

PEMBANGUNAN MODEL SUKUK DI
MALAYSIA BERASASKAN MAQASID
SYARIAH : RUJUKAN KEPADA MAJALLAH
AHKAM AL-ADLIYYAH.

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PENGESAHAN PELAJAR

Saya dengan ini mengaku bahawa kerja yang terkandung dalam tesis ini adalah asli melainkan petikan yang telah dijelaskan sumbernya. Saya juga mengaku bahawa hasil kerja ini tidak pernah dikemukakan untuk ijazah-ijazah lain di Universiti atau mana-mana institusi lain



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SYARIAH : RUJUKAN KEPADA MAJALLAH AHKAM AL-ADLIYYAH TITLE

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Tesis ini diserahkan sebagai memenuhi keperluan
untuk penganugerahan
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Pusat Sains Kemanusiaan
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ABSTRAK

Pembangunan model sukuk yang di maksudkan dalam kajian ini adalah inovasi dan idea-idea baru bagi mengatasi isu-isu kritikan terhadap penerbitan sukuk (Al-Amine, 2015). Di dapati isu kritikan terhadap penerbitan sukuk sejak tahun 2008, iaitu penerbitan sukuk yang masih lagi terikut-ikut dengan semangat dan trend konvensional masih lagi relevan (Mohamed Naim et al., 2013; B. Muhammad & Usmani, n.d.; Wajdi Dusuki, 2010; Yousri, 2008). Malah isu percanggahan pandangan dan tidak wujud keseragaman dalam kelulusan syariah menyebabkan ada sukuk yang tidak diterima di sebuah negara lain. Ia menjadi cabaran yang mendatang apabila wujud ketidakjelasan dalam memahami aplikasi maqasid syariah, dan masalah yang membawa kepada penyelewengan dan penyalahgunaan maqasid untuk membenarkan perkara yang dilarang oleh syara'. Ia ditambah pula dengan ketidaksediaan sikap sesetengah institusi untuk mengamalkannya kerana kekurangan pengetahuan dalam maqasid syariah dan ekonomi Islam yang lantas menyebabkan manipulasi kontrak kewangan. (A. W. Dusuki, 2010; A. W. Dusuki & Bouheraoua, 2011; Ries & Universiti, 2015). Oleh itu, tujuan umum kajian ini adalah untuk membangunkan satu cadangan garis panduan dalam pembangunan model sukuk berdasarkan maqasid syariah melalui *Qawaid Fiqhiyyah* yang mempunyai ciri-ciri maqasid syariah dalam syeksen undang-undang Majallah ahkam al-adliyyah yang digubal oleh kerajaan Uthmaniyyah. Kajian ini menggunakan metodologi kualitatif yang di rekabentuk menggunakan rekabentuk kajian penerokaan (explorative research) mengguna pakai kaedah kajian kes (Creswell, 2013). Sebanyak tujuh responden terdiri daripada pakar dalam bidang pasaran modal Islam dan maqasid syariah telah ditemubual. Dapatan kajian menunjukkan peranan maqasid syariah dalam pembangunan sukuk di gunakan untuk menangani isu kontroversi syariah melalui pendekatan *makhraj fiqh* (jalan keluar pertembungan pandangan) yang memerlukan penggunaan masalah dalam menstruktur sukuk. Dapatan juga menunjukkan syeksen 30, 25-27 dan syeksen 2 & 3 boleh ditonjolkan untuk menjaga perkara *daruriyat* dalam sukuk seperti nilai keadilan dan menepati kehendak syariah dalam proses penerbitan sukuk. Begitu juga, syeksen 85 dan 87 boleh ditonjolkan untuk menjaga perkara *hajiyyat* seperti menilai tanggungjawab pemodal, pengurus dana dan penerbit tentang amanah dan kerja yang ditanggung bersama. Justeru itu, garis panduan dan senarai semak yang telah dibina yang merujuk kepada Majallah Ahkam Al-`Adliyyah dilihat sebagai nilai tambah kepada penghujahan syariah (*Shariah Pronouncement*). Manakala, penglibatan pemegang amanah dalam kawal selia sukuk dalam konteks pematuhan syariah sebagaimana yang dicadangkan oleh penyelidikan, akan memperkukuhkan lagi semakimbang pematuhan syariah dalam sukuk. Kesimpulannya, syeksen undang-undang di dalam Majallah Ahkam Al-Adliyyah dapat menjelaskan lebih lanjut bagaimana mencapai masalah dan menjauh dari mafsadah dalam membangunkan model baru sukuk akan datang.

Kata kunci : Pasaran Modal Islam, Pembangunan Sukuk , Majallah Ahkam Al-Adliyyah, Maqasid Syariah

ABSTRACT

The development of the sukuk model in this study is innovation and new ideas in the sukuk issuance due to sukuk issuance criticism in 2008 (Al-Amine, 2015). It is found that since 2008, there is relevancy of criticism that claim 85% of sukuk issuance is not shariah compliance (Mohamed Naim et al., 2013; B. Muhammad & Usmani, nd; Wajdi Dusuki, 2010 ; Yousri, 2008). The lack of uniformity in shariah approval and the conflicting views among scholars (modern *fuqaha*) has resulted in some sukuk not being accepted in other countries. It becomes more difficult, when there is ambiguity in understanding the application of maqasid syariah and maslahah, that leads to deviation and misuse of maqasid to allow things prohibited by syariah. It is compounded by the unwillingness of some institutions to practice it due to lack of knowledge in maqasid syariah and Islamic economy which in turn leads to the manipulation of financial contracts. (A. W. Dusuki, 2010; A. W. Dusuki & Bouheraoua, 2011; Ries & University, 2015). Therefore, the general purpose of this study is to develop a guideline in the development of sukuk model based on maqasid syariah through *Qawaid Fiqhiyyah* which has maqasid syariah characteristics in Majallah Ahkam Al-Adliyyah enacted by the Ottoman Empire. This study uses a qualitative methodology and exploratory research design which using case study methods (Creswell, 2013). A total of seven respondents consisting of experts in the field of Islamic capital market and maqasid syariah were interviewed. Findings show that the role of maqasid syariah in the development of sukuk is used to address syariah controversy in the development of sukuk model through the approach of *makhraj fiqh* (way out of the clash of views) which requires the use of maslahah in structuring sukuk. The findings also show that the sections 30, 25-27 and sections 2 & 3 can be highlighted to preserve of *daruriyat* matters in sukuk such as the value of justice and complying with shariah requirements in the sukuk issuance process. Similarly, sections 85 and 87 can be highlighted to preserve of *hajiyyat* matters such as assessing the responsibilities of investors, fund managers and issuers regarding trusts and work borne jointly. Therefore, the guidelines and checklists that have been constructed that refer to Majallah Ahkam Al-Adliyyah are seen as added value to the shariah pronouncement. Meanwhile, the involvement of trustees in the regulation of sukuk in the context of shariah compliance as suggested by research, will further strengthen the shariah compliance in sukuk. In conclusion, the legal section in Majallah Ahkam Al-Adliyyah can explain further how to achieve maslahah (benefit) and stay away from *mafsadah* (harm) in developing a new future sukuk model.

Keyword : Islamic Capital Market, Sukuk Development, Majallah Ahkam Al-Adliyyah, Maqasid Syariah.

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