

**THE *MAQASID AL-SHARIAH* PARAMETER FOR
SUKUK STRUCTURE IN INDONESIA**

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THE *MAQASID AL-SHARIAH* PARAMETER FOR SUKUK STRUCTURE IN INDONESIA

by

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LIST OF ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institution
BUMN	State-Owned Enterprise
DPS	<i>Shariah</i> Supervisory Board
DSN – MUI	The National <i>Shariah</i> Board of the Indonesian Ulema Council
ESG	Environmental, Social, and (Corporate) Governance standards
FAS	Financial Accounting Standard
FSA	Financial Services Authority
FSAR	Financial Services Authority Regulations
IAI	Indonesia Chartered Accountants
IFI	Islamic Financial Institutions
IFRS	International Financial Reporting Standards
JII	Jakarta Islamic Index
KNEKS	National Committee of <i>Shariah</i> Economy and Finance
MSMEs	Micro, Small, and Medium Enterprises
PP	Government Regulation
PPh	Income Taxes
PSAK	The Statement of Financial Accounting Standards
PWA	Trustee agreement
SFAS	<i>Shariah</i> Financial Accounting Standard
SDGs	Sustainable Development Goals
SPV	Special Purpose Vehicle
UUS	<i>Shariah</i> Business Unit
VAT	Value-Added Tax

TRANSLITERATION GUIDE

RUMI LETTERS	ARABIC LETTERS	RUMI LETTERS	ARABIC LETTERS
t	ط	-	ا
z	ظ	b	ب
‘	ع	t	ث
gh	غ	th	ت
f	ف	j	ج
q	ق	h	ح
k	ك	kh	خ
l	ل	d	د
m	م	dh	ذ
n	ن	r	ر
w	و	z	ز
h	ه	s	س
’	ء	sy	ش
y	ي	s	ص
t	ة	d	ض

SHORT		LONG		DIPHTHONG	
a	ـَ	A	آ	Ay	أَيَّ
i	ـِ	I	إِيَّ	Aw	أَوْ
u	ـُ	U	أُوَّ		

Source: *Guidelines for Transliterating Arabic Letters to Rumi*, Dewan Bahasa dan Pustaka (DBP) (1992).

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PARAMETER *MAQASID AL-SHARIAH* UNTUK STRUKTUR SUKUK DI INDONESIA

ABSTRAK

Kajian ini dijalankan bertujuan adalah untuk membentuk parameter *Maqasid al-Shariah* yang boleh digunakan untuk struktur dan perakaunan Sukuk di Indonesia, bagi memaksimumkan potensi Sukuk dalam meningkatkan kesejahteraan sosial dan pembangunan. Parameter Sukuk yang dibentuk adalah berdasarkan analisis perspektif pemikiran ulama Islam di dalam *Maqasid al-Shariah* kekayaan. Kajian ini menggunakan metodologi kualitatif dengan menggunakan data primer dan data sekunder. Data primer dikumpulkan melalui temu bual mendalam melibatkan 11 pakar di dalam bidang kepakaran masing-masing. Manakala data sekunder telah digunakan untuk memahami dan menyelesaikan permasalahan kajian ini secara sistematik. Kajian ini juga menggunakan rangka kerja metodologi *Maqasidi Wahyu* untuk membangunkan dan mencadangkan parameter *Maqasid al-Shariah* bagi terbitan Sukuk di Indonesia. Dapatan kajian ini menjelaskan bahawa tujuan kekayaan adalah untuk memakmurkan manusia dan alam sekitar. Oleh itu, terbitan Sukuk dapat digunakan sebagai suatu instrumen kekayaan supaya kekayaan boleh dimiliki dan dimanfaatkan oleh manusia. Walau bagaimanapun, Islam mengesyorkan ‘tahap yang mencukupi’ sebagai penanda aras dalam pemilikan kekayaan. Tahap tersebut mewakili pemilikan harta yang mencukupi untuk hidup secukupnya tetapi tidak berlebihan, yang menjadi tahap yang paling ideal dan disyorkan Islam. Oleh itu, parameter *Maqasid al-Shariah* Sukuk, yang dibentuk dalam kajian ini dibangunkan berdasarkan parameter *Maqasid al-Shariah* kekayaan (pada tahap yang mencukupi) yaitu 1) *Maqasid al-*

Shariah Pemilikan Kekayaan; 2) *Maqasid al-Shariah* Pemerolehan Kekayaan, dan; 3) *Maqasid al-Shariah* Peredaran/Pembangunan Kekayaan. Berdasarkan skop tiga dimensi *Maqasid al-Shariah* kekayaan ini, kajian ini mencadangkan parameter *Maqasid al-Shariah* Sukuk di Indonesia seperti berikut: a) Berdasarkan Skim Terbitan Sukuk; b) Tujuan Dana Sukuk; c) Aset Asas Sukuk; d) Perjanjian dalam Perjanjian Pemegang Amanah; dan e) Pelayanan Perakaunan Sukuk. Parameter *Maqasid al-Shariah* Sukuk ini penting kerana ia merupakan pendekatan baru untuk memahami *Maqasid al-Shariah* dalam pengamalan Sukuk Indonesia, agar Sukuk dapat menjadi instrumen kewangan syariah yang membawa kesejahteraan (*maslahah*).

THE *MAQASID AL-SHARIAH* PARAMETER FOR SUKUK STRUCTURE IN INDONESIA

ABSTRACT

The purpose of this study is to recommend applicable *Maqasid al-Shariah* parameters for Sukuk structure in Indonesia, in order to maximise Sukuk's potential of improving social well-being and development. The Sukuk parameters are analysed based on the perspective of Islamic scholars on the *Maqasid al-Shariah* of wealth. This study uses qualitative methodology by using primary data and secondary data. Primary data was collected through in-depth interviews with 11 experts in their respective fortes. Secondary data is used to systematically understand and solve the research problems. This study also used the *Maqasidi Wahyu* methodological framework to develop and propose *Maqasid al-Shariah* parameters for Sukuk issuance in Indonesia. The findings of this study suggest that the purpose of wealth is to prosper human and the environment they live in. Therefore, the issuance of Sukuk can be used as an instrument of wealth so that wealth can be owned and utilised by people. However, Islam recommends the adequate level as a benchmark in wealth ownership. The level represents sufficient wealth to live adequately but not excessively, being the most ideal and recommended by Islam. Therefore, the proposed the parameters for Sukuk in this study are developed based on the *Maqasid al-Shariah* of wealth (adequate level), which include 1) *Maqasid al-Shariah* of Wealth Ownership; 2) *Maqasid al-Shariah* of Wealth Acquisition, and; 3) *Maqasid al-Shariah* of Wealth Circulation/Development. Based on the three-dimensional scope of *Maqasid al-Shariah* of wealth, this study proposes the following parameters of *Maqasid al-Shariah* Sukuk for Indonesia i.e., a)

Based on the Sukuk Issuance Scheme; b) Purpose of Sukuk Fund; c) Sukuk Underlying Asset; d) Covenant in Trustee Agreement; and e) Treatment of Sukuk Accounting. The *Maqasid al-Shariah* Sukuk parameter is important because it is a new approach to understand the *Maqasid al-Shariah* in Indonesian Sukuk practice, so that Sukuk can become a *shariah* financial instrument that brings well-being (*maslahah*).

CHAPTER 1

INTRODUCTION

1.1 Introduction

Every national financial system plays a crucial role in the process of economic development. The financial system regulates and facilitates the functioning of the national financial industry, thereby promoting economic growth. This financial system consists of two primary sectors: the financial sector and the real sector. The financial sector comprises various industries that serve as financial service providers, including banking, insurance, and multi-finance. In contrast, the real sector encompasses a diverse range of industries, such as manufacturing, construction, services, agriculture, mining, and trade. The development of the financial sector is a critical driver of growth, especially in the early stages of modern development. However, once the financial system is established, it paves the way for subsequent development in the real sector (Patrick, 1980).

The financial industry plays a vital role in supporting the growth and development of the real industry. It facilitates the transfer of resources, such as capital, from low-growth traditional sectors to high-growth modern sectors, ultimately prompting entrepreneurial responses (Patrick, 1980). Notably, the primary functions of the financial industry encompass providing payment services, connecting savers with investors, generating and disseminating information, efficiently allocating credit, determining pricing, pooling and trading risks, and enhancing asset liquidity (Todaro & Smith, 2015). These functions are crucial at both firm (micro) and macro levels and can be carried out through various financial instruments, including mutual funds, leasing, factoring, and Sukuk. Sukuk, as an emerging instrument in the financial

industry, now serves as an important financial instruments that connects savers and investors in the capital market.

In a broader sense, Sukuk is a financial instrument traded in the capital market, guided by *shariah* principles¹. Conceptually, Sukuk represents a financial instrument within the financial system, where governments or corporations issue it to secure medium or long-term funding. However, in practise, Sukuk operations in capital markets worldwide, including Sukuk in Indonesia, have faced criticism for not fully adhering to *shariah* principles (Naim et al., 2013; Rosly, 2010).

Rosly (2010) suggests that *Maqasid al-Shariah*, the objectives of *Shariah*, can serve as a comprehensive foundation for adopting and applying *shariah* principles. In the context of financial transactions, *shariah* principles offer guidance and regulations for Islamic products like Sukuk to attain commercial viability while upholding Islamic ethics, morality, and justice (*'adl*). However, merely applying *shariah* principles without an understanding of their underlying objectives may not maximise the benefits. For instance, one could invest in a fully Shariah-compliant Sukuk, yet such an investment might not guarantee a significant contribution to the economy and society at large. This situation can arise when businesses employ Sukuk for debt refinancing rather than for 'social' or 'economic' investments. This underscores the importance of *Maqasid al-Shariah* is required in promoting productive investments, which are integral to social and economic development.

¹ *Shariah* principles are principles based on Islamic teachings. Their determination is carried out by the DSN-MUI, both stipulated in this fatwa and in other related fatwas.

Sukuk represents one of the innovations of Islamic financial products. Innovations in Islamic financial products including Sukuk, shares, and mutual funds, are all efforts to ensure the legality of new products, often involving the issuance of *fatwas* and *shariah* opinions. However, these innovations have not yet fully embraced *Maqasid al-Shariah*, which is crucial for ensuring *tahsil* or realising benefits (*manfaah/maslahah*) and avoiding *ibqa* or preventing harm or injury (*mudarraah*). Islamic scholars, therefore, recommend that the innovation process should involve a combination of *shariah* principles and *Maqasid al-Shariah*. This is because *shariah* principles have always played a dual role, serving as both a form of social control² and a tool for social engineering³ (Mufid, 2014). Focusing solely on the application of *shariah* principles, without considering *Maqasid al-Shariah*, would likely limit the impact and benefits of Islamic financial products and impede economic and developmental progress. Consequently, to optimise the benefits of Islamic financial products, this study suggests that adherence to *shariah* principles should be complemented by the application of *Maqasid al-Shariah*.

The interpretation of Islamic law by the ulama (*ijtihad*) does not negate the textuality of the *al-Qur'an* and *al-Sunnah*. Instead, it emphasises the importance of harmonising these texts with the overarching principles of universal *Maqasid al-Shariah* (Mufid, 2014). Moreover, from an Islamic perspective, economic development should be rooted in *Maqasid al-Shariah* to ensure the creation of a just distribution that fulfills all basic human needs, thus preserving the well-being of human life (Rama & Makhilani, 2013).

² As a tool of social behaviour control

³ As a tool of community behavior changer

In Indonesia, Sukuk faces challenges, notably in terms of its standard structure and its recognition as a debt in the financial accounting, similar to conventional bonds, without a mandatory adherence to *Maqasid al-Shariah*. Consequently, Sukuk's potential contribution might not fully optimise benefits and well-being (*maslahah*). Therefore, it is essential to approach the study of Sukuk from the perspective of *Maqasid al-Shariah*, particularly focusing on the *Maqasid al-Shariah of wealth*. Sukuk has evolved into a significant *shariah* financial instrument in the capital market.

This study aims to establishing a new parameter for Sukuk structure and Sukuk accounting in alignment with *Maqasid al-Shariah*, with the ultimate goal of enhancing *maslahah*. In general development and Islamic development, particularly in the context of *Maqasid al-Shariah*, serve as a guiding principles for Islamic law and legal determination (*ijtihad*). While the primary source of Islamic law is divine revelation (*al-Qur'an* and *al-Sunnah*), it is essential to recognise that the law should continuously undergo social changes, necessitating human adjustments accordingly (Shidiq, 2009).

1.2 Research Background

Since the late 1990s, the *shariah*⁴ financial industry in Indonesia has experienced significant growth and development, mirroring the progress of the global *shariah* financial industry, which has been relatively stable. Amidst the predominantly Muslim population and as increasing societal awareness of *shariah* principles in Indonesia, there is a growing demand for *shariah*-compliant investment products. As

⁴ *Shariah* is a complete Islamic teachings and Islamic system, which was revealed to the Prophet Muhammad SAW, recorded in the Qur'an, and can be deduced from the Prophet's "life-style guide", called *Sunnah*. In the context of Islamic Finance, '*Shariah*' is used regularly to signify aspects of compliance with Islamic financial products and services. *Shariah* compliant products refer to products that originate from conventional markets, then "Islamized" by modifying the product to conform to *shariah* requirements. *Shariah*-based products refer to products that do not derive from conventional markets (ISRA, 2015:179).

a result, the Islamic financial industry has rapidly emerged, one of which is the *shariah* capital market.

Sukuk is a *shariah* principles-based capital market instrument, serving as one of the options for corporations to raise funds from the public sector. It also provides an investment option for investors who wish to utilise *shariah*-compliant financial products. Over the recent years, the Sukuk market has seen extensive growth and garnered substantial interest from issuer (Jobst et al., 2008). Globally, there are various Sukuk structures, among others are *Murabahah*⁵, *Bay' Bitsaman Ajil (BBA)*⁶, *Salam*⁷, *Ijarah*⁸, a combination of *Ijarah* structure and *Istishna*⁹ structure, *Musharakah*¹⁰, *Mudharabah*¹¹, and *Wakalah bi Istithmar*¹² (ISRA, 2015).

Following the 2008 global financial crisis, several Sukuk experienced defaults. Scholars and practitioners in the capital market often attribute Sukuk defaults to the quality of Sukuk's underlying assets, leading to the classification of Sukuk into two categories: asset-based and asset-backed. However, from its initial issuance in 2002 to

⁵ *Murahabah* means an increase in capital or a profitable trade. *Murahabah* is technically defined as a sale whose price increase is disclosed to the buyer in accordance with the seller's "purchase price", in relation to a trust-sale of certain specified assets, except for monetary assets such as debt (ISRA, 2015: 242).

⁶ *Bay' Bitsaman Ajil (BBA)* is a sale and purchase transaction related to the financing of an asset on a deferred installment basis, accompanied by a pre-agreed payment period (ISRA, 2015: 374).

⁷ *Salam* is referring to a sales contract, that the seller is trying to sell certain specific commodities to the buyer on an upcoming date agreed upon in exchange, to get a price paid in full in cash (ISRA, 2015: 251).

⁸ *Ijarah* is the reward given for the services provided. *Ijarah* is a contract of transferring ownership benefits to get compensation (ISRA, 2015: 279).

⁹ *Istishna* is a contractual agreement with the manufacturer, to produce goods with detailed descriptions, at a predetermined price, and manufactured from its own material, with its own efforts (ISRA, 2015: 248).

¹⁰ *Musharakah* means share and blend two or more parties to be exchanged between them. *Musharakah* is a contract between partners for capital and profit (ISRA, 2015: 291).

¹¹ *Mudharabah* is a profit partnership, where one party (*rabbul mal*) provides capital and another party (*mudharib*) provides labor (ISRA, 2015: 297).

¹² *Wakalah bi Istithmar* is a contract based on the power of attorney to the agent to carry out all transactions on its behalf. In the sukuk wakalah bi al istithmar, the agent is entitled to a commission as agreed in the agreement. (ISRA, 2015: 322, 521).

2018, the Sukuk structure hasn't witnessed significant development, with *Ijarah* Sukuk and *Mudharabah* Sukuk being the primary types available.

1.2.1 Sukuk Issuance Throughout the World

During the time of Marwan ibn al-Hakam, an Umayyad Caliph in the 1st century Hijrah, people engaged in the practice of buying and selling goods receipts before the actual goods were received by the seller. The Umayyad government paid the soldiers with receipts or coupons in exchange for grains and commodities when the coupons became due. The term 'Sukuk'¹³ was introduced by Imam Malik in his book *Al-Muwatta*¹⁴ to refer to these receipts or coupons as proof of ownership of the goods or the rights of the coupon holder when the coupon matures. This type of Sukuk is also known as Sukuk al-Badai (Fathurrahman, 2017; ISRA, 2015). In the *Hadith* of *Sahih Muslim*¹⁵, selling food or commodities before owning them is strictly prohibited. However, in the current practice of Sukuk, although its origins are traced back to the Umayyad caliphate, its application remains questionable. Presently, Sukuk is a certificate used as proof of ownership for a specific asset's value rather than for grains and commodities.

¹³ Yahya related to me from Malik that he had heard that receipts were given to people in the time of Marwan ibn al-Hakam for the produce of the market at al-Jar. People bought and sold the receipts among themselves before they took delivery of the goods. Zayd Thabit and one of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, went to Marwan ibn al-Hakam and said, "Marwan! Do you make usury halal?" He said, "I seek refuge with Allah! What is that?" He said, "These receipts which people buy and sell before they take delivery of the goods." Marwan therefore sent a guard to follow them and to take them from people's hands and return them to their owners (Muwatta Malik, Book 31, Hadith 44).

¹⁴ The Book of *Al-Muwatta* is a book of hadith and fiqh compiled by Imam Malik bin Anas (Imam Maliki / 93 – 179 H) (Al-A'zhamy, 2004).

¹⁵ Ibn Abbas (Allah be pleased with them) reported Allah's Messenger (ﷺ) as saying: He who buys foodgrain should not sell it until he has taken possession of it (Sahih Muslim, Book 10, Hadith 3640).

Sukuk's historical roots in the Turkish Empire can be traced back to a period when the empire required substantial funds to rebuild the country following the conclusion of the Crusade in 1285 AD. Islamic law scholars designed a system of public funding to ensure compliance with Islamic principles of indebtedness. This system was distinct from the practices prevalent in Christian traditions, which were influenced by the legal principles of Babylon and Greco-Roman laws (Safari et al., 2014).

The first Sukuk introduced in the modern economy was issued by the government of Malaysia in 1988, based on the concept of *Qard al-Hasan*¹⁶. This issuance followed the fourth session of the Council of the Islamic Fiqh Academy of the Organization of Islamic Conference (OIC), held in Jeddah, Saudi Arabia (Yahya et al., 2012; Zulkhibri, 2015). However, the Sukuk issued by Shell MDS in 1990, a non-Islamic firm with foreign ownership in Malaysia, is widely recognised as the inaugural Sukuk of the contemporary era. In 2001, the release of the Guthrie Sukuk marked a significant milestone as the first Malaysian corporate Sukuk to be sold on the global market. Subsequently, the Malaysian government, through Malaysia Worldwide Inc, issued a global Sukuk in 2002 (Melis, 2017). Many issuers worldwide recognise Sukuk as a viable alternative source of financing, to name a few, financing for infrastructure development, aircraft, corporate general purpose needs, capital adequacy, and budgetary requirements (International Islamic Financial Market/IIFM, 2017).

¹⁶ Qardhul Hasan is a loan without any cost (only required to pay the principal amount of the debt) (Nurhayati & Wasilah, 2019).

As depicted in Figure 1.1, the total Sukuk issuance experienced an increase in 2021, reaching a volume of USD 188,121 million, following a period of decline since 2010.

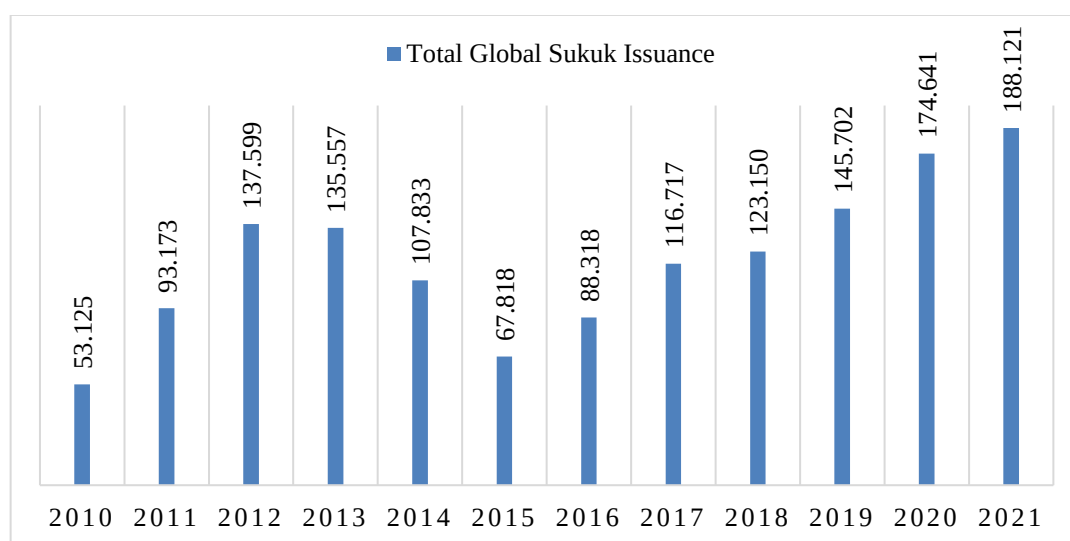


Figure 1.1 International Islamic Financial Market (2022)

Data spanning from 2001 to 2021 reveals that Malaysia has consistently led in Sukuk issuance. During this period, Malaysia issued Sukuk with a cumulative total value of USD 877,410 million, constituting a substantial 54.46% of the global Sukuk issuance. In contrast, Indonesia, a country with a population of 273.753 million, 80.07% of whom identify as Muslims, ranks as the third-largest country in Sukuk issuance, trailing behind Malaysia and Saudi Arabia. The total value of Sukuk issued by Indonesia amounts to USD 148,295 million, making up 9.20% of global issuances. As shown in Table 1.1, Indonesia trails significantly behind these countries in terms of the volume of Sukuk issuances.

Table 1.1 Global Sukuk Issuance by Countries (Jan 2001 – Dec 2021)

Countries	Population (Thousand)	Number Of Issues	Amount Usd Millions	% Of Total Value
Malaysia	32,576	8,575	877,410	54.46%
Saudi Arabia	30,784	308	216,755	13.45%
Indonesia	272,249	634	148,295	9.20%
United Arab Emirates	9,327	162	102,195	6.34%
Turkey	84,680	1,155	84,692	5.26%
Bahrain	1,504	492	43,118	2.68%
Qatar	2,692	62	38,533	2.39%
Pakistan	224,780	148	27,142	1.68%
Sudan	45,052	46	20,579	1.28%
Brunei Darussalam	441	251	13,300	0.826%
Oman	4,497	19	9,207	0.57%
Kuwait	4,336	26	7,595	0.47%
Bangladesh	169,310	129	7,066	0.439%
Hongkong	7,395	5	3,196	0.20%
United Kingdom	67,026	12	2,455	0.15%
Nigeria	211,493	10	1,888	0.12%
Singapore	5,637	16	1,498	0.09%
USA	332,786	5	1,367	0.08%
South Africa	59,353	1	500	0.03%
Ivory Coast	27,054	2	460	0.03%
Senegal	17,204	2	445	0.03%
Jordan	11,057	4	483	0.03%
Gambia	2,492	686	448	0.03%
Maldives	384	6	337	0.021%
Luxembourg	634	3	280	0.02%
Yemen	34,070	2	253	0.02%
Togo	7,886	1	245	0.02%
Egypt	102,180	3	324	0.02%
Mali	21,915	1	285	0.02%
Germany	83,262	3	206	0.01%
Japan	125,380	3	190	0.01%
China	1,444,000	1	97	0.01%
Marocco	36,313	1	105	0.01%
Sri Lanka	22,156	2	5	0.0003%
France	67,843	1	1	0.00004%
Kazakhstan	19,503	1	77	0.00%
Iran	84,038	-	-	0.00%
Total	3,569,804	12,778	1,611,032	100%

Source: IIFM (2022)

1.2.2 Sukuk Issuance in Indonesia

According to the Republic of Indonesia's Law Number 8 of 1995 on Capital Market, the capital market encompasses activities related to public offering and securities trading involving public companies that issue securities, securities-related institutions, and related professions (Balfas, 2012). In the context of *Shariah*'s capital market, it can be defined as activities within the capital market that align with *shariah*'s principles as stipulated in the Capital Market Law. Figure 1.2 illustrates the structure of financial institutions, where the capital market is considered as part of the non-bank sector.

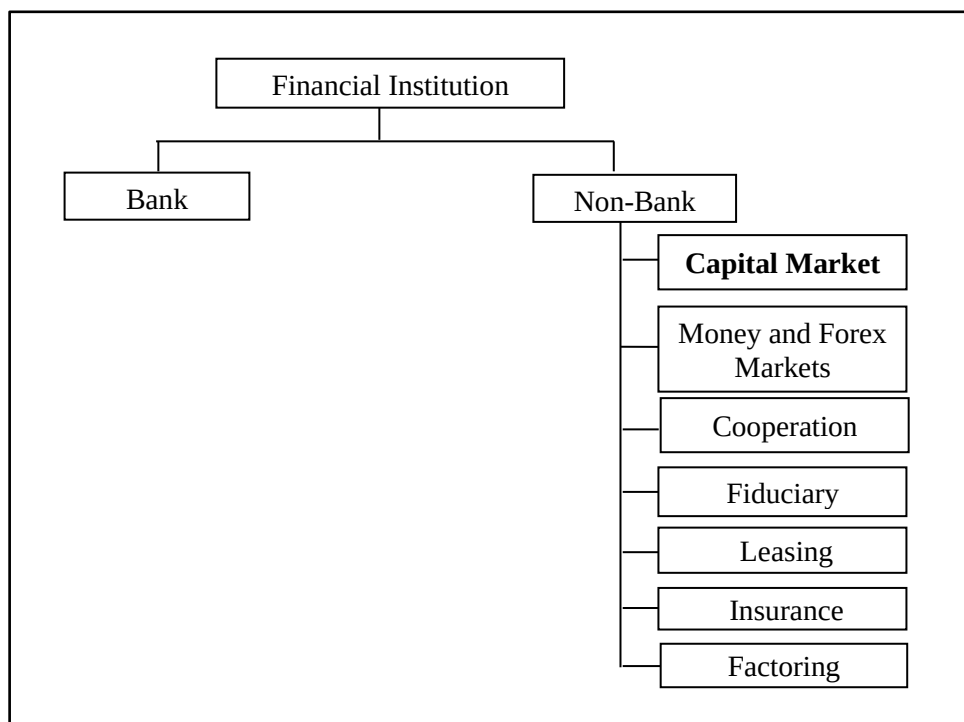


Figure 1.2 Structure of Financial Institutions in Indonesia (Soemitra, 2009)

According to the Capital Market Law¹⁷, *shariah* products encompass various Securities, such as debt instruments, commercial securities, stocks, bonds, participation units of collective investment contracts, futures contracts for securities, and any derivative of securities. The FSA Regulation defines *Shariah* Securities as Securities under the Capital Market Law and associated Regulations of agreement, method, and business activities that do not conflict with *shariah* principles in the capital market (FSA, 2018a). *Shariah* Securities issued in the Indonesian capital market include *Shariah* Stocks, Sukuk, and Participation Units from *Shariah* Mutual Funds.

In 1997, the Indonesian Capital Market introduced its first *Shariah*-based capital market product, i.e., Islamic mutual funds. This milestone was followed by the introduction of the Jakarta Islamic Index (JII) in 2000 and the issuance of *Mudharabah* *Shariah* Bonds in 2002. As of 2017, the range of available *Shariah* products includes *Shariah* Securities, Sukuk (formerly Islamic bonds), *Shariah* Mutual Funds, and *Shariah* Exchange-Traded Funds (ETF). The oversight and guidance for Islamic bonds or Sukuk in Indonesia are primarily provided by the National *Shariah* Board of the Indonesian Ulema Council (DSN - MUI) notably through its fatwa No. 32 / DSN-MUI / IX / 2002.

The first corporate Sukuk in Indonesia was the *Shariah* Bonds of PT. Indosat Tbk in 2002, issued based on the *Mudharabah* Sukuk structure. As of May 2018, the Sukuk structures in Indonesia were predominantly in the form of *Mudharabah* and *Ijarah* Sukuk structures. Among the 41 outstanding Sukuk, 29 were *Ijarah* Sukuk (FSA, 2018b).

¹⁷ Law of the Republic of Indonesian No. 8 of 1995 on The Capital Market.

According to data from the Financial Services Authority (FSA or Otoritas Jasa Keuangan –OJK¹⁸) the average annual growth rate of Sukuk issuance between 2017 and 2022 stands at 45.37%, based on the number of issuances. Despite this impressive growth rate, Sukuk issuance remains relatively limited when compared to bond issuances. As shown in Table 1.2, the total value of Sukuk reached IDR 42.50 trillion by the end of 2022, representing 9.47% of the combined value of outstanding bonds and Sukuk, which totaled IDR 448.61 trillion. The number of corporations involved in Sukuk issuance has exhibited modest growth. In 2016, there were 32 issuers, making up 13% of all debt securities issuing corporations. By 2022, this number had slightly increased to 34 issuers, accounting for 32% of all debt securities issuing entities (FSA, 2018b; Handayani, 2022).

Table 1.2 Corporate Sukuk Issuance in Indonesia (2017- 2022)

Year	Accumulated Issuance		Outstanding	
	Number	Amount (IDR Billion)	Number	Amount (IDR Billion)
2017	79	15,740	137	26,394
2018	177	36,545	104	22,023
2019	232	48,240	143	29,829
2020	274	55,150	274	30,350
2021	327	66,450	189	34,770
2022	403	84,970	221	42,500

Source: FSA (2023)

In addition, the variety of Sukuk structures in Indonesia is relatively limited. Presently, only three types of Sukuk structures are in use in Indonesia, namely *Ijarah* Sukuk, *Mudharabah* Sukuk, and *Wakalah bi Al-Istitsmar* Sukuk. All of these

¹⁸ Financial Services Authority (FSA) is State institution established based on Act Number 21 of 2011 which functions to organize an integrated system of regulation and supervision of all activities in the financial services sector of banking, capital market and non-bank financial services sectors such as Insurance, Pension Funds, Financing Institutions, and other Financial Services Institutions.

structures are asset-based, with the underlying assets for *Ijarah*, *Mudharabah*, and *Wakalah bi Al-Istitsmar* being benefits of assets, projects, and assets, respectively. The issuance of these Sukuk structures is based on the MUI DSN Fatwa that defines acceptable Sukuk structures, rather than being rooted in the principles of *Maqashid al-Shariah*. Additionally, these structural differences lead to variations in how accounting records are maintained, giving rise to challenges related to Sukuk ownership in Indonesia.

Moreover, there is a limited number of studies that have focused on Sukuk structure and accounting (Biancone & Shakhathreh, 2016; Maurer, 2010), let alone in the context of Indonesia. Existing studies, such as those by Arianty (2019) and Purnamawati (2015) have primarily provided narrative discussions highlighting the differences between Sukuk and bonds. In the field of accounting, most studies focused on making narrative comparisons between state Sukuk and corporate Sukuk. Additionally, other Sukuk studies in Indonesia have explored the application of Sukuk as a financial instrument in the capital market, addressing various aspects such as Sukuk's price, income, risk and yield, rating, default, investor interest, return, and financial ratios. To date, there remains a limited number of studies that focus on the specifics of Sukuk structure and Sukuk accounting, particularly from the perspective of *Maqasid al-Shariah*. As far as this study is concerned, no previous studies have concentrated on the application of *Maqasid al-Shariah* in the Sukuk structure and accounting standards.

In general, Sukuk in Indonesia has a vast potential for further development. Nevertheless, the future development of Sukuk could be even more promising and beneficial for the country's development and the well-being of its community if

Sukuk's structure and accounting are expanded to encompass not only *shariah* principles but also the broader practice based on *Maqasid al-Shariah*. Integrating Sukuk's structure and accounting will enable it to fulfil its crucial role in promoting and enhancing overall well-being.

1.3 Problem Statements

The primary objective of this study is to develop *Maqasid al-Shariah* parameters for Sukuk structure and accounting in Indonesia. The development of these new parameters is required to unlock the full potential of Sukuk as an Islamic financial instrument, an investment and funding tool under *shariah*, and, most importantly, to improve social well-being. Despite its increase in numbers, Sukuk in Indonesia is currently facing several issues that would limit its role in attaining its full potential.

First, the Sukuk structure in many countries resembles a bond structure. As a *shariah*-compliant financial instrument, Sukuk structures should be based on Islamic law, which derives from *ijtihad* or legal adaptation. However, financial industry players worldwide have failed to implement Islamic law, and most of them turn to and adopt conventional practices (Wilson, 2008). Hanapi (2014) contends that there is a shortfall in the operational aspects of Islamic economics, particularly in the selection and utilisation of general models to determine what is considered beneficial. This collective approach of selecting, adapting, and undergoing accommodative-modifications to these models is deemed inappropriate. Therefore, it is imperative to address this issue by emphasising the enhancement of the foundational elements of the concept.

In a similar vein, following Taqy Usmani's critique in 2008, the degree to which Sukuk adheres to the principles and core values of Maqasid al-Shariah has remained largely consistent (Naim et al., 2013). The current practices of issuing sukuk replicate the structure of conventional bonds, with the absence of ownership, the right to a fixed return, and a guarantee of principal repayment, thus rendering the majority of Sukuk not Islamic (Radzi & Muhamed, 2019). According to Azmat et al. (2014) the commitment to *shariah* principles in the issuance of Sukuk largely depends on the expertise of *shariah* advisors tasked with approving the Sukuk structure. This remains the case even though the Sukuk issuing business bears *shariah* advisory costs and having the flexibility to consult multiple fatwas.

In Indonesia, the scheme for Sukuk issuance is similarly grounded in the fatwa provided by the DSN-MUI. A case in point is the Mudharabah Sukuk, which is based on the Mudharabah contract, a type of investment agreement. Here, the Sukuk issuer is not only mandated to distribute profits to the Sukuk holders as a form of profit-sharing, and also to repay the Sukuk funds upon maturity, with the Mudharabah Sukuk itself being the underlying asset.

In practice, when adopting the Mudharabah model for Sukuk issuance, its structure often mirrors that of a conventional bond. For instance, 1) Sukuk are issued for a fixed period like debt and bond, while according to Islamic law, a financial instrument such as Sukuk should be issued based on assets' ownership, which does not have a fixed period, like equity (PLN, 2017); 2). Similar to bonds, Sukuk in Indonesia offers fixed returns for its nominal value, which goes against the *shariah* principle that only allows to buy back assets based on the net asset value, market value, fair value, or the price agreed upon at the time of purchase (CIMB Niaga, 2018); 3) Moreover,

Sukuk coupons in Indonesia are based on a conventional banking rates or financial instrument rates for benchmarking (Endri, 2009), and thus have a financial default risk akin to bonds (Angkasa Pura, 2016). While for investors and issuers, adopting a bond structure would simplify Sukuk's risk assessment (Endri, 2009), however, this might hinder Sukuk's financial innovation (Wilson, 2008).

Secondly, the aspect of *shariah* in the Sukuk structure has faced considerable criticism from many researchers. For instance, in *ba'i al-inah* (trading) and *ba'i al-dayn* (debt), Sukuk issuers trade their assets to investors at a specific price, with investors subsequently reselling the assets to the issuer on a deferred payment basis (debt), at cost plus profit. Such practices contradict *shariah* principle, as buying and selling are against international *shariah* standards such as AAOIFI and the International *Fiqh* Academy (Naim et al., 2013). Another issue with the Sukuk structure pertains to its asset ownership, also known as beneficial ownership. In this case, Sukuk issuers can only transfer the benefits of assets to Sukuk holders, but the legal ownership of assets cannot be transferred. This practice contradicts Islamic principles, where the underlying assets of Sukuk should be equivalent to legal ownership and shareholders, allowing investors to redeem the assets in case Sukuk issuers file for bankruptcy (Naim et al., 2013).

Other issues with the Sukuk structure include the use of funds by Sukuk issuers for refinancing conventional debt and activities (Naim et al., 2013). This clearly does not follow the *shariah* principles, as Sukuk issuers are guaranteed a fixed amount of profit. In contrast, according to Islamic law, profit distribution should be determined when the revenue is recognised (Naim et al., 2013). Furthermore, the current practice

of aligning *shariah* principles based on the parameters of the contract (*aqad*) has made *aqad* a determinant of the legitimacy of Islamic financial instruments (Rosly, 2010).

Thirdly, Sukuk issuances are still governed by dual law, including common law and *shariah* principles. In terms of common law, Sukuk issuance presently complies with accounting, tax, and legal standards for a conventional bonds, while the legal aspects must adhere to the requirements of the capital market law and FSA regulations (Hidayat, 2013; Maurer, 2010). Regarding *shariah* aspects, Sukuk must meet the provisions of the DSN-MUI fatwa, with accounting following the *Shariah* Financial Accounting Standards from the IAI. This combination of multiple laws for Sukuk issuance has created a conflict between fundamental principles in Islamic and common law. Subsequently, this has led to challenges in establishing an accounting standard for Sukuk, including the authorisation of ownership transfer.

Based on the abovementioned problems in the Sukuk structure and accounting, this study opines that obedience to *shariah* alone is insufficient; still, it is necessary to harmonise *shariah* principles with *Maqasid al-Shariah*. These problems are the most critical current and future challenges for Sukuk issuers and holders, especially in promoting *Maqasid al-Shariah* (Dusuki, 2010). Sukuk can be an effective financial instrument for *Maqasid al-Shariah* of wealth. Sukuk can play a significant role in ensuring the effective wealth circulation, development, preservation, and equitable distribution of income and wealth (Al Madani, 2018). Without *Maqasid al-Shariah*, the understanding of *shariah* economics and finance may be narrow and rigid, potentially leading regulators to impose policies, laws, and provisions of Islamic accounting standards that might be inappropriate, confusing, and inflexible (Mufid, 2016). Thus, revisiting Islamic financial practices to uphold Islam and *Maqasid al-*

Shariah (Yazid et al., 2015) is crucial, particularly in the case of Sukuk, where its development is vital for economic and social development.

Sukuk plays a central role in the circulation of wealth, facilitating the transfer of wealth from the rich investors to the Sukuk issuer for investment in real economic activities that involve the transfer of wealth among the broader community (Al Madani, 2018). The alignment of Sukuk with the principles of *Maqasid al-Shariah* can enhance its role in improving the welfare and well-being of the community.

Numerous studies have been conducted on Sukuk in Indonesia, encompassing various scopes and methodologies. It is worth noting that previous studies have predominantly focused on examining Sukuk as an investment instrument within the context of the capital market.

In greater details, these studies have focus on aspects such as Sukuk and bonds in terms of prices (Siswantoro, 2012), incomes (Melati, 2013; Hikmah, 2015), risks and yields (Ikayana, 2013; Yunita, 2015; Marimin, Mustofa, & Anik, 2016; Rodoni & Setiawan, 2016), ratings (Sudaryanti, Affandi Mahfudz, & Wulandari, 2011; Afiani, 2013; Purwaningsih, 2013; Rini & Asrori, 2014; Tamara, 2013; Winanti, Nurlaela, & Tititsari, 2017; Pranoto, Anggraini, & Takidah, 2017), defaults (Siswantoro, 2013), investor's interests (Yuliati, 2011), stock returns (Sari, 2014; Fatimatuzzahra & Herlambang, 2014; Purwaningsih & Khoiruddin, 2016; Sari, Ask, & Malikah, 2017), financial ratios (Ramadhani, 2013; Nurakhiroh, Fachrurrozie, & Jayantto, 2014; Putri & Herlambang, 2015; Savitri, 2015); Sukuk structures (Abdul Aziz & Gintzburger, 2009; Abdullah, 2012; Endri, 2009; Hidayat, 2013; Mashiyat et al., 2017; Maurer, 2010; Wilson, 2008), *Maqasid al-Shariah* of Sukuk (Al Madani, 2018; Haerisma,

2017), and *Maqasid al-Shariah* accounting (Birton, 2015; Birton et al., 2015; Birton & Sholihin, 2018).

Nevertheless, there is a limited number of studies focusing on the Sukuk structure and accounting and contextualising them using the approach of *Maqasid al-Shariah* (Al-Mubarak & Osmani, 2010; Naim et al., 2013; Rosly, 2010). Consequently, as Bakar (2017) pointed out, there is currently no *Maqasid al-Shariah*-based parameter available for Sukuk that could serve as underlying guidance for a practical application. Hence this study also attempts to develop new parameters that would allow Sukuk in Indonesia as an Islamic financial instrument that can contribute to social well-being and development.

The characteristics studied are based on an analysis of Sukuk issuance practises in Indonesia, using the *Maqasid al-Shariah* framework with an emphasis on wealth. Consequently, it is expected that the parameters derived from this study's findings will have practical application in Indonesia's Sukuk issuance. This expectation arises from the understanding that these parameters are designed to produce beneficial results (*maslahah*) and have been shaped by real Sukuk issuance practices.

Currently, there is an absence of specific *Maqasid al-Shariah* parameters guiding Sukuk issuance. However, it is pertinent to highlight that nine out of the 17 Sustainable Development Goals (SDGs) resonate with *Maqasid al-Shariah* principles. These encompass goals such as eradicating poverty and hunger, enhancing public health and welfare, ensuring quality education, championing gender equality, providing access to clean water and sanitation, promoting decent work and economic growth, reducing inequality, promoting peace and justice, and strengthening

institutions. These SDGs can be seen as closely intertwined with *Maqasid al-Shariah* parameters.

According to the roadmap established by KNEKS and OJK, the government faces various challenges in promoting corporate Sukuk. These obstacles include tax regulations, lack of awareness among investors regarding the *shariah*-compliant nature of Sukuk, a dearth of skilled professionals in the market, limited liquidity in the secondary market, and inadequate information dissemination (Otoritas Jasa Keuangan, 2021). As such, it falls to the government to encourage corporations to issue Sukuk by offering reduced costs, enhanced tax measures, and fostering partnerships with businesses in the halal sector.

1.4 Research Questions

To address the problem statement, this study developed three main research questions as follows:

- i. What are the perspective of *Maqasid al-Shariah* of wealth and the parameters?
- ii. Do the Sukuk structures and accounting practices in Indonesia adopt *Maqasid al-Shariah* of wealth principles?
- iii. Which *Maqasid al-Shariah* parameters can be adopted in Indonesia's Sukuk structure and accounting in order to maximise Sukuk's potentials of promoting social well-being and development?

1.5 Research Objectives

This study proposes *Maqasid al-Shariah* parameters for Sukuk structure and accounting in Indonesia based on the above research questions. Hence, the objectives of this study are as follows:

- i. To identify the perspectives of *Maqasid al-Shariah* of wealth from Islamic scholars' thought and to develop parameters for *Maqasid al-Shariah* of wealth.
- ii. To analyse the current Sukuk structure and accounting in Indonesia based on *Maqasid al-Shariah* parameters of wealth.
- iii. To recommend applicable *Maqasid al-Shariah* parameters for Sukuk structure and accounting in Indonesia in order to maximise Sukuk's potentials of promoting social well-being and development.

1.6 Definitions of Key Concepts

This section presents the key concepts of this study. The four critical concepts include Sukuk structure, Sukuk accounting, *Maqasid al-Shariah*, and *maslahah* (well-being). The operational definitions of these concepts are described within the context of this study.

1.6.1 Sukuk

Sukuk (plural of *sakk*) is the most common Arabic term used for Islamic securities in today's capital market. Sukuk means certificates (ISRA, 2015), and it can be defined as follows:

- i. According to the Financial Services Authority (FSA), “Sukuk are *shariah* Securities in the form of certificates or proof of ownership of equal value and represents an unspecified part (*syuyu* ‘ / undivided share) in certain tangible assets (*ayyan maujudat*), the value of the benefits of the tangible asset (*manafiul ayyan*) that already exist or will exist, services (*al khadamat*) that already exist or will exist, specific asset projects (*maujudat masyru’ muayyan*), and (or) predetermined investment activities (*nasyath istithmarin khashah*).”
- ii. According to the Institute of Indonesia Chartered Accountants (IAI), as per Standard Akuntansi Keuangan Syariah (*Shariah* Financial Accounting Standard / SFAS) No. 110, Sukuk are “*Shariah* securities in the form of certificates or proof of ownership of equal value. Sukuk represent an unspecified part (not separated or undivided) of certain tangible assets, the benefits of certain tangible assets that already exist or will exist, services that already exist or will exist, and particular project assets or investment activities that have been determined”.

In this study, Sukuk is considered an investment instrument in the form of securities representing ownership of assets or benefits of assets owned by the Sukuk issuer. In Indonesia, two common Sukuk schemes are found, in the form of *Mudharabah* and *Ijarah*. These Sukuk schemes are commonly associated with the principal *shariah* contracts. For this study, only two Sukuk schemes were used, i.e., *Mudharabah* and *Ijarah*, referring to the definition provided by FSA, IAI, and DSN-MUI.

1.6.2 Sukuk Structure

According to ISRA (2015), the structure of Sukuk hinges on its underlying contracts, dividing Sukuk into Sales-based, Rental-based, and Equity-based categories. However, several studies link the structure of Sukuk with its underlying assets, classifying them as either Asset-Backed or Asset-Based Sukuk (Abdul Aziz & Gintzburger, 2009; Abdullah, 2012; Mashiyat et al., 2017). In the context of Indonesia, this particular categorisation of Sukuk structure is not widely recognised. Presently, Sukuk structures are categorised based on their underlying contracts, specifically *aqad ijarah* and *mudharabah*. Meanwhile, according to the Financial Services Authority (FSA), the structure of Sukuk is determined by a range of factors, including Sukuk rating, the level of seniority in financial responsibilities, the objective of the Sukuk issuance, and the availability of collateral.

In the prospectus for the Sukuk issuance in Indonesia, the Sukuk structure is represented by the term “Sukuk scheme”. For instance, in the prospectus of *Ijarah* Sukuk, the Sukuk issuance scheme outlines the process of *Ijarah* Sukuk issuance, which includes the contract (*aqad*) utilised, the nominal value of the Sukuk, the underlying assets of the Sukuk, the transaction flow under the contract used, the utilisation of Sukuk fund, the involved parties, trusteeship agreements, and Sukuk guarantees (PT PLN, 2018). A similar content structure can also be observed in the Sukuk *Mudharabah* prospectus. However, the Sukuk *Mudharabah* Prospectus supplements this information by providing insights into revenue sharing based on the profit-sharing ratio (CIMB Niaga, 2018).

In this study, the term “Sukuk structure” refers to the Sukuk issuance scheme, which entails the contractual framework employed, the underlying assets of the Sukuk, the transaction flow governed by the contract, the utilisation of Sukuk fund, the involved parties, the trusteeship agreement detailing respective rights and obligations, revenue sharing based on the profit-sharing ratio, and the provisions for Sukuk guarantees.

1.6.3 Accounting for Sukuk

In Indonesia, the Institute of Indonesia Chartered Accountants (IAI) is the authorised body responsible for the development of accounting standards. In 2015, IAI issued a revised version of the *Shariah* Financial Accounting Standards (SFAS) No. 110, specifically for Sukuk. IAI’s SFAS provides comprehensive guidance on the measurement, recognition, presentation, and disclosure of accounting for *Ijarah* Sukuk and *Mudharabah* Sukuk transactions. The principle of “substance over form” serves as the framework for accounting measurement, recognition, presentation, and disclosure.

Based on the Statement of SFAS No. 101, an accounting presentation in the context of *shariah* entities, as defined by IAI (2019), is a financial statement that conveys the financial position, financial performance, and cash flows. Accounting presentations illustrate how business transactions, which have undergone measurement and recognition according to the Financial Accounting Standard (FAS), are directly depicted in the financial statements. Information that holds significant intrinsic value but is not explicitly showcased within the financial statements should be disclosed based on FAS No. 1. In this study, the Sukuk accounting refers to the *Shariah* Financial Accounting Standards (SFAS) by IAI, which involves