



Structural Development of *Ijarah Sukuk*: An Appraisal

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Abstract

Sukuk structures rely on the performance of an underlying asset or on a contractual arrangement pertaining to that specific asset. This makes *sukuk* an important facility in Islamic finance since it can be used to provide regular payments throughout the life of the financing plan. This study highlights some important *sukuk* structures, such as *ijarah* for asset acquisition and *sukuk* with a sale and lease-backed structure. Additionally, this study suggests some important proposals to help overcome the *Shari'ah* issues in *sukuk* structures. This study suggests that *sukuk* structures involving the combination of sale and lease-backed contracts should involve a third party who enters into the *Ijarah* transaction with the investors rather than the originator himself. A benefit of this change will help avoid *Inah Ijariyyah* (*Inah* trick for) in the structure. The *sukuk* structure for asset securitization on the other hand, should not be traded in the secondary market because it involves a sale of debt for debt which is prohibited according to the *Shari'ah* principles. As for the forward lease *sukuk*, *sukuk* holders should wait for the commencement of the project before trading their *sukuk* in the secondary markets. This is to ensure that the *Ijarah* property exists before the sale process began.

Keywords: *Shari'ah*, *Sukuk* structure, Islamic Capital Markets

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1. Introduction

Sukuk the plural of *sakk* means certificate, *sukuk* are certificates of equal value that normally engaged and issued by the prevailing owner of an asset either by his own or through financial intermediaries (RAM, 2009). The main importance of *ijarah sukuk* asset is to be leased for constant rental payments; the *sukuk* holders will become the owners of the *sukuk* asset. *Sukuk* could be raised based on the current and available or future asset. The underlying asset could also be underlying services or the usufruct, once the *sukuk* is purchased, the *sukuk* holders are the real owners of the *sukuk* asset and all related usufruct. The term “*sukuk*” literally means lease-based Islamic bond. *Sukuk* according to Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) can be defined as “certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activities (AAOIFI Standards, 2010).

Sukuk market was innovated in other to meet the diverse risk return profiles and the needs of the investors and the issuers who are willing to invest and benefit from the *Shari'ah* compatible deals. Bonds are similarly initiated as financial vehicle with the mission to generate funds from excess spending elements to shortage spending mechanism. However, in bond market a contractual obligation is made to pay fixed or floating interest to the bond holders. Therefore, the main concern in the bond market is the return of the money invested and not the actual asset or the object that is been financed. Since interest is prohibited, the *sukuk* market has a different approached for it as *sukuk* has to be a *Shari'ah* compliant mechanism and away from the interest which is strictly prohibited under the Islamic law. Since money is regarded as medium of exchange and not a source of profit, in another word money cannot generate profit by itself according to the Islamic teachings, there must be an activity that will generate profit be it business, *ijarah* and so on (El Gamal, 2000).

Based on this background, the idea of having *sukuk* market away from the interest has come to

existence. Therefore, the underlying asset for *sukuk* market is a most for an Islamic interest free *sukuk* issuance. The asset to be involved in the *sukuk* market and the investment of the asset should equally be Shari'ah compliant asset and investment. And that is the reason why all the definitions of *sukuk* include these items. For example, the Council of the Islamic Fiqh Academy of the Organization of Islamic Conference (OIC) defined *sukuk* as "any combination of assets (or the usufruct of such assets) that can be represented in the form of written financial instruments which can be sold at a market price provided that the composition of the group of assets represented by the *sukuk* consist of a majority of tangible assets". Accounting and Auditing Organization of Islamic financial Institutions (AAOIFI) has also defined *sukuk* as "certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity". Furthermore, these definitions couple with other related rules concerning the *sukuk* issuances and asset securitization highlight that *sukuk* should be backed by asset and must be compliant with the underlying Shari'ah contract involved in the *sukuk* structure. The *sukuk* income must come from the real securitized asset or the intended venture related to the *sukuk* asset rather than just being simply paper derived (Radzi, 2018).

Therefore, since the *sukuk* is not just an exchange of capital for an interest payment, it's rather an exchange of a *Shari'ah* acceptable asset, then the asset has to be a *Shari'ah* compliant asset as well, couple with the use of the asset in the *sukuk* venture. The Fiqh Academy (Jeddah) in its ruling No. 5, 1998, stated that any asset or collection of assets are eligible to become underlying asset for *sukuk*, the *sukuk* may be traded in the secondary market if the underlying asset comprises predominantly tangible assets (Radzi, 2018).

The *ijarah sukuk* structure is recognized as one of the most popular and sought after *sukuk* structures in Islamic Capital Markets (ICMs). The popularity of *Ijarah sukuk* structure can be attributed to various factors. Furthermore, many governments have seen it very helpful to raise funds for their target economic need coupled with achieving its long-term financing capital projects. Many corporate entities found it very convenient to raising funds via *Ijarah sukuk*. However, previously the cost of *Ijarah sukuk* issuance was high because of uncertainty involved in *Ijarah sukuk*, being one of the most recent product introduced to the ICMs. Therefore, rating expenses are huge as well as various documentation activities on *Shari'ah* requirements related to *Ijarah* transaction. It also involved different charges related to underwriting, legal and investment banking services requirements for the *ijarah sukuk* issuance processes. But these expenses have become lower because *Ijarah sukuk* now has been widely accepted and the past experiences were actually the *sukuk* success stories. Some analysts describe *Ijarah sukuk* as the classical *sukuk* structure from which all other *sukuk* structures have developed, whereas others have underlined its simplicity and the support it receives from *Shari'ah* scholars. *Ijarah* in Islamic finance could be generally understood as the transfer of the usufruct of an asset to another party in exchange for rentals claimed from them, or in other words, simply a lease contract (Syed Ali, 2005).

1.1 Ijarah Sukuk Structure

Ijarah sukuk has three main parties involved in the *sukuk* structure generally, those parties are firstly the originator or the end user and the beneficiary of the *sukuk* issuance. Secondly, the special purpose vehicle (SPV) whose job is normally to arrange and act as middle entity between the originator and the prospective investors. Third are the investors or the *sukuk* certificate holders. In normal situation, the originator will be creating the legally independent SPV with the intention to facilitate the *sukuk* issuance, the lease and the purchase undertaking exercises. The most basic form of *Ijarah sukuk* is a securities issuance where the underlying transaction between the issuer and the obligor involves a lease of tangible or intangible property. *Ijarah sukuk* was the most common *sukuk* structure used in 2008, based on the statistics of number of issuances. The popularity of the *Ijarah* structure can be attributed to a number of different factors. Some commentators have described it as the classical *sukuk* structure from which all other *sukuk* structures have developed, whilst others have highlighted its straightforwardness and its favorable perception with *Shari'ah* scholars. The AAOIFI standards on investment *sukuk* provide an unexpectedly liberal and broad business space for structuring *Ijarah sukuk* (Thomas, 2009). There are four variations on the *Ijarah sukuk* structure:

- I. The first approach involves three parties with the acquisition of an asset by the investors from a supplier and onwards lease to the obligor.
- II. The second approach involves two parties with a sale and leaseback of the underlying asset.
- III. The third approach involves asset securitization in which the originating party sells assets from its balance sheet to investors who enjoy the risk and reward of the underlying without recourse to the originator.
- IV. The last approach involves the lease of an asset to be delivered at a fixed time in the future.

1.2 Ijarah Sukuk for Asset Acquisition

In this structure, the originator is in need to purchase an asset for his own use, therefore an *Ijarah sukuk* could be raised for the purpose of purchasing the underlying asset in need and then lease it to the originator for a certain period of time. As an example, if an airline company decides to acquire an airplane through issuance of *Ijarah sukuk*, the SPV would, as an issuer and on behalf of the *sukuk* holders, will buy the aircraft from the manufacturer and then lease it to the airline. This lease can normally take the form of a financial lease, conducted under the rules of *Ijarah muntahiya bittamlik* (a lease ending with ownership). In this structure, the ownership of the aircraft would be transferred to the airline company at the end of the lease agreement period, either by sale or as a benevolent gift by the investors. To ensure that the transfer takes place and the *sukuk* is redeemed, the airline will usually enter into a purchase undertaking agreement with the investors or with the SPV, agreeing that it will purchase the asset upon maturity (Thomas, 2009).

Below is the diagrammatic representation of the structure of *Ijarah sukuk* for asset acquisition (Refer Figure 1).

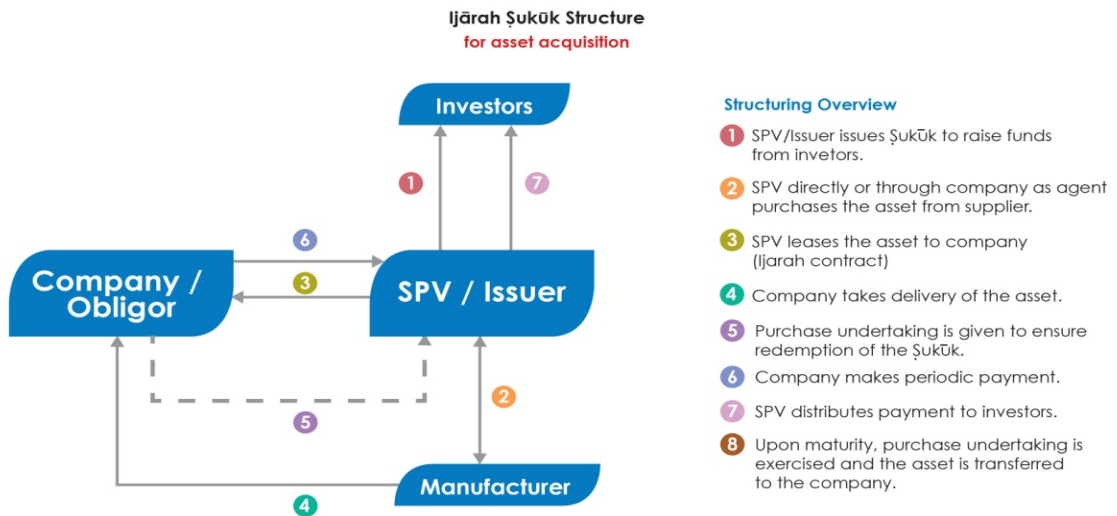


Figure 1: Illustration of *sukuk* for asset acquisition

Source: Thomas (2009) with some amendments

1.3 Rules related to Ijarah Sukuk Asset

There are basic rules as requirements for *ijarah* asset to be accepted for *ijarah sukuk* issuances. First, one of the most important rules pertaining to the *ijarah* asset is the income or the rentals received, in which the rentals must be paid at the rate that was initially agreed upon as the rental amount within a specific duration of period. It is also acceptable to separate the rentals into segment of payments, however, each segment is considered as a separate *ijarah* contract with a specific *ijarah* duration, and will be treated as such in the *sukuk* structure. Second, the underlying *ijarah* asset must be a valuable asset with a valid usufruct. Any asset without valid and *Shari'ah* acceptable usufruct should not be lent and could not be used for *Ijarah*

sukuk structure. Thirdly, the ownership of the asset should be transferred to the investors or the trustee; this is where the *ijarah sukuk* structure involves a sale of the asset to the investors and then leases the asset back to the originator, therefore only the usufruct will be allowed to the originator. Fourth, consumable asset will not be accepted as *sukuk* asset for *ijarah sukuk* structure, this is because in this situation the *Ain* or the physical object of the *ijarah* asset is shrinking, and once it is disappeared the *ijarah* contract will be invalid. Fifth, the liabilities related to the *ijarah* asset will remain with the real owners; the *sukuk* holders as part of the risk involved with their own asset; which generates rewards that come from the asset usufruct. Sixth, the originator will be liable if he uses the asset in a different purpose from which the specification described in the *ijarah* contract. However, if anything happens to the asset during his normal use of the asset as specified in the *ijarah* contract, then he is not liable. Seventh, the *ijarah* asset must be an identifiable asset with complete specifications and usufruct; therefore a proxy asset will not be used as *ijarah sukuk* undying asset. Eighth, once the asset of the *ijarah sukuk* has totally lost its usufruct or completely stops functioning as agreed in the *ijarah* contract, the *ijarah sukuk* will be terminated with immediate effect. And the rentals will also be stopped immediately. However, according to some applications in the market, when a total loss occurred, the trustee has the right to replace the asset, and a *takaful* might be used to recover the asset damaged during the *sukuk* transaction. Furthermore, total loss that occurred based on the misuse or negligence of the originator (the lessee) it will likely be compensated by him on the basis of negligence and misuse of the underlying asset. If the loss of the *ijarah* asset is partial, then the *sukuk* *ijarah* will continue and the asset might be repaired or the *ijarah* return be reviewed according to the existing usufruct available in the *sukuk* asset (AAOAFI, *Shari'ah* standards No.9).

1.4 Ijarah Sukuk for Sale and Leaseback

In this structure, the company uses one or more of its existing assets to obtain liquidity via a sale and leaseback mechanism. The majority of *ijarah* in the *sukuk* market are of this kind. The structure below identifies a sale and leaseback of the *ijarah sukuk* (refer Figure II).

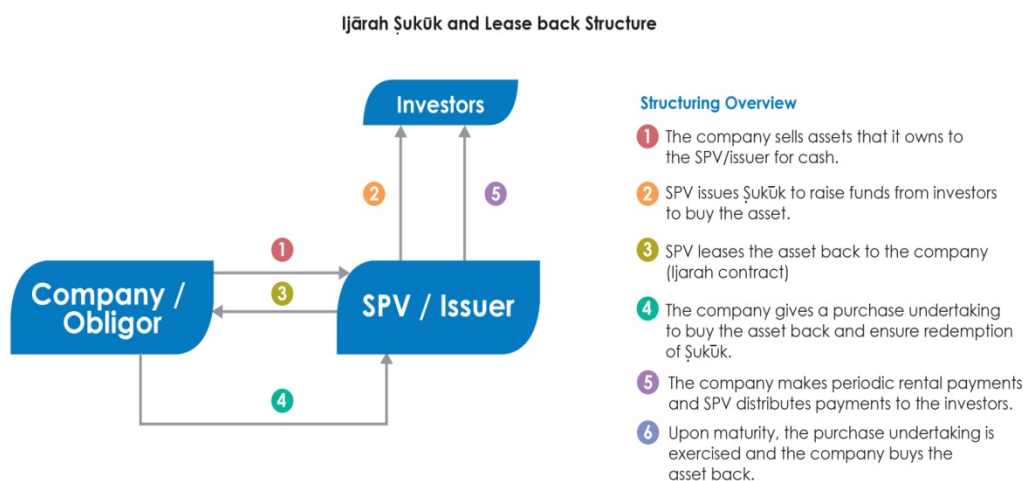


Figure II: Illustration of *Sukuk* with lease back Transaction
Source: Thomas (2009)

1.5 Ijarah Sukuk for Asset Securitization

In this structure, the originator sells the asset to an SPV. In this instance, however, the asset could be of two kinds; income generating or non-income generating. Non-income generating asset would be an asset intended solely for the originators' own use, such as in the structures of the Malaysian Government Investment Issue, Bank Negara Negotiable Notes or Malaysia Islamic Treasury Bills. In the case of Bank Negara *ijarah sukuk*, the issuance of *sukuk* was achieved by selling a building used by Bank Negara

Malaysia (BNM) – the central bank in the structure of its *ijarah sukuk*. Below is a representation of the structure of the BNM *ijarah sukuk*.

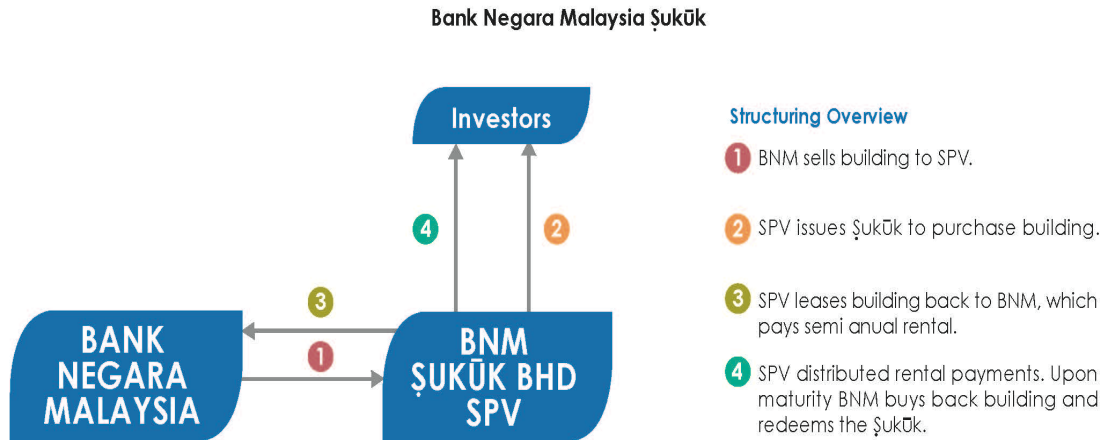


Figure III: Illustration of Bank Negara Malaysia *Sukuk*
Source: Thomas (2009)

BNM has in 2005 announced new Islamic monetary instrument using the *ijarah sukuk* structure. The first issuance of this particular *sukuk* was inaugurated in February 2006 with an issue size of RM400 million. BNM issued the instrument on a regular basis with subsequent issues ranging from RM100 million to RM200 million. The *Shari'ah* Advisory Council of BNM has approved the structure of the *ijarah sukuk* on the basis of the *ijarah* concept of sale and lease back *ijarah*. This structure has also been widely innovated and used by the Middle Eastern *sukuk* markets. BNM Sukuk Berhad was the SPV for the establishment of *ijarah sukuk* and the proceeds were used to purchase asset for the central bank of Malaysia. The underlying asset will then be leased to BNM for rentals, which will be distributed to the *sukuk* holders semi-annually. At maturity, which will also be the end of the *ijarah* contract, the BNM Sukuk Berhad (SPV) will sell the underlying asset to BNM at a predetermined amount. This *sukuk* has actually increases the diversity of monetary instrument of the central bank and helps in managing the liquidity for Islamic money markets. This *sukuk* was extensively and regularly used in Malaysia (BNM *Ijarah Sukuk*, 2006).

For the income generating asset structure, the asset is sold to the SPV, meaning that the *sukuk* holders will effectively become the new owners of the asset. The underlying income generated from the *ijarah* underlying asset involved in this setting will be used to pay the expected return of the investment to the *sukuk* holders. The *sukuk* holders will be enjoying the usufruct rewards as rental from the underlying *sukuk* asset, which is owned by the *sukuk* holders. The transfer of the underlying asset to the investors must be done to ensure the change of ownership and the removal of the asset from the originator's balance sheet is very important and critical. Hence, the trustee will normally move to secure all these rights of the investors and keep all the related documents with him through-out the duration of the *sukuk*. The structure below identifies *ijarah sukuk* for the securitization of income generating-assets (refer Figure IV).

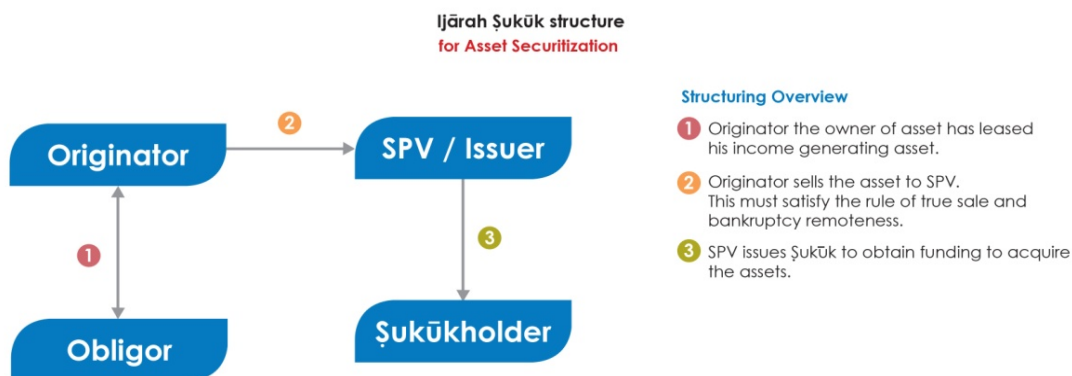


Figure IV: Illustration of *Sukuk* for Asset Securitization
Source: Thomas (2009)

The above securitization model has been used in Malaysia although with a variation in the underlying asset, in which the underlying asset was the receivables. To allow the model to be used worldwide, arrangers might likely choose other alternative and suitable *sukuk* asset for this structure according to their respective countries laws and related regulations involved for *sukuk* issuance and the asset suitability for the *ijarah sukuk* in those countries.

1.6 Issues of *Ijarah sukuk* structure

Ijarah sukuk structure was the earliest *sukuk* issued and traded at the global ICMs. Both corporate entities and sovereign utilized *Ijarah sukuk* structure for various purposes; however, *ijarah sukuk* was not left without criticism by some scholars challenging its *Shari'ah* compliant status. One of the main issues surfaces for the validity of the *ijarah sukuk* structure was the issue of originator's guarantee. In normal situation, the originator who is a third party will provide a guarantee of the capital raised via the *ijarah sukuk*. At maturity of the *ijarah sukuk*, the *ijarah* would be terminated and rentals will be ended. The underlying asset will remain in the ownership of the collective *sukuk* holders, and if the asset has a market value then the *sukuk* holders may witness a capital gain and if there is no value then they will experience capital loss. *Sukuk* investors are always not in favour of any structure that may end with loss; therefore any kind of guarantee will attract the marketability of the *sukuk* issued. That is the reason why if the underlying asset is a public property or has no ready market at maturity, then the *sukuk* holders are most likely to incur loss. This will certainly discourage investment in the *sukuk* or most likely to increase the originators financing cost. This is the reason why many originators are not willing to dispose their asset permanently for the *sukuk* issuance and then issues of guarantee to repurchase the asset will surface. It is important to mention that to structure the *ijarah-sukuk* with structures that are eye-catching for potential investors, the *sukuk* contract need to provide some important elements to the *sukuk*-holders that the originator will be willing to purchase back the asset at face value at maturity. However, this arrangement is not left without *Shari'ah* scholar's concern (AAOIFI *Shari'ah* standard No. 17 para5).

1.7 *Ijarah Sukuk* for Lease of Future Assets (Forward Leasing)

A forward leasing *sukuk* is identified by AAOIFI *Shari'ah* standards as a certificate of ownership or usufruct of a described future asset (AAOIFI *Shari'ah* standards, 2010). These are certificates of equal value issued for the purpose of leasing tangible future assets and for collecting the rental from the subscription revenue so that the usufruct of the described future asset passes into the ownership of the holders of the certificates. *Shari'ah* scholars permit these leases to be executed from a future date; termed as a 'future pre-paid lease', in such instances the structures are intended to provide working capital for construction projects and are agreed as an undertaking to lease the end product. In this case, pre-rentals are

payable by the lessee based on an understanding that the product will indeed be leased. However, in case that it is not manufactured or acquired as according to the specifications laid down in the lease agreement, such pre-rentals are repayable by the financiers (Thomas *et al.*, 2005).

The characteristic approach in a project finance is to structure sequential contracts of *istisna'* and *ijarah*. The combination allows for the financing of construction project that require the lease tenure to be extended beyond three years. Typically, one is dealing with tenure between five and ten years. The profit calculation is fixed in tranches for the construction period and might be either fixed or variable when the lease comes into force. The Zam Zam Towers in the Holy City of Mecca are an example of this kind of lease structure. In this instance, the term allows investors to separate property and right of occupants; the advance payments of the future occupancy benefit were matched to the construction costs (Thomas *et al.*, 2005).

The *ijarah sukuk* is one of the prominent and famous structure in the Malaysia's ICM. The *ijarah sukuk* structure in Malaysia is similar to *ijarah sukuk* in the Middle East and other countries. However, some factors might differ in Malaysia due to the role of the country's laws. In Malaysia the law recognizes beneficial ownership which grants the *sukuk* holders freedom and access to the beneficial ownership of the *sukuk* asset. Hence, the full ownership of the *sukuk* asset might be tricky in some structures (Radzi, 2012).

While the assets must be clearly identifiable in *ijarah* contract, all rentals should also be clearly determined at the time of the contract and for the duration of the *ijarah* contract. Although it is possible to split the term of the *ijarah* into smaller periods where different amounts of rental may be calculated for each rental period, the total rental amount to be paid during a given period must be fixed at the beginning of that period. If an asset is damaged beyond repair and it cannot be restored, the *ijarah* contract shall be terminated on the day on which such loss occurred. If there is a total loss, the trustee may have the right to substitute or replace the affected asset. Although in reality, the trustee will only do so if the originator (as service agent) is able to use either the insurance (*takaful*) or any other proceeds from the incurred loss to procure substitute or replacement assets. However, if a loss is caused by the misuse or negligence of the originator, the originator will be liable to compensate the trustee for any depreciation in the value of the affected asset in relation to the latter's value immediately before such total loss occurred. In the event that an asset suffered partial loss or damage, the *ijarah* will survive with respect to that asset (AAOIFI *Shari'ah* standards, 2010).

1.8 Innovations in *Ijarah Sukuk* Structure

Ijarah sukuk has been one of the most innovative *sukuk* issuances in the history of ICMs. One of the example of these innovations is the Darrat *sukuk* issuance, where the combination of *Ijarah* and *istisna'* *sukuk* are used to structure the innovative Darrat *sukuk*. However, this *sukuk* structure is based on asset that does not exist, and that is why the *istisna'* contract comes into the structure, as *istisna'* contract is an exceptional contract to allow construction related contracts to ease the affairs of the people. Therefore, at the time of securitization, the *sukuk* asset does not exist yet. Four different parties are involved in this structure; *sukuk* holders, originator, the SPV and the contractor. Each party is essential to the *sukuk* structure and its validity. For instance, the *ijarah* contract involves in this structure is *ijarah muntahiya bi al-tamlik* which will involve engagement between the SPV and the originator where the rentals will be channeled to the *sukuk* holders, and the originator will end up purchasing the subject matter at the end of the *ijarah* contract. The *istisna'* project of constructing the subject matter will be done with the contractor for SPV to deliver to the originator for *ijarah* to begin. It is important to mention here that the *sukuk* holders will not sell their *sukuk* in the secondary market before the construction of the subject matter, because the *sukuk* in their holding is considered as debt before the construction and delivery. However, as soon as the subject is constructed or partly constructed, it can be used by the originator and the *ijarah* contract is considered valid and the *sukuk* can be traded in the secondary market (Syed Ali, 2005).

The innovation in *ijarah* related *sukuk* issuances has also been captured in Caravan *sukuk* which is one of the *ijarah* related innovation in *sukuk* market. The *sukuk* is for an existing moveable property rental (cars and trucks) and aims at securitizing the receivables of the car renting company. Modern technology is used to connect rental earnings derived from each property (cars and trucks) to the *sukuk* holders. Another distinguishing feature of Caravan *sukuk* is the possible involvement of foreign parties in the *sukuk* issuance.

The issuer and the underlying assets can be situated in different locations and even nations (Syed Ali, 2005).

1.9 Risk Management for Ijarah Sukuk

Sukuk have different types of risk and at the same time these risk also mitigate in managing other types of portfolio risks. *Sukuk* transform various types of assets and contracts into financial certificates therefore each *sukuk* structure is unique and depends on its *Shari'ah* underlying contract (Syed Ali, 2005). Risk in *sukuk* market could be divided into systematic and unsystematic risks. It is important to mention here that risk are always there to stay in any financial activities, however mitigating and minimizing the risk is the most important issue for the *sukuk* risk management. Risk management should be a consistent process and an integral part of the financial planning process of the *sukuk* issuances. Conventionally, market risks are assessed and managed via derivatives mechanisms, such as futures contracts, forward and swap contracts and options. *Sukuk* risk might share some important risk features with the conventional market, however *sukuk* is a unique instrument due to its strict adherence to the *Shari'ah* law. *Sukuk* risks are usually managed without the use of speculative mechanisms like derivatives. This has made it a bit tricky for the *sukuk* risk management through the conventional understanding. However, some scholars stipulated that there should be a framework to be used for the risk management in ICM without violating the basic *Shari'ah* principles. It is basically part of the risk mitigating process in the *sukuk* structure that each and every transaction is backed by the real and recognized asset or service and not speculative in nature, making it a unique, although it is complex and difficult (Al-Sayed, 2013).

1.10 Secondary Market in Ijarah Sukuk

The subscribers of the *ijarah sukuk* are mainly financial institutions, Islamic banks, central banks and other large corporations and government financial institutions across the globe. This is the reason why most of the *ijarah* sovereign *sukuk* are not actually traded in the secondary market. These institutions are flush with liquidity and have limited alternative for placing the surplus liquidity. Therefore they tend to hold these *sukuk* dearly, and be the main reason why secondary market might not be realized in *ijarah sukuk*. Secondary market trade occurs due to heterogeneity in the nature, opportunities, information and expectations of the players. Therefore, an alternative way to create a secondary market in *ijarah sukuk* is to increase its distribution to a wider group of investors by creating a special *sukuk* for ordinary investors in which financial institutions are not allowed to hold this type of *sukuk*. Another alternative is to lower the returns on the *ijarah sukuk*. Furthermore, as managers are obliged to pay periodic return to the *sukuk* holders, their major apprehension will be about the survival of their business undertaking and dedicating their efforts to find ways to be ahead of the competition and successful business venture. On the other hand, *sukuk* holders are the actual legal owners of the asset, which will make them particular about maintaining the functionality of the asset other than selling their portion of the asset in the secondary market (Sharif and Abdullah, 2018).

2. Conclusion

The *ijarah sukuk* structure is one of the most important structures currently in use for the acquisition of assets and finance projects around the world. This study has explained some *Shari'ah* related issues that need to be considered in order for *ijarah sukuk* structure to be a truly *Shari'ah* compliant model. In the sale and leaseback structure for an example, which is similar to the BNM *ijarah sukuk*, there is an issue of *Inah Ijariyyah* (*Inah* transaction in an *ijarah* contract). This is when the originator leases back an asset to himself after selling the tangible assets to investors. This study suggests that there should be a third party who will enter into the *ijarah* transaction with investors and not the originator so as to avoid *Inah Ijariyyah* in the structure.

The following important requirements should be considered when using *ijarah* as the underlying structure for *sukuk* issuance. This includes, the rental must be at an agreed rate and for an agreed period. The subject of the *ijarah* must have a valuable use (i.e. asset without a usufruct cannot be leased). The

ownership of the assets must remain with the trustee and only the usufruct right may be transferred to the originator. Hence, anything, which can be consumed, cannot be leased by way of an *ijarah*. As ownership of the assets must remain with the trustee, any liabilities arising from the ownership must also rest with the trustee (as owner). In other words an asset remains a risk to the trustee throughout the lease period in the sense that any harm or loss caused by factors beyond the control of the originator will be borne by the trustee. All liabilities relating to the use of the assets, however, rest with the originator (as lessee). The originator (as lessee) cannot use an asset for any purpose other than the purpose specified in the *ijarah* agreement. If no purpose is specified, however, the originator can use the assets for any purpose as it would normally be used for the regular course of business.

The structure for asset securitization, that currently uses the asset income or receivables as an underlying asset, should be regarded as debt based *ijarah sukuk* and not equity based *ijarah sukuk*. This is because it will normally involve the sale of debt for debt when it comes to going public (secondary market), which is prohibited by the Prophet (pbuh). However, Malaysian scholars have legalized the sale of debt for debt relying on the basis of Imam ibn Qayyim's (1973) view that there are differences between the sale of debt for debt and the *bay' kali' bil kali'*. The sale of '*kali' bil kali'* is prohibited according to *Shar'iah* because it involves the sale of debt with a differed debt, and thereby involves high risk. In the forward leasing structure, however, the asset is not in existence at the time of the issuance of the *sukuk*. The Hadith of the Prophet (pbuh) is clear and definitive in its instruction that "you should not sell what you do not have". Therefore, the *sukuk* holders should not sale their *sukuk* in the secondary market until after the commencement of the project.

Ijarah sukuk is one of the best methods in enhancing the private sector economy; the main reason is that in an *Ijarah sukuk* the actual beneficiaries of the *sukuk* issuance are the *sukuk* holders (investors) who are the owners of the *sukuk* underlying asset. The *ijarah sukuk* are also providing mechanism to promote and actualize innovation in the ICMs at large and in the *sukuk* market in particular. *Sukuk* is more preferred to conventional bonds because it is issued in a single Islamic economic system where the nominal is determined based on equity investments and real economic outputs. This has helped in strengthening and sustaining the ICMs in the contemporary economic world.

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