

## Development Of Sukuk Musyarakah and Sukuk Istishna Products: Legal Aspects And Potential Implementation In Indonesia

Tuti Nadhifah<sup>1</sup>, Heni Risnawati<sup>2</sup>\* Muhammad Dzulhilmi Yazid<sup>3</sup>

\*Correspondence:

Email:  
[hениrisnawati@umkudus.ac.id](mailto:hениrisnawati@umkudus.ac.id)

Afiliasi:

<sup>1,2,3</sup> Universitas Muhammadiyah  
Kudus, Indonesia

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### Abstrak

Penelitian ini mengkaji arsitektur hukum dan kelayakan praktis Sukuk Musyarakah dan Sukuk Istisna sebagai instrumen pembiayaan yang mematuhi syariah di Indonesia, dengan fokus khusus pada penerapannya untuk pembiayaan infrastruktur dan UMKM. Secara metodologis, analisis kualitatif yang bersifat doktrinal dan regulatori digunakan untuk mensintesis ketentuan undang-undang, pengawasan, dan tata kelola pasar terkait penerbitan serta implementasi sukuk, sekaligus menyelaraskannya dengan kebutuhan pembiayaan sektoral guna mengidentifikasi kondisi pemungkin dan hambatan. Temuan menunjukkan bahwa kedua instrumen tersebut layak dan, dalam konfigurasi proyek tertentu, merupakan alternatif yang lebih disukai untuk memobilisasi modal jangka panjang bagi infrastruktur yang terhubung dengan UMKM karena mekanisme bagi-risiko dan struktur berbasis asetnya. Namun, difusi masih terkendala oleh literasi yang terbatas di kalangan penerbit dan investor, infrastruktur pasar yang belum merata, serta friksi eksekusi yang menghambat skalabilitas. Kontribusi studi ini ialah merumuskan lintasan hukum yang koheren untuk merancang sukuk Musyarakah dan Istisna dalam kerangka Indonesia saat ini, memetakan kesenjangan kebijakan dan pasar, serta mengusulkan tuas operasional guna meningkatkan penerimaan dan pengembangan pasar. Meskipun cakupan kualitatif dan regulasi yang terus berkembang membatasi generalisasi, analisis ini menghasilkan implikasi yang dapat ditindaklanjuti bagi regulator, perantara, dan penerbit yang berkomitmen memperluas pembiayaan yang inklusif dan selaras syariah. Kebaruan penelitian terletak pada integrasi analisis hukum dengan wawasan pembiayaan yang berorientasi aplikasi bagi UMKM dan infrastruktur dalam ekosistem sukuk Indonesia yang kian matang.

### Abstract

This study examines the legal architecture and practical feasibility of Sukuk Musyarakah and Sukuk Istisna as sharia-compliant financing instruments in Indonesia, with a specific focus on their application to infrastructure and MSME financing. Methodologically, a qualitative doctrinal and regulatory analysis is employed to synthesize statutory, supervisory, and market governance provisions on sukuk issuance and implementation, while aligning these with sectoral financing needs to identify enabling conditions and constraints. The findings indicate that both instruments are viable and, in certain project configurations, preferable alternatives for mobilizing long-term capital to MSME-linked infrastructure, owing to their risk-sharing mechanisms and asset-backed structures. However, diffusion remains constrained by limited literacy among issuers and investors, uneven market infrastructure, and execution frictions that impede scalability. The study contributes by delineating a coherent legal pathway for structuring Musyarakah and Istisna sukuk within Indonesia's current framework, mapping policy and market gaps, and proposing operational levers to enhance acceptance and market development. Although the qualitative scope and evolving regulation limit generalizability, the analysis yields actionable implications for regulators, intermediaries, and issuers committed to expanding inclusive, sharia-aligned financing. The originality lies in integrating legal analysis with application-oriented financing insights for MSMEs and infrastructure within Indonesia's maturing sukuk ecosystem.



## INTRODUCTION

The Indonesian Islamic financial market has experienced significant development in recent decades. Along with the increasing awareness of the importance of sharia-based finance in accordance with Islamic principles, sharia investment instruments have also begun to receive widespread attention (Hikmah & Selasi, 2025). One of the most developed instruments is sukuk, which is now the main alternative in sharia-based financing. Sukuk has great potential to support infrastructure financing and other economic sectors in Indonesia, which increasingly require safe, transparent, and sharia-compliant funding sources (Romadhoni et al., 2023).

As part of sukuk instruments, Sukuk Musyarakah and Sukuk Istishna have emerged as leading products that offer flexible and innovative financing solutions. Sukuk Musyarakah is based on the principle of partnership between parties involved in a particular project or business, where each party is entitled to a share of the profits according to their contribution. Meanwhile, Sukuk Istishna is a financing instrument for construction projects or the manufacture of goods that are not yet available, with payments made in the future after the project is completed. Both types of sukuk have enormous potential to be implemented in Indonesia, especially in the infrastructure sector which continues to grow (Muliana & Mansyur, 2022).

According to S&P Global Ratings, sukuk issuance is expected to reach \$190 billion to \$200 billion in 2025, following the market's strong performance last year. Total issuance reached \$193.4 billion in 2024, down slightly from \$197.8 billion the previous year. However, the most striking difference was the 29% increase in foreign currency issuance to \$72.7 billion as of December 31, 2024. The main contributors to the increase were issuers from Malaysia, the GCC countries led by Saudi Arabia, and Indonesia. (Ibecfebui.com, 2024).

The rapid development of the Indonesian sharia financial market has opened up opportunities for sukuk products, especially Sukuk Musyarakah and Sukuk Istishna, to become the main instruments in financing various national strategic projects. These products not only answer increasingly complex financing needs, but also provide investment alternatives that are in accordance with sharia values. Sukuk securities are structured to comply with sharia by distributing profits, not interest, and generally include tangible assets in investments (Abubakar et al., 2023). In the context of Indonesia, which has the largest Muslim population in the world, the existence of sukuk becomes very relevant as a tool to optimize the potential of the existing sharia economy. Therefore, it is important to dig deeper into the potential application of these two sukuk products and the legal challenges that may arise in the implementation process.

Regulations in Indonesia regarding sukuk have a legal framework that is quite supportive of sukuk issuance, such as Law No. 19 of 2008 concerning State Sharia Securities (SBSN) and OJK and DSN-MUI regulations. However, the development of musyarakah and istishna sukuk is still not optimal, when compared to other types of sukuk, for example ijarah. Several legal and technical challenges in terms of contract structuring, ownership of an underlying asset, and reporting and supervision mechanisms are factors that hinder widespread implementation. Overall, the main problems in the implementation of musyarakah and istishna sukuk are low emission values, lack of socialization, lack of incentives from the government, lack of understanding from both parties, both issuers and investors and fear of taking risks (Asokawati et al., 2024). For this reason, the novelty in this research is a study of the legal aspects and implementation of musyarakah and istishna sukuk, which are important in encouraging innovation and strengthening the national Islamic financial system.

## METHOD

This study uses a qualitative approach that aims to explore in-depth understanding of the development of sukuk products, especially Sukuk Musyarakah and Sukuk Istishna, and their potential application in Indonesia. This qualitative study emphasizes more on descriptive and interpretive

analysis of the data obtained, with the aim of providing a more comprehensive insight into the two sukuk products and their application in the context of Indonesian sharia economics.

This approach was chosen because the researcher wanted to explore the phenomena and concepts related to sukuk in depth, not only to measure the relationship between variables or to produce statistical figures. This study does not aim to produce broad generalizations, but rather to understand the dynamics in the application of Sukuk Musyarakah and Sukuk Istishna based on existing theories and practices (Creswell, 2014).

### **Literature Study Approach and Legal Document Analysis**

The main methods used in this study are literature study and legal document analysis.

#### **1. Literature Study**

The literature study was conducted by collecting, reviewing, and analyzing various relevant library sources, such as scientific journals, books, articles, and research reports that discuss sukuk, especially Sukuk Musyarakah and Sukuk Istishna. Through this literature study, researchers can explore the basic concepts, theories, and applications of sukuk products in Indonesia and other countries. The literature reviewed also includes an analysis of policies and regulations governing the issuance of sukuk and their potential application in Indonesia. (Mohammed, 2017).

#### **2. Legal Document Analysis**

In this study, legal document analysis is an important aspect to understand the legal aspects of the issuance of Sukuk Musyarakah and Sukuk Istishna in Indonesia. The legal documents analyzed include applicable laws and regulations, such as Law No. 19 of 2008 concerning State Sharia Securities (SBSN), regulations of the Financial Services Authority (OJK), and fatwas from the National Sharia Council (DSN) of the MUI relating to the issuance and management of sukuk in Indonesia.

This legal document will provide an overview of the legal procedures governing the issuance of sukuk and provide clarity regarding the legal aspects related to sukuk transactions in the Indonesian sharia financial market (OJK, 2020).

### **Data Sources**

The data used in this study consists of various relevant sources to support understanding of the topics discussed. The main data sources in this study include:

- a) Scientific journals that discuss sukuk and the application of sharia financial instruments, both in Indonesia and internationally. These journals are the main source for understanding theories related to sukuk products and their application in Islamic economics.
- b) Books that discuss basic theories and applications of sukuk products, principles of Islamic finance, and applicable regulations. This book provides a comprehensive reference on sukuk, both from an economic and legal perspective.
- c) Research reports related to the development of the sukuk market in Indonesia and analysis of the Islamic financial sector. This research report provides empirical data and case studies relevant to the application of Musyarakah and Istishna sukuk.
- d) Regulations governing the issuance and trading of sukuk in Indonesia, such as the SBSN Law, POJK (Financial Services Authority Regulation), and fatwas from the DSN MUI related to sukuk transactions and products. This document will provide a clear legal basis related to the regulations governing sukuk in Indonesia.

By combining literature studies and legal document analysis, this research is expected to provide deeper and more comprehensive insights into the development and implementation of Sukuk Musyarakah and Sukuk Istishna in Indonesia, both in terms of theory and practice.

## RESULTS AND DISCUSSION

### Implementation and Regulations Governing Sukuk Musyarakah

The implementation of Sukuk Musyarakah in Indonesia has shown great potential, especially in the infrastructure sector and financing of large projects that require long-term funding. The Indonesian government, through various related institutions such as the Financial Services Authority (OJK), has developed regulations to facilitate the issuance of sukuk in Indonesia. The issuance of this sukuk allows the government and business entities to obtain funds without violating sharia principles, while offering investment alternatives that are in accordance with market needs.

According to the regulations issued by the OJK, the issuance of Sukuk Musyarakah in Indonesia must meet several requirements, including an agreement on the distribution of business profits, transparency in fund management, and the obligation to comply with the fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI). This regulation aims to ensure that the sukuk products issued truly comply with sharia principles and do not contain elements that conflict with Islamic teachings, such as usury or gharar (uncertainty) (OJK, 2019).

Sukuk Musyarakah can be issued by both the government and private companies that need funds for certain projects. For example, in the issuance of Sukuk Musyarakah for infrastructure projects, the company will sell part of the project ownership rights to investors, and investors will receive a profit sharing according to the income generated by the project. Therefore, this product is very relevant in financing large projects such as the construction of toll roads, ports, and power plants (Khan, F., & Bhatti, 2017).

The regulations governing the issuance of Sukuk Musyarakah also include transparent audit and reporting procedures, to ensure that the funds raised from the sukuk are used in accordance with the agreed purposes, and the profit sharing paid to sukuk holders is carried out fairly and in accordance with the agreement stated in the sukuk contract.

### Implementation and Regulations Governing Sukuk Istishna

The implementation of Sukuk Istishna in Indonesia is increasingly developing, especially in financing infrastructure projects that require large amounts of funds and are long-term. As a sharia financial instrument, Sukuk Istishna is very relevant for use in financing construction projects that can involve many parties, such as the construction of toll roads, power plants, and other public facilities that require long construction times and large funds.

One of the advantages of Sukuk Istishna is the flexibility in payment scheduling. Payments can be made based on milestones or stages in project development. This makes it easier for the issuer to manage funds and provide payment guarantees to investors in accordance with project development (Ali, M., & Abbas, 2018). In this case, investors receive payments or profit sharing after the project is completed, based on the initial agreement that has been agreed upon by all parties involved.

The issuance of Sukuk Istishna in Indonesia is governed by strict regulations issued by the Financial Services Authority (OJK) and the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI). OJK as the authority that oversees the Indonesian capital market regulates the procedures for issuing sukuk, including Sukuk Istishna, by ensuring that all transactions and products issued comply with established sharia principles. One of the important regulations governing the issuance of Sukuk Istishna is POJK No. 30/POJK.04/2019 which regulates the issuance and trading of sukuk in Indonesia (Keuangan, 2019).

This regulation requires a sharia audit to be conducted by the DSN MUI to ensure that all sukuk issuance procedures follow applicable sharia principles. In addition, the regulation also includes transparency requirements in the use of funds from sukuk issuance, as well as provisions related to the distribution of results that must be fair and in accordance with the principles of justice in Islam. The implementation of these strict regulations aims to maintain investor confidence and ensure that projects

financed through Sukuk Istishna run according to plan and generate fair profits for all parties involved (MUI, 2020).

## Discussion

### Legal Aspects of Sukuk Musyarakah and Sukuk Istishna

Sukuk Musyarakah and Sukuk Istishna are sharia financing products regulated by Indonesian laws and regulations that refer to sharia principles. Both types of sukuk have a clear legal basis, both at the international and national levels.

#### Sukuk Musyarakah

Sukuk Musyarakah, which is based on the principle of partnership, is a sharia financial instrument that is seen as an alternative in financing large projects. Based on the Financial Services Authority (OJK) Regulation No. 30/POJK.04/2019 concerning Sukuk Issuance, Sukuk Musyarakah can be issued based on the principle of syirkah (cooperation) in a particular business or project. In the issuance of this sukuk, sukuk holders are entitled to receive profit sharing from the results of the business or project being financed. This legal aspect is strictly regulated to prevent elements that conflict with Islamic law, such as usury or gharar (uncertainty) (Keuangan, 2019).

#### Sukuk Istishna

Sukuk Istishna is a sukuk issued based on an istishna (order) contract, where one party (issuer) receives funds from investors to produce or build a project or goods according to agreed specifications. In the context of Indonesian regulations, sukuk Istishna is regulated in Law No. 19 of 2008 concerning State Sharia Securities (SBSN), which provides a legal basis for the issuance of government sukuk based on projects or goods ordered. This sukuk is strictly regulated to ensure that the project or goods built are in accordance with the agreement and free from usury or speculation (Kementerian Keuangan RI, 2008).

The implementation of Sukuk Musyarakah and Sukuk Istishna in Indonesia has great potential, especially in the infrastructure sector and financing for the MSME (Micro, Small, and Medium Enterprises) sector. Indonesia, as a country with rapid economic growth, needs alternative financing that is in accordance with sharia principles. Sukuk, with the principle of profit sharing and legal certainty regulated by sharia regulations, is a promising instrument.

#### Application in Infrastructure Sector

Sukuk Musyarakah and Sukuk Istishna have great potential to be used in financing infrastructure projects in Indonesia. Given the ever-growing need for infrastructure development, sukuk can be an ideal alternative to finance large projects such as the construction of toll roads, ports, and power plants. The Indonesian government has begun issuing sovereign sukuk for infrastructure projects, as seen in the issuance of Sovereign Sukuk in order to finance development projects that are productive and support the national economy (Kementerian Keuangan RI, 2020). Sukuk Musyarakah, based on a partnership between investors and issuers, allows for sharing of risks and profits in these large projects.

#### Implementation in MSME Financing.

Sukuk also has the potential to be used in financing the MSME sector. Many MSMEs in Indonesia need financing to develop their businesses, but are hampered by limited access to conventional financing. Sukuk Musyarakah can be used to finance MSMEs by sharing business results, which is in line with the principle of justice in sharia economics. The use of sukuk for the MSME sector is expected to open wider financial access for this sector, which is an important pillar in the Indonesian economy (Dewan Syariah Nasional, 2018). Challenges in Implementing Sukuk in Indonesia

Although the potential for implementing Sukuk Musyarakah and Sukuk Istishna is very large, there are several challenges that must be faced so that sukuk can develop optimally in Indonesia:

##### a) Lack of Sukuk Literacy

One of the main challenges is the lack of sukuk literacy among the Indonesian people, especially among financial market players. Many people do not yet understand the basic concept of sukuk and

how it works. Therefore, it is necessary to increase understanding of sukuk, either through sharia financial education, seminars, or more intensive counseling. Without sufficient understanding, the acceptance of sukuk products, both by investors and issuers, will be limited (Maulana & Thamrin, 2020)

b) Limited Infrastructure Support

The supporting infrastructure for sukuk issuance and trading is also still limited, including technology systems and sukuk trading platforms. Although there are several institutions that provide these facilities, further development is needed to increase efficiency and transparency in sukuk issuance and trading. This is important to attract more investors and expand the reach of sukuk products in the Indonesian financial market (Ramadan, 2020)

Sukuk Musyarakah and Sukuk Istishna offer great potential as alternative financing instruments that comply with sharia principles in Indonesia. With existing regulations, these two sukuk products can be the main choice in financing the infrastructure and MSME sectors. However, challenges related to limited literacy and infrastructure need to be overcome to increase the acceptance and development of sukuk in Indonesia.

## CONCLUSION

Based on the results of the research conducted, it can be concluded that Sukuk Musyarakah and Sukuk Istishna are sharia financing instruments that have great potential to develop in Indonesia. Both sukuk products, with mechanisms based on sharia principles, offer relevant financing solutions for strategic sectors such as infrastructure and MSMEs.

Sukuk Musyarakah, which is based on partnerships, provides opportunities for joint financing in large projects and sharing risks and profits. Meanwhile, Sukuk Istishna, with the principle of orders, has great potential to be used in financing projects that require funds for the construction or production of goods according to agreed specifications.

The implementation of these two sukuk products can strengthen the Indonesian economy, especially in supporting the development of much-needed infrastructure and empowering the MSME sector which is the backbone of the national economy. Existing regulations in Indonesia provide a strong legal basis for the issuance and transaction of sukuk, but there are still challenges related to sukuk literacy and infrastructure that supports the issuance and trading of these sukuk.

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