

The application of Maqasid Al-Shariah in Islamic Sukuk (The Malaysian Case)

تطبيق مقاصد الشريعة في الصكوك الإسلامية (الحالة الماليزية)

MAHI Souad, Pr LEBIG Mohamed Bachir

University of Sidi Bel Abbes Algeria

Received: 2020/02/14; Accepted: 2021/03/01

Summary : This study aims to find out the extent of commitment of the Malaysian Islamic Sukuk to Maqasid al-Sharia, and to reach the desired goal, first of all we deal with the definition of Maqasid al- Shariah , their divisions, and Maqasid of the financial activities were discussed, then to the concept of the Sukuk, the development of the Malaysian Sukuk market and finally analysing the application of the Malaysian Sukuk on Maqasid al-Sharia ,at the end of the study It was concluded that Malaysia is a leader in the issuance of sukuk, as it dominates the Islamic sukuk market until the first half of 2019, and that this product (sukuk) applies these Maqasid.

key words :Maqasid al-Sharia ; financial products; Islamic sukuk ; Malaysian sukuk.

Résumé: Cette étude vise à découvrir l'étendue de l'engagement des Sukuk islamiques malaisiens envers Maqasid al-Sharia et pour atteindre l'objectif souhaité, tout d'abord, nous traitons de la définition de Maqasid al-Shariah, de leurs divisions et puis Maqasid des activités financières ont été discutées, puis sur le concept du Sukuk, le développement du marché des Sukuk malais et enfin l'analyse de l'application du Sukuk malais sur Maqasid al-Sharia, à la fin de l'étude Il a été conclu que la Malaisie est un leader dans l'émission de sukuk, car il domine le marché islamique des sukuk jusqu'au premier semestre 2019, et que ce produit (sukuk) applique ces Maqasid.

mots clés: Maqasid al-Sharia; produits financiers; Sukuk islamique; Sukuk malaisien.

الملخص : تهدف هذه الدراسة إلى معرفة مدى التزام الصكوك الإسلامية الماليزية بمقاصد الشريعة ، و للوصول إلى الهدف المرجو تم التطرق بداية إلى مفهوم المقاصد الشرعية ، تقسيماتها، المقاصد الخاصة بالتصرفات المالية ، ثم إلى مفهوم الصكوك ، تطور سوق الصكوك الماليزي و أخيرا عرض الصكوك الماليزية على مقاصد الشريعة و تم التوصل إلى أن ماليزيا دولة رائدة في إصدار الصكوك إذ تهيمن على سوق الصكوك الإسلامية إلى غاية النصف الأول من سنة 2019 ، و أن هذا المنتج (الصكوك) يلتزم بتطبيق مقاصد الشريعة .

الكلمات المفتاحية : مقاصد الشريعة ؛ منتجات مالية ؛ صكوك إسلامية ؛ صكوك ماليزية .

I-Introduction :

The legitimate aspect of Maqasid al- Sharia are witnessing a great interest in the recent times. the goals intended by Allah in the law is to preserve the interests of creation in the immediate and future, which made its application in particular on the financial side an urgent necessity at a time when benefit are mixed with evil.

Islamic Sharia considered saving money from the five essentials and gave provisions for its protection, so it's necessary to apply the science of Sharia in the practical applications of the Islamic financial industry, where the most important challenge facing it is to provide financial products consistent with the Sharia. Islamic Sukuk represent one of the most important financial products developed that many Islamic and non-Islamic countries seek to issue in order to mobilize financial resources that are in line with the principles of Sharia, and Malaysia is the world leader in this field so this study comes to show the extent of application Maqasid al- Sharia in the Sukuk, based on Malaysian experience.

To achieve this goal, the study came as follows:

I -Maqasid al-Sharia an overview

I-1- Definition of Maqasid al-Shariah

I -2 - Classification of Maqasid al-Shariah

I- 3 - The objectives of shariah in Islamic finance (Maqasid al-Shariah)

II- Malaysia's sukuk Market

II- 1-Definition of sukuk

II- 2- Sukuk Market Developments in Malaysia

II- 3- The application of Maqasid al-Shariah in Malaysia's sukuk

The problem :

However, the problem that remains is:

Do Islamic financial products, including Malaysian Sukuk, comply with Maqasid Al- Sharia for financial activities?

The hypothesis :

The study is based on the following hypothesis: Considering that sukuk is a leading financial product for the Islamic financial industry, it necessarily fulfills Maqasid Al- Sharia.

Previous studies :

The most important study on which the research relied is the book The Maqasid Al- Sharia in Islamic Finance by Lahsasna Ahcene, which dealt with the legitimate intentions of their importance, and tools for their activation in Islamic Finance. The second study, The Role of Sukuk in Islamic Capital Markets, which studied the sukuk market for a group of leading countries in this field, among them a Malaysian.

Finally, the International Islamic Financial Market IIFM report which conducted an in-depth study of the global sukuk market in 5 chapters.

This study focused in particular on the extent of application of Maqasid Al- Sharia in the Malaysian Sukuk.

I--Maqasid al-Sharia an overview

I.1. Definition of Maqasid al Shariah

Ibn Ashur defined Maqasid al-Shariah base on two aspects: (Mohamed, E,I, A,2001,p251)
- The general aspect which is the purpose and wisdom behind the enactment of all or most of the shari'ah ruling.

This definition is more related to the general objective of Shariah.
- The second definition of Maqasid al-Shariah is very specific.

It is related to specific objective to those objectives that are designed to achieve specific benefits to people in their daily activities, such as Islamic finance
Alal al-Fasi defined Maqasid Shariah as the end sought behind the enactment of each of the ruling of Shariah and the secret involved. (Allal E,F,1993,p7)

I .2. Classification of Maqasid al-Shariah

Maqasid al-Shariah is divided into three major categories as follows (Lahsasna,2013,p4) :

- The necessities or essentials (daruriyyat).
- The needs (hajjiyyat).
- The complementary (tahsiniyyat).

All the Islamic legal ruling refers to realize one of the above categories.

I .2.1. The necessities or essentials (daruriyyat):

The al-daruriyyat refer to the necessities and the essentials that the people depend on them and without them the whole society will be in total disaster and disorder and end with total collapse.

I.-2.1.1. Importance of necessities

- The essentials are the matters on which the religion and worldly affairs of the people depend on.
- Their neglecting will lead to total disruption and disorder.
- The five fundamentals of necessity must be protected.
- Must safeguard them whether by individual, society or by government and authorities.
- These five universal fundamentals principles has been addressed in all revelations.
- There is a consensus from all religions that these five d' aruriyyat must be protected.
- These values include the five fundamental matters in life

The five fundamental of necessities are : Protection of al-Din , Protection of Life (Al Nafs)
Protection of (Nasl) human being (Al-'Ird) Family, Protection of Intellect or Mind (Al-'Aql)
and Protection of Property ((Al-Mal).

I .2.2.2. Protection of Property ((Al-Mal)

Property is one of the necessities of mankind .However It should be acquired in a legitimate way.“And do not eat up your property among yourselves for vanities”
(Al Baqarah : 187)

- Allah has revealed severe punishment for those who obtain property illegally in order to

protect them.

- Islam gave the right to human being to own and have growing wealth.
- Islam emphasize on the halal transaction in order to get income and grow wealth.
- provide various financial contracts to conduct business in lawful manner.
- Islam has provided the guidelines in financial activities to inquire ownership.
- Shariah provide various financial contracts to conduct business in lawful man

I .2.2.The needs:

- It is refer to the supporting needs and interests required in order to have smooth life.
- The life without protection of these needs leads to hardship and affects the social functions very badly.
- Shatibi defined it as “it consists of what is needed to attain conform and alleviate hardship. If it is neglected, human subjects (mukallafin) will suffer distress and hardship.
- The harm resulting from neglecting it cannot be equated with the fundamental universals.
- Examples: Salam, Istisna, Leasing

I .2.3.The complementary:

- The complementary or embellishments or tahsiniyyat refer to the interest which provide Improvement in the society and lead to better life, and give progress in the moral and spiritual in the Muslim society.
- The disappearances of complementary don't affect the society function, and will not interrupt the normal process life in the society.
- As result of that the nation will become an attractive model for other.
- Examples: voluntary (sadaqah), ethical and moral rules.

I- 3- The objectives of shariah in Islamic finance (Maqasid al-Shariah)

The objectives of the Shariah in financial transactions refer to the overall goals of Shariah in all kind of activities (Lahsasna,2013,p13)

- Shariah aims achieving various goals which the umah canbenefit from it, and bring them peace, prosperity, happiness and wealth.
- These objectives are not confined to one type of financial transaction, but include all aspects of financial activities and dealings.
- These objectives seem specific as they deal with finance, they can be considered as integral objectives when their universal goals are considered.
- These objectives do not deal with specific types of rulings ,but they are related to almost all types of financial transactions and involve all activities of trading, profit making, spending and consumption.
- The objectives of Shariah in financial activities as follows:

I- 3-1- The circulation of Wealth :

This refers to enable large sectors of the population to become a part of the monetary cycle of wealth.

Shariah is against the concentration of wealth in a few hands in the society.

We can observe this objective of circulation of wealth in the following:

giving of zakat/donation/ spending for the sake of Allah/ Prohibition of monopoly in the business.

Facilitate the financial transactions Eliminate all the elements disturb the flow of circulation of the wealth.

Promoting sharing profit principles./ giving blessing on partnership in business like Mudarabah, Musharakh

To emphasise on the importance of this objective, the Shariah permit all new financial contracts and activities which are considered permissible unless there is a text which prohibits them .

I.3.1. 1. Tools for circulation of the wealth:

Encourage the Business activity
Facilitate the business transaction.
Acceptance of the minor gharar in business transaction.
Providing a comprehensive business structure in trade and business transaction.
Acceptance of un-named contracts.

I- 3-2-The Continuity of the Investment of Wealth

In order for a society to become prosperous, the wealth must be invested and should be available in many hands for its investment and increment.

We can observe this objective in the following:

The shariah encourage business and trade and prophet give blessing to the trade.
Shariah gives blessing to the investment (musharakah & mudarabah).
Emphasize to invest the capital of the orphans.

I- 3-2-1-Tools for preservation of the wealth in Islamic business transaction: .

Encouraging the domestic and international trade
. Setting up guideline and principles for Islamic investment (SC)
Facilitating the process of setting up firm and fund management
. The efficiency in regulating and managing and protecting the investment.
. Creating a sound platform for investment.

I- 3-3- Achieving Comprehensive Communal Prosperity

This objective is directed at fulfilling the basic material needs of the all members of the society by achieving personal satisfaction.

. The achievement of this objective will also rid society of negative social attributes such as stratification of the population into privileged and non- privileged classes.

I- 3-3-1- Tools for achieving this objective

The achieving to this objective is by encouraging the following:
Encouraging the donations./ Promoting sharing profit concept. Encouraging Qardhasan from the rich people in the society and from the Islamic banks and the financial institution.
Keeping the circulation of the wealth in all hand of the society members.
Encouraging the business partnership (Mudarabah and Musharakah).

I- 3-4-The Financial Transparency

This objective of Shariah in business and finance is to keep it transparent.
Examples: Musharkah (profit and loss sharing)/ Mudarabah/ Murabahah/ contractual agreement (offer & acceptance):

to avoid all kind of misuse of the property and squander in business.
to prevent disputes, arguments among the community on financial matters.
To ensure the honesty in business.
Reduce corruptions.
To upgrade the society to the level of trust and confident.
To make sure all the wealth in the society is pure by paying Zakat.
Ensuring the halal income to the society, and prevent haram income.

I- 3-4-1 Tools for finance transparency:

Account audit, Finance management, Declaration of ownership, Zakat

I- 3-5- Prevent harm and hardship in wealth and finance

The Shariah through its rules and principles is trying to achieve comprehensive communal prosperity in the society.

by making this achievement every member in the society will be enjoying the satisfaction and security.

as result of this all type or harm and hardship will be either removed from the society or minimize in the finance and business transaction.

It is understood that preventing of the harm in finance is a result of putting into practices most of the objectives of Shariah in finance.

because those objectives are the key factor for this achievement.

I- 3-5- 1-Tools of preventing harmful in finance

- Government law and finance policy.

- Banks and financial institution

- Imposing Islamic law in business transaction

Implementation the concept of legal maxims in business transaction

I- 3-6- Ensure justice in circulation of the wealth in business transaction

- The justice is a very comprehensive concept in from Islamic perspective.

- It is a prime requirement in human life in all aspect.

- We can observe the justice in wealth and economic precisely in circulation of finance in business transaction.

- The justice in the wealth starts from earning wealth and possessing property by right, without any harm.

I- 3-6-1- Tools of preventing harmful in finance

- Shariah impose some rules and regulation in contracts and business transaction such as the requirement of the mutual consent in the contract.

- Shariah prohibit all the elements that may lead to injustice business such encourage all type of business activities which create justice and benefit as bribery, fraud and deception, gambling, uncertainty, riba, ect

- Shariah encourage all type of business activities which create justice and benefit to the business community and social life as well to the business community and social life as well.

II- 1-Definition of sukuk

Islamic Financial Services Board defines : certificates that represent the holder 's proportionate ownership in an undivided parte of the underlying asset , where the holder assumes all right and obligations to such asset.(Mohd ,2012,p3).

According to Securities Commission Malaysia (SC) ,Sukuk refers to certificates of equal value which evidence undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the Shariah Advisory Council Malaysia (SAC) .

Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) described sukuk as securities of equal denomination representing individual ownership interests in portfolio of eligible existing or future assets. (Bank Negara Malaysia , 2019)

II- 2- Sukuk Market Developments in Malaysia :

Malaysia one of the Asian countries that have a success story regarding sukuk became a leading country in issuing sukuk (siti , Norazih,2019,p1) , it has issued the highest number of sukuk , the first was issued in the 1990 through Shell MDS (Malaysia) and the first corporate sukuk global Guthrie in 2003. The Malaysian sukuk market experienced its development boom from 2001-2008 during which the average growth rate was 21% .By this time , the amount corporate sukuk iussed exceeded the value of outstanding corporate bounds .(

Sumaira, Irum ,& Rehana, 2018, p 167).

Malaysia maintained its dominance in the global sukuk market , with market share of 20.6% (RM 138.7 billion) as of end – October 2017(Bank Negara Malaysia , 2018) , and 50.5% of the global sukuk issuance as at end of October 2018 .For the first half of 2018 ,Malaysia retained its position as the world's leading issuer with a 41% share , an increase from 33% a year ago .It issued USD 22.4 billion worth of sukuk during the period , an increase of 9% from 1H 2017 . The increase reflected a surge in corporate issuance across a broad range of sectors as well as an increase in the volume of short-term Islamic Treasury bills issued by the Central Bank of Malaysia(IIFM,2019, p 139).

1H2019 continued to see strong issuance activity of global sukuk, with USD87.4 billion issued, up 53.9% increase from the same period in 2018 (USD56.8 billion). (refer to chart 1) Malaysia remained the largest issuer, with USD35.1 billion issued (commanding a market share of 40.2%). (refer to chart 2)

The key factors that has plays an instrumental role in the success of Malaysia's sukuk market are : (COMCEC, 2018, p 92)

- legal regulatory framework .
- Market and infrastructure development .
- Taxation
- Diversified market players in supply and demand sides.

II. 3.The application of Maqasid al-Shariah in Malaysia's sukuk

To know the extent of the application of Maqasod al-Shariah in the Malaysian sukuk, we applied the theoretical side on a range of Sukuk issued by Malaysia.

II. 3.1. The circulation of Wealth / The Continuity of the Investment of Wealth

As we have already mentioned in the theoretical part the goal of this aspect is for wealth to spread widely, as the Sukuk managed to attract the financial surplus from a wide audience, whether they are individuals or institutions by splitting the required capital into small units that allow investors to obtain real profit from the project and is not limited to a specific segment. And we see this in the Malaysian Sukuk, as the number of issuances in Malaysia reached until November 2018 was 64 issues, 62 domestics and 2 internationals , It also contributed to finance and development of many economic sectors, as shown in the figure below .

II.3.2. The Financial Transparency

Both The issuers of sukuk and investors must know their Duties and right also the market transparency , Figure 2. illustrates the process flow for sukuk issuance in Malaysia .

II.3.Prevent harm and hardship in wealth and finance

We noted the application of the Malaysian Islamic Sukuk through the legislations and laws issued by the Malaysian government and thus providing a legal environment that excludes all that hinders the issuance and circulation of Sukuk and avoids them falling into the legal prohibitions (forbidden) ,(table 1) shows that .

II.3.4.Ensure justice in circulation of the wealth in business transaction

The sukuk are based on the principle of sharing in the profit and loss regardless of the investment formula in force, so the owner of the sukuk receives a return that is a share of the profit, and he bears his share of the loss in proportion to what he owns of the sukuk, and the following chart clarifies the various formulas that have been issued the Malaysian sukuk during of period (2005-2016) , the Murabahah contract is the most used.

III-Method and Materials:

According to the nature of the topic, we followed a case study method, as it was based on the Malaysian experience as the world's leading experiment, and it is one of the first countries to have contributed to the development of the sukuk market since its inception in 2001.

VI-Results and discussion:

Most of the data relied on for this study in the practical part was forms and tables, through which each Magsad was analyzed separately and the results are:

- A rise in the number of issues and sectors funded by the sukuk explains the realization of the trading Magsad.
- The method of issuing sukuk allows to know the rights and obligations of both parties (the issuer and the investor), which explained the achieving the Magsad of transparency.
- The issuance of laws and instructions, including taxation, provides a legal environment that facilitates dealing in sukuk, which explained the achievement of Magsad abolishment of Haram
- Sharing the profit and loss in various forms (speculation, participation, ...), explained the achievement of the Masgsad of justice.

V-Conclusion :

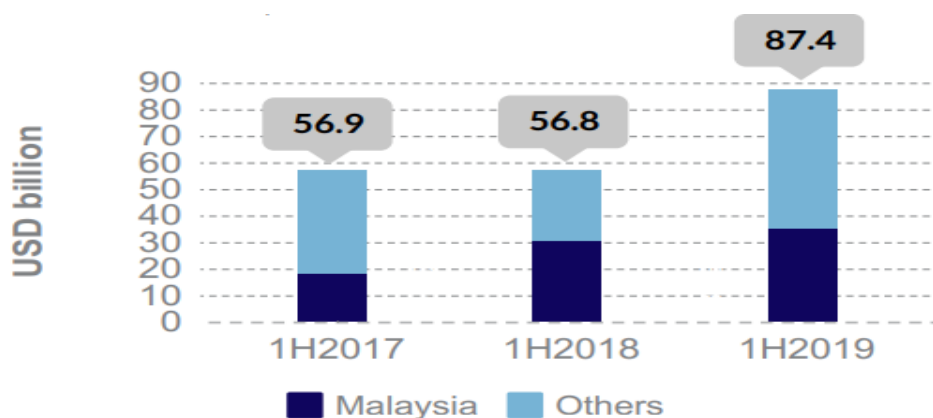
After completing this study, through which we tried to find out the extent to which Islamic Sukuk adheres to Maqasid al-Sharia related to the financial aspect, we reached the following conclusions:

- Maqasid al-Sharia aims to protect the interest of mankind and prevent the evil from them.
- Islamic Sukuk is one of the most important products of the Islamic financial industry, which has a prominent role in financing various economic projects.
- Malaysia is the world's dominant country for the issuance of Islamic sukuk, and this is until the first half of 2019.
- Malaysian Sukuk adhere to Maqasid al-Sharia related to financial activities, including: the circulation of wealth , transparency, prevent harm and hardship and justice , which revolve in the scope of the general Maqsad to save money.

And the most important recommendation that can be given by this research, is the necessity for Algeria to follow the Malaysian experience, especially since Algeria suffers from a lack of financial revenues, as it is an opportunity to attract money and employ a financial tool that is compatible with the Sharia on one hand and the advancement of the economy on the other hand

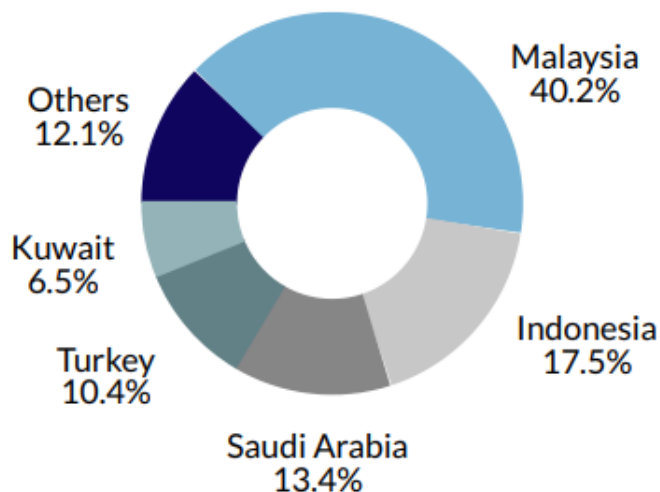
VI-Appendices:

Chart 1 : Global Sukuk Issuance 1H2017-1H2019



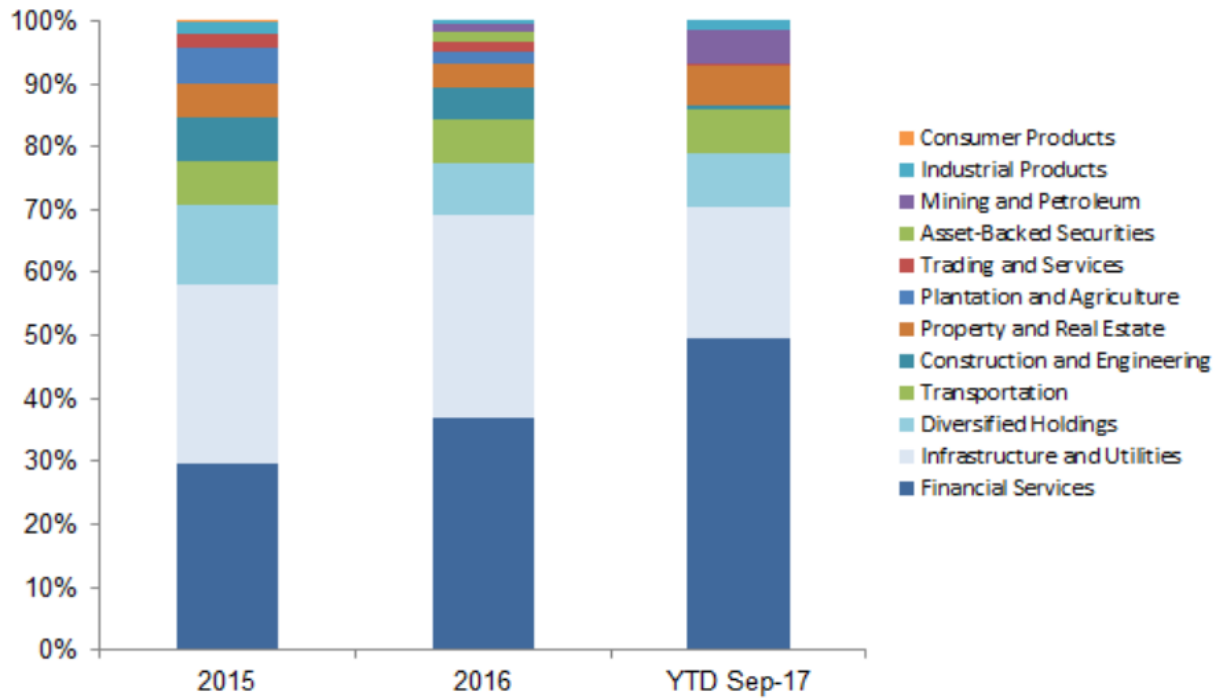
Source : Bank Negara Malaysia (2019). Global Sukuk Islamic and Funds Statistic 1H 2019. http://www.mifc.com/index.php?ch=ch_kc_definitions&pg=pg_kcdf_overview&ac=330 visited on 13/01/2020.

Chart 2 : Global Sukuk Issuance by Domicile 1H2017-1H2019



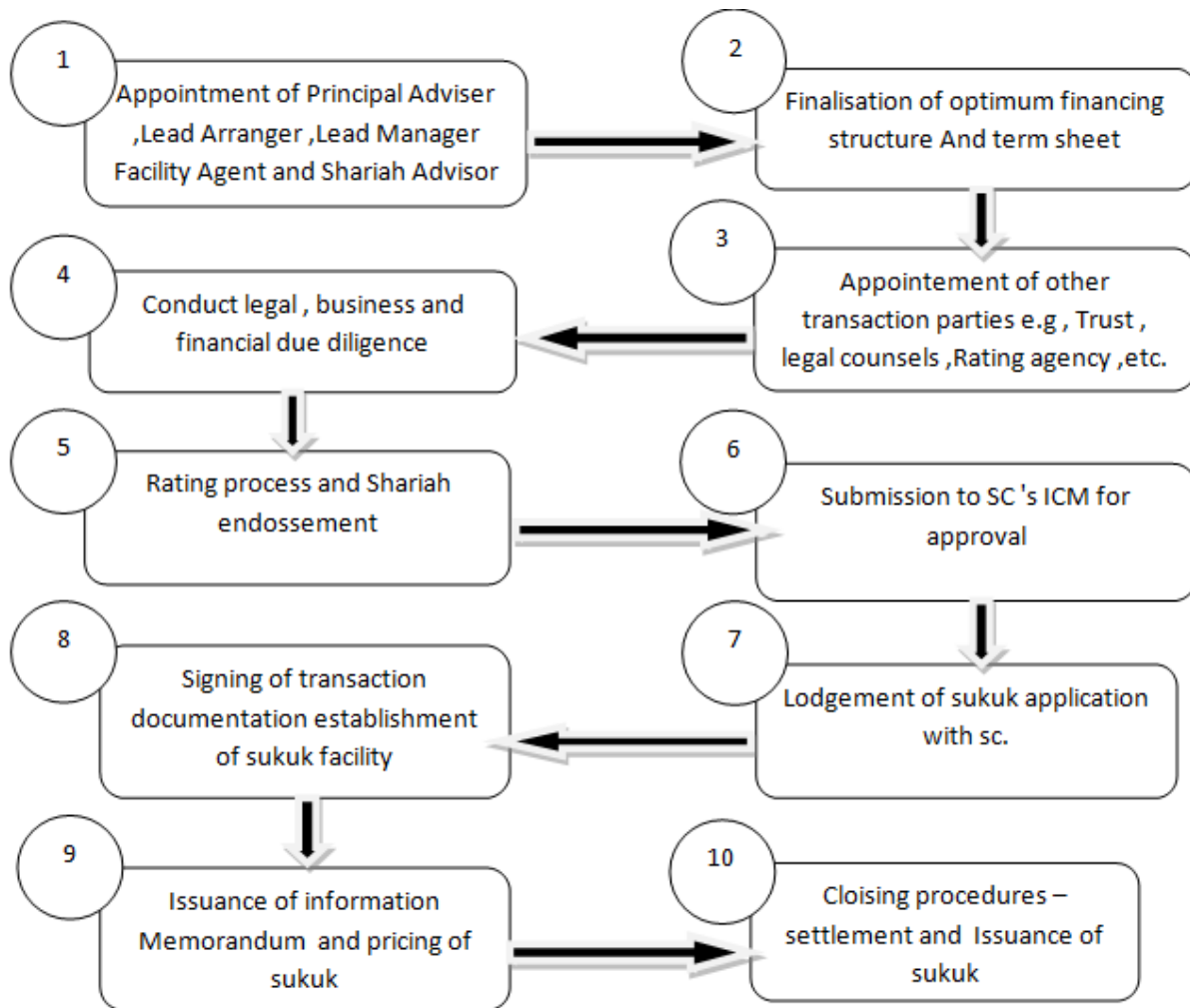
Source : Bank Negara Malaysia (2019). Global Sukuk Islamic and Funds Statistic 1H 2019. http://www.mifc.com/index.php?ch=ch_kc_definitions&pg=pg_kcdf_overview&ac=330 visited on 13/01/2020.

Figure 1 : Malaysia's Corporate Sukuk Issuance by Sector (2015-sep2017)



Source : The Role of Sukuk in Islamic Capital Markets , Standing Committee For Economic and commercial Cooperation of the organization of Islamic Cooperation (COMCEC) , 2018,p 83.

Figure 2 : Process Flow For Sukuk Issuance in Malaysia



Source : The Role of Sukuk in Islamic Capital Markets , Standing Committee For Economic and commercial Cooperation of the organization of Islamic Cooperation (COMCEC) , 2018,p 86.

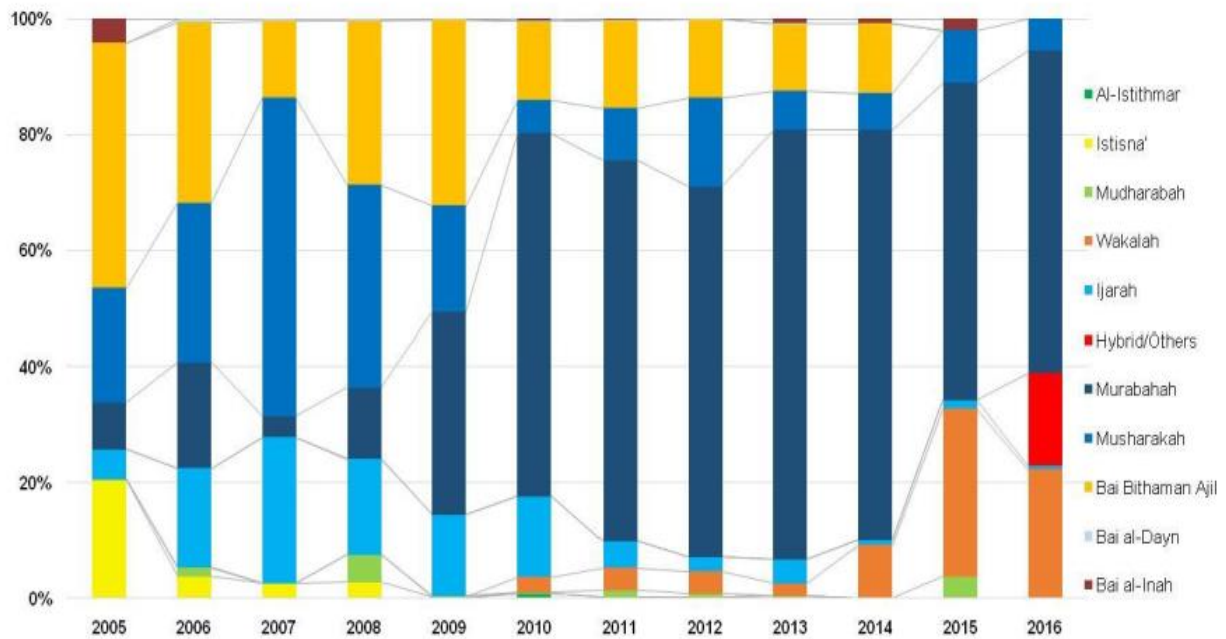
Table 1 : Legislation introduced in Malaysia (2000-2018)

Year	Legislations/incentives introduced in Malaysia
2000	Introduction of comprehensive Islamic capital Marekt Guidelines and Islamic Capital Market Master Plan
2004	Introduction of. Guidelines on Issuance of Islamic Securities by the Securities Commission (SC) .
2005	Tax legislation provide exemptions for banking and Islamic Securities for sale , purchase and lease of assets.
2006	Allowance of an RM Sukuk issuance by foriegn entities .
2007	Stamp duty exemption on investing and trading of sukuk.
2010	Tax deduction on expenses incurred in the issuance of corporate sukuk under the principles of Musharakah ,Mudarabah ,Ijarah and Istisna until year of

	assesment 2015.The incentives are also extended to expenditure incurred on the issuance of Islamic Securitie approved by the Labuan Financial Services Authority .
2011	Tax deduction on expenses incurred in the issuance of corporate sukuk under the principales of Wakalah until year of assesment 2015.
2013	Comming into force of the Islamic Financial Services Act 2013.
2014	Tax deduction on expenses incurred in the issuance of corporate sukuk under the principales of Ijarah and Wakalah extented until year of assesment 2018.
2015	SC lodge and launch a framework .
2016	Tax deduction on additional expenses incurred of retail sukuk structured pursuant to the principales of Murabahah , Musharakah ,Mudarabahand Istisna until the year of assesment 2018.
2017	Tax deduction for the expenditure incurred on the issuance or offering of Sustainable and Responsible Investment (SRI) until the year of assesment 2020.
2018	Income tax exemption for green SRI sukuk social grant reciever.

Source : Mohd Razlan Mohamed, Malaysian Bond & Sukuk Market An Overview , " Showcasing Asain Bond Markets : Opportunities And Risks " An ACRAA Conference In Corporation With Asian Bankers Association Wyndham Grand Hotl , Manama , Bahrain , 23 April 2018 , p12.

Chart 3 : Malaysian Corporate Sukuk Issuance by The Type of Sharia Contract (2005-2016)



Source : The Role of Sukuk in Islamic Capital Markets , Standing Committee For Economic and commercial Cooperation of the organization of Islamic Cooperation (COMCEC) , 2018,p 81

Bibliography:

- Mohamed El Taher Ibn Ashur.(2001). Tahkik Mohamed Al-Taher Al-Misawi.. Maqasid El Shariha El Islamia, , (Second Edition). Jordan : Dar Al-Nafees for Publishing and Distribution.
- Allal El-Fassi.(1993).Maqasid El Shariha Wa Makarimiha (Fifth Edition). Beirut : Dar Al-Gharb Al-Islami.
- Lahsasna Ahcene .(2013) . Maqasid al-shariah inIslamic Finance. Kuala Lumpur : IBFIM.
- Mohd Nazri Bin Chik. (2012, January). Sukuk: Shariah Guidelines for Islamic Bonds. Islamic Banking Operations and Regulatory Framework Workshop ,Organized by Centre for Banking Studies, Central Bank of Sri Lanka , Colombo – Sri Lanka
- Bank Negara Malaysia (2019). Global Sukuk Islamic and Funds Statistic 1H 2019. http://www.mifc.com/index.php?ch=ch_kc_definitions&pg=pg_kcdf_overview&ac=330
- Siti Sarah Mohd Zaki Fadzil , Noraziah Che Arshad. (2019). How Tenure of Sukuk Issuances Impacts The economic Growth in Malaysia ? , Advanced International Journal of Banking , Accounting and Finance, volume (1) , 1-12.
- Sumaira Ghafoor, Irum Saba , Rehana Kousrer.(2018). Sukuk issuance in Malaysia : Lessons for Pakistan. Journal of Accounting and Finance in Emerging Economies , volume (4) , 159-176.
- Bank Negara Malaysia (2018). What is Sukuk ? http://www.mifc.com/index.php?ch=ch_kc_definitions&pg=pg_kcdf_products&ac=316
- International Islamic Financial Market (IIFM). (2019). Sukuhttps://www.iifm.net/wp-content/uploads/2019/08/IIFM-Sukuk-Report-8th-Edition_4.pdfk Report.
- Standing Committee For Economic and commercial Cooperation of the organization of Islamic Cooperation (COMCEC). (2018). The Role of Sukuk in Islamic Capital Markets . http://www.sbb.gov.tr/wp-content/uploads/2018/11/The_Role_of_Sukuk_in_Islamic_Capital_Markets.pdf

- Mohd Razlan Mohamed.(2018, April). Malaysian Bond & Sukuk Market An Overview . " Showcasing Asian Bond Markets : Opportunities And Risks " An ACRAA Conference In Corporation With Asian Bankers Association Wyndham Grand Hotl , Manama , Bahrain