The current issue and full text archive of this journal is available at
https://muwafaqat.uis.edu.my/index.php/journal

The Rule of *Dar'u Al-Mafasid Awlaa Min Jalbi Al-Mashalih* and Its Application in Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) Fatwa No.137 on Sukuk

Islamic Finance

01

Submitted: 7 March 2024
Revised: 16 December 2024
Accepted: 16 December 2024
E-Published: 30 April 2025

Kaedah Dar'u Al-Mafasid Awlaa Min Jalbi Al-Mashalih dan Penggunaannya dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) No.137 Tentang Sukuk

RYAN BIANDA
(Corresponding Author)
Faculty of Islamic Civilisation Studies
Universiti Islam Selangor
Bandar Seri Putra, 43000 Kajang, Selangor
Ibnu.kaunda2020@gmail.com

FINANTYO EDDY WIBOWO
Faculty of Economics, Accountancy & Management
Universiti Islam Selangor
Bandar Seri Putra, 43000 Kajang, Selangor
finantyoeddy@gmail.com

ABSTRACT

This study aims to analyze the implementation of DSN-MUI Fatwa No. 137 on Sukuk and its impact on the development of Islamic financial markets in Indonesia. This fatwa emphasizes the importance of compliance with sharia principles in the issuance of Sukuk, especially to prevent *ribawi* practices and ensure transparency in financial transactions. This research uses a qualitative approach with a literature study method, where data is collected from various secondary sources such as books, journals, and relevant articles. The analysis is done descriptively with a focus on the application of the principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* in the context of Islamic finance. The results show that Fatwa No. 137 plays an important role in ensuring that Sukuk issuance in Indonesia complies with Shariah principles. It has succeeded in increasing the confidence of Muslim investors by providing an investment instrument that is free from usury and *gharar*, as well as supporting the sustainable financing of infrastructure projects. The implication is that this fatwa not only strengthens Islamic capital market regulations but also promotes more inclusive economic growth. This study provides additional insights for the development of Islamic financial instruments and suggests further research to explore the challenges in the implementation of this regulation.

Keywords: Fatwa DSN-MUI No. 137, Sukuk, Islamic Finance, Sharia Principles, Capital Market

ABSTRAK

Kajian ini bertujuan untuk menganalisis pelaksanaan Fatwa DSN-MUI No. 137 tentang sukuk dan kesannya terhadap perkembangan pasaran kewangan Islam di Indonesia. Fatwa ini menekankan kepentingan pematuhan prinsip-prinsip syariah dalam penerbitan Sukuk, khususnya untuk mencegah amalan *ribawi* dan memastikan ketelusan dalam transaksi kewangan. Penyelidikan ini menggunakan pendekatan kualitatif dengan kaedah kajian literatur, di mana data dikumpulkan daripada pelbagai sumber sekunder seperti buku, jurnal, dan artikel yang relevan. Analisis dilakukan secara deskriptif dengan fokus pada penerapan prinsip *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* dalam konteks kewangan Islam. Hasil kajian menunjukkan bahawa Fatwa No. 137 memainkan peranan penting dalam memastikan penerbitan Sukuk di Indonesia mematuhi prinsip-prinsip syariah. Fatwa ini berjaya meningkatkan keyakinan pelabur Muslim dengan menyediakan instrumen pelaburan yang bebas daripada riba dan *gharar*, serta menyokong pembiayaan mampan untuk projek infrastruktur. Implikasinya ialah fatwa ini bukan sahaja memperkukuh peraturan pasaran modal Islam, tetapi juga mempromosikan pertumbuhan ekonomi yang lebih inklusif. Kajian ini memberikan pandangan tambahan untuk pembangunan instrumen kewangan Islam dan mencadangkan penyelidikan lanjut bagi meneroka cabaran dalam pelaksanaan peraturan.

Kata Kunci: Fatwa DSN-MUI No. 137, Sukuk, Kewangan Islam, Prinsip Syariah, Pasaran Modal

INTRODUCTION

The capital market plays a crucial role in the economic development of nations across the globe. It serves as a fundamental mechanism for mobilizing funds to meet industrial needs and facilitate the efficient allocation of resources within an economy (Sunariyah & Si, 2004). Nearly all countries operate capital markets to streamline the supply and demand for capital, which is essential for fostering economic growth. Capital markets support various entities, particularly businesses, by providing access to external financing sources beyond conventional banking systems. Among the most prominent instruments within the capital market are stocks, bonds, and mutual funds. These instruments not only serve as means for entities to raise capital but also offer investors opportunities to diversify their portfolios. Companies often rely on external funding to support business expansions, and one of the primary methods to secure such funding is through the issuance of bonds (Adrian Sutedi, 2018). The use of bonds offers significant advantages, including the absence of ownership interference, unlike shares, which may lead to dilution of control.

When comparing stocks and bonds, several distinctions arise in terms of asset types, associated risks, business cycles, terminologies, conditions, and legal frameworks.

Companies must evaluate the benefits and drawbacks of issuing bonds versus shares, as each financial instrument presents unique implications. Bonds are debt securities that obligate issuers to pay interest and principal, whereas shares represent equity with no such fixed payment obligations. In this context, bonds generally exhibit lower risk levels compared to the volatility associated with stocks. Furthermore, bonds are issued for a specific term, unlike stocks, which have indefinite lifespans. The cost of capital for bonds primarily involves pre-tax interest payments, whereas dividends on shares are distributed from post-tax profits (Sapto, 2004). Despite these differences, both instruments are essential for firms seeking to optimize their capital structures.

In the domain of Islamic finance, however, conventional bonds are viewed through a critical lens due to their reliance on interest payments, which is considered *riba* (usury) and is strictly prohibited under Islamic law. Islamic economic principles emphasize that financial transactions must not involve interest, which is deemed exploitative and unjust. Nevertheless, bonds are recognized as a necessary financial instrument for raising capital. In response to this dilemma, Islamic finance has innovated by reconstructing conventional bonds into instruments that comply with sharia principles, giving rise to the concept of Islamic bonds, known as sukuk. The emergence of sukuk reflects an effort to align financial instruments with Islamic ethical standards, ensuring that Muslims can participate in capital markets without compromising their religious beliefs.

The development of sukuk is intricately linked to the growth of the Islamic capital market in Indonesia. As one of the largest Muslim-majority countries, Indonesia has made significant strides in integrating Islamic finance into its economic framework. The inauguration of the Islamic capital market on March 14, 2003, by the Ministry of Finance, Bapepam, and the Indonesian Ulama Council (MUI) marked a milestone in this journey (Manan, 2015). Furthermore, the establishment of the Jakarta Islamic Index (JII) in 2000 was a proactive measure to facilitate investments that comply with Islamic guidelines, thereby attracting both domestic and foreign investors interested in sharia-compliant instruments. Sukuk has emerged as a vital component of the Islamic capital market, offering a sharia-compliant alternative to conventional bonds.

However, despite its alignment with Islamic principles, sukuk remains distinct from conventional bonds in several critical ways. Sukuk are structured to adhere to sharia guidelines, which prohibit interest-based earnings. Unlike bonds, which guarantee fixed interest payments, sukuk involve profit-sharing or leasing arrangements, making the returns contingent on the performance of the underlying assets. Nonetheless, the sharia compliance of sukuk is subject to varying interpretations among scholars. Critics argue that certain sukuk structures, particularly those resembling sale and leaseback arrangements, may inadvertently replicate the prohibited elements of conventional finance, such as *inah* (a sale followed by a buyback) and *wafa* (a sale with a promise of repurchase), which are prohibited under Islamic law due to their resemblance to interest-bearing loans (Trimulato, 2021). This ambiguity necessitates continuous scrutiny and refinement to ensure that sukuk remain genuinely compliant with sharia principles.

The central issue that arises in the context of sukuk is ensuring that these instruments maintain their sharia integrity while also being competitive in the global financial market. The principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* (preventing harm takes precedence over bringing benefits) is often invoked to justify the structuring of sukuk in a manner that avoids elements deemed harmful by Islamic law. This principle underpins the regulatory framework set forth by the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), particularly in Fatwa No. 137, which governs the issuance of sukuk. According to this fatwa, sukuk must be based on tangible assets and real economic activities, thereby eliminating the speculative aspects commonly associated with conventional bonds.

Fatwa No. 137 addresses the complexities of aligning modern financial practices with Islamic jurisprudence. It stipulates that sukuk should be structured in a way that ensures compliance with sharia while also fulfilling the economic needs of issuers and investors. The fatwa emphasizes that the assets underlying sukuk must be free from prohibited activities, such as alcohol production or gambling, which are considered *haram* in Islam. Additionally, the returns generated from sukuk must stem from legitimate business activities, thereby reinforcing the ethical foundation of Islamic finance (Hartanto & Sup, 2021). This regulatory guidance not only aligns with the *maqāshid al-sharī'ah* (objectives of Islamic law) but also fosters investor confidence by providing clear parameters for sukuk issuance.

While the guidelines provided by Fatwa No. 137 are crucial for the integrity of sukuk, challenges remain in implementing these principles effectively. For instance, the requirement that sukuk be backed by tangible assets can limit the flexibility of issuers, particularly in industries where such assets are not readily available. Furthermore, ensuring that sukuk structures do not inadvertently mimic conventional debt instruments is an ongoing challenge that requires continuous monitoring by regulators, scholars, and market participants.

The literature on sukuk highlights the critical role of sharia compliance in maintaining the legitimacy of Islamic financial instruments. Scholars such as Zubair (2012) and Rizali (2010) emphasize the need for a robust regulatory framework that balances the principles of Islamic law with the practicalities of modern finance. However, gaps remain in the literature regarding the effective implementation of these frameworks in rapidly evolving financial markets. As sukuk becomes an increasingly popular instrument for financing large-scale projects, particularly in infrastructure development, there is a need for further research into optimizing their structures to ensure both sharia compliance and economic viability.

The objective of this study is to critically examine the implementation of Fatwa DSN-MUI No. 137 and its impact on the development of sukuk in Indonesia. This study contributes to the existing body of knowledge by providing a detailed analysis of how the fatwa addresses the challenges of integrating Islamic principles into modern financial practices. The novelty of this research lies in its focus on the practical implications of the fatwa in fostering sustainable economic growth while adhering to the ethical imperatives of Islamic finance. By exploring these dynamics, the study aims to offer insights into potential areas for further refinement of sukuk regulations, thereby supporting the development of a more resilient and ethically sound Islamic financial market in Indonesia.

Rules of Fiqh *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih*: Definition and Concept

The concept of *qawaid fiqhiyyah*, commonly referred to as *fiqh* rules, originates from Arabic terminology encompassing principles, foundations, or essential bases. The term "*Qaidah*" (plural: *qawaid*) can refer to both tangible and intangible concepts, ranging from physical foundations like that of a building to abstract principles such as those underlying religious beliefs *(ushuluddin)* (Umar, 2008). A rule, in this context, is understood as a set of principles that form the basis of legal judgments, acting as standards or propositions that guide human behavior. In Islamic jurisprudence, *fiqh* denotes a comprehensive understanding of Islamic laws derived from detailed interpretations by scholars *(fuqaha)*. According to experts like Al-Zarqā (2001), *fiqh* involves general rulings that encompass a wide range of life aspects. The use of *qawaid fiqhiyyah* is particularly vital in the realm of financial transactions *(muamalah maliyah),* where continuously evolving economic activities require ongoing legal interpretations and adaptations (Andiko, 2011).

Fiqh rules are holistic frameworks that encompass specific conditions and criteria, without which their legal implications may be subject to exceptions *(mustatsnayat)*. These rules are vital in addressing contemporary legal issues that may not have explicit precedent in the Qur'an or Hadith. The jurisprudential foundation also includes principles directly derived from the sayings of the Prophet Muhammad (SAW), such as the rule "*la dharara wa la dhirar*" (no harm should be inflicted nor reciprocated). This foundational approach highlights that Islamic legal rulings are not static but adaptable to new circumstances. The DSN-MUI fatwas, which play a significant role in Indonesia's Islamic financial sector, also rely on these jurisprudential principles in addition to the Qur'an and Hadith to issue rulings that guide the industry.

The rules of fiqh can be broadly classified into two main categories: the Basic Rules *(al-Qawaid al-Asasiyyah)* and General Rules *(al-Qawaid al-Kulliyyah)* (Zuhaili, 2006). The Basic Rules are universally accepted among scholars of different Islamic legal schools (madhhabs) and apply broadly across various discussions in Islamic jurisprudence. In contrast, General Rules are more context-specific, applicable to certain areas of *fiqh* but not necessarily accepted across all schools. These distinctions are essential in understanding the flexibility and scope of Islamic law, allowing for diverse interpretations within a unified legal framework.

One of the most critical fiqh principles is *Dar'u Al-Mafasid Awla min Jalbi Al-Mashalih*—a derivative of the broader rule *Ad-Dhararu Yuzaluu* (harm must be eliminated). This principle emphasizes that when faced with a choice between preventing harm *(mafsadah)* and achieving benefit *(maslahah),* priority must be given to preventing harm. Scholars have largely agreed on this hierarchy, aligning it with the overall objectives of Islamic law *(maqāshid al-sharī'ah),* which prioritize the protection of religion, life, intellect, lineage, and property. This principle serves as a crucial legal guideline, particularly in the field of financial transactions, where the potential for both harm and benefit often intersects.

In the context of the evolving financial landscape, the application of *qawaid fiqhiyyah* is increasingly significant due to the complexities introduced by modern economic activities. As technological advancements and societal needs expand, new financial instruments and transaction models emerge, necessitating resolutions that are in line with Islamic law (Sulistiani, 2018). The continuous development of these rules is intended to provide Islamic solutions to contemporary challenges, ensuring that financial activities remain compliant with religious principles. This legal adaptability is crucial in the Islamic finance sector, especially for instruments like sukuk, which serve as sharia-compliant alternatives to conventional bonds.

The principle *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* (rejecting harm takes precedence over seeking benefits) plays a vital role in structuring Islamic financial products like sukuk. It underscores the prioritization of avoiding harm, particularly the prohibition of interest *(riba)* and speculative activities *(gharar),* which are common in conventional finance. The application of this principle in sukuk issuance ensures that the transactions remain ethically sound and compliant with sharia. According to ibn Abdissalam (n.d.), when faced with a conflict between preventing harm and achieving benefits, Islamic law mandates that preventing harm must take precedence, even if it means forgoing certain benefits. The prioritization of the rejection of harm above is, of course, closely related to the magnitude of the harm. This situation should also be avoided because the *usul fiqh* rules have also regulated such matters, as in ibn Abdissalam (n.d.), as follows:

> *If the harm is greater than the benefit, then we must reject the harm and ignore the benefit*.

This principle becomes particularly relevant in structuring sukuk, where ensuring compliance with sharia involves navigating complexities related to asset ownership, profit-sharing, and risk management. Sukuk are designed to align with Islamic ethical guidelines by basing returns on profit and lease arrangements rather than interest payments. However, certain sukuk structures may inadvertently resemble conventional bonds, raising concerns about their sharia compliance. Critics argue that some sukuk schemes, particularly those involving sale and leaseback arrangements, may be perceived as a workaround that closely mimics prohibited practices such as *inah* (a sale followed by a buyback) and *wafa* (a sale with a promise of repurchase). This highlights the need for a rigorous assessment of sukuk products to ensure they genuinely adhere to Islamic principles (Trimulato, 2021).

This rule applies to any issue in which there is a mixture of *mashlahah* and *mafsadah*. So when *mashlahah* and *mafsadah* come together, then the priority is to reject *mafsadah*. This is because the Prophet PBUH, as the holder of the legal authority *(shari'),* has greater attention to things that are prohibited *(manhiyyat)* than those that are commanded *(ma'murat)*. This is because in *manhiyyat* there are elements that can damage and eliminate the wisdom of the prohibition itself, not so in *ma'murat*. In a hadith narrated by Bukhari and Muslims, the Prophet said:

> *"Whatever I forbid you from doing, avoid it, and whatever I command you to do, do it to the best of your ability, for indeed, what destroyed those who were before you was the questioning and disputing of their prophets." (Sahih al-Bukhari, Kitab Al-I'tisam bil-Kitab was-Sunnah, Bab 2, No. 7288 and Sahih Muslim, Kitab Al-Fadha'il, Bab 130, No. 1337).*

Despite the clear guidelines provided by fatwas like DSN-MUI No. 137, implementing the principle of prioritizing harm prevention in modern financial markets is challenging. Sukuk issuers often face pressure to structure their products in a way that appeals to international investors, which can lead to compromises in sharia compliance. For example, ensuring that the underlying assets are genuinely owned and utilized in a manner consistent with Islamic law can be difficult when catering to the expectations of global markets. This raises questions about the authenticity of sukuk as a purely Islamic financial instrument and the extent to which its current structures align with the ethical imperatives of sharia (Hartanto & Sup, 2021).

The literature underscores the critical role of sharia compliance in ensuring the legitimacy and sustainability of Islamic finance. Scholars such as Zubair (2012) have emphasized the importance of adhering to Islamic principles to maintain the integrity of financial transactions and avoid the pitfalls associated with conventional finance. However, there remains a gap in exploring the practical challenges of implementing these principles, particularly in dynamic financial environments where the boundaries between Islamic and conventional finance are increasingly blurred.

Ultimately, the application of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* in Islamic finance, especially in the issuance of sukuk, underscores the need for continuous evaluation and refinement of financial products to ensure their compliance with sharia. The principle not only protects against potential harms but also guides the development of ethical financial solutions that align with the objectives of Islamic law. Moving forward, it is imperative for scholars, regulators, and industry practitioners to collaborate in refining sukuk structures to bridge the gap between religious obligations and market demands, thereby promoting the growth of a robust Islamic financial system that can compete on a global scale.

The pursuit of aligning sukuk with the principle of harm prevention is ongoing, with significant implications for the broader Islamic finance sector. As sukuk become more integral to financing large-scale projects, particularly in infrastructure, there is a need for further research to explore how Islamic principles can be better integrated into financial innovation without compromising on ethical standards. Such efforts are crucial for fostering sustainable economic development in accordance with Islamic values, ultimately contributing to the stability and growth of the global financial system.

National Sharia Council of the Indonesian Ulama Council (DSN-MUI)

The Indonesian government created MUI (Majelis Ulama Indonesia), which is a forum for the association of scholars from various groups such as Nahdhatul Ulama, Muhammadiah, Persis, Nahdhatul Wathon, etc., and in it many experts with different scientific backgrounds have an obligation to explain to the public about the legal position of these contemporary transactions. On this basis, MUI made a special division called DSN (National Sharia Council), whose main task is to spawn and produce legal guidelines that become a reference for the community and business practitioners in carrying out their economic activities, which is briefly called the DSN Fatwa. In issuing a fatwa, MUI must have the basis and proof of *Al-Quran* and *As-Sunnah*, but not all new problems are explained in *Al-Quran* and *As-Sunnah*. Because every incident and event in society is always developing, there must be an effort to do *ijtihad* and analogy using the rules based on the sources of Islamic law (Rizaludin et al., 2023).

In the DSN-MUI Basic Guidelines, what is meant by the National Sharia Council is a council formed by MUI to handle issues related to the activities of Islamic financial institutions. So DSN is an integral part of MUI. This council is tasked with fostering the application of sharia values in economic activities and the financial sector in particular, including the business of banks, insurance, and mutual funds.

Juridically, the DSN is recognized in BI DIR Decree No. 32/34 on Commercial Banks based on sharia principles as a body that regulates the products and operations of Islamic banking as well as supervising DPS-DPS in various Islamic financial institutions. Article 31 of SK DIR BI 32/34/1999 states that to conduct their business activities, Islamic commercial banks are required to pay attention to the fatwa of the National Sharia Council (Umam, 2012). Organizationally, the DSN is an autonomous body, but it remains an integral part of and under the MUI because the chairman and secretary of the MUI lead the council ex-officio. While the members of this council consist of scholars, practitioners, and experts in fields related to the economy and sharia muamalah and have good character, Members of this council are appointed by MUI for a period of four years (Hidayah, 2019).

There are three things behind the formation of DSN, namely: (a) realizing the aspirations of Muslims regarding economic issues and encouraging the application of Islamic teachings in the economic field, which is carried out in accordance with the demands of Islamic law. (b) Efficiency and coordination of the scholars in responding to issues related to economic issues (c) To encourage the application of Islamic teachings in economic and financial life.

The main function of DSN is to supervise the products of Islamic financial institutions so that they are in accordance with the principles of Islamic Sharia. For this reason, DSN makes guidelines for sharia products based on Islamic legal sources. Another function of DSN is to research and provide fatwas for products developed by Islamic financial institutions (Ilyas, 2021).

The rules of *fiqh* become a proposition or foundation that has an important role in the practice of legal *istinbat* in fatwas issued by DSN MUI, given the characteristics of the rules themselves, which are expressed with a brief narrative but have a broad scope of meaning, so that the Ulama are facilitated in determining a law.

METHODOLOGY

The method used in this research is a qualitative method using a descriptive analysis approach that aims to provide an overview of fiqh rules and economic transaction practices in Islamic financial institutions. The data collection technique used is a literature study. The data used in this research are secondary data in the form of DSN-MUI Fatwa No.137/DSN-MUI/IX/2020 concerning Sukuk, as well as other sources in the form of books, journals, and other sources relevant to this research.

ANALYSIS AND RESULTS

The concept of Sukuk based on Fatwa DSN-MUI No: 137/DSN-MUI/IX/2020

Islamic bonds are internationally known as sukuk. The word sukuk can be easily traced in classical commercial Islamic literature. Sukuk comes from the Arabic "*sak*" (singular) and "*sukuk*" (plural), which have a meaning similar to a certificate or note. In its practical understanding, Sukuk is a proof (claim) of ownership (Zubair, 2012).

In the previous DSN-MUI fatwa Number 32/DSN-MUI/IX/2012, the term used still refers to "Sharia Bonds" and has not used the term "Sukuk". Based on the fatwa, Sharia bonds can be defined as long-term securities issued by issuers in accordance with sharia principles. The bond is given to the holder of the Sharia bond, which requires the issuer to pay income to the holder in the form of yield, margin, or fee and also repay the bond funds at maturity.

From the interpretation of this fatwa, it can be concluded that sukuk, or Islamic bonds, are securities that are proof of ownership of assets, either in the form of tangible, intangible, or project contracts from certain activities. The issuer is required to pay profit-sharing income to Sukuk holders and return the Sukuk according to the agreed maturity date. The entire process, from the issuance of securities to the delivery of proceeds, must be carried out in accordance with Sharia principles.

According to DSN-MUI Fatwa No. 137/DSN-MUI/IX/2020 concerning Sukuk, in order to fulfill economic activities that require large amounts of funding and the need for investors to participate in investment activities, the Islamic capital market industry and products in Indonesia are growing rapidly, including sukuk-based products.In this fatwa, sukuk are sharia securities (sharia securities) in the form of certificates or proof of ownership of equal value and represent an indefinite share of ownership *(musya')* in the underlying assets (sukuk assets/*ushul al-shukuk*) after the receipt of sukuk funds, the closing of reservations, and the commencement of the use of funds according to their designation. Sukuk assets *(ushul al-shukuk)* are assets that form the basis of sukuk issuance, consisting of tangible assets *(al-a'yan)*, benefits of tangible assets *(manafi' al-a'yan)*, services *(al-khadamat)*, specific project assets *(maujudat masyru' mu'ayyan),* and/or assets of specified investment activities *(nasyath istitsmar khashsh)*.

Provisions on the characteristics of sukuk: (1) The sukuk asset *(ushul al- shukuk)* used as the basis for sukuk issuance must be in accordance with sharia principles; (2) The sukuk asset *(ushul al-shukuk)* belongs to the sukuk holder; (3) Each sukuk unit must have the same value *(mutasawiyah al-qimah);* (4) Sukuk at the time of issuance does not reflect the issuer's debt to sukuk holders, but rather reflects the sukuk holders' ownership of sukuk assets *(ushul al-shukuk)*; (5) Sukuk can turn into debt / receivable *(dain)* in the event that sukuk assets *(ushul al-shukuk)* turn into receivables *(dain)* sukuk holders; (6) In principle, the issuance of sukuk must have a certain period of time unless otherwise agreed in the contract or regulated by applicable laws and regulations; (7) The issuer is obliged to pay income to sukuk holders in the form of profit sharing / margin / fee and repay sukuk funds at maturity in accordance with the contract scheme; (8) The return on sukuk with *mudharabah* and *musyarakah* contracts must come from business activities that become sukuk assets *(ushul al-shukuk)*.

Sukuk must be issued using contracts based on Sharia principles, such as *Mudharabah, Ijarah, Wakalah, Musyarakah, Murabahah, Salam, Istishna',* or other contracts based on Sharia principles. *Riba* (Usury), *gharar, maysir, tadlis, dharar* (harm), *risywah, haram, zhulm* (mistreatment), and sin are examples of elements that must be avoided in the issuance of sukuk (Hartanto & Sup, 2021).

Rules of *Fiqh*: *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* in Fatwa DSN-MUI on Sukuk

In DSN MUI Fatwa No. 137, it is stated that the basis for the permissibility of Sukuk law is based on arguments from the Qur'an, Hadith, and Jurisprudence Rules. The Qur'anic evidence is conveyed in Surah Al-Baqarah, verse 278:

> *"O you who believe! Fear Allah and give up the residue of usury if you are believers."*
>
> *(Al-Baqarah, 2: 278)*

While the hadith evidence, as narrated by Al-Tirmidhi from 'Amr bin 'Auf Al-Muzani, says that the Prophet said:

> *"Covenants may be made among the Muslims except those that prohibit the lawful or make lawful the unlawful; and the Muslims are bound by their terms except those that prohibit the lawful or make lawful the unlawful."*
>
> *(Sunan Al-Tirmidhi, Kitab Al-Ahkam, Bab Maa Dzakara 'an Rasulillah saw fi Ash-Shulhi baina An-Naas, No.1352)*

And the Jurisprudence Principles, which are the basis for the Ulama DSN MUI to explain the law of Sukuk, are:

"Preventing harm should take precedence over benefiting."

The application of the argument in the form of the above rules provides legal legitimacy regarding Sukuk because avoiding *mafsadat*, or harm, must take precedence over bringing *maslahat* or goodness. Therefore, sukuk will avoid *mafsadat* for a Muslim more than using conventional bonds.

The Concept of *Maslahah* in the implementation of Sukuk

Today, sukuk have emerged as a prominent Islamic financial instrument, offering an alternative to conventional bonds that typically involve the element of *riba* (usury). Sukuk serve as an essential financing tool for companies or institutions that require funds to support their business activities while adhering to Islamic principles. Similar to conventional bonds, sukuk are utilized to meet the urgent financial needs of entities. However, unlike bonds, which involve interest payments prohibited in Islamic finance, sukuk are structured to align with *maqāshid al-sharī'ah* (the objectives of Islamic law), ensuring compliance with sharia principles. The primary goal of issuing sukuk is not merely to fulfill financial needs but also to achieve broader societal benefits aligned with Islamic ethical considerations.

The concept of *maqāshid al-sharī'ah* is fundamental to understanding the role of sukuk in Islamic finance. The objectives of Islamic law are categorized into three main levels: *dharūriyyāt* (essential needs), *hājiyyāt* (complementary needs), and *tahsīniyyāt* (embellishments or enhancements) (El Fadl, 2004). The purpose of these categories is to ensure that the welfare of Muslims is secured both in this world and in the Hereafter (Hallaq, 2000). Sukuk, when viewed through the lens of *maqāshid al-sharī'ah,* fulfill essential needs *(dharūriyyāt)* by providing a sharia-compliant means of raising capital for businesses. This is particularly relevant for companies facing financial constraints, enabling them to obtain necessary funding without resorting to interest-bearing loans, which are prohibited in Islam.

From the perspective of *maqāshid al-sharī'ah,* sukuk serve two crucial functions. Firstly, they act as a financial instrument essential for companies or institutions needing funds to continue their operations. By issuing sukuk, businesses can address funding gaps in a manner consistent with Islamic principles, thereby supporting economic growth without compromising religious obligations. Secondly, sukuk provide an alternative to conventional bonds for Muslim business actors who seek to avoid *riba.* For many businesses, especially in predominantly Muslim countries, bonds are often seen as an unavoidable tool for capital raising. However, sukuk offer a *halal* alternative, allowing these entities to meet their financial needs while maintaining compliance with Islamic law (Rizali, 2010).

The ethical foundation of sukuk is deeply rooted in the principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* (preventing harm takes precedence overachieving benefits). This principle underscores the importance of prioritizing the avoidance of harm, particularly in financial transactions, where the risk of *riba, gharar* (excessive

The current issue and full text archive of this journal is available at
https://muwafaqat.uis.edu.my/index.php/journal

uncertainty), and *maysir* (gambling) is high. The issuance of sukuk under the guidelines of Fatwa DSN-MUI No. 137 exemplifies the application of this principle in the context of Islamic finance. The fatwa mandates that sukuk be backed by tangible assets and structured transparently, ensuring that transactions do not involve prohibited elements. By adhering to these principles, the fatwa aims to protect the interests of investors while promoting the ethical use of financial instruments (Hartanto & Sup, 2021).

However, the implementation of these principles in the modern financial market is not without challenges. The need to balance sharia compliance with the demands of global investors often presents complexities. While sukuk are intended to be sharia-compliant, there is a risk that certain structures, such as sukuk *ijarah* and *wakalah*, may resemble conventional bonds if not properly regulated. For instance, although sukuk are based on asset ownership, some transactions may be nominal, lacking true ownership by investors. This can lead to issues of *gharar*, where the transaction may be perceived as speculative, thus undermining its compliance with sharia (Trimulato, 2021).

Fatwa DSN-MUI No. 137 emphasizes that sukuk must be based on genuine asset ownership and involve transactions that reflect the principles of Islamic law. However, in practice, adhering to the principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* requires careful consideration, especially when trying to attract investors accustomed to conventional financial instruments. To appeal to a broader investor base, certain adjustments in sukuk structures may be necessary. These adjustments, however, must not compromise the core values of sharia compliance. The challenge lies in ensuring that sukuk remain competitive in the global market while upholding Islamic ethical standards (Zubair, 2012).

In the construction of sukuk, ethical considerations related to achieving the objectives of *maqāshid al-sharīʻah*—namely, preserving religion *(hifz al-dīn),* life *(hifz al-nafs),* intellect *(hifz al-aql),* lineage *(hifz al-nasl),* and wealth *(hifz al-māl)*—must always be central. Sukuk are designed to avoid transactions that involve prohibited activities, such as *gharar, maysir,* and *riba,* thereby ensuring that the wealth generated is halal. This aligns with the broader objective of promoting societal welfare through ethical financial practices. By adhering to these principles, sukuk contribute to the achievement of *maqāshid al-sharīʻah,* ensuring that financial activities lead to the preservation of fundamental human rights and well-being.

Nevertheless, there remains the challenge of integrating these ethical principles into the complex landscape of modern financial markets. For sukuk to continue to thrive, a collaborative effort among regulators, scholars, and practitioners is necessary. This collaboration is crucial to developing innovative sukuk structures that are not only compliant with sharia but also meet the practical needs of the market. For instance, exploring flexible sukuk models that maintain asset-backed structures could help bridge the gap between traditional Islamic principles and the evolving demands of global investors.

The principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* remains a cornerstone in the regulation of sukuk, ensuring that harm is avoided even when pursuing economic benefits. However, excessive regulation may stifle the development of innovative Islamic financial instruments. Thus, there is a need for a balanced approach that maintains the integrity of Islamic finance while allowing for flexibility in product development. As the demand for sukuk grows, particularly in financing large-scale projects, there is an opportunity to expand the role of Islamic finance in promoting sustainable economic development.

Further research is needed to explore how the principle of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* can be applied more effectively in the development of Islamic financial instruments, particularly sukuk. By adopting a more holistic approach, stakeholders can ensure that sukuk not only adhere to sharia but also remain competitive in the global financial landscape. This is essential for fostering the growth of a resilient and ethically grounded Islamic financial system, which can contribute to achieving broader economic and social goals.

In conclusion, sukuk have proven to be a vital instrument in aligning modern financial practices with Islamic ethical standards. Fatwa DSN-MUI No. 137 serves as a robust framework to guide the issuance of sukuk, ensuring that they comply with the principles of Islamic law while addressing the financial needs of businesses. By prioritizing harm prevention over the pursuit of benefits, sukuk demonstrate the potential of Islamic finance to offer sustainable and socially responsible investment options. However, the ongoing challenges highlight the need for continuous efforts to refine the regulatory frameworks and innovate within the scope of sharia compliance, ensuring that sukuk remain a viable and attractive option in the global market.

CONCLUSION

The conclusion of this study shows that DSN-MUI Fatwa No. 137 has strengthened the regulation of Sukuk issuance in Indonesia, ensuring that this financial instrument is aligned with sharia principles. Key findings show that this fatwa successfully prevents usurious practices and ensures sharia-compliant transactions through real asset requirements and sharia contract-based profit sharing. This increases the confidence of Muslim investors, which in turn expands participation in the Islamic financial market.

This research contributes to the literature by deepening the understanding of the role of sharia regulation in encouraging the growth of the Islamic capital market in Indonesia. The implication is that clear and strict regulations can be a significant driver for the development of the Islamic economy without compromising religious principles.

However, implementation challenges remain, especially regarding asset valuation and the application of the principles of *Dar'u Al-Mafasid awlaa min Jalbi Al-Mashalih* amidst modern market dynamics. Further research is recommended to explore innovative solutions to overcome these challenges and maximize the potential of Sukuk as a sustainable financing instrument. The findings provide a solid foundation for collaborative efforts between scholars, regulators, and industry players to strengthen the integrity of Islamic financial markets.

REFERENCES

Adrian Sutedi, S. H. (2018). *Aspek hukum obligasi dan sukuk*. Sinar Grafika.

Al-Zarqā, S. A. (2001). *Syarḥ al-Qawā 'id al-Fiqhiyyah*. Damsyiq: Dār al-Qalam.

Andiko, T. (2011). *Ilmu Qawa'id Fiqhiyyah: Panduan Praktis dalam Merespon Problematika Hukum Islam Kontemporer*. Teras.

El Fadl, K. M. A. (2004). *Atas Nama Tuhan*: Dari Fikih Otoriter ke Fikih Otoritatif, terj. R. Cecep Lukman Yasin. Jakarta: Serambi Ilmu Semesta.

Hallaq, W. B. (2000). *Sejarah Teori Hukum Islam Pengantar Untuk Ushul Fiqh Mazhab Sunni. Jakarta: Raja Grafindo Persada*.

Hartanto, S., & Sup, D. F. A. (2021). Konsep Sukuk Wakaf dalam Perspektif Fatwa DSN-MUI. *Muslim Heritage*, 6(1).

Hidayah, A. N. (2019). *Kedudukan Fatwa Ulama Dalam Sistem Hukum Nasional Sebagai Landasan Operasional Bank Syariah*.

ibn Abdissalam, I. (n.d.). *Qawaid al-Ahkam fi Mashalih al-Anam. Dar AlJil, Kairo, TT*.

Ilyas, R. (2021). Peran Dewan Pengawas Syariah Dalam Perbankan Syariah. *JPS (Jurnal Perbankan Syariah)*, 2(1), 42–53.

Izzat, O. D. (1989). *Al-Qawaid Al-Fiqhiyyah Ma'a Syarhi Al-Mujaz. Damsyik: Dar Tarmizi*.

Manan, D. R. A. (2015). *Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syariah*. Prenada Media.

Rizali, M. (2010). Konstruksi Hukum Sukuk Berdasarkan Fiqih Muamalah (Doctoral dissertation, Universitas Islam Indonesia).

Rizaludin, R., Susanto, H., & Mubarak, J. (2023). Analisis Kaidah Urf pada Fatwa DSN-MUI No. 54 tentang Syariah Card. *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah*, *5*(4), 1904–1921.

Sapto, R. (2004). *Panduan investasi obligasi*. Jakarta: Gramedia Pustaka Utama.

Sulistiani, S. L. (2018). Perbandingan Sumber Hukum Islam. *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, *1*(1).

Sunariyah, S., & Si, M. (2004). *Pengetahuan Pasar Modal*. Edisi Empat. Yogyakarta: UPP AMP.

Trimulato, T. (2021). Analysis Produk Keuangan Syariah Sukuk. *Kunuz: Journal of Islamic Banking and Finance*, *1*(2), 120–137.

Umam, K. (2012). Legislasi Fikih Ekonomi Perbankan: Sinkronisasi Peran Dewan Syariah Nasional dan Komite Perbankan Syariah. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, *24*(2), 357–375.

Umar, A. M. (2008). *Mu 'jam al-Lughah al-'Arabiyyah al-Mu 'asirah.* Misr: A'lam Al-Kutb. Taba 'Ah, 1.

Zubair, M. K. (2012). Obligasi dan Sukuk dalam Perspektif Keuangan Islam (suatu kajian perbandingan). *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, *46*(1).

Zuhaili, M. M. al. (2006). *Al-Qawaid Al-Fiqhiyah Wa Tathbiqatiha Fi Madzahib Al-Arbaah*. Damaskus: Dar Al-Fikr.