

Contract, Scheme, and Underlying Asset Awqaf-based Sukuk: Study Case in Malaysia, Singapore and Indonesia

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Abstract: Sukuk is an element of Islamic Finance Instrument which increased rapidly by over the years. Nowadays, in another country is doing something to made inovation with sukuk instrument by get benefit of capital or fundraising for development fund of non-financial institutions such as waqf asset. Hence, this paper attempts to Introduce, Understand, and Purpose the Contract, Scheme and Underlying Asset Sukuk-Awqaf Based in Malaysia, Singapore and Indonesia. The results of this research showed that schemes and contracts in Malaysia, Singapore and Indonesia is varied according to the governance system in each different country. Underlying Asset on tosukuk-waqf based in each country is a waqf asset with different type of waqf and management according to government authority in developing waqf asset.

1 INTRODUCTION

Sukuk in this milenial Era is working out became fundrising which the good selection to empower waqf asset. The reason is lack of funding sources for waqf management is inversely propotional to the waqf asset itself. The advantages of waqf-based sukuk are associated with project-based sukuk. It's mean that sukuk issuance is intended for the real economy of sector development. Waqf assets appropriated to purpose for any productive in the community with Islamic principles

A waqf maybe structured on real underlying asset which have productive use (for e.g. office complexes, residential buildings) or may even be structured as a cash waqf where financial assets are utilised to generate returns (e.g. investments in Islamic securities, sukuk) and achieve the waqf's purpose. As such waqf institutions critically achieve four major economic and social objectives: Generating growth, Income stream in perpetuity, Social redistributive attributes, and provision of public services. (MIFC Report, 2014)

Indonesia in mid-2016 issued sukuk as a waqf funds in collaboration with Bank Indonesia, Badan Wakaf Indonesia (BWI), and the Ministry of Finance to issue waqf-based sukuk instruments into absolute legitimacy undercover for sukuk products. In the Badan Wakaf Indonesia News (2016) are the

mechanism of sukuk in Indonesia is done by leasing waqf assets to sukuk issue. The issuer will be issuing sukuk to investors. After that, the issuer will incorporate the contractor to build assets on the waqf assets.

By mean of Qardhulhasan or Musyarakah / mudharabah contracts should be alleviate poverty for some country. Mubarak (2014: 12) showed how Singapore in 2002 had used waqf-based sukuk for building mosques which included waqf assets and other development program for other waqf assets. Majelis Ugama Islam Singapura (MUIS) has issued contemporary financing in form sukuk of about S \$ 35 million. In that contract, profits are divided according to the proportion of capital invested. Investors with corporate Baitulmal get profit income based on the agreed rental income which is 3.03%. The guardian of the waqf (or the self-waqf land) gets a new mosque with an increase in Jemaah capacity and 4 floors of commercial property that is used as income for the mosque as an operational and maintenance fund. The proceeds from the management of waqf property can generate a surplus of up to SGD 3 million or around Rp 21 billion. About 60 percent of this surplus is distributed to maintain 69 mosques in Singapore. Singapore issues Sukuk as an asset management fund mixing new waqf (mosque management, hospital management, commercial complex land, and science endowments). Whereas New Zealand has succeeded in issuing sukuk by collaborating with endowments

which can help increase the credibility of the New Zealand endowments globally, encourage innovation in non-bank Islamic financial institutions and can open up the potential of Muslim minority communities in developing Islamic economics (Hasan, et al: 2017). Sairally et al. (2017) revealed that sukuk issuance can finance the renewal of waqf assets. Saudi Arabia issued sukuk al-Intifa 'in 2003 used as a waqf asset management, Zam-Zam Tower, Malaysia issued Sukuk Sustainable and Responsible Investment (SRI) as a source of waqf funds (Hasan et al., 2017), Research Results from Musari (2016) shows that sukuk has the potential to become an Islamic nanofinance instrument where sukuk collaboration with waqf with underlying assets can be a low source of funding for micro-society financing that avoids interest rates. Waqf-based sukuk can be integrated into the nanofinance program to be effective. The purpose of this research is to describe the sukuk contract and scheme as well as waqf-based sukuk underlying assets in Malaysia, Singapore and Indonesia.

2 THEORITICAL REVIEW

2.1 Waqf-based Sukuk

The construction of waqf assets Financing made it commercial with sukuk instruments. Sukuk instruments are the one of the other way to obtain funds for carrying out a large-scale project (Omar, 2015: 96). Sukuk is a certificate of ownership for a real asset in accordance with the basis of Islamic economics, sukuk may be an instrument for equal distribution and distribution of wealth. Being a big challenge for sukuk at this time to be able to connect the financial sector with the real sector, especially utilizing more economies. Sukuk as a ownership certificate for real assets, namely waqf assets included in the real asset category.

The advantages of waqf-based sukuk are aimed at productive goals in the community in accordance with sharia principles. Endowments are structured based on real basic assets which have productive uses (eg office complexes, residential buildings) or can even be prepared as cash waqf where financial assets are used to generate returns (for example investments in sharia securities, sukuk) and achieve waqf goals.

The waqf system from the position of Islamic finance was built to serve all segments of the community consisting of Islamic banking, capital markets and takafulto increase the full income of the

commercial community through financial products and services. The funds used are channeled for various purposes around production and consumption activities as well as Government infrastructure development, in turn, funds can also be used through tax collection and also government sukuk issuance to finance expenditures (general costs and infrastructure development). In the Islamic social sector consisting of zakat and waqf appears to serve low-income communities through the provision of economic programs for those who are classified as poor. Programs can include basic consumption, business incubation programs, health services, program education, and so on. (Ismail: 2015).

2.2 Underlying Asset

In the Islamic perspective, sukuk of its essence is a representation of the legal ownership rights that are transferred by the sukuk issuer (issuer) to the sukuk holder through intermediation called Special Purpose Vehicle (SPV). Therefore, sukuk holders have full rights (milkiyyah kamilah) on the commercial sale value or profit on the asset, and if there is a loss on the underlying assets experienced by the sukuk issuer, the sukuk holder must be willing to bear the risk of the loss. This is based on the Sharia legal maxims which says that al-ghorm bi al-ghorm (there is no riskless advantage) and al-kharaj bi al-dhaman (liability that determines profit). (Wafa: 2010).

Sukuk transactions aren't receivables but investments, because debt securities create an impression that interest is not lawful according to sharia so it cannot be issued. Six characteristics of sukuk that differ from conventional bonds are; Require underlying assets, is proof of ownership of a tangible asset or benefit rights (beneficial title), income in the form of rewards (coupons, margins and profit sharing, according to the type of aqad used), free from elements (riba, gharar and maysir), issuance through Special Purpose Vehicle, The use of proceeds from the sukuk issuance must be in accordance with sharia principles. In the issuance of sukuk, it must be accompanied by an underlying asset or asset participation that functions as an object of agreement or contract. In this case the sale of assets does not mean the sale of physical benefits (beneficial title) while the ownership rights (legal title) remain with the issuer (DepKeu: 2010). Assets are generally in the form of Tangible assets and financial assets which are the Beneficiary Right for the originator. The originator may act freely in

exploiting assets to gain profits, can sell (bay'), rent (ijarah), or make the assets as collateral for debt (rahn). In connection with the sukuk contract, the originator can use his assets (Tangible assets) in the form of direct sales (bay'mutlakah), rent (ijarah), or make it as a guarantee for obtaining capital increase. Sales, leasing of assets, or making it a guarantee of a contract, are not intended to release assets absolutely, but only make the assets as collateral so that assets that are less salable are sold. By making the assets as collateral, the originator will be able to obtain cash capital that will be used to finance the project. (Wahid, 2010: 152)

Underlying Assets are not in the form of tangible assets, but in the form of benefits for those assets. Al-intifa'a in question means "taking advantage", namely the benefits of assets that are used as Underlying Assets on the sale of sukuk. So the sukuk investor or holder has the right to use the sukuk issuer's assets, but does not have the right to own the asset. Underlying Assets to be used are derived from waqf assets. (Syairozi: 2016)

3 METHOD

This type of research is descriptive with a qualitative approach. The sampling technique uses purposive sampling and is based on the criteria that have been set in each country. The type of data in this study is in the form of secondary data, data collection is done by documentation.

This research was conducted in 3 countries, namely Indonesia, Singapore and Malaysia. Waqf-based sukuk studied are waqf-based sukuk incorporated in the Indonesia Sukuk Index (ISI), Sukuk registered at Singapore Government Securities (SGS), and Sukuk in the Bloomberg Malaysian Sukuk Bond Index (BMSBI). This research is also limited to products and contracts that are only used for developing Waqf.

Data analysis in this study uses qualitative methods. The data obtained are classified and thematically processed and descriptive-analytic studies are carried out by examining multidisciplinary concepts of science.

Table 1. Samples

| Issuance Year | Name of Sukuk | Issuer Due | Sukuk Structure | Due Date |
|---------------|--------------------------|------------|-----------------------|----------|
| 2002 | First Resources | Singapore | Al-Musharakah | 2017 |
| | | | Al-Ijarah | 2017 |
| 2015 | National treasury Berhad | Malaysia | Wakalah bil Istithmar | 2022 |
| 2016 | Government of Indonesia | Indonesia | Al-Ijarah | 2017 |

4 FINDING AND DISCUSSION

4.1 Contracts and Schemes as Well as Waqf-based Sukuk Underlying Assets in Malaysia

In the Malaysian state, the sukuk instrument in an effort to build waqf assets using the Ijarah contract and the Al-wakalah agreement with the name of the SRI (Sustainable and Resposing Investment) sukuk. In financing using the ijarah contract has four phases, namely in the first phase, the State Islamic Religion Council (MAIN) makes a special company, the Al-Wakalah Company. Al-Wakalah company, a subsidiary of MAIN. The Al-Wakalah company collaborates with the Malaysian Waqf Foundation (YWM) with the mudhorobah mutlaqah agreement in the making of waqf land belonging to MAIN. Second, Syarikat Al-Wakalah by using the services of SPV, SPV issues sukuk ijarah to investors aiming to get a number of funds for the construction of assets on waqf land. Third, the process of payment of profits for ijarah sukuk issuance on an annual basis to the issuer and to MAIN and YWM. Fourth, the process of redeeming sukuk ijarah and taking over all shares issued to YWM wa'ad. (Omar, 2015: 124)

After the flow goes smoothly in the 5th year the yield is ready to be given to the manager. As many as 10% of tenants will be granted to the company al-wakalah. The granting of these grants can be used as an initiative to the al-wakalah company in an effort to promote the premise contained in rented assets.

Table 2: Distribution of Nisbah to Sukuk Issuance Parties

| Investors and Other Parties | Amount of Payment | Total Amount | Notes |
|---------------------------------------|---|--------------|---|
| Syarikat Al-Wakalah (MAIN subsidiary) | 90% | 1 | The funds are collected to make par value payment to investors and the initial purchase of YWM assets. It is also used a mudharabahmutlaqahpartnership fund to other parties (YWM and MAIN) |
| Sukuk Investor | 10% | 1 | The level of profit gained by investors |
| YWM and MAIN | These two parties will get a sharewith the profits obtained by the company with a 90:5:5 ratio after a deduction from the provision of shares to investors. | | |

Source: data processed by the author.

While 90% will be used as contingent money (Omar, 2015: 130). At the end of the fifth year, the results of the rental obtained will be billed by the company al-wakalah to investors and those who collaborate. Between MAIN and YWM will get the division ratio from Syarikat Al-Wakalah 90: 5: 5 (90% of the land of waqf building, 5: 5 for both parties).

Table 3: Distribution of Nisbah After the 25th Year (the end of the yield)

| Stakeholders | Total Ratio of Rental Results | Number of years | Note |
|---|-------------------------------|-----------------|---|
| Syarikat Al-Wakalah (MAIN's subsidiary company) | 60% | 1 | Put in the Waqf Tube Fund supervised by the company it self. Re-divided into several parts: Rizab's special needs, liquidity needs and new publishing needs |
| State Islamic Religion Majlis (MAIN) | 40% | 1 | Distribution of funds to mauqf'alayh and groups in need |

Source: Financing the Construction of Waqf Assets Using Sukuk Books, Universiti Malaya.

After division between high-ranking parties, where in the 26th year, the company al-wakalah

received as much as 60%, the MAIN received 40% of the total number of rented (benefits) of the successful building. Thus MAIN will obtain sustainable funding sources and the distribution of the benefits of waqf assets to Mauqf'alayh. The results of Omar's (2013) research suggest that contracts suitable for waqf-based sukuk issuance in Malaysia use musyarakahsukuk that has been implemented by the Saudi Arabian country with Singapore. However, in practice, the contract applied and used in the Malaysian state waqf-based Sukuk issuance, namely Khazanah SRI (Sustainable and Responsible Investment) uses the Al-Wakalah contract published on May 18, 2015 amounting to RM 100 million to fund waqf assets namely the foundation AMIR Trust School. SRI Sukuk is part of the government's ongoing efforts to optimize waqf assets.

Khazanah Nasional Berhad aims to encourage the innovation of Islamic finance, to support Malaysia's position as a global Islamic financial center. Sukuk contracts with SRI use the Wakalah bi Al-Istithmar contract where the certificate represents or represents a project that is managed based on Investment Agency by giving the agent the freedom to manage operations as a Certificate Holder. In this transaction the publisher is an agency of investment and the Investor is the main actor as a source of operational funds. Thus the certificate holder has assets represented by the existence of a certificate with a value of benefits and has the right to obtain a ratio if there is a benefit in the issuance. (IIFM Glossary 4th Edition, 2014)

Through the success of Waqf-based Sukuk issuance carried out in 2015 and able to improve educational accessibility, the second phase was relaunched. The second phase of the SRI worth Rp. 100 million sukuk includes retail proportions to enable Malaysian individuals to participate in supporting the further implementation of the Trust Schools Program. The contract using Al-Wakalah Al-Istithmar contract, Wakeel namely IhsanBerhad, Trustee or supervisory board is CIMB Islamic Trustee Berhad and Khasanah is as Sub-wakeel from Sukuk issuance. Schemes and contracts make it easier for investors to understand more clearly where the funds are directed without other parties making the process of channeling funds too long. The purpose of Sukuk SRI (Sustainability and Responsibility Investment) as a continuous action for responsibility in providing social funds including waqf assets. Providing returns to investors if the project is successful and giving investors the choice to change their investment into donations.

Waqf assets are used as underlying assets in the form of educational foundations. With the issuance of waqf-based sukuk with the concept of Sustainable

and Responsible Investment (SRI) through the Wakalah agreement bi Al-Istithmar proceeds from the sukuk issuance will be distributed to the Amir Foundation (YA) which is a waqf asset, the Foundation is a non-profit organization initiated by Khazanah in 2010. From distribution to the Amir Foundation, it is used to fund the Trust Schools Program education. (Fasha, 2017)

4.2 Contracts and Schemes and Underlying Waqf-based Waqf Assets in Singapore

Waqf-based sukuk issued by the state of Singapore is a successful sukuk pilot conducted by MUIS as the holder of waqf-based Sukuk issuance. The use of waqf development financing using sukuk instruments involves in Singapore using two main concepts, namely in the implementation of sukuk using the musharaka contract and the creation of new asset values that are higher in value by using old assets using the ijarah contract.

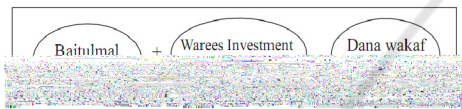


Figure 1. Singapore Waqf Scheme (musyarakah agreement)

Source :Financing the construction of waqf assets using sukuk books, Universiti Malaya is processed by the author

The implementation of the first sukuk involves three parties, namely; Baitul maal (MUIS / Majelis Ugama Islam Singapore), Warees Investment Pte. Ltd, Tube of waqf funds (MUIS). The use of the Musharaka contract has a maturity of 5 years. The establishment of the Singapore Islamic Assembly (MUIS) as Baitul Maal for the management of waqf that has been stipulated in the Administration of Muslim Law Act (AMLA) in Chapter 3 Article 2 concerning the Islamic Ugama Majlis and Article 4 concerning FinancialProvisions (Financial Provisions). , 2017) Then the creation of new asset values that are higher in value by using old assets using the ijarah contract. Following is the cash flow movement scheme using the ijarah contract:

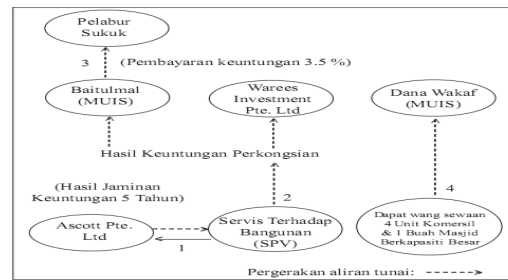


Figure 2. Scheme of Singapore waqf-based sukuk movement (ijarahcontract)

Source :Financing the construction of waqf assets using sukuk books, Universiti Malaya. (Processed by the author)

Waqf assets are located in Bencoolen Singapore in the form of fostering mosques, commercial complexes and 103 apartment rooms (including the first waqf assets used in the issuance of sukuk). The three parties initiated the capital amounting to SD35 billion where the Waqf Fund Tube (MUIS) was in the form of endowments with SD 4.2 billion and cash in the amount of SD 519,000 as well as the BaitulMaal (MUIS) as the parent financier and investment warehouse in the form of expertise and providing little capital . In the second contract, ijarah has an expected yield of 3.5 percent with a maturity of 10 years where there is an agreement on ijarah contract made by SPV with the Ascott international Pte.Ltd (developed progress). In the process of issuing sukuk with this model, it does not run in two contracts simultaneously. When the maturity date of the Musharaka agreement is 5 years, the Ijarah contract only runs in the 6th year from the due date. In this practice the MUIS as a legitimator allows the terms of the ijarah contract value to equal the value of the first contract with the value of the next contract. In the process BaitulMaal (MUIS) is entitled to building rental assets for 99 years. (Omar, 2015: 99). The concept of waqf-based Sukuk in Singapore is more internal in nature where MUIS (Assembly of the Islamic Ummah of Singapore) holds full assets of waqf and acts as BaitulMaal. Then Warees Investment as a direct subsidiary of MUIS acts as a capital provider or Sukuk Issuer. Very progressive regulations that allow waqf properties to be rented for up to 99 years without transferring ownership to tenants; and allow to sell waqf properties completely and replace them with new and higher loan-free property (istibdal). Because of this flexibility, MUIS can issue sukuk called sukukMusharakah to finance the development of fair assets on a large enough scale. The results of Omar's (2013) study show that waqf-based Sukuk in Singapore use Musyarakah contracts. Singapore

wants waqf assets to be more productive by adjusting sharia principles or principles with caution and detail where waqf assets are not assets with private ownership or a group but assets that have been represented for mutual benefit. Waqf assets are used as underlying assets in the form of property assets. The Singapore Islamic Assembly (MUIS) makes a special section on the management of waqf property in Singapore. Processing of waqf assets under the specialization of the unit of strategy of zakat and waqf (zakat and waqaf strategic unit). Waqf assets that will be used as Underlying Assets located in Bencoolen Singapore are the first waqf assets carried out by MUIS by using musyarakahsukuk as a development financing contract. The waqf assets are used for the management of the mosque, a commercial complex and maintenance costs for 103 rooms in apartments where the waqf is underground.

4.3 Contracts and Schemes as Well as Underlying Waqf based Assets in Indonesia

Waqf-based sukuk in Indonesia for contracts and schemes use the concept of ijarah. Waqf-based sukuk was introduced in mid-2016. The government seeks to optimize waqf. At the Sharia Economic Festival in August 2016, Bank Indonesia revealed various efforts in encouraging waqf optimization, one of which is the waqf-linked Sukuk model as an alternative source of financing. Waqf-based sukuk financing is more focused on infrastructure development using the ijarah contract. Transaction structure on waqf-based sukuk issuance in Indonesia (1) Construction of infrastructure assets on waqf land, (b) Nadzir issues sukuk, (2) Proceed sukuk is used to build infrastructure by using contractor services, (3) Financing is carried out in stages until infrastructure assets are completed, (4) Contractors have finished building infrastructure, (5) Infrastructure assets are managed by nadzir (shohibulmaal) with management company (mudharib), (6) Rental income obtained from tenants, (7) Rental income is divided into profits from nadzir and sukuk investors

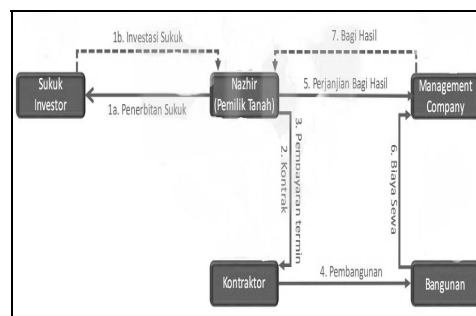


Figure 3. Indonesian waqf-based sukuk scheme (ijarah contract) Source :Sharia Economic Festival(www.bi.go.id)

The results of Ismail's research (2015) show that contracts and schemes use the ijarah structure. However, the results of the success of waqf-based sukuk in Indonesia are still unknown, this is due to the fact that there is still a need for processes and tangible results. Waqf-based sukuk in Indonesia needs to be widely and more intensely introduced to domestic and foreign investors where the potential assets of waqf in Indonesia need to be produced. Waqf assets that are used as underlying are assets using infrastructure. The Indonesian Waqf Board (BWI) initiated a productive waqf project with the cooperation of NazhirWaqf of the RaudatulMuta'alamin Foundation with PT. Provera Development for the development of productive waqf, namely Tower Office Building in the South Jakarta area. The total project was around USD 20 million (12-year tenor) with funding contributions from IDB amounting to USD 15.5 million. (BI, 2016)

5 CONCLUSION

Waqf-based contracts and sukuk schemes in Malaysia, Singapore, Indonesia have different concepts and contracts. Every contract and scheme applied by each country has its own strengths and weaknesses. Malaysia, which has rapid growth in the capital market, makes waqf-based sukuk issuance in great demand by investors. This is evidenced by its success in issuing waqf-based sukuk until the second stage in 2017. While in Singapore, Singapore is the first initiator in waqf-based sukuk issuance and emphasizes originality by adjusting the contract in accordance with sharia principles and the management is more internal because of the main control in carrying out waqf-based Sukuk issuance under the control of the Singapore Islamic Assembly (MUIS). In Indonesia, waqf-based sukuk is a sharia financial product that is still newly published in its country. The success of waqf-based sukuk in

Indonesia is still unknown, this is because there is still a need for a process and tangible results. The knowledge of the people in Indonesia is not yet widely known about waqf-based sukuk.

Waqf assets are used as Underlying Assets in sukuk issuance. Waqf assets have commercial value and are able to generate income. Asset Characteristics according to IFSB-7 there are 3 types, namely Assets Based, Asset Backed, and Pay-through Structure. The Malaysian state uses the Al-Wakalah contract within the scope of the Backed Asset which has a risk at the time of failure when the sukuk is running, Singapore uses Al-Ijarah namely Asset Based which has a guarantor if there is a risk to return investor capital, Indonesia uses the Al-ijarah contract, namely Asset Based.

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