantage of derivative instruments to deal with the drop in the rupiah exchange rate. In addition, derivative instruments can also minimize losses and financial risks for the company.

3.1. Hedging Facility

Derivative commodity contracts have a strong correlation with the underlying commodity or product. The value of a derivative contract will move in parallel with its reference product on the spot market. So, if one party has exposure from its position in the spot market, then that party can reduce the risk caused by price changes that occur for products in the spot market by opening a position in the derivatives market. This step is called hedging or hedging.

3.2. Speculation

As in the physical market, contracts in the derivatives market also experience price changes so that people can benefit by buying and selling derivative contracts. In derivative contracts, there are various ways to settle contracts. Completion of contracts with the physical handover of goods at a later date Settlement in cash (cash settlement) Settlement by granting the right to buy or sell a product at maturity.

Sharia Hedging (al-Tahawwuth al-Islamic/Islamic Hedging)

Hedging is one of the exchange rates for ways or techniques to reduce risks arising from exchange rate fluctuations. While sharia hedging (al-Tawawwuth al-Islami/Islamic Hedging) on exchange rates based on Sharia principles aims to hedge.

Sharia hedging transactions (al-Tawawwuth al-Islamis/Islamic Hedging) based on real needs (al-hajah al-massah) may be carried out under the conditions stipulated in Fatwa DSN No.96/DSN-MUI/IV/2015 regarding the type of sharia hedging transactions (Al-Taahawwuth Al-Islamic/Islamic hedging) yang cenderung lindung nilai ini sangat bergantung dengan pembentukan harga di pasar fisik (spot), dengan demikian transaksi lindung nilai harus memiliki underlying transaksi tapa adanya underlying transaksi maka aktivitas akan cenderung spekulatif.

In the Islamic economy, hedging is limited only to futures and options transactions according to DSN Number 28/DSN-MUI/III/2002 concerning buying and selling currencies (Al-sharf) is haram. While forward transactions according to the fatwa should only be carried out for unavoidable needs (lilhajah). On February 24, 2016, BI released Bank Indonesia Regulation No. 18/2/PBI/2016 concerning value-saving transactions based on principles and External Circular Letter (SE) No. 18/11/DEKS issued on May 12, 2016. With the fluctuation of the rupiah exchange rate that continues to rise and fall. Then hedging efforts are indeed a solution not only for conventional financial institutions, but sharia businesses can also have sharia hedging with sharia hedging characteristics: a). Sharia hedging must not be carried out for purposes carried out for speculative purposes so it is mandatory to have, b). This transaction should only be carried out if there is a real need to reduce exchange rate risk against foreign currencies, c). With the use of the muwa'adah contract, this contract stipulates that sharia hedging transactions will be preceded by forward agreement.

The types of derivative instruments can be divided into several forms. In general, derivative instruments are divided into 2 parts, namely derivatives sold on the secondary market and derivatives over the counter. Here are some types and examples of derivatives.

3.3. Handover Contract

A handover contract is an agreement between two or more parties to hand over or buy assets or commodities at an agreed price, quantity, and date of delivery. The delivery contract can be said to be complete if the commodity or foreign currency is delivered physically or delivered on a net basis.

3.4. Futures Contracts

Futures contracts in derivatives are agreements between two or more parties to deliver or buy assets or commodities at an agreed price, amount, and date of delivery. The difference with delivery contracts is that futures contracts are regularly traded on futures exchanges, which are places where futures contract transactions are conducted.

3.5. Options contracts

An option contract is a derivative instrument that is widely used to protect against risk or value (hedging). There are 2 types of option contracts, namely put options and buy options. A put option or put option is giving the owner the contractual right to sell a particular asset. While the purchase option or call option is to give the owner the contractual right to buy a particular asset. Option owners have the right, but they are not obligated to enter into the transaction at the price specified in the option contract.

3.6. Swaps

The last type of derivative is a swap, which is a contract to exchange cash flows within a certain period and is carried out continuously. An example of a swap transaction that is commonly carried out is an interest rate swap. An interest rate swap is associated with any value or price that tends to fluctuate. The function of the swap is usually to protect the company from fluctuations in interest rates. Swaps can generally be negotiated directly by two or more parties holding the contract.

In a more specific sense, a derivative is a financial contract between 2 (two) or more parties to fulfill promises to buy or sell assets/commodities which are used as traded objects at a time and price which is a mutual agreement between the seller and the buyer. The future value of the traded object is strongly influenced by its parent instrument in the spot market.

Derivatives are contracts or agreements whose value or profit opportunity is related to the performance of other assets. These other assets are referred to as underlying assets. Derivative securities are derivative securities of “main” securities, both in the form of equity and debt. Derivative effects can mean direct derivatives of the “main” Securities or subsequent derivatives. an investment instrument that has been listed on the Indonesia Stock Exchange (IDX) other than mutual funds, stocks, and bonds or debentures. Derivatives are contractual agreements entered into between two or more parties to buy or sell assets or commodities.

One of the derivative instruments is a financial derivative which has also been listed on the Indonesia Stock Exchange (IDX). Financial derivative products themselves consist of stocks, bonds, currencies, and other financial instruments. Even though it is included as an investment instrument, there are still many investors who do not know about derivatives and derivative products. Even though the profits obtained by investing in these derivatives are relatively high. However, because not many people know about it, investors often choose stocks, mutual funds, and so on as investments.

Contract agreement entered into between two or more parties to buy or sell assets or commodities. Furthermore, derivative transaction contracts function as objects traded at prices that have been agreed upon from the previous agreement. The price value of derivative trading contracts in the future is affected by the asset or commodity price of the parent.

The concept of this derivative was first introduced in Chicago, USA in 1949. Farmers in Chicago at that time were harvesting wheat. When the wheat has been harvested, the price of wheat will decrease due to excess stock. Meanwhile, when there is no wheat harvest, the price of wheat will rise because wheat is scarce. Because of this, Chicago farmers often suffer losses. To prevent losses and maintain wheat price stability, a derivative financial instrument in the form of a wheat purchase contract was issued by the Chicago Mercantile Exchange. With the existence of derivative products, farmers can sell their wheat in the future at the price specified in the contract that has been made.

So, when the grain is harvested, the farmers don't have to sell all of their grain to Chicago which can lead to overstocking. Farmers can store grain in advance so that it can be sold in the future at a predetermined price. The events above are how derivatives work. Simply put, the way derivatives work is based on the derivative trade agreement contacts that have been agreed upon. Derivatives are one of the investment instruments that have a high risk because they take advantage of estimated future prices with the potential to get large returns. [7]

4. Conclusion

The word derivative is a contract or payment agreement whose value is a matter of the value of the underlying instrument such as interest rates, mat values, commodities, equities, and indices. While a transaction is an activity carried out by a person that can cause changes to the assets or finances he has, whether it increases or decreases in value. In derivative transactions, there is no regulation that I only hedge sharia stated in Fatwa DSN-MUI No. 96 of 2015. In practice, it is explained that weak regulations result in many assumptions that enter as examples of sharia hedges mentioned in the field of the transaction it is feared that there are gharar, Maisie, and usury'. Then, if it is related to derivative transactions against sharia hedging regarding the 5.0 era, it could be carried out in the future with a note that it does not take much advantage of it and the parties both benefit from the transaction.

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