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Analysis of Sukuk Default from the Perspective of the Principle of Al-Ghunmu bil Ghurm and Sharia Asset Guarantee Mechanisms

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Abstract

The rapid development of sukuk within contemporary Islamic capital markets has generated critical debate regarding the consistency between the theoretical foundations of Islamic finance and the practical implementation of sukuk structures, particularly in cases of issuer default and bankruptcy. This study aims to analyze sukuk default from the perspective of the principle of *al-ghunmu bil ghurm* and sharia asset guarantee mechanisms. This research employs a qualitative library research design using a normative-doctrinal approach. The data were collected from DSN-MUI fatwas, classical fiqh mu'amalah literature, sukuk prospectuses, bankruptcy regulations, and contemporary scholarly publications related to Islamic finance and sukuk default. The collected data were analyzed using descriptive-analytical and content analysis methods. The findings reveal that contemporary sukuk structures have experienced a substantial transformation from substantive risk-sharing mechanisms toward risk-transfer arrangements through the widespread use of purchase undertaking clauses, principal repayment guarantees, and liquidity support facilities. The study further demonstrates that the dominance of asset-based sukuk creates significant legal fragility because investors generally possess only beneficial ownership rights that are not legally enforceable during bankruptcy proceedings. Consequently, underlying assets frequently fail to function as effective legal protection mechanisms for investors. This study also identifies the emergence of a "Shariah Compliance Paradox," namely the coexistence of formal sharia compliance with substantive financial practices that reproduce conventional debt-based logic. The study concludes that contemporary sukuk practices increasingly prioritize market competitiveness and investor certainty at the expense of substantive Islamic principles of distributive justice and equitable risk sharing. Therefore, stronger sharia governance, regulatory reform, and the gradual standardization of asset-backed sukuk structures are necessary to preserve the authenticity and credibility of Islamic finance.

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Introduction

The development of the Islamic finance industry over the past few decades has shown an increasingly progressive trend, one of which is marked by the growing use of sukuk as a financing instrument by both governments and corporations. Sukuk is regarded as a more sharia-compliant alternative to conventional bonds because it is based on ownership of real assets (underlying assets) and emphasizes the principles of profit-sharing and risk-sharing (Kurniasari, 2014). In the ideal framework, sukuk is not merely a financial instrument but also reflects the values of justice and balance as taught in Islamic economics. However, behind this development, various challenges have emerged that test the consistency of sharia principles implementation, particularly in cases of default. Cases where issuers fail to fulfill their obligations to investors become a crucial point that raises an important question: do existing sukuk structures truly reflect the principle of risk sharing, or have they shifted toward risk transfer as found in the conventional financial system?

In situations of default, the issue extends beyond financial aspects and touches upon the fundamental normative dimensions of *fiqh muamalah*. One of the principal foundations of Islamic economic activity is the *fiqh* maxim: *al-ghunmu bil ghurm* (al-Zuhaylī, 2006, Volume 1: 453; Ḥaydar, 2003, Volume 1: 90), which means: “Profit is proportional to the risk borne.” This principle emphasizes that every gain must be accompanied by a willingness to bear risk. According to Adinugraha (2017), this principle forms the basis of legitimacy in Islamic economic activities, especially in partnership-based contracts such as *mushārah* and *mudhārah*. The relationship between profit and risk in Islam is inherent and inseparable; therefore, any transaction that eliminates risk for one party potentially deviates from sharia principles (Nuraini Rachmawati & Bn Ab Ghani, 2020). In the context of sukuk, investors, as providers of capital, are theoretically positioned as beneficial owners of the underlying assets, thereby entitling them to profits while also obligating them to bear the risks associated with the performance of those assets. In practice, however, clauses guaranteeing the return of principal investment are frequently found, indirectly reducing investors’ exposure to risk and thereby creating an imbalance in risk distribution (Imam Mawardi et al., 2024).

In addition to the principle of *al-ghunmu bil ghurm*, the concept of *dhamān* (liability/guarantee) in *fiqh muamalah* provides a framework regarding the fair limits of responsibility between parties in a transaction. Generally, *dhamān* may be understood as the obligation to bear losses or provide guarantees against certain risks (Alilia et al., 2025). Based on the views of classical scholars, *dhamān* may only be imposed upon the managing party (issuer) in cases involving negligence (*ta’addi*), carelessness (*taqsir*), or violation of contractual conditions (*mukhalafat al-syurut*). If losses occur due to pure and reasonable business risks, shifting all losses to one party while the other continues to enjoy absolute profit is not justified under sharia (Ibn ‘Affānah, 2009, pp. 129–131). In contemporary Islamic finance practice, the application of *dhamān* often sparks debate. Several sukuk structures incorporate guarantees from issuers or third parties to ensure principal repayment to investors in order to attract market interest. However, Rachmawati and Ghani (2020) emphasize that such guarantees must not be used to guarantee profits absolutely or eliminate the fundamental risks of investment, as doing so may undermine the validity of the sharia contract itself.

Another crucial aspect distinguishing sukuk from conventional debt instruments is the existence of an underlying asset. Theoretically, sukuk is an asset-based or asset-backed instrument that represents ownership over an asset or its usufruct. According to Athallah and Rahmawati (2024), the underlying asset in sukuk serves as the basis of the transaction, the source of investment returns (yield), and a form of protection for investors in cases of default. Nevertheless, the effectiveness of such assets as security during crises remains the subject of intense academic debate. Ulum and Mubarok (2024) explain that the majority of sukuk circulating in today's market are asset-based, where investor ownership over the asset is merely contractual formality intended to fulfill sharia compliance requirements rather than genuine legal ownership that can be enforced (sharia-based). Consequently, when issuers face bankruptcy or insolvency, investors do not possess direct claims to liquidate the assets, unlike in asset-backed sukuk structures that provide stronger legal ownership rights to investors.

Although the literature on risk management and sukuk structures has been widely published, most previous studies tend to focus on macro-financial risk mitigation (such as Athallah & Rahmawati, 2024) or general evaluations of sukuk ratings (such as Ulum & Mubarok, 2024). There remains a gap in the literature specifically examining the normative-legal dilemma arising when issuers experience total bankruptcy or default. The critical research gap identified in the current industrial landscape lies in the ambivalence surrounding the application of the concept of *dhamān* and the principle of *al-ghunmu bil ghurm*. On the one hand, the industry promotes sukuk as a risk-sharing instrument. On the other hand, in order to maintain market reputation, biased clauses guaranteeing the return of principal investment are articulated, substantively shifting the essence of the transaction into risk transfer. Furthermore, the theoretical optimism that underlying assets function as protective guarantees for investors often clashes with the realities of bankruptcy law. Many studies discuss collateral assets in general terms without critically addressing the structural fragility inherent in asset-based sukuk schemes. As a result, a distortion arises in which investors refuse to bear business losses, while issuers are burdened with absolute liability that contradicts the fair limitations established within the classical framework of *dhamān*.

To fill this academic gap, the novelty of this research lies in its critical-deconstructive approach that simultaneously integrates classical fiqh principles—namely the interrelation between the theory of *dhamān* and the principle of *al-ghunmu bil ghurm*—to dissect the structural pathology underlying modern sukuk default practices. Unlike previous studies that predominantly examine default solely from the perspective of financial risk management, this research offers a new perspective by exposing the conceptual distortion occurring in the shift from risk-sharing schemes to risk-transfer mechanisms when issuers experience bankruptcy. More specifically, the originality of this article rests on a substantive-comparative analysis of the effectiveness of underlying assets between asset-backed and asset-based models. It explores how the boundaries of issuer liability can be redefined fairly without undermining either the eschatological rights of the Muslim community or the legal certainty expected by investors. Accordingly, this article is expected to contribute new theoretical insights to the contemporary discourse on Islamic economic law while simultaneously strengthening the substantive implementation of modern Islamic finance.

Method

This study employs a qualitative research design based on library research to critically examine the normative and conceptual dimensions of sukuk default within the framework of Islamic economic law. Library research is considered appropriate because the primary focus of this study lies in analyzing legal doctrines, fiqh principles, regulatory provisions, and contemporary scholarly debates concerning the implementation of sukuk in modern Islamic finance (Hadi & Afandi, 2021; Husni et al., 2025). The study specifically adopts a normative-doctrinal approach to evaluate the conformity between contemporary sukuk default practices and the substantive principles of sharia, particularly the principle of *al-ghunmu bil ghurm* and the doctrine of *dhamān*.

The data utilized in this research consist entirely of secondary sources, which are systematically classified into three categories. First, primary legal materials include fatwas issued by the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI), particularly regulations concerning sukuk and Islamic bonds, such as Fatwa No. 32/DSN-MUI/IX/2002 and Fatwa No. 137/DSN-MUI/IX/2020. Second, secondary legal materials comprise classical fiqh mu‘āmalah literature discussing the concepts of *dhamān*, risk allocation, and Islamic commercial liability, as well as contemporary academic journal articles, sukuk prospectuses, legal analyses, and empirical studies related to sukuk default and Islamic capital markets. Third, tertiary legal materials include legal dictionaries, Islamic economic encyclopedias, and supporting reference materials that assist in clarifying technical and conceptual terminology relevant to the study.

Data collection was conducted through a selective documentation technique by identifying, classifying, and inventorying authoritative literature relevant to the research focus. The selection process prioritized scholarly sources discussing the relationship between sukuk default, risk-sharing mechanisms, issuer liability, and the legal status of underlying assets within both classical and contemporary Islamic legal frameworks.

To ensure the validity and reliability of the data, this study applies source triangulation techniques by comparing and cross-examining information derived from various authoritative references (Nurfajriani et al., 2024). The triangulation process integrates three principal dimensions: classical Islamic jurisprudential perspectives found in fiqh literature, normative legal provisions contained in DSN-MUI fatwas and Islamic financial regulations, and contemporary practical data reflected in sukuk prospectuses and default-related case analyses. Through this approach, the study seeks to minimize interpretive bias while strengthening the analytical consistency of the findings.

The collected data were analyzed using descriptive-analytical and content analysis methods (Sumarno, 2020). Content analysis was employed to examine the substantive meanings, contractual structures, legal clauses, and implicit normative assumptions embedded in contemporary sukuk arrangements, particularly in situations involving issuer insolvency or bankruptcy. The analysis focused on identifying patterns of risk allocation, the expansion of guarantee mechanisms, and the legal implications of asset ownership structures in modern sukuk practices.

The analytical process was conducted through three interactive stages. First, data reduction was undertaken by selecting and simplifying relevant information while excluding broader financial discussions unrelated to the central research problem. At this stage, the analysis specifically concentrated on literature addressing the correlation between sukuk

default, the scope of *dhamān*, and the legal effectiveness of underlying assets. Second, data display was performed by systematically organizing the collected information into thematic categories, including risk distribution under the principle of *al-ghunmu bil ghurm*, the sharia limitations of guarantee mechanisms, and the distinction between asset-based and asset-backed sukuk structures. Third, conclusion drawing and verification were conducted through inductive and deductive reasoning to formulate a comprehensive legal interpretation regarding the compatibility of contemporary sukuk default practices with the substantive principles of Islamic economic law.

Result

Structural Transformation of Risk Distribution in Contemporary Sukuk

The analysis of DSN-MUI fatwas, sukuk prospectuses, and contemporary Islamic finance literature demonstrates that modern sukuk structures formally maintain the doctrinal narrative of risk sharing while substantively operating through risk-transfer mechanisms. Normatively, sukuk issuance is designed to embody the principle of partnership-based investment in which investors participate not only in profit acquisition but also in the possibility of financial loss arising from business performance. This structure is theoretically rooted in the principle of *al-ghunmu bil ghurm*, which requires a proportional relationship between entitlement to return and exposure to risk.

However, the findings reveal that the operational reality of contemporary sukuk deviates significantly from this theoretical construction. Most sukuk contracts examined in this study contain contractual clauses that guarantee the repayment of principal investment regardless of the actual performance of the underlying business activities. These guarantees commonly appear in the form of *purchase undertaking* clauses obligating issuers to repurchase sukuk at nominal value upon maturity or default events. Consequently, investors continue to enjoy stable financial protection even when the financed assets experience severe economic deterioration or bankruptcy.

This finding indicates that the practical allocation of risk within modern sukuk structures is asymmetrical. Investors largely receive the economic benefits associated with investment returns while remaining insulated from substantial business losses. In contrast, issuers ultimately absorb the majority of financial liabilities during default situations. Such arrangements substantially weaken the genuine implementation of profit-and-loss sharing principles and instead reproduce a financial structure closely resembling conventional fixed-income securities.

Furthermore, the analysis identifies that the transformation of risk-sharing principles is not incidental but structurally embedded within the architecture of contemporary Islamic capital markets. The need to maintain investor confidence, market liquidity, and competitive parity with conventional bonds has encouraged issuers and financial institutions to prioritize capital certainty over substantive sharia risk-sharing ideals. As a result, the original philosophy of Islamic investment is gradually subordinated to market-oriented financial engineering.

Expansion and Functional Shift of *Dhamān* in Sukuk Practice

The findings further demonstrate a substantial expansion in the operational meaning of *dhamān* within modern sukuk arrangements. Classical fiqh literature generally limits the imposition of liability upon managers or issuers to circumstances involving negligence (*taqsīr*), misconduct (*ta'addī*), or contractual violations (*mukhālafat al-shurūṭ*). Under this classical framework, ordinary business losses resulting from market fluctuations should be proportionally borne by investment participants according to their contractual positions.

Nevertheless, the documentary analysis conducted in this study reveals that contemporary sukuk contracts increasingly extend the function of *dhamān* beyond its classical juridical boundaries. Modern sukuk structures frequently incorporate liquidity support facilities, third-party guarantees, reserve accounts, and issuer commitments intended to preserve investors' principal capital even in situations of genuine commercial failure. In practice, these mechanisms operate not merely as safeguards against managerial negligence but as instruments for neutralizing commercial risk itself.

The findings suggest that *dhamān* has undergone a functional transformation from a conditional liability mechanism into a systemic financial protection instrument. This transformation fundamentally alters the balance of obligations between issuers and investors within Islamic financial transactions. Rather than functioning as investment participants exposed to market uncertainty, investors increasingly occupy a position analogous to secured creditors whose capital expectations remain protected irrespective of business outcomes.

Moreover, the analysis reveals that the expansion of guarantee mechanisms is strongly influenced by institutional pressures within the global financial system. Sukuk issuers face substantial market expectations to provide stable and predictable returns comparable to conventional bonds. Consequently, legal innovations are introduced to accommodate investor demands while simultaneously preserving formal sharia legitimacy. This condition creates a hybrid contractual structure in which Islamic legal terminology coexists alongside financial mechanisms designed primarily to minimize investor risk exposure.

Legal Fragility of Underlying Assets in Bankruptcy Situations

Another significant finding of this study concerns the structural fragility of underlying assets as investor protection mechanisms in contemporary sukuk practices. Theoretically, the existence of underlying assets constitutes one of the principal distinctions between sukuk and conventional bonds. Sukuk investors are conceptually recognized as holders of ownership interests over tangible assets, usufructs, or investment projects that form the basis of sukuk issuance. Under this framework, underlying assets should function not only as instruments of sharia compliance but also as enforceable legal protection during default situations.

However, the findings reveal that the majority of sukuk circulating within contemporary Islamic capital markets are structured as asset-based rather than asset-backed instruments. In asset-based sukuk, investors merely possess beneficial ownership rights without acquiring direct proprietary rights over the underlying assets. Legally, the assets remain registered under the issuer's ownership and continue to form part of the issuer's bankruptcy estate during insolvency proceedings.

This structural arrangement produces significant legal consequences. When issuers experience bankruptcy, sukuk investors generally lack independent authority to execute or liquidate the underlying assets because their ownership status is not fully recognized under national bankruptcy law. Instead, investors are positioned similarly to unsecured creditors who must compete with other claimants within the general bankruptcy process. As a result, the underlying assets fail to function effectively as bankruptcy-remote protection mechanisms.

The findings therefore demonstrate a substantial contradiction between the theoretical representation of ownership in sukuk discourse and the practical enforceability of investor rights within contemporary legal systems. Although underlying assets are formally presented as evidence distinguishing sukuk from conventional debt instruments, their practical legal function frequently remains symbolic rather than substantive.

Emergence of the “Shariah Compliance Paradox”

One of the most important findings of this study is the identification of a structural contradiction described as the “Shariah Compliance Paradox.” This paradox refers to the condition in which modern sukuk structures formally satisfy sharia contractual requirements while substantively reproducing conventional financial logic.

The analysis demonstrates that contemporary sukuk instruments generally fulfill the external procedural elements of Islamic finance, including the utilization of sharia contracts, the existence of underlying assets, and compliance with DSN-MUI fatwas. Nevertheless, beneath this formal legal structure, the operational substance of many sukuk arrangements prioritizes capital certainty, investor protection, and financial predictability in ways that substantially reduce or eliminate genuine risk sharing.

The paradox becomes particularly visible during default situations. Although sukuk investors are theoretically described as asset owners participating in business risk, contractual mechanisms are simultaneously constructed to ensure that investors remain protected from significant losses. Consequently, the core ethical foundation of Islamic finance—namely the equitable distribution of profit and liability—is weakened through legal and financial engineering designed to accommodate modern capital market expectations.

This finding indicates that contemporary Islamic finance is increasingly confronted by a tension between normative sharia ideals and pragmatic market demands. The pursuit of global competitiveness has encouraged the emergence of financial structures that preserve Islamic legal symbolism while gradually converging toward the operational characteristics of conventional finance.

Discussion

The Structural Shift from Risk Sharing to Risk Transfer

The findings of this study demonstrate that contemporary sukuk structures have undergone a significant transformation from a genuine risk-sharing mechanism into a sophisticated form of risk transfer. This transformation reflects a deeper structural adaptation of Islamic financial instruments to the logic of modern global capitalism. Although sukuk are theoretically constructed upon partnership-based contracts that require proportional sharing of profit and loss, the practical architecture of most contemporary sukuk instead prioritizes investor certainty and capital preservation.

This phenomenon occurs because the modern Islamic capital market operates within a highly competitive global financial environment dominated by conventional fixed-income instruments. Investors—particularly institutional investors—generally prefer predictable returns and minimal exposure to uncertainty. As a consequence, sukuk issuers are pressured to design instruments capable of competing with conventional bonds in terms of stability, liquidity, and perceived security. In response to these market pressures, contemporary sukuk contracts increasingly incorporate legal mechanisms such as purchase undertakings, liquidity facilities, and principal repayment guarantees that effectively shield investors from genuine business risk.

From the perspective of Islamic economic jurisprudence, this structural adaptation fundamentally alters the philosophical foundation of Islamic investment. Classical Islamic commercial law does not merely prohibit *ribā* formally, but also seeks to establish distributive justice through equitable participation in both profit and loss. Therefore, when financial structures systematically protect investors from downside risk while still enabling them to receive economic returns, the substantive distinction between Islamic finance and conventional debt-based finance becomes increasingly blurred.

The transformation identified in this study demonstrates that contemporary Islamic finance is not merely experiencing technical contractual evolution, but also undergoing ideological accommodation toward conventional market rationality. Sukuk no longer function purely as instruments of participatory investment but increasingly resemble sharia-labeled debt securities operating within a risk-minimization paradigm.

Recontextualizing the Principle of *Al-Ghunmu bil Ghurm*

The principle of *al-ghunmu bil ghurm* occupies a central position in Islamic economic ethics because it establishes the normative relationship between entitlement and responsibility. Within this framework, profit is not viewed as an automatic reward attached to capital ownership, but as a legitimate consequence of one's willingness to participate in commercial uncertainty and potential loss.

The findings of this study reveal that contemporary sukuk structures substantially weaken this ethical foundation. Investors continue to claim stable financial returns and full repayment of principal even when issuer bankruptcy results from legitimate business failure rather than negligence or misconduct. Such arrangements create an asymmetrical distribution of rights and liabilities that contradicts the spirit of proportional justice embedded in classical *fiqh mu'amalah*.

More critically, the elimination of meaningful investor risk produces a deeper epistemological problem within Islamic finance. Islamic commercial law historically emerged not only to avoid prohibited transactions but also to establish an economic order grounded in fairness, accountability, and shared responsibility. When modern sukuk structures isolate investors from commercial risk while preserving profit entitlement, the transaction gradually loses its participatory economic character and moves closer toward creditor-debtor relations characteristic of conventional finance.

This condition demonstrates that the challenge facing contemporary Islamic finance is not simply one of formal legal compliance, but rather the preservation of substantive ethical objectives. The principle of *al-ghunmu bil ghurm* should therefore be understood

not merely as a technical fiqh maxim but as a foundational paradigm for constructing socially just financial relationships.

The Juridical Expansion of *Dhamān* and the Crisis of Contractual Authenticity

Another critical issue identified in this study concerns the expansion of *dhamān* beyond its classical normative boundaries. In traditional Islamic jurisprudence, guarantees function primarily as corrective mechanisms intended to address negligence, misconduct, or contractual violations. The doctrine was never intended to eliminate ordinary business risk entirely because risk itself constitutes an integral component of lawful commercial activity.

However, contemporary sukuk practices demonstrate that *dhamān* has gradually been transformed into a comprehensive financial protection mechanism designed to neutralize uncertainty for investors. Through various contractual innovations, issuers assume increasingly broad liability obligations that effectively guarantee investor capital regardless of commercial outcomes. This transformation reflects the growing dominance of financial pragmatism over substantive jurisprudential consistency.

The expansion of *dhamān* also reveals a deeper crisis of contractual authenticity within modern Islamic finance. Classical Islamic contracts such as *mudhārabah* and *mushārahah* were originally designed as genuine partnership models emphasizing entrepreneurial cooperation and mutual exposure to market uncertainty. Yet in contemporary sukuk practices, these classical contracts are frequently reconstructed within institutional frameworks that prioritize financial predictability rather than participatory economic justice.

Consequently, Islamic contracts risk becoming merely symbolic legal instruments detached from their original ethical and economic objectives. The preservation of contractual terminology without preservation of substantive contractual consequences creates what may be described as juridical formalism, namely a condition in which compliance is measured primarily through procedural legality rather than through realization of sharia objectives (*maqāṣid al-sharī'ah*).

Asset-Based Sukuk and the Illusion of Ownership

One of the most significant findings of this study lies in the structural weakness of asset-based sukuk regarding legal ownership rights. Contemporary sukuk discourse frequently emphasizes the existence of underlying assets as evidence distinguishing Islamic finance from conventional debt instruments. However, the findings demonstrate that in many cases these ownership claims are largely symbolic and lack substantive enforceability within bankruptcy proceedings.

In asset-based structures, investors generally possess only beneficial ownership rights rather than direct proprietary control over the underlying assets. Legally, the assets remain under the issuer's ownership and continue to form part of the bankruptcy estate during insolvency proceedings. As a result, investors are unable to independently execute or liquidate the assets despite the theoretical narrative that sukuk represent ownership-based investment instruments.

This condition produces what may be termed the "illusion of ownership." Investors are formally described as asset holders during normal market conditions, yet during

financial crises their legal position resembles that of unsecured creditors within conventional debt systems. The underlying assets therefore function primarily as instruments of formal sharia validation rather than as substantive legal protection mechanisms.

The dominance of asset-based sukuk demonstrates how contemporary Islamic finance often prioritizes transactional efficiency and regulatory convenience over genuine ownership transfer. While asset-backed sukuk potentially provide stronger alignment with Islamic legal principles by establishing enforceable proprietary rights, such structures remain relatively limited because they involve greater legal complexity and higher transaction costs.

The “Shariah Compliance Paradox” and Form-Over-Substance Practices

The identification of the “Shariah Compliance Paradox” represents one of the central theoretical contributions of this study. This paradox reflects the growing divergence between formal sharia compliance and substantive Islamic economic values within modern financial practices.

Contemporary sukuk structures generally succeed in satisfying formal legal requirements by incorporating Islamic contracts, obtaining fatwa approval, and utilizing underlying assets. However, the findings reveal that these formal mechanisms frequently coexist with substantive financial practices designed to reproduce the economic outcomes of conventional bonds. Risk elimination, capital certainty, and return stabilization remain dominant priorities despite the theoretical emphasis on profit-and-loss sharing.

This paradox illustrates the emergence of a form-over-substance orientation within parts of the Islamic finance industry. Sharia compliance becomes increasingly procedural and documentary, while the deeper ethical objectives of Islamic economics—such as distributive justice, shared responsibility, and equitable risk participation—receive diminishing practical realization.

The study therefore argues that the future legitimacy of Islamic finance depends not only upon maintaining formal contractual distinctions from conventional finance, but also upon restoring substantive commitment to the ethical and jurisprudential principles underlying Islamic commercial law. Without such commitment, Islamic financial institutions risk becoming merely alternative branding mechanisms operating within fundamentally conventional financial paradigms.

Implications for Islamic Financial Governance and Regulatory Reform

The findings of this study carry significant implications for the future governance of Islamic capital markets. First, regulatory authorities such as the Otoritas Jasa Keuangan and the Dewan Syariah Nasional Majelis Ulama Indonesia should strengthen substantive sharia governance by reevaluating contractual mechanisms that excessively neutralize investor risk. The standardization of asset-backed sukuk structures should be encouraged because they provide stronger alignment between ownership rights and investment liability.

Second, national bankruptcy regulations require harmonization with Islamic financial structures in order to ensure legal recognition of investors’ proprietary claims over underlying assets. Without bankruptcy-remote legal protection, the ownership narrative central to sukuk legitimacy remains vulnerable to collapse during insolvency proceedings.

Third, the Islamic finance industry must reconsider the extent to which market competitiveness should dictate the structure of sharia-compliant financial products. Excessive accommodation toward conventional financial expectations may increase short-term market acceptance but simultaneously erode the normative distinctiveness that originally justified the existence of Islamic finance itself.

Ultimately, the sustainability of Islamic finance depends not merely upon its capacity to replicate conventional financial efficiency through Islamic terminology, but upon its ability to offer a genuinely alternative economic paradigm rooted in justice, accountability, and equitable participation in risk and reward.

Conclusion

This study concludes that the contemporary practice of sukuk default management reflects a significant structural deviation from the foundational principles of Islamic commercial jurisprudence. Although sukuk are theoretically constructed as risk-sharing instruments grounded in partnership and asset ownership, the findings demonstrate that most contemporary sukuk structures operate through mechanisms that substantially transfer risk away from investors and toward issuers. The widespread use of purchase undertaking clauses, principal repayment guarantees, and liquidity support facilities indicates the gradual transformation of sukuk from participatory investment instruments into sharia-compliant fixed-income securities that closely resemble conventional bonds.

From the perspective of the principle of *al-ghunmu bil ghurm*, this transformation creates a normative imbalance between the right to profit and the obligation to bear loss. Investors continue to enjoy financial returns while simultaneously being protected from genuine commercial risk, even in cases of issuer bankruptcy caused by legitimate business failure. Such arrangements weaken the substantive realization of distributive justice that constitutes one of the core ethical foundations of Islamic economics.

The study further reveals that the effectiveness of underlying assets as investor protection mechanisms depends heavily upon the legal structure adopted within sukuk arrangements. The dominance of asset-based sukuk in contemporary Islamic capital markets creates substantial legal fragility because investors generally possess only beneficial ownership rights rather than enforceable proprietary claims over the underlying assets. Consequently, during bankruptcy proceedings, the underlying assets often remain part of the issuer's general bankruptcy estate, thereby undermining the practical function of asset ownership as a distinguishing feature of sukuk.

Theoretically, this research contributes to the development of contemporary Islamic economic discourse by identifying the phenomenon described as the "Shariah Compliance Paradox," namely the coexistence of formal sharia compliance with substantive financial practices that reproduce conventional risk-transfer logic. This finding demonstrates that the central challenge facing modern Islamic finance lies not merely in maintaining procedural contractual compliance, but in preserving the substantive ethical objectives of Islamic commercial law.

Nevertheless, this study is limited by its normative-doctrinal nature, which relies primarily on secondary legal materials, fatwas, scholarly literature, and contractual documents. Consequently, the research has not fully explored the sociological and institutional dynamics surrounding sukuk restructuring, investor behavior, judicial interpretation, and bankruptcy dispute resolution in practice. Future studies are therefore encouraged to employ empirical and socio-legal approaches through case studies, interviews, and comparative regulatory analysis in order to provide a more comprehensive understanding of the operational realities of sukuk default management.

Based on these findings, this study recommends that regulatory authorities, particularly the Otoritas Jasa Keuangan and the Dewan Syariah Nasional Majelis Ulama Indonesia, strengthen substantive sharia governance by encouraging the gradual standardization of asset-backed sukuk structures and reevaluating contractual clauses that excessively eliminate investor risk. In addition, harmonization between Islamic financial regulations and national bankruptcy law is urgently required to ensure stronger legal protection for underlying assets within insolvency proceedings. Ultimately, the sustainability and credibility of Islamic finance depend upon its ability to preserve substantive justice and authentic risk-sharing principles rather than merely replicating conventional financial practices under Islamic legal terminology.

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