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UPCOMING CHALLENGES IN ESTABLISHMENT OF ISLAMIC REITS INVESTMENT IN INDONESIA

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Abstract

Being a country with the biggest Moslem population in the world with its 87% Moslem population amongst its 255 million population in 2016, Indonesia is a huge market for Sharia compliance investment, given the fact that the country GDP breaches the psychological threshold of US$3,000 per capita, and that the middle class has been growing vastly in the recent decade, it is quite a wasted opportunity to see Sharia compliance investment product is not easy to find and the share is only less than 5% of overall portfolio size in Indonesian capital market. As strong indication of Indonesia Stock Exchange (IDX) readiness to accommodate the operations and transactions of Sharia compliance investment products is the induction of two Sharia indices, called JII (Jakarta Islamic Index) as main index and ISSI (Indeks Saham Syariah Indonesia - Indonesian Sharia Stock Index). Currently, Sharia capital market products are transacted and indexed in this Stock Exchange, consists of Sharia compliance stocks, Sharia Mutual Funds, and Sharia Bonds (sukuk). But, with recent development which another type of investment product was introduced and distributed to the retail investors, the Dana Investasi Real Estate (DIRE, or Real Estate Investment Trust – REIT) which is a conventional investment product, there are big hopes and expectations that the Sharia version of it, namely Islamic REIT or Sharia REIT, should be established soon, to be distributed to the investors and transacted and indexed in the IDX. Given the generic nature of REIT product, this would be operated similar to common open-ended Mutual Funds, to be distributed as retail product in the form of Investment Unit, and underlied by asset(s) that generate value added to be redistributed to the investors as gain, an additional value to the Investment Unit they possessed. The main difference however, is the underlying assets, where REIT is not using paper based investment assets like Mutual Funds but using the Real Estate assets to generate value added to be redistributed to the investors. This journal is trying to elaborate and evaluate the challenges in establishing the Sharia REIT in Indonesia from the perspectives of regulatory restrictions, various 'aqd to be implemented in the Sharia REIT contracts, some possible scheme of Sharia REITS to be implemented as the fund scheme, and of the view on eligibility of various Real Estate assets available in the market to be included in the scheme and deployed as underlying assets to the established Sharia REIT.

Keywords: Sharia, investment, Indonesia capital market, Islamic REITs

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Introduction

Indonesia is the world's fourth most populous country, with approximately 255 Million of populations, with 85 % are Moslems, making it the world's largest Moslem population. Despite this brief fact, in the area of development of Islamic Financial Service, Islamic Investments and Islamic Economy, the country is relatively less developed compared to another country with less percentage of Moslems in their overall population. To name one of many, Malaysia, the closest neighbour and traditionally seen as center of developmet of Islamic Economy in the region.

Supporting the Islamic investment spirit amongst the investors and those who are concerning the eligibility of the conventional investments, Indonesia government has launch two indices that are specifically indexing Sharia (Islamic Law) compliance stocks in Indonesia Stock Exchange (IDX). These are Jakarta Islamic Index (JII) and Indonesia Sharia Stock Index (ISSI), both are indexing the shares traded in IDX. The main difference lies in the inclusive principles adopted by ISSI compared to exclusive principles for IDX, which assert its exclusiveness towards the financial aspects and sharia compliance aspects.

One of the consequences grew from the protected and supported growth of Islamic Economy in Indonesia, the diversification of investment vehicle, particularly to accommodate retail investors, in November 2012, Ciptadana Sekuritas, a national investment management company, launched its first-for-the-nation Real Estate Investment Funds (REITs). This emiten is circulating and being traded in IDX under the tickercode of XCID. This milestone has opened the possibility of diversification in Indonesia's investment landscape that previously relied to stock exchange, bonds, mutual funds, real estate, commercial properties, and golds.

The challenge is however, how to accommodate the sharia compliance product adopters who have the appetite in the REITs product in Indonesia market. The product design itself poses questions that may have to be covered before the initial prototype of the product can be introduced. The basic product design of REITs, at least for the conventional version that is already circulating in the market, provides flexibility required by the retail investors who have the appetite to invest in the commercial properties and or real estate, but being restrained by the amount of capital required to do so. This is the main advantage posed by the product design that attracts market appetite, given the vast growth of Indonesia's property business, mainly for the period of 2009 to 2013, where country's economy growth rate consistently sat in the area between 5.5 to 7.0% per year surpassing its glory days in the oil boom era of 1980s, and also above the regional average rate. However, recent drops are shadowing the overall economy and investment outlook, as country's growth is now less than the numbers expected and obviously fall far below the quoted numbers before, due to various aspects.

A Brief Description About The Capital Market Investment in Indonesia

Indonesian Stock Exchange (IDX) is called as the emerging market among the investors. The market capitalizasion in bourse closing on July 2016 is Rp 5,508 billion with big 10 emitens holding the biggest market capitalization represented 48.2% from total market capitalization in IDX or equivalent in value of Rp 2,656 billion. These big 10 emitens are represents the groups of emiten in financial institutions (17.2%), in trading and services (12.9 %), and in consumer (18.2%). Meanwhile, the comparison of trading done by the local investor and foreign investor are 44%:56% from the total of transaction during half of the year 2016. This is an improvement because in the previous years the IDX transaction was dominated by the foreign investors. In regional bourse transaction, IDX performed better compare with other bourse in regional area which are coming from Thailand, Philipines, Malaysia, Singapore, Japan, China and Hong Kong. The table of this comparison can be seen below:

WORLD BENCHMARK INDICES COMPARISON

Country	Index	Daily Change		Rank	Month-to-Date Chg.		Rank	Year-to-Date Chg.		Rank	30-days Chart
		Points	%		Points	%		Points	%		
▲ Indonesia JCI	5,127.50	17.32	0.34%	3	110.85	2.21%	12	534.49	11.64%	3	
▲ S. Korea KOSPI	2,021.11	3.85	0.19%	5	50.76	2.58%	10	59.80	3.05%	8	
- Thailand SET Index	1,492.00	N/A	N/A	-	47.01	3.25%	7	203.98	15.84%	1	
▲ Malaysia FTSE BM	1,670.84	2.44	0.15%	6	16.76	1.01%	13	-21.67	-1.28%	11	
▲ Singapore FTSE ST	2,928.76	3.41	0.12%	7	87.83	3.09%	8	46.03	1.60%	9	
- Japan Nikkei 225	16,497.85	N/A	N/A	-	921.93	5.92%	1	-2,535.86	-13.32%	12	
▲ Hong Kong Hang Seng	21,803.18	143.93	0.66%	1	1,008.81	4.85%	2	-111.22	-0.51%	10	
▼ China SSE Comp.	3,043.56	-10.73	-0.35%	10	113.96	3.89%	6	-495.62	-14.00%	13	
▼ Philippines PSE Index	7,986.25	-43.81	-0.55%	11	190.00	2.44%	11	1,034.17	14.88%	2	
▼ India* S&P Sensex	27,753.71	-82.79	-0.30%	9	745.18	2.76%	9	1,636.17	6.26%	5	
▲ USA^ DJIA	18,516.55	10.14	0.05%	8	821.87	4.64%	3	912.68	5.18%	6	
▲ UK* FTSE 100	6,683.20	13.96	0.21%	4	290.03	4.54%	4	440.88	7.06%	4	
▲ Australia All Ordinaries	5,538.90	28.80	0.52%	2	228.50	4.30%	5	194.30	3.64%	7	

Source : www.idx.co.id

Reits in Global Investment Market

Globally, investment in REITs have been becoming alternative investment instrument that affordable and favorable for retail or corporate consumer. The improvement in property and consumer sectors increases the yield to the investors. This affects the increases the value of REITs portfolio globally. In France, investment in REITs known since 2003 and its value of its investment portfolio growing higer (Newell, Adair, & Nguyen, 2013). In Turkey, the research about REITs said that REITs already becoming instrumen of investation since 2002. People there also able to access this kind of investment from their capital market called Istanbul Stock Exchange (ISE). But this study is not stated that the REITs is the one who comply with sharia principles(Aktan & Ozturk, 2009). In United States, by the research of

Laopodis-2009, REITs even have been existing since 1971. And by 1993, its capitalization increased in a very big number. This increasement appeared because in US the product of financial service (insurance, pension fund, and investment trust) consitantly grew and become people need in investment instrument.

Reits in Regional Investment Market

Talking about regional Asia-Pasific investment market, Hong Kong and Singapore is the indicator of capital market growth. Those countries are the pioneer of establihment REITs as the alternative instrument in capital market that could be accessed by the individual or corporate investor. One of the research published explained that there is one of the document already continuesly published to inform to public about the study of the comparison yield in REITs and other instrument of investment (Yat-Hung, Joinkey, & Bo-Sin, 2008).

Other research from Dimovski with the tittle A-REITs Right Issues, introducing REITs as an alternative investment since 2001. And from that moment the demand on REITs increased. As in Hong Kong, a research found that retail investment from REITs in this country is the biggest one. The study from Hui, Yiu and Yau in Retail Properties in Hong Kong: A Rental Analysis coudl describe that REITs is an investment enthused by the community and its growth becoming increasing a lot. In addition, the study exposed by Wei, Anuar and Ramakrishnan in Integration between The Asian, found the strong relations between REITs market and economics variables in Asia with investment in REITs. This signs as a form of investment has a rule in stirring economic condition regionally. REITs has an important rule on it.

Singapore esthablished REITs since 2002, known as S-REITs. It become the varian of investment there. And by 2003 its growth significantly improved. One interest and ironic things in that one of S- REITs portfolio exists in Singapore Stock Exchange but they are using the properties that lies in jurisdiction of Indonesia to gain some profits (Newell and Anh, 2015). In Malaysia, we can find Islamic REITs. These REITs have several differences compared with the conventional one. Al-‘Aqar KJP REITs is claimed as the world‘s first Islamic Reit. It was estalished in Malaysia – based unit trust on 28 June 2006 with the investment objective of owningnand investing in Shariah’s compliant real estate. When it was launched, Al-‘Aqar KJP REITs own and invested in six hospitals which were first acquired from KJP Healthcare Bhd and its subsidiaries (Dusuki, 2008).

Guidelines on the issuances of Islamic REITs in Malaysia had been outlined by Malaysian Security Commission to introduce a new investment opportunity in the Islamic Real Estate Investment Trusts. It was planed to facilitate the development of this sector and provide shari’ah guidance on this type of the investment. It also help to enhance competitiveness of Malaysian Islamic capital market by attracting global Islamic investor who wish to deversify their investment portfolio which are shari’ah compliance.

The sharia’ah compliance assessment is examine by Sharia’ah committee or advisor. It has responsible to over look the operation of Islamic REITs. The purpose is to ensure that all of the aspect of Shari’ah principles including investment, deposit, and financing decision for Islamic REITs, acquisition, and disposal of real estate and rental earning and activities. The

Sharia'ah committee is also required to supervise and ensure that all of funds are managed and administered according to the Shari'ah principles decreed and outlined by the Securities Commission (Abozaid, 2008)

Reits in Indonesian Investment Market

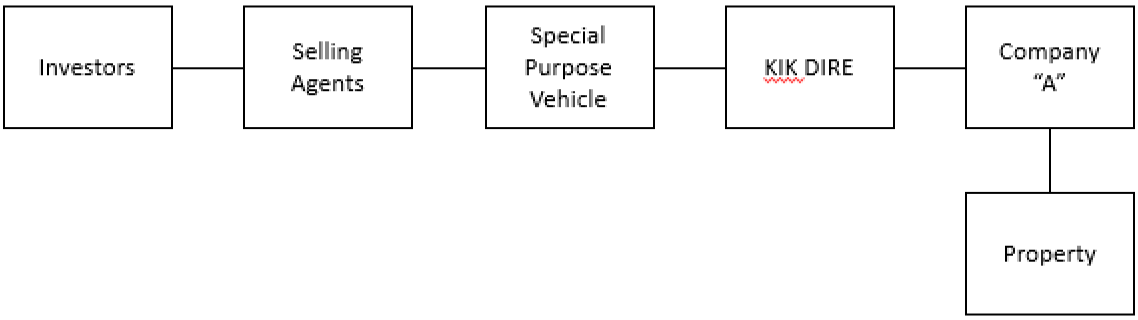
At present, Indonesia already has REITs as an investment instrument in capitald market. It has been established on Novembre 2012. It is presented by Cipta Dana Securitas with the trading name DIRE Ciptadana Properti Retail Indonesia (DIRE Ciptadana). This product has ticker code XCID in IDX or XCID. JK in Reuters.com in the global investment portal. The property used as the object of investment is Solo Grand Mal. This REITs nowadays is the one and the only REITs exist in Indonesia. No more REITs offered in the Indonesian capital market so far. And from the writer's point of view, investment in REITs is not yet well known and becoming popular. Thus, exposing to the market must be done to introduce REITs as the new investment instrumen in capital market to retail and to corporate investors. This product should be introduced as the capital market investment instrument which is underlied by the properties. This is the only capital market product which is invested in the real sector activities. So that it does not have any volatile issues in the trading activity. It should be more sustained compared with other products in capital market.

Discussing about the investment, means we have to examine about the legal aspect. The legal aspect in Indonesia adopts The Civil Law legal system. Different with Malaysia which adopts The Common Law legal system, the legal form in Indonesia to established REITs will not be the same. In Malaysia, they have trustee as one party who runs the REITs establishment and operation. This is the main different in establishing REITs while in Indonesia law system, we do not have the the trustee institution. The trustee institution in Malaysia set up to be the guardian on the behalf of investors to ensure that all aspect and operating the REITs is well managed. Meanwhile in Indonesia according to the Civil Law legal system adopted here, the trustee institution does not exist. And to ensure and guard the investor interest there is a Special Purpose Vehicle (SPV) company formed for that purpose. The SPV Company is netral that it is neither owned nor controlled by the property owner nor the selling agents. The establishment of SPV Company is to bridging many purposes between the selling agents companies and the owner of property rented. The SPV Company creates the REITs investment and sell this kind of product investments as the mutual fund investment to the selling agent companies like Investment Manager Company, banks or securities. Then, the selling agents sell the REITs mutual funds to the investors.

The SPV Company is established to create the REITs (called KIK-DIRE) as the new investment product. This product is sold by the selling agents to the investors. Then, the SPV company deals with the property owner to manage the rental services of the property to the tenants. The SPV company predicts the value of the property and estimated the potential rental revenue for the next 15 to 20 years ahead (depends on the REITs agreements). Then the property is acquired in two alternatives. Firstly, is from total acquisition. Means the the SPV company buys the property. This way is costly because there will be many taxes applied in acquisition transaction. Secondly, by acquiring the shares of the property's legal entity. The processes should be accompanied in parallel by due dilligence processes from legal consultant and public external auditor. The revenue from the property rental is the main source of income for the REITs. There are also fees, charges and expenses involved in the administration of the fund, including manager fee as the additional income from the rental. These revenues will be used in paying dividends and capital gains to the investors who bought the REITs mutual fund.

The illustration of the REITs (KIK-DIRE) is explained through two figures below:

Acquiring REITs by acquired the whole properties



Acquiring REITs by acquiring some shares of the property's owner

Islamic Reits as The New Investment Instrument in Indonesia

As the country with the majority and the biggest mosleem population in the world, Indonesia has such a big potential in term of halal life style. This is include how the people here behaves in their way to invest. Investment in shari'ah compliance way supposed to be the the most favorable investment product. Islamic REITs funds invest their portfolio in property (real estate) such as residential, commercial (mall), and retail properties, storage facilities, warehouse and car parks. It is different from the conventional one, the Islamic REITs requires strictly observe Islamic investment guidelines and shari'ah principles. This provide new opportunity to the investors who wish to invest in property (real estates) through shari'ah compliances investment instruments (Dusuki, 2008).

The prospect of Islamic REITs in Indonesia from the writter's point of view, seems very promissable. Surely, by some supports from the government its growth will be potentially high. Hence, one important things is to persuade and encourage the govenrment sets up some rules over Islamic REITs and give some incentive to propel the REITs establishment, in Indonesia, there is an institution set by the government to review the implementation of shari'ah principles and its compliance. The body named MUI (*Majelis Ulama Indonesia* / Indonesian Cleric Council) is the highest institution established to manage sharia' compliance and its implementations in Indonesia. MUI acts based on The Qur'an and the Sunnah, and also possibly acts on the thoughts (Ijtihad) from the Ulamas both from nowadays and from the past days. In terms of financial services and financial institutions aspects, MUI has established DSN (*Dewan Syariah Nasional* / National Shari'ah Council) to provide guidelines of sharia' implementations on the products and services distributed to society. DSN is responsible in ensuring that every aspect of financial transactions fulfill the sharia' requirements. It relies the efforts upon the eradication of the practices of riba, gharar and maisyir aspects in financial transactions. In broader scopes, especially in Islamic banking, Islamic insurances and Islamic capital market, DSN lengthen its control capacity through the appointed DPS (*Dewan Pengawas Syariah* / Shari'ah Supervisory Council) to review and give some opinions if required in banking and financial services matters from within.

Fiqh Muamalah on Islamic Reits

Islamic finance is the only one financial system in the world that is based on the teaching from the major reigions that is proven and attract the attention of secular mosleem and non-mosleem as well. While the conventional financial industri has been suffering a tremendeous loss of reputation, due to its obvious shortcomings and it is harmful impact of economics worldwide, a sharia'ah compliant financial industry appears to be profitable, viable, fair, and a clear survivor of the recent global debacle.

Islamic finance represents a fundamental departure from conventional interest-based and speculative practices, as it relies completely on real economics transactions, such as trade, investment based on profit-sharing, and other solidarity ways of doing business. Rather than treating money as a commodity (as in capitalism), in Islam, money is no more than a measure of value (Hassan and Mahlknecht, 2011).

It is important to settle the right activities which comply sharia principles. Islamic finance pushes to apply any transaction which is free from riba, gharah and maishir activities. Riba means having some addition / advantages in transaction without having some risk related to the transaction. Gharar means the transaction committed to gambling activities. And maishir related to unclear and doubtful transactions. Besides, it must be important also, to ensure that all transaction should be halal (not unlawful) and thayib (proper). Adopting shari'ah principles by appliying them into all the transactions during the investment, means to ensure the maslahah comes into our life and bring us into well being life.

Islamic REITs, must comply all the shari'ah princiles. All the transactions exist must be guaranteed in halal and thoyib way. Since the establishment process until selling it to the investors all activities must be examined and contolled by DPS. It also defined also by the DPS how much the portion inevitable non-halal transaction can be accepted. Just like in Malaysia, the Sahri'ah Committee has defined that inevitable non-halal transaction can be accepted is not more than 20% to total rental paid to the tenan (Abozaid, 2008).

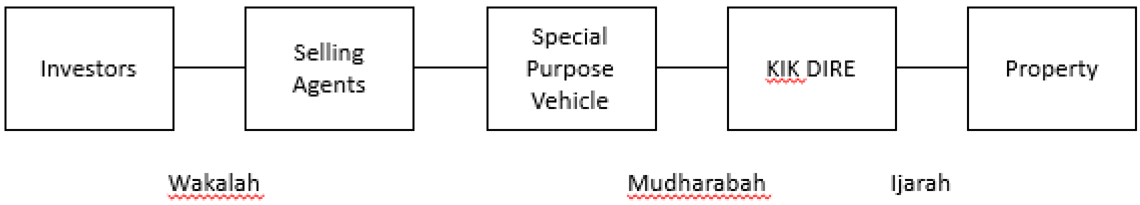
Besides guarantees the halal and thoyib transactions coming from the rental payment, also important to ensure other transaction. The property used in REITs invesment must be insured to cover any risks probably coming ahead. The risks are various like fire, flood, earthquake, riots, robbery, etc. The insurance company oppointed shoud be the insurance one which adopt shari'ah priciples. If there is no available insurance company that able to meet this kind of qualification, then DPS should make the decicion for that purpose. Either using the conventional insurance company or making any other possible solutions.

From the perspektif of the property using in Islamic REITs, there are some significant differences. In conventional REITs, the propertis used as the underlying assets are not limited. Any fix assets are welcome. Those properties are the fix assets rented due to their purpose such as residents, commercial, hotel, factory, parking hall, hospital. So far there is no data mentioned about any other use of the fix assets in REITs. In the point of view Islamic REITs, there are the limitations of use the fix assets or properties.

Alligne with the shari'ah priciples, all activities should free from the non-halal attributes. Hence, the rental practice is not allowed for any activities against shari'ah law. The rental activities are not fit to rental from hotel, ciggarettes factory, or any other activities against shari'ah law. Though, if some avoidable circumstances related to this rental appears, then DPS should make decicison. Either permit the renral up to some percentage alllowed, or totally giving the recomendation for not using that properties into this Islamic REITs establishment.

'Aqd (Contract) Used

The REITs scheme in general consists of following flow of four-parties involvement:



Then there are some possible 'Aqd (contracts) to be deployed and implemented to cover those flows of transaction and binding parties involved in each stage, when we are about implementing the Sharia scheme into general REITs scheme and establishing the Islamic REITs.

Mudharabah

Mudharabah (share agreement) which may incur the Profit-Sharing scheme or the Revenue-Sharing scheme, is the main 'Aqd that binds the investor (or also called *Shahibul Maal*) to the fund manager or Investment Management Company (or also called *Mudharib*). The law of Mudharabah absorbs in The Holy Qur'an from the surah Al-Baqarah article 198. And Also the Sunnah of The Prophet Muhammad thougt us about it. In Indonesia, this 'aqd is regulated in Kompilasi Hukum Ekonomi Syariah (Compilation of Economic Law Shari'ah) article 20 (4). Based on this share agreement, the investor agrees to invest some amount of fund as investment, to be invested in (and only in) the porfolio of REITs created, issued and managed by the Investment Management Company.

Same as in common Mutual Fund scheme, here the transaction to be covered would be quantified in the Unit of Investment and this can be translated into monetary amount of investment calculating the accummulated unit of investment purchased multiplied by Net Asset Value per Unit (or also called NAV per Unit). NAV per Unit itself is something that must be published daily by the Investment Management Company in the widereached media, both newspapers and or electronic media (such as portal or website) as first hand information for investors and other concerning parties on the performance of the fund. Back to *Mudharaba* scheme, the agreement would also contain the sharing portions between parties, which usually called *nisbah* which literally means 'portion'. Putting 60:40 or so 60/40 between parties commonly understood as out of agreed result to share (can be revenue or can be profits), the investor would get 60% out of it and the Investment Management Company would get 40% out of it.

The challenge comes to the stipulation of this mandatory content into a written agreement to be agreed, approved and signed by parties, which making the electronic enrollment and application becoming tricky and not as streamlined as conventional agreement which not oblige parties to do so. The standard agreement and its notice in the electronic format which accompanied by the default share portion and negative confirmation clause, a final disclaimer lines that stipulates "if the concerning parties do not address any objection, negation and or rejection on this, then the agreement made above is valid, accepted, agreed and binding all parties concerned".

Wakala

Wakala in general is the principle of representation when undertake the transaction. On top of the type, and the nature, of the transaction itself, the 'Aqd is governing the way the transaction is conducted by the parties involved through the involvement of their representatives. This representative is often called 'Wakil' literally means 'representative'. Here, to initiate, and or to conduct, and or to negotiate, and or to settle, a transaction, an appointee is nominated and or assigned to represent concerning party(ies) to make deals and or handle transactions for and on behalf of this party(ies)'s interests with its/their counterparts only specifically in this particular transaction or particular authority(ies). The use of Wakala in Islamic finance is very broad in scope and very wide in the nature of authority might be granted. Almost in every scheme and transaction type, Wakala is deployed either by active party, by passive party, and even sometimes by regulatory function party.

The appointment of Wakil in any Wakala 'Aqd is absolutely comply and adhere to Islamic view and regulation on the principles of appointment, principle or representation, and also principle of legal capacity of an individual. Here this means, only an individual, and or party, that meet requirements of legal capacity and making legal act, and meet the requirements to be appointed and to cater the tasks as representative, that can be nominated, appointed and authorized to act for and on behalf of the transaction's interest owner(s). The law of Wakala absorbs in The Holy Qur'an from the surah Al-Kahf article 19. And Also the Sunnah of The Prophet Muhammad thought us about it. In Indonesia, this 'Aqd is regulated in National Shari'a Board's decree (Fatwa DSN-MUI) No. 10/DSN-MUI/IV/2000 about Wakala.

Ijarah

In general Ijarah speaks about lease transaction, where the underlying assets, include if it is a real estate asset or property, is leased from one party to another one, and as compensation of this transaction, the rental fee is paid upon the right to use. Basic principles of this transaction consists of four elements: asset to be leased, lessor, lessee, rental fee. To be noted, rental fee is paid and calculated upon the 'right to use' without any transfer of ownership for whatsoever.

Accompanying other 'Aqd incorporated into this Islamic REITs scheme, Ijarah is essential in generating value, here it is rental fee as main revenue of the scheme, to be distributed among parties involved. To be noted here, that lease agreement is subject to further agreement among lessor and lessee, whether this can be done as pure lease (rental fee is paid only for the right to use without any open option to acquire the asset) or this can be done as lease and purchase agreement (where rental fee is paid for certain period for right to use, and asset is open to purchase in the end of the lease contract once the valuation meets the residual value of asset).

The law of Ijara absorbs in The Holy Qur'an from the surah Al-Baqarah article 233. And Also the Sunnah of The Prophet Muhammad thought us about it. In Indonesia, this 'Aqd is regulated in National Shari'a Board's decree (In Indonesia, this 'Aqd is regulated in National Shari'a Board's decree (Fatwa DSN-MUI) No. 44/DSN-MUI/VIII/2004.

Validity of Underlying Asset(s)

Unlike the conventional funds which based on paper assets and in REITs cases based on property assets, from the regulatory perspective and from the product compliance perspective, there is no issue or challenge of validity of underlying assets. As long as the regulatory and product compliance set by regulator are fulfilled (usually regarding legal terms, financial and accounting standard fulfillment, and market conduct aspects fulfillment), then no issue would raise and hinder the launch, the operations and the communication of the fund towards public. But in the case of establishment the Islamic REITs, as well as the same challenges faced by regular Islamic Mutual Funds, the validiy of underlying assets in the face of Shariah Law and principles would always raise as major issue to solve before the conventional regulatory sets.

The end side of the scheme, the REITs requires a property, or can be a set of properties, to be leased, to be treated as revenue generating asset(s) to gear out scheme and generating income to the involved parties in the scheme. However not every type of property can be accepted here. Refer to the principles of not accepting any items that are related to *riba*, *maysir*, *gharar*, and also in other view it is mandatorily for Moslems to avoid any practice that is seen as doubtful or also called as *syubhat* where the final state of being *haram* or *halal* is not yet reached, then it is essential to do total disclosure of property aimed for Islamic REITs use. There are two groups of classification to determine this acceptability: by the property type, and by the property usage.

From the property type, included in the list of accepted and allowed property to be part of Islamic REITs are hospitals, clinics, office buildings, shopping malls, warehouses, schools, campuses, parking lots, stores, apartments and residential properties. While from the property usage, included in the list of accepted and allowed property to be part of Islamic REITs are productive contracts (rent out, lease) for acceptable use by Shariah Law, means when the property type is included in the "white list" such as stores, but if the items sold are not acceptable by Shariah Law then the property is not accepted and allowed to be part of Islamic REITs scheme. Also in this context, the type of property within the "white list" but to be used in affiliation of something within *syubhat* or even under *haram* category, then it has to declined and rejected. Fall under this context to be examples are: schools for hoteliers, schools or campuses opened, operated and branded as education institution for other religion or other religious groups, same principle applies for hospitals and clinics. Further elaborations would cover also the context of cosmetic plastic surgery clinics, maternity clinics practicing abortion on request, warehouse used for non *halal* products to be stored, and apartments to be rent out to obviously non adherent group or type of tenants.

What are the consequences of the application of principles above? There are three possible direct consequences occur. Firstly is the narrower option to take for the Islamic REITs operators in establishing the fund. The available option in the property market can be much narrower compared to the conventional side. Commercial property markets in major cities in Indonesia currently is dominated by office spaces, shopping malls and hotels. Hotels would be waived from the acceptable list immediately. But office spaces and shopping malls are usually fall under the operator group and or owned by an institution that are usually hard to penetrate and reluctant to the external parties aiming for commercial and or financial scheme. The secondly thing impacting the scheme would be the profitability of available options, as the remaining items in the white list are most probably not in the top of the profitable item list. Also usually as the segmentations sometimes can be much clustered, the reach of audience can make things worse for some property type, such as acceptable type of clinics, schools, stores and apartments. Thirdly, direct consequence are somewhat positive to the scheme as the limitations apply can bring the benefit of preference to the targeted market. As the Moslems view things is so much black or white view between *halal* and *haram* state, the initial filtering on the property use for the Islamic REITs scheme would be advantageous particularly for the marketing communication, distribution and product communication aspects of the fund.

The Challenges of Islamic Reits in Indonesia

Although investment in REITs already become as one of the instrument investment in Indonesian capital market (IDX – Indonesian Stock Exchange) since 2012 still it does not popular and well-known in the community. There is the only one so far, the REITs exist in Indonesia. It known as Ciptadana mutual fund in REITs (KIK-DIRE). Ciptadana Capital is the company which issued this REITs. So far there is no more REITs issued yet. Hence, this articles is written to see whether the Islamic REITs can be the other type of REITs which is exist in IDX.

But, it seems there are some challenges to expand REITs as the investment alternative. The existance of REITs nowadays has some challenges. And so does the Islamic one. The barriers to entry for conventional REITs and the Islamic one in Indonesia that can be explained in few items as follows. The first, it is the matter of the tax rate in Indonesia. The value added tax rate (called PPN in Bahasa) for acquitition of fix assets in Indonesia would become the most important thing to be concerned. The 5% rate for the acquitition of fix assets is applied to both side, the seller and the buyer. Then, it is to be concern also about the land and property taxes (called PBB in Bahasa). There must be aware also about the potential tax rate that could be applied in REITs transaction since the transaction of REITs is not yet facilitated by the government in the taxation aspect. However, this challenges should not be the factor to be unconvinced the investor. Why? Because like other mutual fund investment, the government already applied some taxes holiday to attract the investor. Hopefully, there would be the same treatment for the mutual fund investment in property called REITs.

Second, REITs is not yet well known as the investment in mutual fund that is underlied by the properties in Indonesia. This factor could be overwhelmed by making some publicities about the REITs and the Islamic ones. The publicities itselves can be done by the private companies and / or the government to attract the investors. Hence, the community aware the existance of REITs and the Islamic ones as the kind of mutual fund investment instruments.
Third, as the country for Moslem community as the majority, actually there is a big potential market to sell the Islamic REITs as the investment instrument which alignes with the sharia. But, for the people here, the awareness of investing in sharia compliance investment instruments still need to be improved. Some Moslem people here still does not aware or care that the Moslem should obey the sharia as their guidance in every aspect of live. Include in the way they invest their money.

Fourth, it needs some research to explore whether the yield in investing in Islamic REITs are the same or higher or event lower than the yield of the conventional ones. To be able in selling any investment products, we need to know how profitable the product is. In Islamic REITs there are some restriction about the object used as underlying aspec since there will be prohibitation in it. It is clearly prohibited to applying the property such as hotels, ciggateres and/or tobacco factories, or other properties which are not using in any domains aligned with sharia. It is important to know wheter these prohibitions are affected in the yield of investment. Therefore, knowing the yields is something important. But if we can not find any Islamic REITs here to be researched, we can make the study by using the datas of the yield of the Islamic REITs in the country which has many similarities with Indonesia, like in Malaysia. The prelimanary study will be much useful for this purpose.

Conclusion

As the new investment instrument in capital market, REITs seems has a good opportunity to attract the public interest. Since this investment instrument is underlied by the property, therefore it considered as the investment in real sector eventhough it also trades in capital market infrastructure. The presence of Islamic REITs in Indonesian capital market (IDX) shows a brand new and specific choice of investment to the investors who wants to invest their fund accordant to shari'ah principles. The compliance aspects towards fiqh muamalah principles on this matter have been assessed in order to ensure that the scheme is well-aligned to shari'a principles. Islamic REITs as a new investment instrument is not yet established in Indonesia. Hopefully, it will be established soon and all of the upcoming challenges on it would be resolved, to allow the local and global Islamic investors obtain more alternative to invest their funds in Capital Market.

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