

## PROBLEMS IN PRACTICE OF *ṢUKŪK* ISSUANCE AS ALTERNATIVE FINANCING IN INDONESIA\*

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### ABSTRACT

*In line with the development of global economic activity, Islamic Finance has become one of strategic solutions for global crisis. Being an alternative financing instrument, *ṣukūk* shows an increasing trend in Indonesia. However, it is still hindered by some noticeable problems, namely unclear legal aspects, insufficient political will from the Government to encourage business stakeholders in issuing *ṣukūk*, inadequate human resources in mastering Islamic economics, and poor promotion on *ṣukūk* for potential investors. This study made use of a normative juridical approach by utilizing secondary data from the primary legal regulations, with the specific research methods using descriptive analysis in which data were subsequently described qualitatively. This work finds that *ṣukūk* possesses great potentials as an alternative financing instrument in Indonesia. Development of*

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*ṣukūk as a financing instrument requires strong political will from the Government to set up the infrastructure as well as legal and qualified human resources to support the development of ṣukūk market in Indonesia.*

**Keywords:** *ṣukūk, infrastructure development, Indonesia, alternative financing, problems on ṣukūk issuance*

## **INTRODUCTION**

Infrastructure development is an effort to support the acceleration and expansion of economic development in Indonesia in order to achieve the vision of Indonesia as one of the developed countries with high and sustainable economic growth. Based on the Master Plan for the Acceleration and Expansion of Indonesian Economic Development,<sup>1</sup> one of the obstacles that must be considered in the acceleration and expansion of Indonesian economic is infrastructure development. This infrastructure development would incorporate Indonesia's six economic corridors and will create connectivity nationally based on the integration of regional development, the national transportation systems, the national logistic systems as well as the information and communication technology systems. To achieve this vision, the Government needs to find alternative financing to absorb funds not only from domestic but also foreign investors to finance infrastructure projects that require huge funds. One of the financing instruments that have been widely used in many countries is through the issuance of *ṣukūk*.

Recent innovations in Islamic finance have changed the dynamics of the Islamic economic industry, especially in the financing area such as bonds and securities. *Ṣukūk* has become a trend in recent years whereby now emerged as the various types of *ṣukūk* such as Government *ṣukūk* (Sovereign *ṣukūk*) and Corporate *ṣukūk* that become the alternatives for capital structure. Based on his research, *ṣukūk* has been grown to become into one of the most important mechanisms in acquisition capital from the international capital markets through a funding structure that *sharia* compliance. Multinational Companies, Governments, State Owned Enterprises and Financial institutions have been using international *ṣukūk* as an alternative in financing syndication. Hence, *ṣukūk* has been grown and developing into one of the financial instruments that are very attractive in financial global market.

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<sup>1</sup> Coordinating Ministry for Economic Affairs, Republic of Indonesia. *Presidential Decree No. 31, 2011 about Master Plan Acceleration and Expansion of Indonesia Economic Development 2011-2025.*

Development of *ṣukūk* in Indonesia began with the first *ṣukūk* issuance by PT. Indonesia Satellite Corporation (Indosat) Tbk in September 2002 with amount of 175 billion rupiahs (Siskawati E., 2010: 1-9). Such initiative was followed by other major companies. Afterwards, based on data from Indonesia's Ministry of Finance, in 2003, there were six Corporate *ṣukūk* issued with a value of 740 billion rupiahs. Meanwhile, in December 2006, total Corporate *ṣukūk* in Indonesia increased to 17 Corporate *ṣukūk* with total value of 2.2 trillion rupiahs. And in December 2007, total Corporate *ṣukūk* and Medium Term Notes (MTNs) that has been issued were 32 types with a total value of 3.23 trillion rupiahs. However, even though the data shows that *ṣukūk* in Indonesia continues to grow each year, but it is not followed by the government attention regarding regulations that rule the issuance of *ṣukūk*. During that period, although the mechanisms of *ṣukūk* issuance as sharia bond have different characteristics and regulations with conventional bond, but *ṣukūk* issuers were used conventional bond's issuance regulations for issuing *ṣukūk*.

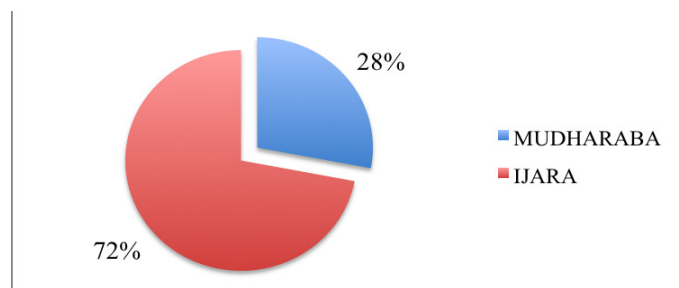
This situation implied how slow response of the Indonesian government in order to keep up with the rapid development of Islamic finance in various parts of the world. Not many companies in Indonesia that have been implementing the concept of Islamic finance supporting this problem. Consequently, Indonesia that has known as the largest Moslem population country in the world but in term of financial Islamic had not been taken consider by Islamic Finance Practitioners. Thus, the attention of Islamic finance practitioners from Middle East, Europe and the United States put more emphasis on Singapore, Malaysia, Qatar, Dubai and Bahrain. At the moment, Indonesia requires substantial funds to cover the state budget and stimulate economic growth. One way to cover deficit of state budget is to attract the foreign investor for investing in Indonesia. One country that has a large amount of funds and ready to be invested in Indonesia are Middle East countries. However, with the absence of laws governing and protection for investing in *ṣukūk* will be the cause of the *ṣukūk* investors are reluctant to invest in Indonesia.

Indonesian government finally began to show their concern; in 2003 Indonesian Ulema Council (Majelis Ulama Indonesia/ MUI) through the National Shariah Council (Dewan Syariah Nasional-MUI) was asked by the government to create rules or law that can regulate the issuance of *ṣukūk* in Indonesia. The National Shariah Council tried to create a law began with modifying the Law No. 24/ 2002 about Government Securities, and then they try to convert part of sovereign bonds into *ṣukūk* and ultimately produce a law that has been a legal basis for *ṣukūk* issuance. But the passage of legislation as the legal basis for the issuance of *ṣukūk* requires a very long time for a

legitimate right by the House of Representatives. Hence, when the bill of *ṣukūk* was still discussed in parliament, several companies in Indonesia decided to issue Corporate *ṣukūk* even though of its legal basis is still not release yet. After long and heated debates, the bill was finally passed into *ṣukūk* Law on 7 April 2008. With passed this *ṣukūk* Law, expected that foreign investors, especially from Middle Eastern countries would be investing in Indonesia's Islamic Finance sectors and this will result not only to help in developing of Islamic Finance sector but also to help the government in building infrastructures and cover the deficit of national budget. Following the passing of *Sukuk* Law in 2008, the first Government *Sukuk* was issued through three agencies namely PT. Mandiri Securities, PT. Trimegah Securities and PT. Danareksa Securities using *ijārah* structure with value 4.699 billion rupiahs. The fund from issuance of *ṣukūk* used to cover the deficit of national budget in 2008. This *ṣukūk* has using underlying asset of government property such as land and buildings as collateral. At that time, the Government prioritizes the *ṣukūk* to be selling domestically, when there were excess then the *ṣukūk* will be offered to the international market.

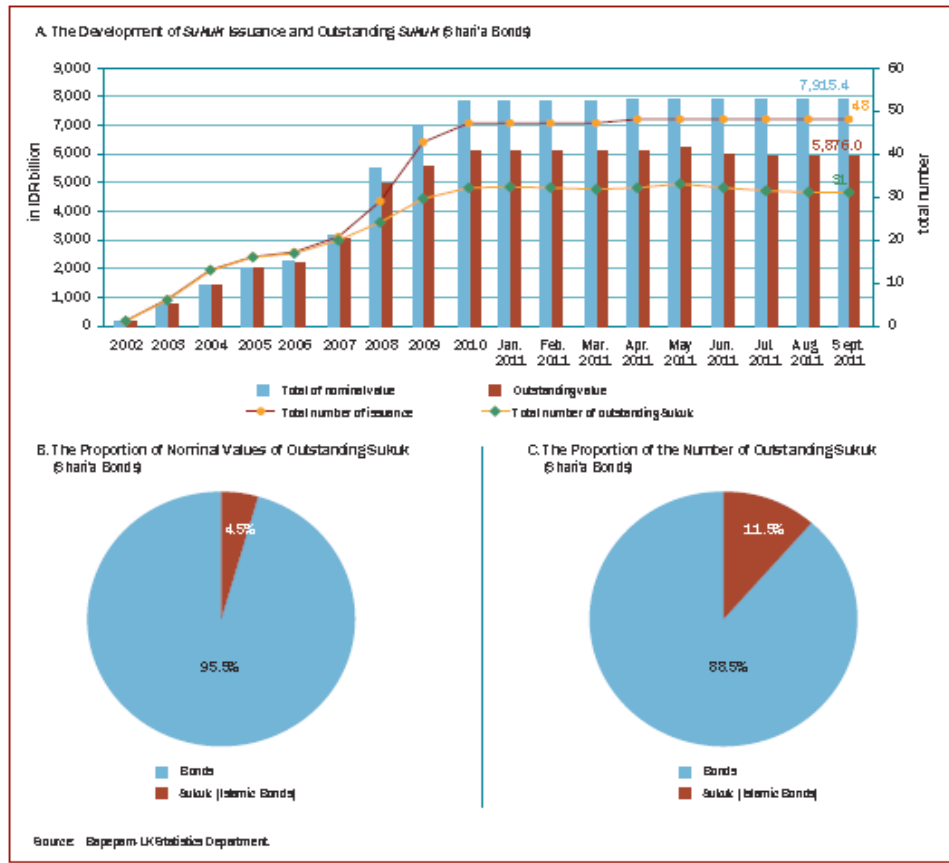
Corporate *ṣukūk* value until the end of 2008 had reached 5,498 trillion rupiahs, while *ṣukūk* structures that have been used in the period 2002-2004 are dominated by *muḍārabah* of 740 billion rupiahs (88%), followed by *ijārah* with a value of 100 billion rupiahs (12%). As for 2004-2007, *ijārah* dominated with value 2.194 trillion rupiahs (92%), followed by *muḍārabah* 200 billion rupiahs (8%). The period of 2007-2012 was dominated by *ijārah* with value 5.2 trillion rupiahs (72%), followed by *muḍārabah* with value 2.014 trillion rupiahs (28%).

Figure 1.1. Percentage *Ṣukūk* Structures In Indonesia 2007-2012



Source: Compilation from various data.

Figure 1.2. The Development of *Sukuk* Issuance and Outstanding *Sukuk* (Shariah Bonds)



Source: Bapepam LK Statistics Department.<sup>2</sup>

Figure 1.2 depicts the development of Corporation *Sukuk* in Indonesia and proportion of outstanding *ṣukūk*. The graph of development *ṣukūk* shows an increasing trend of *ṣukūk* in Indonesia; however percentage of nominal value of *ṣukūk* is only 4.5 percent out of total outstanding bonds. In term of the number of outstanding *ṣukūk*, it is only 11.5 percent out of total outstanding bonds. This means that the development of *ṣukūk* in Indonesia has not been significant when compared with conventional bonds. However, as explained before, the development of *ṣukūk* in Indonesia has potentials for growing.

<sup>2</sup> www.bapepam.go.id.

## **OBJECTIVES OF RESEARCH**

This objective of this research is to identify the existing problems in the issuance of *ṣukūk* as an alternative infrastructure financing in Indonesia and provide solutions in dealing with these problems.

## **METHODOLOGY**

This research used a descriptive analysis, which according to Soekanto (1982: 50), this method is appropriate to use in describing and analyzing the data that obtain from secondary data and primary data that equipped with. Data are collected on a range of issues relating to the regulation of *ṣukūk* and infrastructure financing associated with the development and expansion of the Indonesian economy. To discuss the issues raised in this study, researchers conducted a normative approach that emphasizes on library research to obtain secondary data. Soekanto and Mamudji (1985: 15) call such research as a study of legal literature. In accordance with the field of law study, normative methods are used to measure the meaning, purpose and existence of *ṣukūk* as an alternative infrastructure financing in Indonesia. The research was supported by a comparative law and economics approach (economic analysis of law).

## **LITERATURE REVIEWS**

### **Definition of *Ṣukūk***

The following are definitions of *ṣukūk* according to several agencies: Based on *fatwā* from the Indonesian Ulema Council (Majelis Ulama Indonesia) number 32/DSN-MUI/IX/2002, *ṣukūk* is long-term securities Shariah based issued by issuer to the holders of Islamic bonds, which require the issuer to pay the income to *ṣukūk* holders in the form of yield/margin/fee, and payback the initial amount of *ṣukūk* at the time of maturity. Meanwhile, Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in Financial Accounting Standard defines investment in *ṣukūk* as certificates of equal value representing the undistributed ownership of an intangible assets, usufructs and services, or ownership in the assets of particular projects or investment activities. (AAOIFI Shariah Standard No.18).

Capital market and Institutions Supervisory Agency (Badan Pengawas Penanaman Modal –Lembaga Keuangan-BAPEPAM-LK) in their decree states that *ṣukūk* is Islamic securities in the form of certificates or proof of

ownership of the same value and represents an integral part of the inclusion or not consist of: ownership of certain tangible assets, the value of benefits from tangible asset and services both existing and will be exist, assets of particular projects or activities of specific investment activities. Act No.19/2008 about Sovereign *Ṣukūk* (*Surat Berharga Syariah Negara-SBSN*) define Sovereign *Sukuk* as State securities letter issued based on Shariah principles as a part of participation on Sovereign *Sukuk's* asset, either in rupiah or foreign currency.

In the implementation of *ṣukūk*, there are several requirements that *ṣukūk* issuers should comply such as the *ṣukūk* must have the underlying assets in the transaction and the issuer's type of business must be conduct with Shariah compliance businesses. There are some types of business that must be avoided by issuer of *ṣukūk* (*muḍārib*) since they are not in accordance with Shariah concept *i.e* businesses that run gambling and gambling games or prohibited trade, conventional financial institution (*ribawi*) including conventional banking and insurance, trade on non-*halal* food and drinks, and provide goods or services that damage morale. The *ṣukūk* structures that commonly used among others are *muḍārabah*, *mushārah*, *murābahah*, *salam*, *istiṣnā'* and *ijārah*. In term of return of investment in *ṣukūk*, the income (yield) investment distributed by issuer (*muḍārib*) to *ṣukūk muḍārabah* holders (*ṣāḥib al-māl*) must be cleared from non-*halal* aspects. Meanwhile, distributed income must refer to the contract that *ṣukūk* holder's hold and the transfer ownership of underlying asset should follow contract agreement. Particularly for issuance of *ṣukūk ijārah*, aspect of Shariah from the beginning process of transaction are supervised by Shariah supervisory board or experts team that appointed by the National Islamic Shariah Council from MUI.

### Regulation and Legal Basis for Issuing *Ṣukūk* in Indonesia

Fatwa from National Shariah Council (Dewan Syariah Nasional-MUI)

- a) Fatwa No. 32/DSN-MUI/IX/2002 Concerning Shariah Bonds<sup>3</sup>
- b) Fatwa No. 33/DSN-MUI/IX/2002 Concerning Shariah *Muḍārabah* Bonds<sup>4</sup>
- c) Fatwa No. 40/DSN-MUI/X/2008 Concerning the Capital Market and the General Guidelines for Implementation of Shariah in the Capital Market<sup>5</sup>
- d) Fatwa No. 41/DSN-MUI/III/2004 Concerning Shariah *Ijārah* Bonds<sup>6</sup>

<sup>3</sup> Fatwa No. 32/DSN-MUI/IX/2002 Concerning *Shari'a* Bonds.

<sup>4</sup> Fatwa No. 33/DSN-MUI/IX/2002 Concerning *Shari'a Muḍārabah* Bonds.

<sup>5</sup> Fatwa No. 40/DSN-MUI/X/2008 Concerning the Capital Market and the General Guidelines for Implementation of *Shari'a* in the Capital Market.

<sup>6</sup> Fatwa No. 41/DSN-MUI/III/2004 Concerning *Shari'a Ijārah* Bonds.



- e) Fatwa No. 59/DSN-MUI/V/2007 Concerning conversion of Shariah *Muḍārabah* Bonds<sup>7</sup>
- f) Fatwa No. 69/ DSN-MUI/VI/2008 Concerning of the Government Shariah Securities (SBSN)<sup>8</sup>
- g) Fatwa No. 70/DSN-MUI/VI/2008 Concerning the method of SBSN Issuance<sup>9</sup>
- h) Fatwa No.72/DSN-MUI/VI/2008 Concerning Sale and Lease back of *Ijārah* SBSN<sup>10</sup>

Regulations on domestic and international issuance of government *ṣukūk*

- a) Domestic issuance
  - i) Book building for Sovereign *Sukuk* (Finance Minister Regulation No. 118/PMK.08/2008 on Issuance and Sale SBSN in Domestic Primary Market through Book building)<sup>11</sup>
  - ii) Book building for Sovereign Retail *Sukuk* (Finance Minister Regulation No. 218/PMK.08/2008 on Issuance and Sale of Retail SBSN in Domestic Primary Market)<sup>12</sup>
  - iii) Auction (Finance Minister Regulation No.11/PMK.08/2009 on Issuance and Sale of SBSN in Domestic Primary market through Auction)<sup>13</sup>
  - iv) Private Placement (Finance Minister Regulation No. 75/PMK.08/2009 Concerning Issuance and Sale of SBSN through Private Placement)<sup>14</sup>
- b) International issuance
  - i) Book Building (Finance Minister Regulation No.152/PMK.08/2008 Concerning SBSN Issuance in Foreign-Currency Denomination in the

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<sup>7</sup> Fatwa No. 59/DSN-MUI/V/2007 Concerning conversion of *Shari'a Muḍārabah* Bonds.

<sup>8</sup> Fatwa No. 69/ DSN-MUI/VI/2008 Concerning of the Government *Shari'a* Securities (SBSN).

<sup>9</sup> Fatwa No. 70/DSN-MUI/VI/2008 Concerning the method of SBSN Issuance.

<sup>10</sup> Fatwa No. 70/DSN-MUI/VI/2008 Concerning the method of SBSN Issuance.

<sup>11</sup> Book building for Sovereign *Sukuk* (Finance Minister Regulation No. 118/PMK.08/2008 on Issuance and Sale SBSN in Domestic Primary Market through Book building).

<sup>12</sup> Book building for Sovereign Retail *Sukuk* (Finance Minister Regulation No. 218/PMK.08/2008 on Issuance and Sale of Retail SBSN in Domestic Primary Market).

<sup>13</sup> Auction (Finance Minister Regulation No.11/PMK.08/2009 on Issuance and Sale of SBSN in Domestic Primary market through Auction).

<sup>14</sup> Private Placement (Finance Minister Regulation No. 75/PMK.08/2009 Concerning Issuance and Sale of SBSN through Private Placement).



- International Primary Market with charges reflected in Finance Minister Regulation No. 129/PMK.08/2009)<sup>15</sup>
- ii) Private Placement (Finance Minister Regulation No. 75/PMK.08/2009 Concerning Issuance and Sale of SBSN through Private Placement)<sup>16</sup>

## DISCUSSION

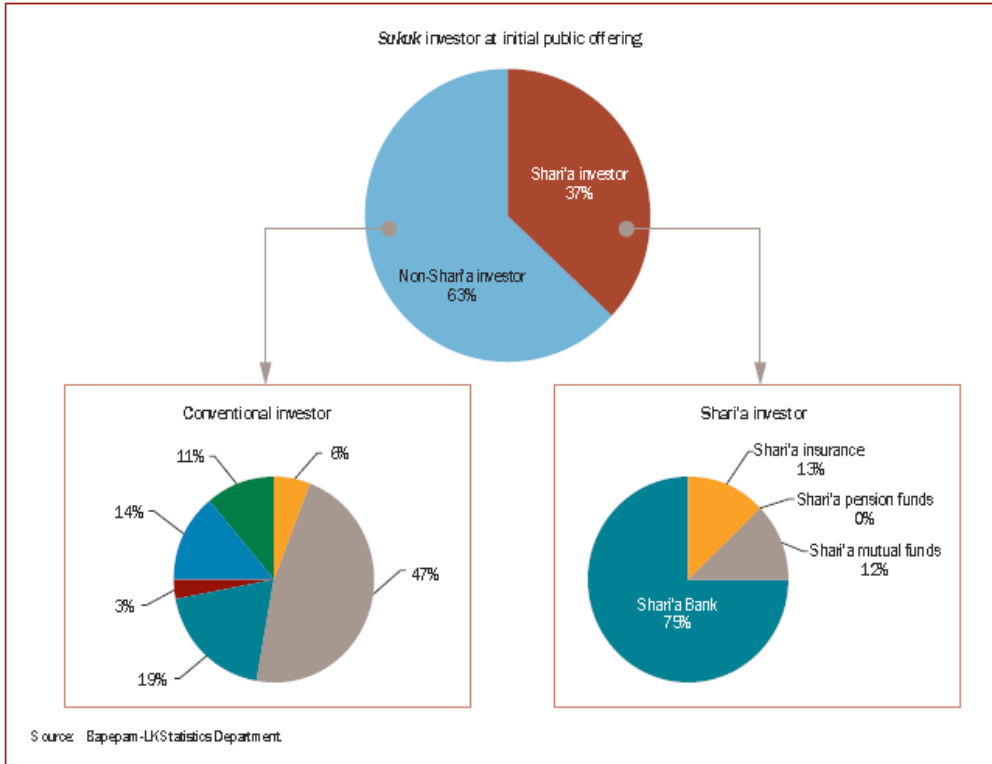
As mentioned earlier, the development of *ṣukūk* in Indonesia was considered very slow due to lack of regulations that governing and protecting *ṣukūk* holders's investment. Moreover, when compared with conventional bonds, the outstanding data show percentage of conventional bonds are greater than *ṣukūk* percentage, it means that *ṣukūk* has been proven still not optimized to be used as capital financing. Even more interesting can be seen from the chart below (figure 1.3) that the percentage amounts of non-Shariah investors (conventional investors) are greater than the Shariah investors. It indicates that market confidence and demand from conventional investors is relatively high and this reflects there are possibilities for Shariah investors for increasing.

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<sup>15</sup> Book Building (Finance Minister Regulation No.152/PMK.08/2008 Concerning SBSN Issuance in Foreign-Currency Denomination in the International Primary Market with charges reflected in Finance Minister Regulation No. 129/PMK.08/2009).

<sup>16</sup> Private Placement (Finance Minister Regulation No. 75/PMK.08/2009 Concerning Issuance and Sale of SBSN through Private Placement).

Figure.1.3. The Profile of Corporate *Ṣukūk* Investors



Source: Bapepam LK Statistic Department

Figure 1.3 depicts that during Initial Public Offering (IPO) non-Shariah investors more interested to invest in *ṣukūk* compare to Shariah investors. According to the data, the number of Shariah investors only 37 percent compared to non-Shariah investors by 63 percent. If we see the data in detail, from 37 percent of Shariah investors, Islamic Banks dominate investor profile with 75 percent, *takāful* by 13 percent and Islamic mutual fund by 12 percent. Meanwhile, the non-Shariah investors are dominating by conventional insurance companies with 47 percent. The rest row is a Conventional Pension fund (19 percent), Securities firms (14 percent), Conventional banks (6 percent), and Conventional Mutual Funds (3 percent), others (11 percent).<sup>17</sup>

*Ṣukūk* market in Indonesia has the potential to increase significantly if all stakeholders work together to facing the obstacles. One of the obstacles that

<sup>17</sup> [Republika.co.id](http://Republika.co.id), [www.republika.co.id](http://www.republika.co.id)

practitioners and regulators need to address is poor standardization of *fatwa* on structure of Islamic instruments products. The fact that AAOIFI standard has not been made as as reference adds to the reluctance of several investors to invest through *ṣukūk* in other countries. For example the reluctance of some investors from Middle East countries to invest in Malaysia is due to *contract Ba'i al-'inah* which according to them it is not allowed in Islamic investment system. Another obstacle refers to Blair W. (2005) is risk management as one of problem in issuance of *ṣukūk*, i.e. the operational risk and Shariah compliance risk. Likewise, differences in the techniques and the concept of stock screening Shariah investment instruments are different in every country, making it difficult to unify the vision and mission for a Shariah investment instrument product to be accepted in all countries. Fatah D.A. (2011) in his study argued that the challenge in developing the *ṣukūk*, especially in Indonesia is the poor public awareness of the existence of *ṣukūk*, as well as Shariah share, Islamic mutual funds, *takāful*, Shariah mortgage and so forth.

Another problem is although there is already exist *ṣukūk* Law, but the existing of Indonesian *ṣukūk* Law only encourage some corporations to develop *ṣukūk* in Indonesia, and this action is only justified by some industry, especially government. This is caused by the inability of the existing *ṣukūk* Law to accommodate the mechanism of *ṣukūk* issuance by the state/regional government and corporate. Furthermore, existing *ṣukūk* Law does not cover the resolution mechanism disputes between parties in term of issuance and/ or management of *ṣukūk*. In common practice, economic parties including Shariah investor have been accustomed to using the non-litigation disputes settlement, such as negotiation, mediation, and arbitration. Most *ṣukūk* contracts include a clause that in the case of disputes, it will be resolved by deliberations ways.

## CONCLUSION

To sum up, challenges that Indonesia is currently face is affected by four factors. The first factor is juridical. Although Indonesia has law of *ṣukūk* that approved by the Parliament in 2008, it still needs to be supported by additional clear regulations and technical instructions. In addition, some regulations negate *ṣukūk* for they require completeness letter state assets and accuracy of accounting report. In term of Taxation, there is no clear and supportive tax policy toward *ṣukūk*. So far double taxation problem toward *murābahah* financing remains unsolved by Internal Revenue Agent (DitJen Pajak). Internal Revenue Agent has not acknowledged that the selling scheme in the financial industry is different from actual purchase scheme. Hence, Internal Revenue Agent continues to charge Value Added Tax (VAT) on the purchase of goods

by bank. Hence, the cost of goods and transaction cost could rise from normal price.

Secondly is political willingness. Issuance of *ṣukūk* in Indonesia requires solid cooperation not only between the government and private sector as entrepreneurs, but also between financial authorities and ministries. The only active institution is Bank Indonesia (Central Bank). Meanwhile, to make the *ṣukūk* as instrument accepted nationwide, the role of government, particularly of Ministry of Finance, Minister of State Owned Enterprises and others agencies such as the Department of Justice and human right, Department of Education and state government, is completely necessary. With the full and serious supports, the growth of *ṣukūk* will be high. Thirdly are Human Resources. Indonesia do not have universities that offer programs or departments concentrating on Islamic economics or finance, which leads to insufficient islamic economic scholars. The country only has Tazkia Institute that focuses on islamic economics. It is the responsibility of the Ministry of Education to prepare human resources knowledgable in islamic economics or finance to help accelerate the growth of islamic market in Indonesia. The final factor is socialization, Indonesian public awareness is still wanting. Study from Bapepam-LK shows that *ṣukūk* only contributes 4.5%. The percentage indicates that is a lack of public interest for investment in *ṣukūk* due to poor promotion of the product.

## **RECOMMENDATION**

The first thing that the government must perform is improving cooperation among ministries and institutions that are related to the development of *ṣukūk* market. In addition, the government must provide clarity on the taxation, for example by providing tax incentive that will encourage company to issue their *ṣukūk*. Whereas, the issuance cost of *ṣukūk* will become a tax deduction for issuer. Similarly, *ṣukūk* holders will get special tax treatment for their income or exempted from taxation. To provide compatible human resources in Islamic Finance, government plays a significant role through the ministry of education in prepare university graduates with sufficient knowledge on Islamic economics and are ready as workforce in Islamic economic sectors. In term of public awareness, government should set a socialization programs in order to provide knowledge to public about the existence of *ṣukūk*, but this should be done by involving stakeholders such as practitioners, analysts, and scholars in the field of Islamic economics.

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