

Exploring models and issuance of Indonesian sovereign *Sukūk* as a financial instrument for state budget deficit

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Abstract

This study explores the concept and practice of sovereign *sukūk* issuances managed by the Government of Indonesia as an instrument to finance the state budget deficit in Indonesia. The government has been forced to employ a budget deficit policy to fund the vast country's spending. To finance the deficit, the government uses sovereign *sukūk* (named *Sukūk Negara*) as one of the financial instruments in addition to sovereign bonds (called *Surat Utang Negara*). The study uses a qualitative method with library study and interviews as the data collection techniques. The finding shows that the government has developed four models of sovereign sukuk structure, named *Ijārah* Sale and Leased Back, *Ijārah al-Khadamat*, *Ijārah* Asset to be Leased, and *Wakālah*; with the crux of the four models is *Ijārah Sukūk* which combines two central Islamic contracts, i.e. sale and purchase contract (*al-Bay`*) and lease contract (*al-Ijārah*). The sale and purchase of state-owned assets in Indonesian sovereign *sukūk* issuance is limited to the beneficial right of the asset only (excluding the legal title of the asset). Likewise, the study positively contributes to the two fields, i.e., academic research and the finance industry (particularly Islamic finance involving government and private investors).

Keywords: state budget deficit, Islamic finance, Islamic securities, sovereign *sukūk*

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Introduction

The Government of Indonesia has been forced to employ budget deficits to finance the vast country's spending in the last few years. The reports on the state budget by the finance ministry show an upward trend in the nominal value of the budget deficit every year (Ministry of Finance, 2019). To finance the deficit, the government uses sovereign **sukūk** (named **Surat Berharga Syariah Negara** or SBSN) as one of the financial instruments in addition to sovereign bonds (called **Surat Utang Negara** or SUN).

The government benefits from **sukūk** after the passage of Sovereign **Sukūk** Law No. 19 of 2008 (Armen et al., 2023). Sovereign **sukūk** essentially involves a country raising funds from the capital market, as the return would be generated from the state-owned assets underlying the **sukūk** issuance (Owens & Thompson, 2011). The proceeds of **sukūk** are also used to support the development of public infrastructures. Starting from 2013, the amounts of **sukūk** (for infrastructure projects) continued to increase, reaching IDR 22,5 trillion in 2018 (Fauziah & Nurwahidin, 2020) and IDR 175,37 trillion in 2022 (Raharjo, 2023). Currently, Indonesia is seizing second place of worldwide largest **sukūk** issuing country. By reaching the issuance of USD 15 billion or IDR 214 trillion, Indonesia accounts for 18 percent of the total global **sukūk** issuance of USD 87 billion or IDR 1,244 trillion (Rusydia & Irfany, 2021).

The motivation why the Government of Indonesia uses **sukūk** is seemingly in line with the opinion of Khan (2007) that two main reasons drive any government to seek **Sharī'ah**-compatible ways to mobilize financing resources. First, there is a growing popular demand to convert the financial system to conform to **Sharī'ah**. Second, governments in Muslim countries often may like to tap extra resources from the part of the population that remains excluded from the financial markets because of their faith and belief in the prohibition of interest (Khan, 2007).

There are 4 (four) structures/models of sovereign **sukūk** have been designed by the government using Islamic contracts. The structures are labeled as **Ijārah** Sale and Leased Back, **Ijārah Al-Khadamat**, **Ijārah** Asset to be Leased, and **Wakālah**. However, the issuance of government securities for the budget deficit is still dominated by conventional bonds. The issuance of sovereign **sukūk** seemed to range between 5.9% to 18.53% of total government securities from 2010 to 2023 (Bank Indonesia, 2024). The situation indicates that the development of **sukūk** issuance in Indonesia still faces challenges. Previously, Cobanoglu (2015) found various challenges in developing **sukūk** (sovereign or corporate), converged into four aspects, i.e., market players, product characteristics, regulation, and government as the originator or issuer (Jarkasih & Slamet, 2009). Mainly, there are 3 (three) aspects of the main challenges for sovereign **sukūk** development, i.e., issuer (government), investor (**sukūk** holder), and market.

Similarly, **sukūk** also still presents some complications and dilemmas, as it is simultaneously praised by the backers and disliked by the opponents. **Sukūk** is expected to be an alternative to the conventional bond denounced due to its element of usury. On the other hand, **sukūk** is also reviled as just an imitation of the conventional instrument covered with an Islamic costume due to the similarities in how they work. Amidst the above discussion, Laila and Anshori (2021) proposed issuer improvements as the foremost solution to deal with challenges that could be followed by other aspects (such as improvements in regulation and market/investor aspects).

Some previous studies also have portrayed other issues, such as the role of **sukūk** in economic development (Beik, 2011), using **sukūk** funds for infrastructure development (Fauziah & Nurwahidin, 2020; Pratiwi et al., 2017; Shaikh, 2015), progress in sovereign **sukūk** issuances (Laila & Anshori, 2021), investment analysis in sovereign **sukūk** (Al-Suwailem, 2021; Raksawati et al., 2021), assessment on retail sovereign **sukūk** in Indonesia (Sukmana, 2022), analysis on choice of sovereign debt issuance (Boujlil et al., 2020), opportunities and challenges of retail sovereign **sukūk** issuance (Muchtar, 2021), as well as evaluation of sovereign **sukūk** as a government financing instrument with stakeholder theory (Surachman et al., 2023). Merely one study was found about the concept and application of sovereign **sukūk** (Lutfiani, 2018).

Hence, the concept and models of Indonesian sovereign **sukūk** must be further examined where the issuer (government) plays an important role. The study is expected to find a clear picture of how the Government of Indonesia designs and uses this Islamic financial instrument to finance the budget deficit together with other government securities. This study also contributes to the worldwide research sources on models and operations of government **sukūk**. The novelty and contribution of this study will be demonstrated through a more in-depth examination of the scheme and mechanism of sovereign **sukūk** issuance in Indonesia as an Islamic tool for backing budget deficit, which is similarly struggled by other countries.

Method

The study uses a qualitative design which will focus on discovering participants' experiences, perspectives, and thoughts, as this approach explores the meaning, purpose, or reality (Bryman, 2012; Baxter & Jack, 2015). This design is appropriate to investigate the Indonesian sovereign **sukūk** in detail, such as its concept, models/structures, and practice of its issuances. The study uses a literature review and semi-structured interviews to collect qualitative data. The review of library sources aims to examine the various secondary data discussing the use of sovereign **sukūk** to finance the state budget deficit in Indonesia. The data also will be used as the basis for the interview questionnaires. For the interview, the study used semi-structured open-ended questions arranged in a

reasonable, logical order and covered the areas necessary for the study. The interview is conducted separately with 3 (three) finance ministry representatives associated with the Directorate of **Shari'ah** Financing. The collected data are examined using an interpretative approach to content analysis.

Result and Discussion

Components Constructing Indonesian Sovereign Sukūk

Suwadi (2016) highlights several features characterizing Indonesian sovereign **sukūk**, such as the unique names of the structure based on various underlying transactions/contracts. Transferring the beneficial rights only as State Treasury Law No. 1 of 2004 forbids the sale or transfer of state-owned assets is also an interesting issue from a legal perspective since the beneficial right is a new term in the Indonesian legal system. The SPV of the Indonesian sovereign **sukūk** also acts as a single actor, both as issuer and trustee. Besides, there is the requirement for **fatwā** from the ulema council to ensure it is **Shari'ah**-compliant and to give assurance that investment in sovereign **sukūk** does not breach **Shari'ah** principles.

Suwadi's finding aligns with the notion of investing in sovereign **sukūk**, which generates returns from state-owned assets underpinning the **sukūk** issuance (Owens & Thompson, 2011). The features above also implicitly signify the critical components of **sukūk**, distinguishing it from traditional instruments that usually incorporate interest prohibited by Islam.

Five main components construct the Indonesian sovereign **sukūk**, namely: the government as issuer/originator/ obligor, investor as **sukūk** holder, underlying assets of **sukūk**, issuing company as an issuer or SPV on behalf of the government and as trustee of sovereign **sukūk** holders, and Islamic contracts used in **sukūk** issuances (Armen, 2020). Revealing these key components is significant to believing that **sukūk** is fundamentally distinct from conventional bonds. Many people remain unable to distinguish between **sukūk** and bonds due to a lack of literacy, as exposed by a study using a sample of university students majoring in Islamic banking (Maulana & Thamrin, 2021). The study exposed the level of literacy regarding **sukūk** in terms of knowledge and belief only received a fair score of 53-59% of the overall score of 100%.

The Government of Indonesia as Originator/Obligor

As mandated by Sovereign **Sukūk** Law 2008, the Government of Indonesia has the authority to issue this financial instrument (Article 5, Paragraph 1) implemented by the Minister of Finance (Article 5, Paragraph 2). Hence, the government has routinely issued sovereign **sukūk** since 2008, becoming one of the sources to finance the state budget deficit. The government authority to issue sovereign **sukūk** must be approved by

the House of Representatives as regulated by **Sukūk Negara** Law 2008 in Paragraph 1 of Article 8 (Asyhari, 2017).

In terms of sovereign **sukūk** enhancement in Indonesia, Laila and Anshori (2021) proposed that the government boost the role of **sukūk** in financing the budget deficit. In line with this, Armen (2020) revealed that the government continues to renew its commitment to raise the issuance of sovereign **sukūk** and use it to develop public infrastructures. The commitment to boosting the sovereign **sukūk** issuances is positively seen and evidenced by the annual growth in the proportion of sovereign securities issuance.

Sovereign Sukūk Holders or Investors

Sukūk holders have the right to gain profit, margin, and nominal value of **sukūk**. For some people, sovereign **sukūk** could be counted as a zero-risk financial instrument, based on a payment guarantee to the principal and return with state budget funds as forced by Sovereign **Sukūk** Law 2008. However, sovereign **sukūk** is not a 100% risk-free financial instrument due to the default risk, especially when the government suffers a financial crisis and does not have sufficient funds to pay the obligations. Thus, investors need to comprehend their rights and responsibilities in the event of default or bankruptcy (Suwadi, 2016).

Thus far, the public debt repayment performance by the government remains safe. Rating and Investment Information, Inc. (R&I) confirmed the Sovereign Credit Rating (SCR) of Indonesia at BBB+ (above investment grade) with a favorable outlook (Ministry for Economic Affairs, 2024). This undoubtedly improves investors' willingness to invest in Indonesian sovereign **sukūk**.

Underlying Asset of Sovereign Sukūk

The issuance of sovereign **sukūk** depends on the existence of assets as one of its main components. The asset represents the value of the sovereign **sukūk** that is issued, including the nominal value and profit or return generated from the ownership of the asset (Ministry of Finance, 2015). The **Sharī'ah** Standard of AAOIFI No. 17 (2) guides that the **sukūk** assets can be grouped into some types, namely: tangible assets, usufructs, services, and projects or other commercial activities. Those assets should comply with the **Sharī'ah** principles (Ministry of Finance, 2015).

Sovereign **Sukūk** Law No. 19 of 2008 (Article 1) defines sovereign **sukūk** asset as an object of financing and state-owned assets with economic value in the form of land and buildings used as underlying **sukūk** issuance. Two types of assets used in sovereign **sukūk** issuance are state-owned assets called Barang Milik Negara or BMN and objects of financing (government projects). Many government projects in various sectors could be employed as underlying assets of **sukūk**, such as energy, telecommunications, transportation, agriculture, manufacturing, and public housing.

Islamic Contracts Used in Sovereign Sukūk Issuances

Sukūk is an intercessor between the owner of funds and the user. Both are involved in a contract (*al-ʿAqd*) agreement in Islamic Bisnis law (*Fiqh al-Muʿamalah*). Hasanah (2018) defines a contract as a written agreement that includes **ijab** (offer) and **qabul** (acceptance). **Al-ʿAqd** comes from the verb **ʿaqada** in Arabic, which means to 'tie' or 'coagulate.' However, **al-ʿAqd** has a deeper meaning than a standard contract relationship. This is because it involves the general requirements of offer, acceptance, consideration, and the intention of establishing a legal relationship.

According to Sovereign **Sukūk** Law No. 19 of 2008, **al-ʿAqd** is defined as a written agreement that does not violate the **Sharīʿah** principles and the laws and regulations. Several contracts in the Islamic Jurisprudence that might be used in **Sukūk Negara** issuance are **ljārah**, **Muʿārabah**, **Mushārah**, and **Istiṣnāʿ**. Hence, there are various models of sovereign **sukūk** that the government can issue, i.e., **ljārah Sukūk**, **Muḍarabah Sukūk**, **Mushārah Sukūk**, **Istiṣnāʿ Sukūk**, and under other contracts as long as not contrary to **Sharīʿah** principles (Ministry of Finance, 2015).

Special Purpose Vehicle (SPV) and Trustee

The government has established a sovereign **sukūk** issuing company as a special purpose vehicle (SPV). Regulation No. 57 of 2008 rules that the issuing company has the authority to issue sovereign **sukūk**, manage, and administer sovereign **sukūk** assets for the interest of **sukūk** holders. SPV also can act as a trustee for **sukūk** holders (Sovereign **Sukūk** Law 2008, Article 14). The trustee has several duties, namely: making an agreement with another party for the benefit of **the sukūk holder, supervising sukūk assets for the benefit of the sukūk holders, and representing other interests of the sukūk holders** related to the agreement of **sukūk** issuance. According to Wilson (2008), a special-purpose vehicle is a prerequisite for the successful issuance and management of **sukūk**.

Discussion on Models of Indonesian Sovereign Sukūk and Issuances

The interview is arranged for participants representing the Ministry of Finance around the concept, structures, and procedures for sovereign **sukūk** issuance. The study found that the Ministry of Finance established a special department tasked to manage the sovereign **sukūk** issuance called the Directorate of **Sharīʿah** Financing. The Ministry of Finance in collaboration with the National **Sharīʿah** Board of Indonesian Ulema Council (called DSN-MUI) also designed four models for Indonesian sovereign **sukūk**, i.e. Sovereign **Sukūk ljārah** Sale & Lease Back, Sovereign **Sukūk ljārah** Al-Khadamat, Sovereign **Sukūk ljārah** Asset to be Leased, and Sovereign **Sukūk Wakālah** (Ministry of Finance, 2015).

Ijārah Sale and Lease Back Model

The issuance of this model is directed by **Fatwā** of DSN-MUI No. 72 of 2008. The model is illustrated in Figure 1.

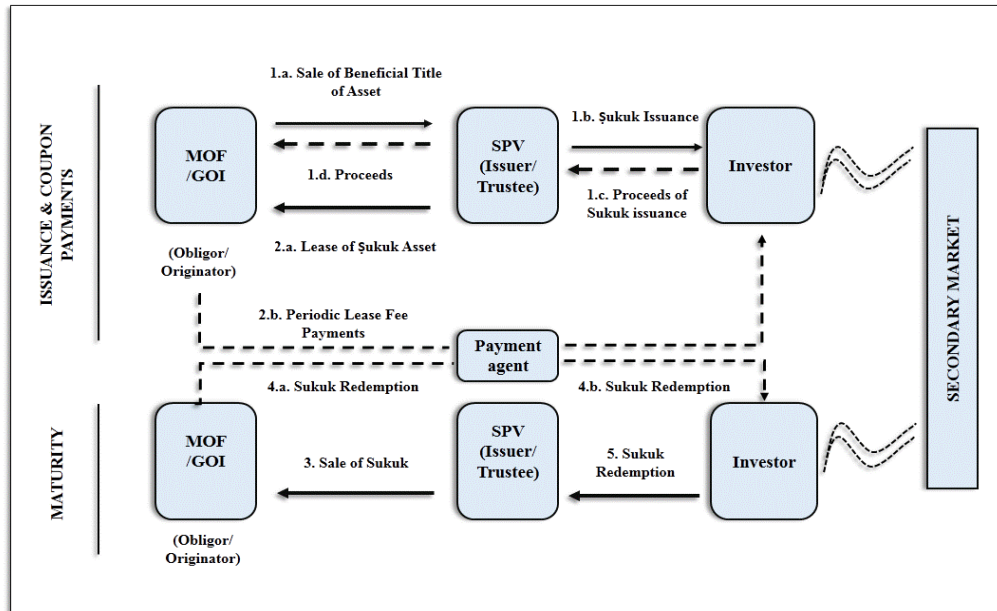


Figure 1. Model of ***Ijārah Sukūk*** Sale and Lease Back

The figure shows that the issuance started with the sale (***al-Bay***) of the beneficial right of the state-owned asset as the underlying asset from the government to SPV (1.a). This transaction is followed by the issuance of sovereign ***sukūk*** by SPV as evidence/certificate of investors/holders on the ownership of ***sukūk*** asset (1.b). The issuance is also denoted with the proceeds of sovereign ***sukūk*** issuance from investors/buyers to SPV of sovereign ***sukūk*** (1.c). Furthermore, payment for the purchase of beneficial rights of ***sukūk*** asset is given by SPV of sovereign ***sukūk*** to the government (1.d).

The return (coupon/benefit) for investors comes from the lease of sovereign ***sukūk*** assets by the government for daily operations (***Ijārah*** contract) (2.a). The government, as the lessee (***musta'jir***), pays the return (coupon/***ujrah***) payment for leasing sovereign sukūk assets to the lessor (***mu'jir***) through the paying agent (2.b). The ***sukūk*** maturity is marked by purchasing the sovereign ***sukūk*** assets by the government from the ***sukūk*** holders through the SPV (the sale contract) (3). The payment for the repurchase of sovereign ***sukūk*** assets shall be made by the government to the sovereign ***sukūk*** holders through the paying agent (4.a & 4.b). In this situation, the validity of this financial instrument is ended with its redemption (5).

The interviewee explained that the sovereign ***sukūk*** issuance by the government is started with the establishment of an SPV (***Perusahaan Penerbit Sukūk Negara*** or PPSN). The objective of establishment is to fulfill the legal requirement imposing the presence

of a special legal entity that takes the role as Trustee (**Wali Amanat**) for **sukūk** holders. The primary responsibility of SPV is to issue sovereign **sukūk** and to use the proceeds to purchase fixed and existing state-owned assets (could be in the form of land and buildings). The purchased assets are rented back out by SPV (on behalf of investors) to the government which thereof this structure is called Sale and Lease Back Sovereign **Sukūk**.

The sale and purchase of state-owned assets are limited to the beneficial right only, so there is no transfer of legal title from the originator to SPV. The legislation of beneficial rights is to break through the impasse in using state-owned assets as underlying issuance due to restrictions by the State Treasury Law of 2004 in both Articles 49 and 50 (Armen et al., 2023). When the tenure ends, the value of the repurchased asset by the government is the same as the issuance value. The government issues and sells sovereign **sukūk** products using 3 (three) issuance methods: book building, auction, and private placement. SPV provides two documents for the issuance of the Sale and Lease model: for sale and purchase transaction (**'Aqd al-Bay'**) and lease transaction (**'Aqd al-Ijārah'**).

Parenthetically, the sale and leaseback scheme is a standard structure and has become the most frequently used by issuers. In practice, the Ministry of Finance issues two forms of **sukūk** using the sale and leaseback structure: (a) Islamic Treasury Bills or **Surat Perbendaharaan Negara Syariah** or SPN-S, and (b) Islamic Fixed Rate or IFR (MFI, 2015). **Islamic** Treasury Bills or **Surat Perbendaharaan Negara Syariah** (SPN-S) is a short-term sovereign **sukūk** issued to cover short-term cash lacks due to a cash mismatch in the State Treasury Account in one fiscal year. At the same time, Islamic Fixed Rate (IFR) is issued for institutional investors, medium-term to long-term tenure, fixed coupon paid per semester (semi-annual basis), and labeled as tradable sovereign **sukūk** in the secondary market. The main challenge to use this model is the limited tangible assets as the prerequisite for **sukūk** issuance.

Ijārah Al-Khadamat Model

This model is applied to issue sovereign **sukūk** using the underlying asset as **haji** services. This type of **sukūk** could be categorized as the certificates of ownership of described future services as referred by the AAOIFI **Shari'ah** Standards No. 17 (3/2/4). The model is illustrated in Figure 2.

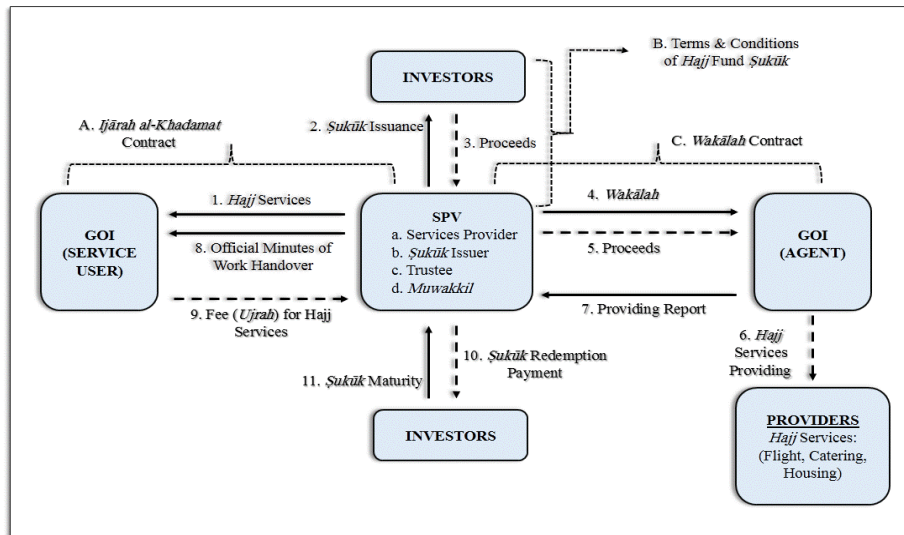


Figure 2. Model of *Ijārah Al-Khadamat*

The figure shows an agreement to provide the **hajj** service by SPV of sovereign **sukūk** to the government (using the *Ijārah al-Khadamat* contract) (A). The sovereign **sukūk** (named **Sukūk Dana Haji Indonesia**) is issued by the SPV as the evidence/certificate for placement/ownership of sovereign **sukūk** asset in the form of **hajj** service (2). The investors pay the proceeds of sovereign **sukūk** issuance to SPV of sovereign **sukūk** (3). The process is followed with authority transfer (*wakālah*) from the SPV of sovereign **sukūk** to the government to provide **hajj** service (C).

This process is followed with the funds transfer from SPV to the government and the providing of **hajj** service by the government as Agent (*Wakīl*) (5 & 6). The issuance of this sovereign **sukūk** model is completed with the report of **hajj** services provided by the government as Agent to SPV of sovereign **sukūk** as Principal (*Muwakkil*) (7). Signing the official report on **hajj** service between the government and SPV of **sukūk** (8). The issuance ends with the payment of a fee (*ujrah*) of **hajj** service by the government as a service user (*Musta'jir*) to the **sukūk** holders as a service provider (*Mua'jir*) through the paying agent and the redemption of **sukūk** at the maturity date (9 & 10).

According to the interviewee, the purpose of this model is to invest the Indonesian **hajj** fund called (**Dana Abadi Umat**) in sovereign **sukūk** investment. In practice, the SPV of sovereign **sukūk** receives *al-hajj* funds from the Ministry of Religious Affairs (the authorized ministry to manage the **hajj** of Indonesian citizens), and will issue non-tradable **sukūk** with *Ijārah al-Khadamāt* model according to tenure agreed with the Ministry of Religious Affairs as the authorized party of *al-hajj* funds. On the other hand, the Ministry of Religious Affairs will act on behalf of the government to provide the **hajj** services, including transportation, housing, and catering, until the tenure ends. However, this model is no longer issued since the authority to manage **hajj** funds was moved to the **Hajj** Fund Management Agency (**Badan Pengelola Keuangan Haji**).

Ijārah Asset to be Leased Model

The structure is similar to the ***Ijārah*** Sale and Lease Back model. The difference is that there are two sale and purchase contracts, i.e., a contract to sell and purchase state-owned assets and a contract to sell and purchase the government project. Thus, this model is developed to finance government projects (Ministry of Finance, 2015). This model is categorized into certificates representing the ownership of tangible assets promised to be leased (***sukūk milkiyyah al-maujūdah al-mau'ūd bisti'jārihā***), as referred to the AAOIFI ***Sharī'ah*** Standard No. 17 (3/1). The government used this structure to issue sovereign ***sukūk***, Project-Based ***Sukūk***, or PBS. The model is illustrated in Figure 3.

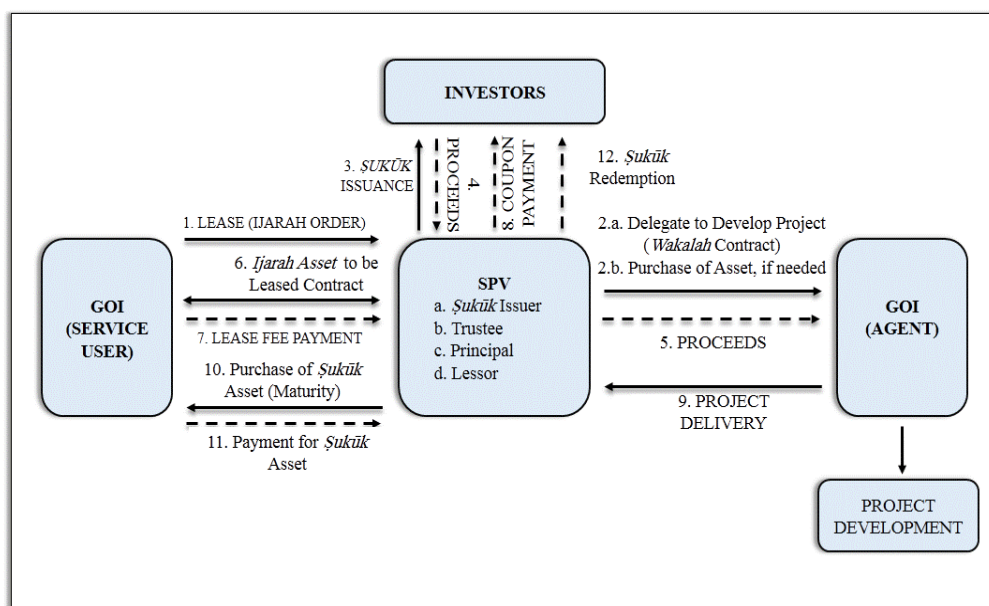


Figure 3. Model of ***Ijārah*** Asset to be Leased

For the issuance of this model, the government places a lease order of assets in certain specifications to the SPV of sovereign ***sukūk*** to be leased (1). The process is followed with authorization (***Wakālah***) by the SPV of sovereign ***sukūk*** to the government as Agent (***Wakīl***) to develop the project would be used as a lease object (2.a). Subsequently, there is a purchase (***al-Bay'*** contract) of ***Barang Milik Negara*** (state-owned asset) in the form of land and building to be used as part of ***Ijārah*** object (if needed) (2.b). The ***Sukūk Negara*** issuance by the SPV as evidence of the investors' participation in sovereign ***sukūk*** assets is accompanied by the transfer of sovereign proceeds from investors to SPV (3 & 4). Later on, the proceeds are transmitted by SPV (Principal) to the Government of Indonesia (as Agent or ***Wakīl***) (5).

On the other hand, there is an ***Ijārah*** Asset to be Leased contract between the government (Lessee) and the SPV (Lessor) (6). The government periodically pays the lease fee (***ujrah***) as Lessee to SPV, which should be given to sovereign ***sukūk*** holders

as the return/coupon (7). The periodic payment for coupons (**ujrah**) of sovereign **sukūk** to the sovereign **sukūk** holders through the payment agent (8). This model of sovereign **sukūk** is completed with the delivery of the project between the government (Agent) and the SPV (Principal) through a project handover agreement (9). The issuance ended with purchasing of the sovereign **sukūk** asset (**al-Bay`** contract) by the government from the sovereign **sukūk** holder through the SPV (10). The payment for the purchase is made by the government to the sovereign **sukūk** holders through the payment agent as sovereign **sukūk** redemption (11).

The study deemed that the **Ijārah** Asset to be Leased structure is similar to the structure of **al-Ijārah al-Mausūfah fī al-Dhimmah**. According to Nassar (2009) this structure is also called a forwarding lease, defined as the sale of future benefits for spot payment. It can also be termed a Salam contract for usufructs; regardless, the usufructs are derived from physical objects or services. Forward **Ijārah** is the commitment from the lessor to make some usufruct available in the future, which has been thoroughly described to avoid any potential conflict that may arise in this regard. Forward **Ijārah** has the features of two contracts: **Ijārah** and **Salam**. Combining these two characteristics will produce what is called forward leasing (Lahsasna & Ahmad, 2017).

Ijārah Asset to be Leased is the contract upon the specified object. Some parts of the object existed when the contract was made, and the handover of the whole thing will be done in the future as stated in the agreement. **Fatwā** of DSN-MUI No. 76 of 2010 becomes the guideline in issuing this **sukūk** model. The government had applied the **Ijārah** Asset to be Leased model into two sovereign **sukūk** products, i.e., Project-Based Sukūk (PBS) and **Sukūk Negara Ritel** (Retail **Sukūk**). Project-based **Sukūk Negara** is issued to finance the government infrastructure projects in rupiah denomination at the domestic market with a fixed coupon and tradable in the secondary market. The issuance of Project-Based **Sukūk Negara** refers to **Fatwā** DSN-MUI No. 76 of 2011 and Government Regulation No. 56 of 2011.

While Retail Sovereign **Sukūk** is created for individual (retail) investors. This type of sovereign **sukūk** is sold to individual Indonesian citizens through selling agents. The issuance of Retail Sovereign **Sukūk** is endorsed by **Fatwā** of DSN-MUI No. 76 of 2011 and Regulation of Finance Minister No. 218 of 2008, amended by No. 187 of 2011. The issuance of this model is commendable to be maintained and fostered, especially for the development of public infrastructures such as transportation, telecommunications, and energy sectors.

Wakālah Model

Sukūk al-Wakālah is a partnership-based **sukūk** that is referred to by the AAOIFI **Sharī`ah** Standards No. 17 (3/6/3) as an investment agency **sukūk** (**sukūk al-wakālah bil-istithmār**). This **sukūk** represents a project or activity developed under an agency

(*wakālah*) contract by appointing an agent or representative to manage the project on behalf of the *sukūk* holder. This model is illustrated in Figure 4.

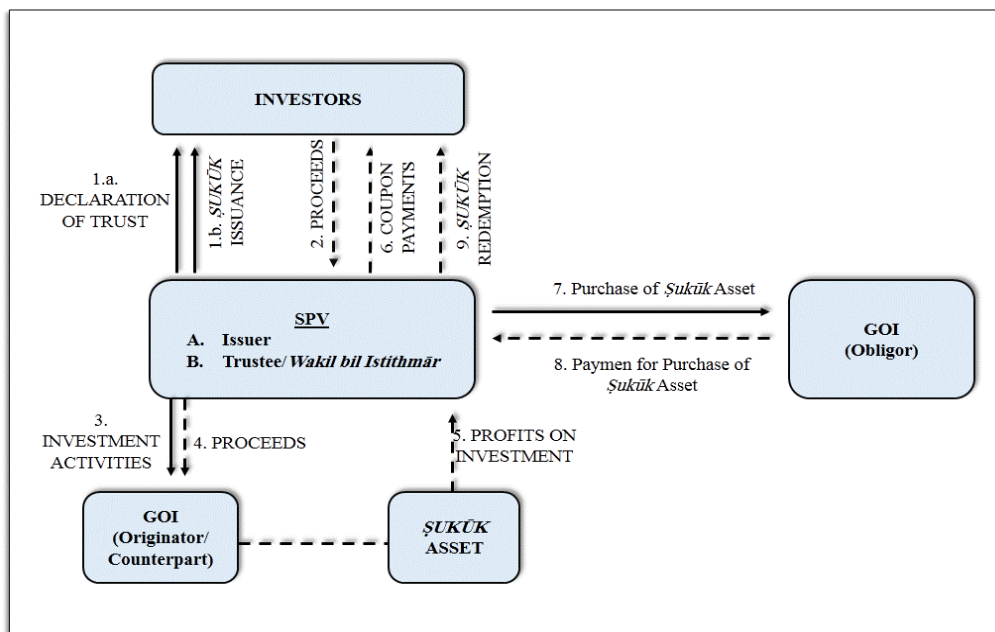


Figure 4. Model of *Wakālah Sukūk*

For the issuance of this model, the SPV declares itself to act as the agent of the sovereign *sukūk* holders to manage the proceeds of sovereign *sukūk* issuance in performing activities that generate gains/profits (1.a). The SPV conveys the planning of investment activities to the potential investors. There are two kinds of *Wakālah* contracts will be used, namely: *Wakālah* with Fee (*Wakālah Bil Ujrah*) or *Wakālah* without Fee (*Wakālah Bi-Dūnil Ujrah*). In addition, the SPV also informs/reports investment activities undertaken, including the type of activity, the composition of activities, the calculation of gains/profits of each exercise, and calculations of composition. If sovereign *sukūk* will be traded in the secondary market, the SPV has to maintain the composition of activities at least 51% in tangible assets.

Based on this model, the SPV should conduct various profitable activities, whether they are *ijārah*, trade, and other *Sharī'ah* compliant activities, with the government as counterpart, using the proceeds of *sukūk* issuance (3). Any gain from these activities will be given to the sovereign *sukūk* holders as coupons (return) (5). The coupon could be presented periodically during the term of sovereign *sukūk* and after the agreement's maturity date. Upon maturity, the Government of Indonesia bought the *Sukūk Negara* asset at an agreed price by redemption of the issued sovereign *sukūk* (9).

This model is similar to the *Ijārah Asset to be Leased* scheme. However, the *Fatwā* of DSN-MUI for the *Ijārah Asset to be Leased* model does not explicitly mention the percentage of underlying assets, which consist of tangible and intangible assets for this

structure. The government issues a Project-Based **Sukūk** (PBS) using **Ijārah Asset to be Leased** structure with the underlying assets consisting of 10% of fixed/tangible assets and 90% of government projects (intangible assets). While for sovereign **sukūk** with **Wakālah Bil Istithmār** model, DSN-MUI in **Fatwā** No. 95 of 2014 stipulates the composition of underlying assets are a minimum of 51% of tangible assets and a maximum of 49% of intangible assets (projects).

The interviewee explained that the reason for the 51-49% calculation is to follow several Shari'ah scholars' views regarding **sukūk** tradability in the secondary market. Based on the **fatwā**, the government labels sovereign **sukūk** with **Wakālah Bil Istithmār** model as tradable and issues them in the international financial market. The interviewee also highlighted that the Sukūk Wakālah Bil Istithmār issuance mechanism is similar to the **Asset to be Leased** structure. The investment activity is to purchase and lease back the asset from and to the government.

The returns given to the investors are in the form of fees or **ujrah**. The proceeds of sovereign **sukūk** issuance using **Wakālah Bil Istithmār** model are used to purchase the state assets or to finance the government projects that are leased back to the government until the tenure of sovereign **sukūk** expires. The government will repurchase the assets on the maturity date. This structure is named **Wakālah Bil Istithmār** because the investors entrust their funds to the SPV to invest them. One primary document for this structure is the 'declaration of trust.'

Last but not least, the sale transaction of state-owned assets for the issuance of **sukūk** with the condition that the government has to repurchase them at **sukūk** maturity shows a similarity to **Bay' al-Wafā'** model. The validity of this kind of transaction is debated among classical and contemporary **Shari'ah** scholars. Further study is essential to find the status of this transaction from an Islamic perspective.

Conclusions

The study concluded that the crux of the four **sukūk** models developed by the Government of Indonesia is **Ijārah Sukūk**, which combines two central Islamic contracts, namely, sale and purchase contract (al-Bay') and lease contract (al- **Ijārah**). Although the fourth model is labeled as **Wakālah Sukūk**, the crux of this model is similar to **Ijārah Sukūk**, i.e., sale of the asset and leasing it back. Likewise, the second model, i.e., **Ijārah al-Khadamāt, is also ijārah sukūk**, but it uses a different underlying asset. This model takes **al-hajj** services as the underlying asset involving flights, housing, and pilgrims' catering. **Ijārah sukūk** is considered a classical structure and has become the most commonly used by issuers since 2008.

The study also found that the sale and purchase of state-owned assets in Indonesian sovereign **sukūk** issuance is limited to the asset's beneficial right only (excluding the

legal title of the asset). The beneficial right is a new legal concept in the Indonesian legal system (including SPV and Trustee) adopted into the Indonesian legal system for sovereign **sukūk** issuance. In addition, the sale and resell back mechanism in the **sukūk** structure also reveals the feature of debated **Bay‘ al-Wafā’**.

The study also deemed that the issuance of the third and fourth models of sovereign **sukūk** (**Ijārah** Asset to be Leased and **Wakalah**) is essential to be fostered by the government. The policy should play a significant role in developing the sectors that have a multiplier effect on Indonesia’s macro economy. It is also suitable for subsequent studies to examine the opportunities for **sukūk** structures other than **Ijārah** models, such as **Murābahah**, **Muḍārabah**, **Mushārahah**, **Istiṣnā’**, etc. in sovereign **sukūk** issuances in Indonesia.

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