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Legal Consequences of Implementing Ijarah Contracts in Sukuk Issuance

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Article	Abstract
<p>Keywords: Sukuk, Ijarah, Sharia Investment.</p> <p>Article History: Received: December, 15 2022 Reviewed: April, 17 2023 Accepted: June, 13 2023 Published: June, 30 2023</p> <p>DOI: 10.30762/qaw.v7i1.192</p>	<p><i>Today the development of the Islamic capital market is showing rapid progress, this is evidenced by the increase in the index on the JII (Jakarta Islamic Index) list. One of the sharia financial products currently being developed is sukuk. According to OJK, Sukuk consists of ijarah, mudharabah and wakalah bonds. These three types are adjusted to the use of the contract at the time of its issuance mechanism which will lead to legal consequences. The purpose of this study is to provide an overview of the legal consequences of implementing ijarah contracts on the issuance of sukuk. The research method used in this study is a qualitative method with a descriptive approach, which collects data related to sukuk in ijarah contracts taken from sources such as books, journals, theses, and other related sources. The results of the study show that sukuk ijarah promises good profits for issuers or investors. This is due to the nature of ijarah contracts which are part of natural certainty contracts, namely contracts that provide certainty of profit payments, both the time period and the amount of payment. The stability of these risks will encourage people to participate, because people will tend to participate in sukuk that provide greater profits, are stable, and are resistant to the risk of loss.</i></p>

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INTRODUCTION

Although not yet as large as the Composite Stock Price Index (JCI), the increase shown is greater than the increase in the index in the JCI. The increase was motivated by the addition of the sharia concept which upholds the halal value of the product and emphasizes the blessings of the product. The existence of a sharia concept that prioritizes halal principles, free from usury and maisir invites interest from various parties to join the islamic capital market today.¹ Islam provides guidance in financing and is free from the forbidden elements of usury. This reason makes Sharia products increasingly preferred by the public.²

As for the investment, sedniri is indispensable for the development and development of the country's infrastructure. A country that still has a low level of investment is referred to as a developing country, because of the low funds raised and collected by the community which is not sufficient for domestic development needs. Therefore, the state is required to find a solution to the problem which is useful for overcoming existing shortcomings. One of the ways used is to apply for a loan abroad.³

The frequent world economic crisis makes countries in the world not want to stand idly by. Because it was recorded that from 1920 to the 20th century there have been at least 25 times the world economic crisis. Meanwhile, in 2018 it was reported that Indonesia has great potential in developing Islamic-based finance. This is supported by the majority of the Indonesian population who are Muslims. Sharia products are considered to be a solution in improving the Indonesian economy.⁴

The presence of Islamic financial products such as sharia invests is considered to be a solution to investment problems that have occurred recently. Some time ago, the community was shocked by the emergence of "fake" investments that offered lucrative profits. The emergence of the investment is accompanied by various modes, such as investing a certain amount of money and will receive a bonus every month. For example, an investment of 5

¹ Putri Dewi Angelina, "Tinjauan Sukuk Ijarah Dan Mudharabah Dari Segi Regulasi Dan Akuntabilitas Dengan Menggunakan Psak 110 (Perusahaan Penerbit Sukuk Yang Terdaftar Dalam Data Statistik Sukuk Otoritas Jasa Keuangan Tahun 2019)" (Sekolah Tinggi Ilmu Indonesia, 2020), 3.

² Rudi Bambang Trisilo, "Penerapan Akad Pada Obligasi Syariah Dan Sukuk Negara (Surat Berharga Syariah Negara/Sbsn)," *Economic: Jurnal Ekonomi Dan Hukum Islam* 4, No. 1 (2014): 18–38, [Http://Ejournal.Kopertais4.Or.Id/Tapalkuda/Index.Php/Economic/Article/View/782](http://ejournal.kopertais4.or.id/Tapalkuda/Index.Php/Economic/Article/View/782).

³ Alvien Septian Haerisma, "Tinjauan Maqasid Syari'ah Terhadap Obligasi Syariah (Sukuk)," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 2, No. 2 (2017): 136, <https://doi.org/10.24235/Jm.V2i2.2154>.

⁴ Doli Witro Dan Iwan Setiawan, "Sukuk And Bonds In Indonesia: An Overview," *Jurnal Akuntansi Dan Bisnis Syariah* 3, No. 2 (2021): 101–18. Doi :10.15575/Aksy.V3i2.14055.

million rupiah, it will get a 10% bonus, then if you succeed in inviting others to invest, you will get an additional profit of 15% every month. These cases invited the OJK (Financial Services Authority) to form an Investment Alert Task Force to pay attention to the large number of "fake" investments circulating recently.⁵ This is what encourages Islamic finance to grow because it applies the gharar principle, which is free from elements of fraud.

One of the Islamic financial products that is developing today is sukuk. Today sukuk has become one of the strongest elements in the Islamic economy. Sukuk has shown development in the international market as well as being able to become a developer in terms of financial cash flow outside the domestic.⁶ The development of sukuk is believed to be one of the most innovative developments of Islamic financial products in this contemporary era. This is because sukuk can be one of the sources of funding.

If viewed explicitly, the presence of sukuk is an answer to conventional bonds that are still shrouded in usury practices. The presence of this sukuk is an alternative financing instrument both for entrepreneurs and for the state which is based on sharia principles.⁷ Sukuk is also a form of investment that allows Muslim and non-Muslim investors to invest in Indonesia, which can be one of the supporters in the country's economic development.

Sukuk applied in Indonesia has various types, one of which is sukuk in the ijarah contract. Sukuk in this ijarah is a form of sukuk which is formed because of the ijarah contract by paying attention to the elements that are in accordance with the financing of the ijarah. Sukuk ijarah itself consists of various forms ranging from sukuk to ownership of leased assets, sukuk in ownership of benefits and sukuk in ownership of services.⁸

Sukuk as per the one used in the DSN-MUI fatwa is a contract that is far from the word usury. This sukuk is different from government money securities (SUN), Indonesian Retail Bonds (ORI), and Government Treasury Bills (SPN). Because in the Islamic economic view, the three bonds are types of bonds that are interest-based and contain usury so they are prohibited in Islamic law. So the presence of laws related to SBSN becomes a foundation that provides certainty in the halal and legality of state sukuk transactions for Muslim investors in

⁵ Elif Pardiansyah, "Investasi Dalam Perspektif Ekonomi Islam: Pendekatan Teoritis Dan Empiris," *Economica: Jurnal Ekonomi Islam* 8, No. 2 (2017): 337–73, <https://doi.org/10.21580/Economica.2017.8.2.1920>.

⁶ Muhammad Iqbal Fasa, "Sukuk : Teori Dan Implementasi," *Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam* 1, No. 1 (2016): 80, <https://doi.org/10.31332/Lifalah.V1i1.476>.

⁷ Fasa, 82.

⁸ Siti Nur Kholifah, "Eksistensi Sukuk Di Indonesia: Sukuk Mudarabah Dan Sukuk Ijarah," *Jurnal Hukum Dan Ekonomi Syariah* 08, No. 2 (2020): 155–66. <https://doi.org/10.32332/Adzkiya.V8i02.1981>.

the capital market. This is because in sukuk there is an underlying asset, which eliminates the gharar element in the state sukuk.⁹

Based on statistical data on sukuk by the Financial Services Authority (OJK), there are 3 types of sukuk, namely Ijarah, Mudharabah and Wakalah. The distribution is determined from the contract that underlies the issuance of the sukuk.¹⁰ According to Nasution and Faisal (2021), the existence and popularity of a sukuk is the basis for investors as a material consideration in the investment process which can run smoothly and meet the expected profit targets.¹¹ Meanwhile, according to Khalifah (2020), Sukuk ijarah can be said to be quite good for issuers who wish to issue sukuk. The returns that will be given to the sukuk ijarah holders are obtained from the rental proceeds with a fixed ijarah fee rate (fixed income). This ijarah fee is obtained from renting a place and has been determined beforehand, not depending on profit sharing like sukuk mudarabah.¹² According to Purnamawati (2015), due to differences in the three types of sukuk, the returns received by investors can be in the form of profit sharing, margin or fees.¹³ This shows that the application of the contract to the issuance of sukuk will determine the results and risks and consequences that will be obtained by investors, both related to the risk of profit and risk of loss.

Departing from that, this study will discuss the legal consequences of implementing ijarah contracts on the issuance of sukuk. The purpose of this study is to provide an overview regarding the legal consequences of implementing ijarah contracts on the issuance of sukuk. So that the results of this study are expected to be able to provide policy recommendations in understanding the legal consequences of issuing sukuk with ijarah contracts, especially for investors and practitioners of the Islamic capital market and for society in general.

⁹ Hapil Hanapi, "Penerapan Sukuk Dan Obligasi Syariah Di Indonesia," *Jurnal Ilmu Akuntansi Dan Bisnis Syariah* 2, No. 2 (2019): 253-254. Doi :10.15575/Aksy.V1i2.5553.

¹⁰ Iyah Faniyah, *Kepastian Hukum Sukuk Negara Sebagai Instrumen Investasi Di Indonesia*. (Yogyakarta: Deepublish, 2018), 71.

¹¹ Akmal Huda Nasution And - Faisal, "Eksistensi Dan Popularitas Sukuk Di Indonesia : Sukuk Ijarah," *Jakpi - Jurnal Akuntansi, Keuangan & Perpajakan Indonesia* 9, No. 1 (2021): 96, <https://doi.org/10.24114/jakpi.v9i1.25710>.

¹² Kholifah, *Eksistensi Sukuk Di Indonesia: Sukuk Mudarabah Dan Sukuk Ijarah*, 164.

¹³ Indah Purnamawati, "Perbandingan Sukuk Dan Obligasi (Telaah Dari Perspektif Keuangan Dan Akuntansi)," *Jurnal Akuntansi Universitas Jember* 11, No. 1 (2015): 62, <https://doi.org/10.19184/jauj.v11i1.1261>.

LITERATURE REVIEW

A. Ijarah Contract

1. Definition Of Ijarah

Linguistically, ijarah means to sell benefits. Ijarah is one of the muamalah activities which are related to the needs of human life such as rent, contracts and so on.¹⁴ As for the term ijarah, it is widely discussed by madzhab scholars. According to Hanafiyah scholars ijarah is a transaction of a benefit which expects a reward. According to Shafiiyyah ijarah whose law is mubah to be carried out which is related to the expediency of goods that allow certain substitutes. Meanwhile, according to the scholars Malikiyah and Hanabilah, ijarah is a type of contract whose law is mubah to be carried out and is related to the ownership of a benefit within the specified time and allows for a substitute.

Based on the above understanding, it can be understood that jumhur ulama agree that ijarah is to sell the benefits of an item, not to sell the object. So the jurisprudence scholars forbade renting out trees for fruit, farm animals for milk to be taken and other examples of the same. Because this is not only taking advantage of the object but also taking the object.

2. Legal Basis of Ijarah

Jumhur scholars agreed that ijarah is enshrined in the Qur'an, As-sunnah and also ijma'.¹⁵ The legal ijarah is a mubah based on the following Qur'anic postulates: Ath-Thalaq: 6, which means: "Women who do not menstruate anymore (menopause) between your wives if you are in doubt (about the period of idah) then the idah is three months; and so (also) women who do not menstruate. As for the women who are pregnant, their time is until they give birth to their womb. And whoever is devoted to Allah, he undoubtedly makes ease for him in his affairs" Then in Surah Al-Qhasas: 26, which means: "And one of the two (women) said, "O my father! Make him a worker (to us), indeed the kindest person you take as a worker (to us) is a strong and trustworthy person."

¹⁴ Nasroen Haroen, *Fikih Muamalah*. (Jakarta: Gaya Media Pratama, 2007), 228.

¹⁵ Muhamad Izazi Nurjaman Dudang Gojali, Iwan Setiawan, "The Concept Of Wages And Its Implication : Analysis Of The Ijarah And Ju ' Alah Contracts In Sharia Economic," *Jurnal Hukum Islam* 20, No. 2 (2022): 229–52. <https://E-Journal.Iainpekalongan.Ac.Id/Index.Ph/Jhi/Index>.

Meanwhile, the prophet's hadith can be found in a hadith narrated by Al Bukhari and Muslims that the Prophet saw. said: "The Messenger of Allah saw with a blessing, and then he gave wages to the artisans" (Diriwayatka of Ibn Abbas).¹⁶

3. Rukun Of with Ijarah

There is one pillar of ijarah, namely the words ijab and qabul. This utterance is a seductive expression of mu'jir as well as a phrase of mnerima sewaan delivered by musta'jir, this opinion was put forward by Hanafiyah scholars. Meanwhile, according to jumhur ulama rukun ijarah, there are four types, namely:¹⁷

- a. 'Aqid (the one who is a man of cahoots).
- b. Shigat Akad
- c. Ujrah (Wages)
- d. Benefits.

According to the Hanafiyyah oang scholars who are berakad, ujrah and benefits are included in the requirements of ijarah.¹⁸ Meanwhile, in article 251 of the Compilation of Sharia Economic Law, there are also four pillars of ijarah, namely the party who rents, the party who rents, the object that becomes the obek ijarah, and the contract.¹⁹ In the case of a contract, it does not have to be as clearly evaporated. Contracts can be done in other ways such as contracts with oral, contracts with tulian or contracts with sign language for people who have special needs or are unable to perform contracts orally, in writing or in clear speech, this is conveyed in article 252 of the Compilation of Sharia Economic Law.

4. Terms of Ijarah

- a. The one who has the right ('Aqid)

The people who perform the contract according to Shafi'iyah and Hanabilah must be people who are already balig and also sensible. This is because if done by a small child or a lunatic, it can cause losses from one of the parties. Therefore, the contract performed by a madman or the contract performed by a small child of his contract is considered invalid. However, according to the Hanafi And Maliki Schools, the party who has the obligation does not necessarily have to baligh, even

¹⁶ Syihabuddin Ahmad, *Ibanah Al-Ahkam Syarh Bulugh Al-Maram* (Beirut: Daar Al-Fikr, 2004), 181.

¹⁷ Doli Witro Et Al., "Analisis Implementasi Akad Ijarah Di Perbankan Syariah Berdasarkan Regulasi Dan Fatwa," *Asy-Syari'ah* 23, No. 2 (2022): 279–96, <https://doi.org/10.15575/As.V23i2.14141>.

¹⁸ Haroen, *Fikih Muamalah*, 231.

¹⁹ Mahhakah Agung, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Mahkamah Agung Republik Indonesia, 2008), 70.

a small child on the condition that mumayiz can perform a contract including an ijarah contract with the condition that he gets approval from his guardian to perform the contract, and there is no coercion from any party.

b. Shigat (ijab and Qabul)

The ijab qabul that is carried out must be clearly spoken or must be understood between the two sides that are in cahoots so as not to cause doubts and also conflicts between the two sides.

c. Ujrah (wages)

According to the scholars, the wages disclosed in the payment of the ijarah rent must be clear both in terms of type and amount and it is not allowed that the wages given are of the same type as the goods rented. For example, the wages of renting a house to be occupied by occupying the house. As for the wages given in the ijarah can be classified as: first, the wages given at the beginning of the contract, then the wages are required to be accompanied by a willingness between the two parties, namely 'ajir and musta'jir, the wages are called al-Musamma. Second, it is the wages that are equal to the level of work or it is said that the level of work with wages is decent. Or it can also be said to be the prevailing wages in general. The wage is called al-mitli.²⁰

d. Benefits

In relation to benefits, the goods leased must be clearly beneficial, and those benefits are those that may be used for matters justified in the syara'.

5. Contemporary Ijarah Practices

a. Ijarah Muwazzi

Ijarah muwazzi is often referred to as parallel ijarah, which is to rent the property of another person (third party) to someone. The condition must be to obtain permission and approval from the owner of the goods. The law of ijarah like this is mubah slama there is permission and keridhoan from the owner of the barabg. If you don't get permission, the law will not be fooled. This kind of contract is usually one of the products in banking.

b. Ijarah Maushufah fi al-Dzimmah (IMFZ)

One of the ijarah contracts practiced in this contemporary era is the ijarah maushufah fi al-dzimmah (IMFZ). This contract is one of the development results

²⁰ Nurul Huda, *Ekonomi Makro Islam: Pendekatan Teoritis* (Jakarta: Kencana Prenada Media Group, 2008), 230.

of the ijarah contract known so far. The IMFZ contract is a form of lease agreement for an item, but the goods do not yet exist but only mention the quality and quantity. However, this contract is allowed in Islam based on the DSN-MUI fatwa No. 1022 which states that the IMFZ contract is one of the contracts justified by Shari'a on the condition that it follows the applicable provisions. This contract is one of the contracts applied in sharia financial institutions (LKS).

According to the Malikiyyah scholar as quoted in the book in the book of *Bidayatul Mujtahid* by Ibn Rusyd, it states that the ujah in the IMFZ contract must be paid in advance, that is, at the time of the contract. This is so that the contract carried out is avoided from buying and selling receivables.

Meanwhile, according to the Hanabi scholars quoted in *kita al-kafi fi Fiqh Ibn Hanbal* a work from *ibn qudamah* states that there are two opinions in the payment of the IMFZ contract. First, ujah can be paid at the end of the contract. This is based on the ability to terminate the payment of ujah in accordance with the agreement. Second, ujah must be paid in advance, that is, when the contract takes place, this postulates on having to pay a price (*tsaman*) in buying and selling greetings. This opinion is the same as that of shafi'iyah scholars who argue that ujah in the IMFZ contract, must be paid at the beginning, namely in the contract assembly such as the payment of *tsaman* on the greeting contract.

B. Sukuk

1. Definition of Sukuk

Sukuk is a plural word of the word "sakk" from Arabic meaning certificate or proof of ownership. Meanwhile, according to the Accounting and auditing organizing for Islamic Finaancial Institutions (AAOIFI), "This sukuk is a form of certificate that is of the same value and represents an integral part in the ownership of tangible assets, benefits or services, or ownership of the assets of a particular project or investment, which occurs after the sukuk funds are received, the closing of the order, and the sukuk funds received are used in accordance with the purpose of issuing sukuk."²¹

Meanwhile, in the fatawa of the National Sharia Council (DSN) *mejelis Ulama Indonesia* (MUI), the word sukuk is not used, but DSN-MUI uses the term sharia bond. "Sharia bonds are in accordance with fatwa number 32/DSN-MUI/IX/2022 is a long-term securities in accordance with sharia principles issued by the issuer to the holders

²¹ Nana Diana And Novian Ekawaty, "Penerbitan Sukuk Mudharabah Dan Capital Adequacy Ratio Terhadap Profitabilitas," *Kajian Ilmiah Akuntansi* 7, No. 2 (2020): 116–33. Doi: 10.30656/Jak.V7i1.1826.

of Islamic bonds which give rise to an obligation to the issuer to pay income to the holders of Islamic bonds with a profit sharing / margin / fee and repay the bond funds at a predetermined maturity".²²

The difference between sukuk and conventional bonds is the use of a profit-sharing system as an eraser from the interest system applied in conventional bonds. Then sukuk also carries the concept (underlying transaction) in the form of a number of assets that become sukuk issuance, and the parties in it are regulated in accordance with Islamic principles. In addition, the practice of sukuk must be free from the elements of usury, gharar and maisir. So the mention of sukuk often uses the word Islamic bond.²³

2. Sukuk Foundation

In the Financial Services Authority (OJK) regulation No. 18/POJK.04/2015 concerning the Issuance and Requirements of Sukuk as explained in article 2 that the assets underlying sukuk must be in accordance with sharia principles and free from elements that are forbidden in the Islamic economy such as usury, gharar, and maisir. The legal basis for the regulation is Q.S Ali-Imran: 130 which means: "O people of faith, do not eat usury by multiplying and be devoted to Allah so that you may be lucky". Then it is also explained in Q.S Al-Baqarah: 275 which means: "those who eat usury cannot stand, but rather like the stood of a person who entered satan because of madness. This is because they say that buying and selling is the same as usury. Even though God has justified buying and selling and forbidden usury. Whoever gets a warning from his Lord, and then he stops, then what he gets first belongs to him and his business (it is up) to God. Whosoever repeats, then they are inhabitants of hell, they are eternal in it".

In accordance with the OJK regulations which must be based on sharia principles, which consist of:²⁴

- a. Certain tangible assets (a'yan maujudat)
- b. The value of benefits from tangible assets (manafiul a'yan), both existing and future
- c. Predetermined investment activities (nasyat istismarin khasah)
- d. Services (al khadamat)

²² Diana And Ekawaty, 121.

²³ Imam Azizuddin, "Implementasi Akad Ijarah-Asset To Be Leased Pada Transaksi Sukuk Ritel Di Bank Syariah Mandiri Cabang Jombang," *Jurnal Baabu Al-Ilmi: Ekonomi Dan Perbankan Syariah* 5, No. 2 (2020): 190, <https://doi.org/10.29300/Ba.V5i2.3653>.

²⁴ Sri Kasnelly, "Sukuk Dalam Perkembangan Keuangan Syariah Di Indonesia Oleh:," *Aktualita: Jurnal Penelitian Sosial Dan Keagamaan* 11, No. 1 (2021): 1–13. <http://www.ejournal.an-nadwah.ac.id/index.php/aktualita/article/download/239/193/>.

- e. certain project assets (maujudat masyru' mu'ayyan).

METHOD

This research uses a qualitative method with a descriptive approach, which collects data related to sukuk in the ijarah contract taken from sources such as books, journals, skripsi, thesis, and other related sources. Then these data are explained in the form of description both in terms of the meaning of sukuk, the understanding of ijarah, the legal basis, the development of sukuk ijarah in Indonesia and other matters related to the title of the study.²⁵ The type of research used is library research, where the sources found come from books, journals and other written sources.²⁶

FINDING AND DISCUSSION

Development of Global Sukuk

The development of global sukuk is quite a surprising number. In 1990, since the release of sukuk, it has continued to show its consistency in the realm of the global Islamic economy. Although it had experienced a decline in 2008 caused by the world financial crisis and the emergence of words from Maulana Taqi Usmani who was one of the fiqh scholars at that time, who argue that the form of sukuk development in the world is not in accordance with sharia rules. However, in 2009 sukuk issuers experienced a significant increase. It was even recorded that in 2010 the development of sukuk showed an increase of 77.11% which reached USD 52.93 billion. This increase is one of the great achievements of sukuk when compared to previous years. This shows that the prospects for the development of world sukuk are quite promising. Investor confidence that has increased over time has made sukuk continue to exist until now. Even the unexpected thing began to happen, namely in the issuance of sukuk in 2020. At that time sukuk issuance reached its highest point in the history of global sukuk. Even in 2021, the trend of issuing sukuk, both in the amount and value of issuers, will exceed the achievement of.²⁷

The emergence of the sukuk market began with the issuance of sukuk worth USD 600 million in 200 in Malaysia. The publication was characterized as a large sukuk issuance at that time. Then followed by Bahrain which issued sovereign sukuk by implying ijarah and salam contracts. Initially, the sukuk issuance was centralized in Middle Eastern countries that are members of the Gulf Cooperation Countries (GCC) followed by some countries in Asia, with

²⁵ C Sevilla, *Pengantar Metodologi Penelitian* (Jakarta: Uii Press, 2008), 34.

²⁶ V. Wiratna Sujarweni, *Metodologi Penelitian*, (Yogyakarta: Pustaka Baru Press, 2014), 73.

²⁷ Kholifah, "Eksistensi Sukuk Di Indonesia: Sukuk Mudarabah Dan Sukuk Ijarah, 156.

the number of issuances during the period 2001-2007, 62.1% were published in GCC countries, and 36% were published in Asia, especially Malaysia, Brunei and Pakistan.²⁸

The development of this sukuk is strongly supported by regulators and governments in Kaasan Gulf and Asia. At the time of ni counting, there were already very many countries that issued sukuk as a payment instrument. Viewed in 2001 only two countries issued sukuk. Then followed by in 2011 there were 17 countries that issued sukuk. The country with the most sukuk holders in the world is still in the hands of the United Arab Emirates and Malaysia. Based on data from the International Islamic Financial Market's Organization, in the 1st semester of 2011 more than USD 147,549 billion (74.84% of sukuk issued in the world were sukuk issued by Malaysia and the UAE. Meanwhile, Malaysia alone controls around 58.51% of sukuk from all sukuk issuances in the world.²⁹

However, in 2018, Indonesia became the largest global sukuk issuer in the world with a value of US\$ 16.15 billion as of September 2018, this value surpassed Saudi Arabia which only issued US \$ 9 Billion As for now based on data from the OJK, the number of corporate sukuk issuances until September 2021 then reached Rp.65.41 trillion with an outstanding value of 37.16 trillion. However, in 2018, Indonesia became the largest global sukuk issuer in the world with a value of US\$ 16.15 billion as of September 2018, this value surpassed Saudi Arabia which only issued US\$ 9 Billion As for now based on data from the OJK, the number of corporate sukuk issuances until September 2021 then reached Rp.65.41 trillion with an outstanding value of 37.16 trillion.³⁰

Development of Indonesian Sukuk

Indonesia is one of the most numerous sukuk issuers. The sukuk that first appeared in Indonesia was a corporate sukuk issued by PT Indosat Tbk in the form of Indosat's OS Mudharabah to coincide with the end of October 30, 2002. The sukuk is issued with an emission value of 175 billion with a tenor of approximately five years. Based on the Sharia Banking Development Report (LPPS) in 2010, sukuk issued by Bank Indonesia reached 47 pieces, with a total emission of Rp.7.81 trillion.³¹

The development of sukuk in Indonesia has had a very extraordinary impact, as evidenced by the many achievements of the government in the last 10 years, especially after the issuance of the sukuk instrument. In 2018, state sukuk has been issued more than Rp. 950

²⁸ Melis, "Perkembangan Sukuk Di Indonesia, Malaysia, Dan Dunia," *Economica Sharia* 2, No. 2 (2017): 72–87. <https://doi.org/10.36908/Esha.V2i2.97>.

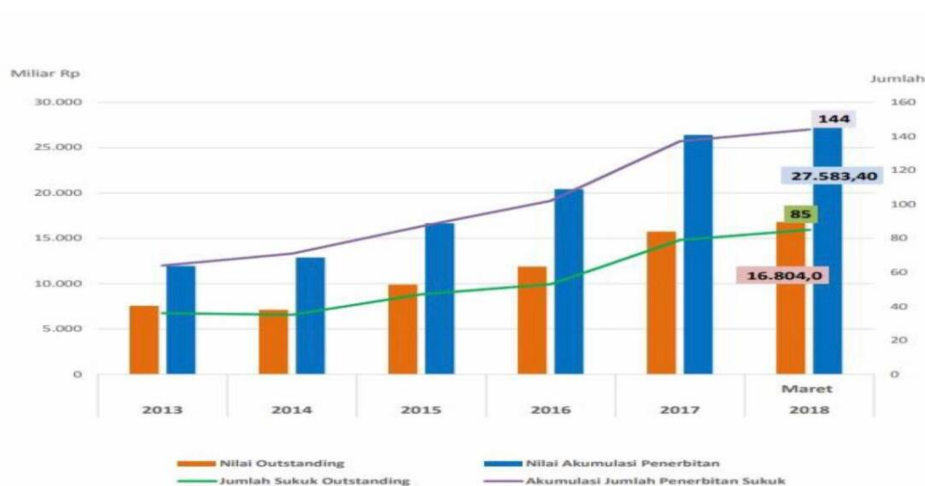
²⁹ Handytio Nugroho, "Perkembangan Sukuk Di Dunia" (Universitas Indonesia, 2013), 18.

³⁰ Nugroho, 20.

³¹ Kasnelly, "Sukuk Dalam Perkembangan Keuangan Syariah Di Indonesia, 8.

trillion with outstanding of Rp. 657 trillion through auctions, book buildings, and private placements. Currently, Even Indonesia is the largest global sukuk issuer in the world with a value of US\$ 16.15 billion as of September 2018, this value surpasses Saudi Arabia which only issued US\$ 9 billion.³²

Figure 2.1 Development of Sukuk Based on OJK in 2018



The Indonesian government issues retail sukuk known as SR013, which is a form of innovation declared by the DSN-MUI, which is offered to every individual (Indonesian citizen) as a safe, easy, affordable, and profitable investment. The SR013 can be ordered with a price range starting from Rp.1 million with a reward every month.³³

Although it is fairly longer in circulation than other countries such as Malaysia, Bahrain and Pakistan, sukuk in Indonesia is not inferior in its current development. State sukuk was first published in 2008 after the issuance of Law Number 19 of 2008 concerning National Sharia Securities (SBSN). The sukuk that applies in Indonesia for now is classified as 6 contracts, namely: Mudharabah, Musyarakah, Murabahah, Salam, Istishna and Ijarah.

The existence of the implementation of the habit of issuing state sukuk as financing the state budget deficit, causes the issuance of state sukuk to increase from year to year in accordance with the developments and strategies set by the state budget. To continue to meet the financing of the state budget deficit, the government is currently continuing to develop National Sharia Securities (SBSN).

³² Faried Ma'ruf, "Review Peluang Dan Tantangan Sukuk Di Masa Pandemi Covid-19 Sebagai Instrumen Keuangan Syariah Indonesia," *Jurnal Bisnis, Keuangan Dan Ekonomi Syariah* 1, No. 1 (2021): 1–8.

³³ Ma'ruf, 4.

The issuance of sukuk in Indonesia will be monitored by the trustee and also supervised by the Sharia Supervisory Board or DPS. The existence of strict supervision related to the issuance of sukuk aims to guarantee the sukuk issued by the issuer from things that are forbidden. The sukuk issued must be a sukuk based on sharia rules, free from usury, gharar, and maisir. The halalness of sukuk can be one of the attractions for investors to invest in sukuk. In addition, it also aims to make sukuk far from the elements forbidden by religion.³⁴

The legal basis of sukuk can be seen in Q.S. Al-Baqarah: 282 which means "O people of faith, if you are mu'amalah not in cash for the appointed time, you should write it down. And let a writer among you write it correctly. And let not the author be reluctant to write it as God taught it".

In order to be categorized into sukuk labeled with sharia, there are several categories that must be met by the sukuk issuer, namely:³⁵

- a. The sukuk issued is proof of title to the underlying asset, and does not constitute the issuance of debt securities;
- b. In issuing the sukuk, it must use a clear contract and avoid forbidden things such as usury, gharar, and maisir;
- c. The sukuk issued must have a sharia supervisor so that the actions he takes do not interfere with the established sharia rules;
- d. Businesses operated using sukuk funds are not businesses that are regulated in sharia, such as liquor, prostitution, gambling and other forbidden things.

Legal Consequences of Implementing Ijarah Contracts in Sukuk Issuance

The ijarah contract used in the issuance of sukuk is called sukuk ijarah. In sukuk ijarah issuers here transfer benefits from the object of the ijarah contract to investors. Then the investor receives the benefit of the object of the ijarah in the form of a fixed asset, of which the form and specifications are clear.

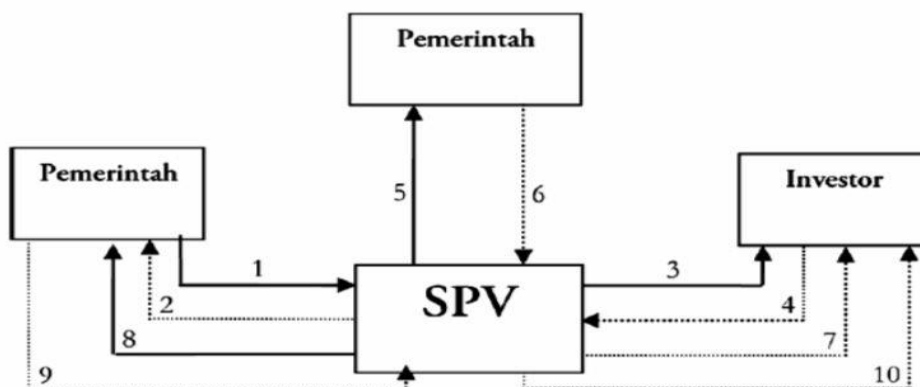
Then the investor who is reinstated by the trustee of the sukuk gives power by using the wakalah contract to the issuer to lease it to a third party. Here the issuer is the beneficiary of the power of attorney, while the investor is the mu'jir who gives the lease to a third party (musta'jir). Then the third party provides rent payments to the issuer. Meanwhile, the issuer provides rent

³⁴ Kholifah, "Eksistensi Sukuk Di Indonesia: Sukuk Mudarabah Dan Sukuk Ijarah, 163.

³⁵ Kholifah, 163.

payments to investors in the form of ijarah fee installments which are paid when the sukuk maturity occurs.³⁶

Figure 2.2 Skim Sukuk Ijarah model



Explanation:

- In the contract scheme above, it can be seen that SPV buys assets sold by the government using bay' al-wafa' contract, which is a form of buying and selling using an agreement in which later the government will buy back the assets sold to SPV.
- After making the contract, the SPV will pay the price and the government will get paid. The consequence is that SPV becomes the owner of the asset automatically when a payment has occurred.
- After that, SPV issues sukuk or Islamic bonds and sells them to investors using ijarah contracts.
- After the issuance of sukuk with an ijarah contract, the SPV will get money from investors;
- Then the government also issued asset leases to SPV at an agreed rental price.
- SPV also gets paid from the government for the lease of its assets periodically in accordance with the agreed time.
- Then the investors also get paid from the SPV lease which then becomes a source of income for the investor.
- In the period of naturity, SPV will resell the assets to the government at the same selling price as the original selling price.
- The government pays the asset at a cash price
- The sukuk for these investors will be redeemed at the same price by the SPV.

³⁶ Febriyadi Tri Hadmoko, Eko Hadi Kusuma, And Amrie Firmansyah, "Febriyadi Tri Hadmoko Eko Hadi Kusuma Amrie Firmansyah Account: Vol 7 No 2 Febriyadi Tri Hadmoko, Eko Hadi Kusuma, Amrie Firmansyah" 7, No. 2 (2018): 1299–1308. <https://doi.org/10.32722/acc.v7i2.3547>.

Sukuk ijarah is one type of sukuk that can be traded. These sukuk holders are entitled to receive rent and can transfer their ownership without having to affect the rights of tenants. This is because sukuk ijarah is a tradable sukuk. However, the damage and care that occurs to this sukuk ijarah is the responsibility of the sukuk owners according to their respective portions of ownership.

This sukuk ijarah is one of the securities that represents the ownership of an asset whose existence is clear and known by all parties. In this sukuk ijarah the leased assets must be clearly known by the parties to the contract. The object of ijarah in this sukuk can be in the form of asset benefits and rent payments or it can also be in the form of service benefits and wage payments. In this sukuk ijarah there are three parties involved, namely the recipient of the ijarah (originator), the sukuk issuer and investors.³⁷

If you pay attention to the truth in retail sukuk, it does not only use the ijarah contract, but also there is a kafalah contract and also a wakalah contract. The kafalah contract is a contract issued when the emission expenditure will be used as collateral for the sukuk to be issued. Meanwhile, the wakalah contract is used when the issuance of sukuk which acts as a representative in the process of the occurrence of sukuk to emissions.³⁸

One example of a sukuk that uses the ijarah contract is the asset to be leased (Ijarah al-Mau'ud Bisti'jariha (IMMB)). Project Based sukuk (PSB). This PSB sukuk is one of the sukuk that has developed in this contemporary era. This sukuk has several contracts involved in it. The main contract used in the PSB is the ijarah contract, with a special structure of ijarah asset to be leased (Ijarah al-Maujudat al-Mau'ud Bisti'jariha (IMMB)). The DSN-MUI fatwa states that bahw aakad IMMB is a halal contract and in accordance with the principles of Islamic law. As for what is meant by the IMMB contract in the DSN-MUI fatwa No. 76 / DSN-MUI / VI / 2010 "is an ijarah contract in which the object of the ijarah has been determined by its characteristics and specifications in full, and part of the ijarah object is already at the location of the contract at the time of the contract. However, the object of the ijarah is not directly handed over but rather handed over in the future in accordance with the agreement of the parties."³⁹

Sukuk ijarah until now is a sukuk that is often used and includes sukuk that has been popular from the beginning of its publication until now. This can be seen from the results of the

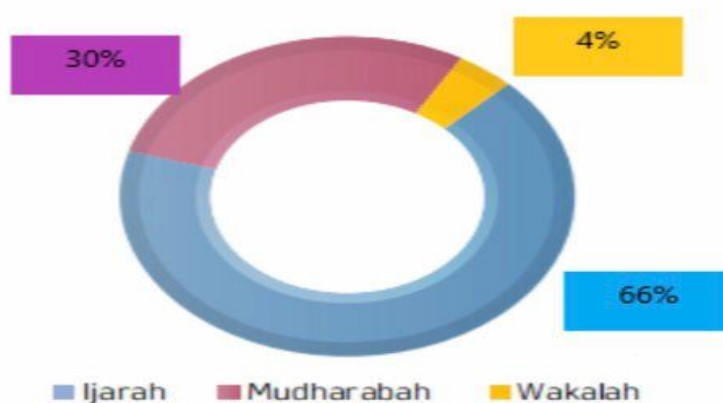
³⁷ Lanang Sakti And Nadhira Wahyu Adityarani, "Tinjauan Hukum Penerapan Akad Ijarah Dan Inovasi Dari Akad Ijarah Dalam Perkembangan Ekonomi Syariah Di Indonesia," *Jurnal Fundamental Justice* 1, No. 2 (2020): 39–50, <https://doi.org/10.30812/Fundamental.V1i2.900>.

³⁸ Azizuddin, "Implementasi Akad Ijarah-Asset To Be Leased Pada Transaksi Sukuk Ritel Di Bank Syariah Mandiri Cabang Jombang. 91.

³⁹ Taufiq Kurniawan And Asmak Al Rahman, "Analysis Of The Application Of The Ijarah Contract In Sukuk Project Based In Indonesia" 19, No. 1 (2019): 37–54. Doi: 10.30631/AI-Risalah.V19i1.254.

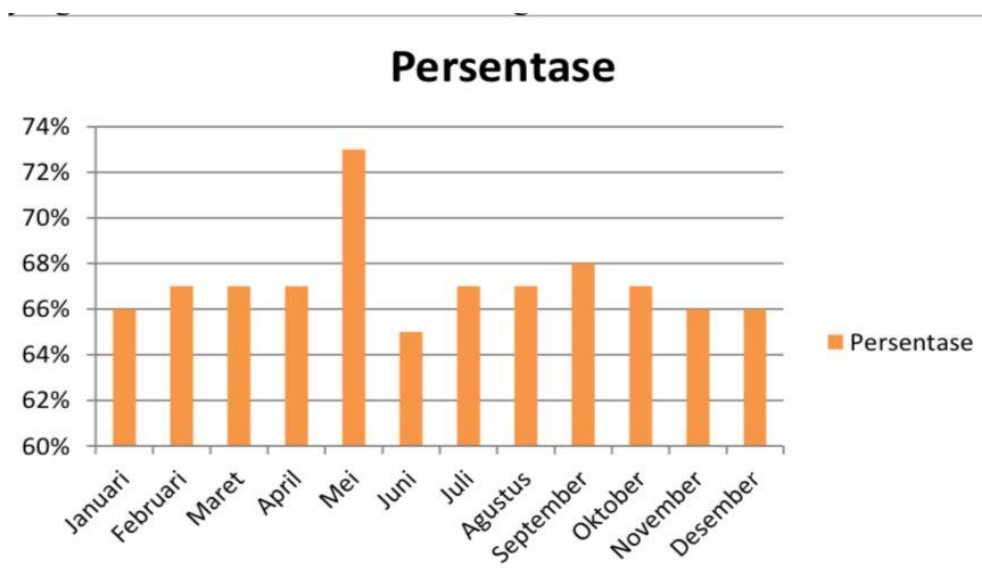
issuance of sukuk ijarah either issued by the state or issued by corporations. The development of sukuk ijarah is because people have more confidence in sukuk ijarah which is considered to be more underwriters because of the existence of a fixed coupons. Currently, the demand for sukuk ijarah is still stable and even continues to increase, even though this sukuk is actually quite a high risk, especially during this pandemic.

Gmbar 2.3 Sukuk Type Percentage Scheme Based on Outsanding Sukuk.



Based on the picture above, it can be seen that the sukuk that is most in demand by the community is the ijarah sukuk with a figure reaching 66%. The good public assessment of sukuk ijarah is due to a more profitable profit-sharing system when compared to other contracts. Even though in 2020 there was a decrease in the number of public purchases of secondary products, sukuk ijarah remained at a stable rate. The presentation of the circulation of Ijarah sukuk in 2020 based on data released by the OJK is as follows:

Figure 2.4. Percentage of Sukuk Ijarah Outsanding During 2020



From the chart above, it can be seen that the sukuk ijarah circulating in the 2020 period has a fairly stable figure, there is no figure that shows 50% and below but only ranges from 65% to 73%. Even though it is shrouded in a pandemic that is quite worrying for the economy, sukuk ijarah is not affected by this situation. Thus, the legal consequences of implementing an ijarah contract in the issuance of sukuk promise good profits for issuers and investors. This is due to the nature of the ijarah contract which is part of the natural certainty contract contract, which is a contract that provides certainty of payment of profits, both in terms of the time period and the amount of payment. So that the stability of this sukuk ijarah, can be seen from two indicators, namely: First, a clear term of payment of benefits. Second, the amount of payment must also be clear in shape and size. Both of these indicators are based on the terms of payment of ujarah for the benefits of goods, which must be clear in terms of time and amount. Of course, sukuk ijarah will be able to encourage people to participate, because people will tend to participate in sukuk which provide greater profits, are stable, withstand the risk of loss and are able to provide stability in the country's economic traffic in the capital market sector.

CONCLUSION

Based on the discussion above, it can be understood that the legal consequences of implementing an ijarah contract on the issuance of sukuk indicate that the sukuk ijarah promises good profits for issuers or investors. This is due to the nature of ijarah contracts which are part of natural certainty contracts, namely contracts that provide certainty of profit payments, both the time period and the amount of payment. So that the stability of this sukuk ijarah, can be seen from two indicators, namely: First, a clear term for payment of benefits. Second, the amount of payment must also be clear in form and size. Both of these indicators are based on

the conditions for paying ujarah for the benefit of goods, which must be clear about the time and amount. Ijarah sukuk will certainly be able to encourage people to participate, because people will tend to participate in sukuk that provide greater profits, are stable, and are resistant to the risk of loss.

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