THE COMPLIANCE OF SUKUK WITH MAQASID AL-SHARIA’A: A CASE STUDY OF THE MEDIUM TERM NOTE SUKUK PROGRAMME OF THE ISLAMIC DEVELOPMENT BANK

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ABSTRACT

The ultimate aim of this thesis is to investigate the compliance of Sukuk (financial certificates or Sharia’a-compliant bonds) with Maqasid Al Sharia’a in hifth al mal, where the Islamic Development Bank’s (IDB) Medium Term Note (MTN) Sukuk Programme represents the case study for this research.

To carry out this investigation, the researcher developed a theoretical framework through appraising the conceptions and theories of Maqasid Al Sharia’a, followed by a review to define human development in the context of Maqasid Al Sharia’a, which is directly connected to the concept of benefit (maslaha).

The review is then developed to present the first model of Maqasid Al Sharia’a in hifth al mal. The thesis presents a conceptual understanding for Sukuk as an important tool for achieving human well-being and sustainable development, while keeping Maqasid Al Sharia’a in hifth al mal in perspective.

The primary data were generated from elite interviews with senior experts and decision makers at the IDB, where their highly significant experience contributes to defining the criteria for the preservation of wealth according to Maqasid Al Sharia’a. From the Maqasid Al Sharia’a theories and the data generated from the interviews, a Maqasid Al Sharia’a model is developed, with this model then employed to analyse the completed IDB projects that were financed by the MTN Sukuk Programme in the 2007–2017 period.
The general findings emerging from this research indicate that the MTN Sukuk Programme is serving the basic elements in the Maqasid Al Sharia’a model to a high degree, with considerable potential for the Programme to serve Maqasid Al Sharia’a in hifth al mal. The impact of the MTN Programme in the Maqasid Al Sharia’a model was found to be significantly positive in terms of achieving human well-being and sustainable development. Finally, it is concluded that applying Maqasid Al Sharia’a in hifth al mal to financial contracts will serve the Islamic purpose of promoting well-being and global development.
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<tr>
<td>AAOIFI</td>
<td>Accounting and Auditing Organization for Islamic Financial Institutions</td>
</tr>
<tr>
<td>BDL</td>
<td>Luxembourg Stock Exchange</td>
</tr>
<tr>
<td>CIBAFI</td>
<td>General Council for Islamic Banks and Financial Institutions</td>
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<tr>
<td>CIT</td>
<td>Central Islamic trustee</td>
</tr>
<tr>
<td>DFSA</td>
<td>Dubai Financial Services Authority</td>
</tr>
<tr>
<td>DIFC</td>
<td>Dubai International Financial Centre</td>
</tr>
<tr>
<td>FSA</td>
<td>Financial Services Authority</td>
</tr>
<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communication technology</td>
</tr>
<tr>
<td>IDB</td>
<td>Islamic Development Bank</td>
</tr>
<tr>
<td>IFSB</td>
<td>Islamic Financial Services Board</td>
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<tr>
<td>IIFM</td>
<td>International Islamic Financial Market</td>
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<td>IIRA</td>
<td>Islamic International Rating Agency of Bahrain</td>
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<td>LSE</td>
<td>London Stock Exchange</td>
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<tr>
<td>MARK</td>
<td>Malaysian Rating Corporation</td>
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<td>MTN</td>
<td>Medium Term Note</td>
</tr>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<tr>
<td>MS Model</td>
<td><em>Maqasid Al Sharia’a Model</em></td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>OTC</td>
<td>Over the counter</td>
</tr>
<tr>
<td>S&amp;P</td>
<td>Standard &amp; Poor's</td>
</tr>
<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
</tr>
<tr>
<td>SSB</td>
<td>Sharia'a Supervisory Board</td>
</tr>
<tr>
<td>SME</td>
<td>Small and medium-sized enterprises</td>
</tr>
<tr>
<td>SPV</td>
<td>Special purpose vehicle</td>
</tr>
<tr>
<td>SRI</td>
<td>Sustainable and responsible investment</td>
</tr>
<tr>
<td>WIEF</td>
<td>World Islamic Economics Forum</td>
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<tr>
<td>UKLA</td>
<td>United Kingdom Listing Authority</td>
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CHAPTER 1  INTRODUCTION

1.1 Research Background

Sukuk are considered as one of the most innovative and growing products of Islamic finance, with $ 97.9 billion issuance volume in 2017 (S&P Global Sukuk Market Outlook, 2018). However, Sukuk market demonstrated a growth rate of 84% in 2014 and a total issuance of USD $241 billion (Thomson Reuters, 2015). The Sukuk market is one of the fastest growing segments in the global financial market. A number of positive indicators articulate the distinct future of the Sukuk market. The first indicator is the growth of the global Sukuk market that has no boundaries to religion or culture, in addition to the broad geographical distribution as Sukuk are listed on most of the global financial markets, such as the Luxembourg Stock Exchange (BDL), London Stock Exchange (LSE), Bursa Malaysia, Indonesia Stock Exchange, Hong-Kong Exchange & Clearing Ltd, La Buan International Financial Exchange, Bahrain Financial Exchange, Irish Stock Exchange, Borsa Istanbul, Nasdaq Dubai and Dubai Financial Market. The second indicator is the increasing interest in Sukuk from the leading global centres of conventional finance, and moreover their involvement in Sukuk issuance. For example, in 2004 Germany issued Sukuk al-ljara of EUR €100 million by the federal state of Saxony-Anhalt that was guaranteed by the Federal Republic of Germany and listed on the Luxembourg Stock Exchange (Maimunah, 2011). In addition, the UK became the first country outside the Islamic world to
issue sovereign Sukuk. The first UK Sukuk of GBP £200 million received a strong demand with orders totalling £2.3 billion (HM Treasury, 2014). Another positive and remarkable indicator of the future of the Sukuk market is the stability against global financial crises. The Sukuk market was affected by the global financial crisis in 2008, where the global Sukuk issuance declined by more than 50% compared to 2007 (GIFR, 2010); however, after two turbulent years, the Sukuk market returned to achieving remarkable growth as the market in 2009–2010 climbed back to the issuance level of 2007. The year of 2011 was the largest such year for Sukuk issuances until 2012, which was considered the year of Sukuk with more than $121 billion of issuances (Thomson Reuters, 2012). Following the financial crisis in 2008, governments and corporations are looking for alternatives outside the interest-based system, and therefore Sukuk has received wide attention, especially as a market that happened to be the least affected by the financial crisis (Mauro, 2013).

1.2 Significance of the Study
Sukuk could play a key role in the economic development process as a vital source of financing for large-scale investments and infrastructure projects. For example, Sukuk was issued by the government of Qatar in 2003 to mobilise resources for the construction of Hamad Medical City (HMC) in Doha (Sukuk, 2006). However, this thriving future is plagued with serious upheavals or challenges due to the contradictions in the characteristics of Sukuk according to Islamic jurisprudence and principles. By the end of 2007, an announcement went public to the media that almost 85% of Sukuk in the market were not in line with
Sharia’a guidelines. This statement created a wave of controversy across the Sukuk industry. The consequences of such a statement may become a serious constraint to market stability and growth when not deemed to be regulated or announced in an arbitrary manner through the media.

Some practitioners and experts of the Sukuk industry have shared their views and suggestions for improving Sukuk structuring. The first view is concerned with the Sharia’a advisory process. According to the importance of reforming and repositioning the Sharia’a advisory process, the suggested approach is to limit the responsibility of fatwa\(^1\) issuances to a national body set up by the financial regulator, and the Sharia’a supervisory board at the institutional level must ensure compliance with fatwa issued by the central body. The second view is regarding the Sukuk secondary market, where the introduction of retail Sukuk with mandatory sizeable tranches to the retail segment will expand Sukuk trading and secondary markets. Consequently, the issuance of larger Sukuk will contribute to the expansion of the secondary market, which will enhance liquidity and marketability. The third view suggests increasing the number of long-term Sukuk, which will increase the diversity and demand of Sukuk, particularly for long-term investors, pension funds and takaful companies. The fourth view regarding the use of Sukuk is financing infrastructure development and mega projects held by governments, which will expand the Sukuk market while directing public surplus to more pressing issues at the social level such as education and health care. Finally, many academics have raised concerns of

\(^{1}\) Refer to the Glossary in the Appendix for definitions of the Arabic terms used in this thesis.
different Sukuk structures, claiming that there is very little creditable and academically rigorous research available on the Islamic capital market in general, and on Sukuk in particular. Therefore, it is important for educational and research institutions to initiate research projects on different aspects of Islamic financial products (GIFR, 2014).

*Maqasid Al Sharia’a* or ‘the ultimate intent of Islamic law’ is a concept that reflects the significant concern of Islam with human development and well-being. As stated by Dusuki (2010), the upper-most objectives of *Sharia’a* seek to establish justice, eliminate prejudice and alleviate hardship. The universal *Maqasid Al Sharia’a* was presented by Imam Al-Ghazali as the preservation of religion, human life, mind, offspring and wealth (Chapra, 2008), which are widely accepted in this order. However, based on the prophetic *hadith* in *Sahih al-Bukhari* that “anyone who is killed for the sake of his material wealth is a martyr”, some scholars give the preservation of wealth precedence over the preservation of life. According to the importance of the preservation of wealth as a tool to achieve the other four universal *Maqasid Al Sharia’a*, Sukuk is suggested as a financial instrument to serve the human development goals and realise *Maqasid Al Sharia’a* in the preservation of wealth. As stated by Ibrahim *et al.* (2014), Sukuk can go a long way in spreading and circulating wealth when properly structured through keeping *Maqasid Al Sharia’a* in perspective.

### 1.3 Research Aim

This study aims to investigate the compliance of Sukuk products with the basic goals and values of *Maqasid Al Sharia’a* in safeguarding wealth (*hifth al-mal*).
1.4 Research Objectives

- To deliver a literature review in the development of *Maqasid Al Sharia’a* theories.
- To deliver a conceptual understanding about Sukuk.
- To develop a theoretical framework of *Maqasid Al Sharia’a* in relation to finance.
- To critically assess the role of Sukuk in safeguarding wealth.
- To critically analyse the impact of the compliance of Sukuk with *Maqasid Al Sharia’a* on human development and well-being.
- To examine the compliance of Sukuk with *Maqasid Al Sharia’a* from the perspectives of Sharia’a scholars and Islamic economists.
- To examine the compliance of the Islamic Development Bank’s Medium Term Note Sukuk with *Maqasid Al Sharia’a*.

1.5 Contribution to Knowledge

- Analysing the data would assist in checking whether Sukuk products are compliant with *Maqasid Al Sharia’a*, according to the basic values and morals of safeguarding wealth.
- The approach to understanding the concept of *Sharia’a* compliance, focusing on the substance over the legal forms of contracts, will add to the body of knowledge.
- This research will investigate the Medium Term Note programme as a paradigm to be followed by different financial institutions.
1.6 Case Study: The Islamic Development’s Bank Sukuk Programme

The Islamic Development Bank (IDB) was established on 12th August 1974, pursuant to the articles of agreement among and between the founding member countries. The IDB began operating as a multilateral development bank on 20th October 1975. The purpose of the IDB is to foster economic development and the social progress of IDB member countries, as well as of Muslim communities in non-member countries, in accordance with the principles of Sharia’a. The IDB pursues this goal by providing project financing, loans and technical assistance, as well as establishing and managing special funds and trust funds.

The IDB is an international organisation that derives its legal personality from public international law. As a supranational institution, the IDB is not subject to national banking regulations and is not supervised by any external regulatory authority (Trust Certificate Issuance Programme Base Prospectus, 2015). According to the IDB’s articles of agreement (1974), it is an independent international organisation possessing full juridical and full capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings. The Board of Governors and the Board of Executive Directors closely supervise the IDB. The IDB has been granted an exemption from all taxes and tariffs on assets, property or income, and from any liability involving payment, withholding or collection of any taxes.

The IDB is required to carry out its activities in accordance with the principles of Sharia’a, which are regularly clarified by the Islamic Fiqh Academy (or the Fiqh
Academy). The IDB has established a *Sharia’a* committee to give opinions on matters on which the *Fiqh* Academy has not yet made any pronouncement.

A resolution by the IDB’s Board of Governors (21–22 May 2013) increased the authorised capital of the bank to Islamic Dinars (ID) 100 billion and the issued capital to ID50 billion. It is also worth mentioning that 98.6% of the amount has so far been subscribed by the member countries.

The IDB has maintained the highest credit rating of AAA from Standard & Poor’s (S&P), Moody’s and Fitch since 2002, with a stand-alone credit rating among the highest of the multilateral lending institutions (IDB annual report, 2014). The IDB undertook a major retrospective assessment of its performance over its 40-year journey; the assessment was outsourced to the US-based Boston Consulting Group (BCG) and revealed that the IDB has grown substantially in membership, capital, and operations, as well as having undergone significant transformation with a view to better serving the mandate. The assessment identified three stages of IDB evolution and development from the operational growth perspective:

- **Start-up Stage (1975–1990):** During this period, the IDB tackled challenges common to newly founded institutions and others which were unique to it since it had no comparable precedent to go by. The bank laid foundations, set directions, and formulated initial guidelines for its operations. Despite the rapid extension of its membership base and the significant increase in its subscribed capital, growth of approval was
moderate (3% annual growth in project financing approvals) and activities were mostly focused on economic infrastructure, industry and mining.

- Ramp-up Stage (1990–2001): In this stage, the membership base continued expanding and became even more diverse. In order to cope with this, the IDB established four regional offices in Rabat (Morocco), Kuala Lumpur (Malaysia), Dakar (Senegal) and Almaty (Kazakhstan). The IDB stepped up its growth rate (11% average annual growth in project financing approvals) to better respond to increasing needs.

- Acceleration Stage (2001–2013): During this phase, the membership base of the IDB remained stable, while approvals witnessed rapid growth (13% annual growth rate on average in project financing approvals). This increase was mostly driven by a sharp rise in the focus on economic infrastructure, and the need to respond to the global financial and economic crisis. Acknowledging the rapidly changing world, particularly propelled by technology and networking, in 2006 the IDB embarked on the shaping of a compelling vision of development together with its member countries. The vision set the new strategic direction to 2020, for the IDB to remain relevant to its member countries and the Muslim communities in non-member countries, and to continue to champion the development of the Islamic financial sector (IDB annual report, 2014).

The assessment also documented the key strengths and uniqueness of the IDB as well as the challenges it faces and the implications of those challenges for its Ten Year Strategy, which the Boston Consulting Group also drafted; the identity
and the achievements of the IDB Group throughout the course of its 40-year journey has enabled it to build key strengths and uniqueness attributed to the IDB Group in terms of:

- The constituency and the founding principle of South–South solidarity.
- A trust-based relationship with member countries due to its political neutrality and unconditional support.
- A strong financial capacity for resource transfer to member countries, together with the confidence of member countries and rating agencies in the financial stability of the IDB, as reflected in the AAA rating.
- A leadership and facilitation role in the seeding and expansion of the Islamic financial sector, which was unique among member countries, as demonstrated by the IDB’s support for the establishment of global Islamic financial sector institutions and advisory regulatory bodies, as well as the introduction of new financial products.
- The role of the IDB has been significant in pioneering trade finance and trade promotion, with the aim of increasing intra-Organisation of Islamic Cooperation (OIC) trade (which reached 18% of total trade as of October 2013) and linking trade to development.
- It has gained expertise in areas such as Islamic finance and infrastructure financing, and specific in-depth knowledge of the development context, global relationships and extended partnerships base of member countries.
• It has accumulated experience in supporting the delivery of services to disadvantaged groups in member countries and Muslim communities in non-member countries.

The IDB is a regular issuer of Sukuk, with all IDB Sukuk issued under the Medium Term Note (MTN) Programme, which is registered and approved by the Financial Services Authority’s United Kingdom Listing Authority (UKLA), and listed on the London Stock Exchange, Bursa Malaysia, Nasdaq Dubai and Borsa Istanbul. The MTN Programme was established in 2005 with an initial size of $1.5 billion. The programme has been upsized several times to reach the current level of $25 billion. The MTN Programme is AAA rated by the international rating agencies.

IDB Sukuk are offered in Reg S format and open for subscription to investors globally. Sovereign wealth funds, central banks, pension funds, insurance companies, Sukuk funds and investment banks are the main investors of IDB Sukuk (IDB annual report, 2014).

IDB Sukuk issued under the MTN Programme are issued in the form of public issuance and private placement, with a maturity mostly of 5–7 years in a fixed or floating rate basis. MTN Sukuk dominate in various currencies, although the public issuances are mostly in US Dollars. The public issuance aims to establish an IDB own benchmark yield curve in the markets across various maturity spectra with a view to achieving competitive pricing for Sukuk. The benefit will be passed on to the member countries in the form of competitive mark-up for project
financing. In addition to raising funds, IDB Sukuk aim to promote the development of the Islamic finance industry and Sukuk markets, in particular by increasing the supply of high quality Sukuk that will be actively traded in the secondary markets. The private placement aims to meet the specific needs of certain types of investors in terms of maturity, profit rate and currency structures. They enjoy the same features as public issuance in terms of rating and listing, depending on the specific preference of the investors.

In addition to being AAA rated by the three international rating agencies, the following endorsements are essentially a manifestation of the transparency and credit quality of IDB Sukuk:

- Eligible for inclusion in the liquidity buffer of banks under the Financial Conduct Authority’s supervision (BIPRU12.7.2)
- Accepted as marketable assets in the European Central Bank.

The first IDB Sukuk was unique from a number of perspectives; it was the first AAA-rated paper, whether conventional or Sharia’a compliant, in fixed income securities to be issued in the Islamic world. Also, it was the first international capital markets’ issue by a non-sovereign entity and the first global Sukuk that was comprised of *ijarah*, *istikna’a* and *murabahah* contracts (Al-Amine, 2012).

According to Adam and Thomas (2004), IDB Sukuk was the first issuance representing a diverse universe of underlying assets in the form of different Islamically structured finance. With a blended pool of assets comprising Sukuk
al-ijarah, murabaha receivables and Sukuk al-istisna’a, these Sukuk represented a model relating to the possibility of securitising a dynamic balance sheet comprising different asset classes. Furthermore, these Sukuk are in line with the Sharia’a principle of comprising a majority of tangible assets or financial rights on tangible assets that validate the inclusion of the murabaha receivables in the asset pool.

The other innovation to Sukuk products by the IDB was the creation of the MTN programme. According to Khan (2012), Sukuk generally require substantive documentation, large numbers of contracts, complicated procedures and marketing for each issuance. Those factors dramatically increase the cost of issuance per Sukuk issued. The standing set of documentation and contracts of the MTN programme that can be finalised at the outset is more cost-effective and provides flexibility in size, issuance and rate.

The current structure of the asset-based MTN Programme Sukuk is based on the wakalah structure, whereby the IDB, as the seller of the financial and/or investment assets, will sell those assets to the special purpose vehicle (SPV), being the issuer and agent for the Sukuk holders. The sold asset to the SPV will become the underlying Sukuk asset, to be jointly owned by the Sukuk holders. The IDB will be appointed as a wakel or agent to manage the Sukuk assets. The Sukuk minimum tangibility ratio shall at all times adhere to the secondary market tradability condition for Sukuk trading at the market prices, as approved by Sharia’a rules.
On each periodic distribution date, the *wakel* will collect the income generated from the Sukuk asset for distribution to the Sukuk investors. Any excess income shall be retained by the *wakel* as an incentive bonus.

On maturity, the IDB being the obligor under this transaction shall buy back the Sukuk certificate/assets from the SPV and cancel the Sukuk certificate. The SPV shall then distribute the cash proceeds to the Sukuk holders. The current IDB Sukuk structure is elaborated in Figure 1.1.

**Fig. 1.1 IDB Sukuk structure**

(Source: IDB: 2016)
From this review, it can be seen that the Sukuk is a vibrant subject with tremendous potential for growth during the next few years. Sukuk can effectively be involved in the human development process when constructed as a *Maqasid Al Sharia’a*-compliant product. According to the high demand for Sukuk issuance in the global market, Sukuk will continue to be one of the most innovative financial products in the leading global conventional markets beside the Islamic markets. As a part of this global growth, the MTN Sukuk Programme of the IDB is a unique case to study on account of the high rating achieved and the fixed documentation of the issuance, in addition to the innovative structure of the Sukuk with a blended pool of assets.

1.7 **Overview of the Thesis**

The researcher will use a qualitative methodology to explore the IDB’s Sukuk Programme as a case study. The primary data will be collected through elite semi-structured interviews, while the secondary data will be obtained from the IDB’s annual reports and projects documents. The thesis includes seven chapters:

Chapter one presents the introduction that explains the research background, significance of the research, the aim and objectives, an introduction to the case study and an overview of the thesis.

Chapter two includes an introduction to explain the term *Islamic law*, the concepts of the foundations and sources of Islamic law, and then an elaboration on *Maqasid Al Sharia’a* theory development from the third Islamic century until
the contemporary interpretations of those theories. This is followed by a detailed discussion on the preservation of wealth in relation to human development and Sukuk.

Chapter three covers the conceptual understanding of Sukuk, which includes a review of the Sukuk definition, Sukuk and conventional bonds’ similarities and differences, common types of Sukuk, structuring Sukuk, the Sukuk global market, challenges in the Sukuk market and finally some of the issues and concerns around Sukuk issuances.

Chapter four is the research methodology chapter that explains the epistemology and the paradigm of the research, the research methodology chosen by the researcher, the data generation and the analysis methods.

Chapter five is the first empirical chapter that includes the narrative analysis of the elite interviews, the conclusions and the results of the analysis, and presents the *Maqasid Al Sharia’a* model.

Chapter six is the second empirical chapter that includes the analysis of the IDB’s completed projects that are financed by the MTN Sukuk Programme, where the *Maqasid Al Sharia’a* model is used to investigate the compliance of MTN Sukuk with *Maqasid Al Sharia’a*.

Chapter seven is the final chapter that includes the main findings of the research, the limitations, opportunities for further research and the concluding remarks of the thesis.
CHAPTER 2  THEORETICAL FRAMEWORK

2.1 Introduction
The first part of this chapter is an introductory review to define Islamic law, including the foundations and sources. The second part will review some of the basic theories of *Maqasid Al Sharia’a* and the development of those theories over time and circumstances. Preservation of wealth as a focus point of this research will be reviewed in more detail to define the conceptions in relation to human development.

2.2 Islamic Law
Islam is one of the major monotheistic religions of the world. Christianity and Judaism share with Islam the belief in God and the hereafter; moreover, they share many beliefs in common, moral values, and certain rules of behaviour in their pristine form that are almost the same, even though there are some differences in the details as a result of changes in circumstances over space and time (Chapra, 2000).

The original teachings of Islam, Judaism, Christianity, Buddhism, Hinduism and many other faiths prohibit lending money and charging interest (Abdul-Rahman, 2010). Philosophers, such as Aristotle, who preceded Christ, considered interest an unnatural income because the lender gains without performing any work, and money cannot beget money (Abdullah and Chee, 2010). There is a continuity
and similarity in the basic worldview and value system of all revealed religions and philosophies. Moral values are concerned with all aspects of human life including the social, economic, and political values, which affect the well-being of everyone (Chapra, 2000).

Islam developed in a commercial society. Through its long history Makkah had become a major Middle Eastern commercial centre, and it was a notable staging post on the trade route linking the spice producers of the East with Mesopotamia and the Mediterranean. The Prophet Muhammad was born in Makkah and grew up as a successful merchant. Moreover, the merchants played a central role in spreading Islam to various parts of the world. Islam encourages trade and commerce, and it is very significant that the Qur’an prohibits riba and permits trade in one and the same verse (Al-Qur’an, 2:275), which provides internal evidence on the relevance of riba for commercial and production loans (Ahmed, 1982).

There are basic principles in Islam, which are mostly shared with other religions. The first and most crucial principle is that God is the creator and owner of wealth. Individuals, accordingly, are expected to be responsible for protecting and developing these assets honestly and successfully to fulfil the needs of all, remove poverty, and promote the equitable distribution of income and wealth. The second is justice and equity, which means that people should have equal opportunity. Equality in this context does not imply that they should be equal in poverty or in riches; a rationally organised society must allow incentive and nurture the desire for excellence (Naqvi, 1981). Social responsibility as a
principle in Islam implies safeguarding the interests of those in one’s charge and looking after those who need help and support to get along in life; almsgiving and charity are the methods that have existed to help the needy, even before Islam. However, Islam created a right for the needy to share in the wealth of the community. Furthermore, Islam emphasises the welfare of the community over individual rights (Warde, 2010).

Islam is an Arabic word that means submission to Allah. The set of rules by which a Muslim should live, judge, and govern is called Sharia’a or Islamic law. It is the integration of all the laws sent by God through his Prophets (Abdul-Rahman, 2010), and is indeed a way of life.

According to Abdullah and Chee (2010), there are three foundations of Islamic law that provide guidance. The first foundation provides guidance on beliefs that include believing in God, the Prophets and Messengers sent by God, the angels, the scriptures sent by God, the Day of Judgment, and Fate. The Second foundation is guidance on morals, as the practice of virtue and morality. Then come guidance on duties, which includes all Man-to-God activities, namely, the five pillars of Islam (faith, prayer, concern for the needy, fasting, and pilgrimage), and Man-to-Man activities, which include marriage and family, punishment and commercial transactions.

Under the judgment of Islamic law, human actions fall into a scale of five values: obligatory, meritorious, permitted, reprehensible, and prohibited. The two major sources of Islamic law or Sharia’a are the Holy Qur’an and the reports of the
sayings and deeds of the Prophet Muhammed (Sunnah). However, Sharia’a is developing to fulfil the current needs due to changes in circumstances over space and time, based on the best efforts of scholars under the vision of Usul al Fiqh, which is defined as the origins and foundations of scholarly work (Abdul-Rahman, 2010).

As a result of the changes in circumstances over space and time, other sources of Sharia’a are applied. The first is Ijtihad, which means the consensus of the scholars, derived directly from the revealed texts of the Holy Qur’an and Sunnah. The second source is Ijma’a, which means the rulings on Islamic matters that are made by qualified Islamic legal scholars and are based on consensus. The third source is Qiyas or reasoning by analogy, settled on by scholars as the most defensible legal method, whereby a divine law revealed for one event can be applied to another event only if some common features are found to exist in both events (Vogel and Hayes, 1998).

Ijtihad is often referred to as a secondary source of Islamic jurisprudence. It is a method by which the scholar recognises the legal meaning of the texts and rules of the Qur’an and Sunnah. While the scholar has the freedom to propose interpretations of such texts and rules, it is only when the interpretations are supported by a subsequent Ijma’a (consensus) that they attain the necessary authority in Islamic law. Sukuk are not referred to in the Qur’an or in Sunnah, since all the ideas that have developed in relation to Sukuk structures and use are the result of Ijtihad (Saeed and Salah, 2012).
To conclude the previous review on Islamic law, Islam is a way of life based on innate human nature, recognising the sanctity of human ownership and possession. The Qur’an mentions the innate human proclivity, love, and securing, possessing and amassing wealth. Therefore, Islam has a clear set of values and principles against negative behaviours with fundamental implications for life and the financial system. The base of those values is built on balance as an Islamic way of life, a balance that prevents any excessiveness or stinting in using the resource, and which is extended and required in the actions and daily activities of Islamic life. Second, enjoying the bounties of God in this world must be without any waste (israf). Third, pursuit of wealth and worldly pleasures should not be based on doing any wrong to others. Fourth, there is a strict warning against those who amass wealth, or do not utilise their resources in services to humanity. Fifth, wealth must not circulate among the wealthy only, which therefore requires a system that achieves a fair distribution of wealth. The wisdom and rationale of this system is included in Maqasid Al Sharia’a.

2.3 Maqasid Al Sharia’a

The term Maqasid is the plural of maqsad, an Arabic term that conveys different meanings but the most inclusive in this position is heading towards an aim.

2.3.1 Maqasid Al Sharia’a Conception

Dusuki (2010) explained the term Maqasid Al Sharia’a as the objectives and the rationale of Islamic law. He added that the upper-most objectives of Sharia’a seek to establish justice, eliminate prejudice and alleviate hardship. A similar definition by Auda (2008) adds moral concepts to the bases of Islamic law, where
he defined *Maqasid Al Sharia’a* as the divine intents and moral concepts upon which Islamic law is based, including the wisdoms behind rulings. Bedoui and Mansor (2015) defined *Maqasid Al Sharia’a* as a set of ethical values that cover all life aspects, including personal, social, political, economic and intellectual. A more comprehensive definition is presented by Al Qahtani (2015), whereby he defined the term *Maqasid Al Sharia’a* as the meanings and wise purposes generally, and specifically considered by the lawgiver to bring benefits for all mankind in this life and the hereafter.

The previous definitions explain *Maqasid Al Sharia’a* as a set of moral concepts and ethical values that present the base of Islamic law. The concepts and values of *Maqasid Al Sharia’a* cover every aspect of human life to achieve the ultimate goal of Islamic law and *Maqasid Al Sharia’a*, which is to bring benefits and alleviate harm from all mankind.

### 2.3.2 Early Theories of Maqasid Al Sharia’a

The early theories of *Maqasid* started to evolve between the third and fifth Islamic centuries, and scholars at this early time did not precisely define *Maqasid Al Sharia’a*. However, their influence and work were the inspiration for later scholars in the same chain of knowledge. *Al-Hakim Al-Tirmithi*, who lived during the third century AH, was one of the first scholars to employ the term *Maqasid* and devoted his writings to this topic. He dedicated very careful attention to excavating the bases for Islamic legal rulings and searching for their hidden wisdom (Al-Raysoni, 2011). The work of *Al-Tirmithi* includes a comprehensive analysis of the wisdom and spiritual secrets behind each of the prayer acts,
followed by a similar work on pilgrimage, entitled pilgrimage and its secrets (Auda, 2008). Abo Zyad Al-Balkhi was the first scholar to write on the Maqasid of dealings. He pointed out Maqasid as being the purposes behind Islamic juridical rulings, and also wrote about the benefits of bodies and souls, in which he explained the contribution of Islamic practices to physical and mental health (Auda, 2008). Abu Mansour Al-Maturidi was considered as a religious leader to many Muslim scholars and students associated with his school of theology for centuries. His most important work is his book on the sources of religious laws and further work on the principles of jurisprudence. Although some of his works have been lost, his academic contributions and his theological school influenced all Hanafi scholars (Al-Raysoni, 2011). A further significant step in the development of Maqasid theory was the work of Al-Qaffal Al-Kabir on the topic of the beauties of the law, where he mentions each ruling of Shari’a briefly and elaborates on the purposes and wisdom behind them. Following a similar methodology Ibn Babawayh Al-Qummi wrote about the reasons behind the rulings, addressing the rationality of believing in God, Prophets, heaven and other beliefs. He also gives moral rationales for prayers, fasting, pilgrimage and charity, among other moral obligations (Auda, 2008). Abu Bakr Al-Abhari, another religious leader who lived in the third century AH, combined comprehensive understanding of jurisprudence with an equally well-founded knowledge of its principles. He enjoyed significant esteem among scholars of all schools of jurisprudence, and a multitude of outstanding scholars who were influenced by his thought.
In his book *Awareness of the traits of Islam*, Al-Amiri Al-Faylasuf introduced the earliest theoretical classification of purposes that was based on criminal punishment in Islamic law by the end of the third century AH. His work is considered as being solely based on criminal punishment in Islamic law (Auda, 2008).

Al-Baqillani was known as the scholar of the Sunnah and spokesman for the Muslims. He was looked upon as the religious leader and the reformer of the fourth century of Islam. His attribution in the history of the principles of jurisprudence discipline took a further step into the phase of comprehensive expansion and interaction with the discipline of theology. His work and writings bear a connection to the study of the objectives of the law that influenced the work that was written thereafter on this discipline, among them Al-Juwayni, Al-Shirazi, Al-Ghazalli and others (Al-Raysoni, 2011).

From this review, the early theories of Maqasid realised three positions. The first is the wisdom behind moral obligation that has been illustrated by Al-Tirmithi, Al-Qaffal Al-Kabir and Ibn Babawayh Al-Qummi. The second position is the wisdom behind religious dealings and practices that has been done by Abu Zeyad AlBalkhi. The third position is the wisdom behind criminal punishments in the Islamic law by Al Amiri Al Faylasuf. Al-Baqillani focused on studying the objectives of law that were not titled Maqasid Al Sharia’a, but influenced a number of Maqasid Al Sharia’a scholars at a later stage.
2.3.3 The Evolution of Maqasid Al Sharia’a Theories

The classification of Maqasid Al Sharia’a according to levels of necessity developed in the fifth century AH, which witnessed an advanced development of Maqasid Al Sharia’a theories through the concept of unrestricted interest (al maslaha al mursalah) as a method that covers what was not mentioned in the scriptures and compensates for the limitations of analogy (qiyas). The significant contribution of a few jurists made the evolution of the theory of Maqasid Al Sharia’a reach the most mature stage (Auda, 2008). The following is an attempt to trace the conception of Maqasid from the fifth until the eighth Islamic century.

Abu Al Ma’ali Al Juwayni was the first to introduce the theory of levels of necessity. He presented five levels of Maqasid: first, necessities; second, public needs; third, moral behaviour; fourth, recommendations; and fifth, what cannot be attributed to a specific reason. Al Juwayni then suggested that the purpose of Islamic law is the protection of the infallibility (al ismah) of faith, souls, minds, private parts and the money of individuals (Auda, 2008). Likewise, Al-Juwayni was the first to present what are referred to as the major five essentials in Islamic law: religion, human life, the faculty of reason, progeny and wealth (Al-Rysoni, 2011). The other significant contribution that Al-Juwayni made was toward a comprehensive discussion of the objectives of the law and the process of istidlal (the search for evidence and meanings), where he points out three schools of thoughts. The first school is restricted solely to textual basis in the Qur’an and Sunnah. The second school extends to the permissibility of adopting the results of istislah reasoning based on unrestricted interests and the search for the most
correct, provided that they do not conflict with any of the three roots of Islamic law (the Qur’an, Sunnah, and the consensus of the Muslim community). The third school holds to the significance arrived at through istiddlal, where it is close to the meaning found in the established roots (Attia, 2007).

Abu Hamid Al-Ghazali was significantly influenced by his teacher Al-Juwayni, following the same method Al-Ghazali revised, where he developed the work of Al-Juwayni and became a pioneer with a position of distinction in the history of jurisprudence principles’ discipline and in the study of the objectives of Islamic law. He referred to the objectives of Islamic law in the context of his discussion of what is known as the appropriateness approach, which constitutes one of a number of approaches to the interpretation of legal rulings in terms of their underlying foundations. This approach is firmly based on the understanding of legal rulings in the context of the benefit that they achieve or the harm that they prevent (Al-Raysoni, 2011). Continuing the development of the work of Al-Juwayni, Al-Ghazali suggested the following order of the necessities of Islamic law: faith, soul, mind, offspring and wealth. He also underscored the preservation (al hifth) of these five necessities and suggested a fundamental rule in that a higher order necessity should have priority over a lower order necessity (Auda, 2008). As stated by Bedoui and Mansio (2015), Al-Ghazali believed that Maqasid al Sharia’a is to achieve the benefits of man on Earth, which represents a major concept in structuring this research.

Fakhr Al-Din Al-Razi included the work of both Al-Juwayni and Al-Ghazali, and devoted many years to the defence of the practice of tracing legal rulings back to
their bases and causes. Al-Razi did not follow the order Al-Ghazali established for the five essentials; at times he listed them as human life, wealth, progeny, religion and the faculty of reason (Al-Raysuni, 2011).

Al Izz Ibn Abdul Salam, who investigated the concepts of interest, and mischief, delivered a significant contribution to the theory of Maqasid Al Sharia’a, where he linked the validity of rulings to their purposes. He stated that when the purpose of the law brings good and prevents mischief then it is unlawful to overlook any common good or support any act of mischief, even if there is no evidence from the scripture, consensus or analogy (Auda, 2008). Ibn Abdul Salam also confirmed the universal principle underlying the interpretation of Islamic legal ruling, which are for the purpose of achieving well-being for all people. He stated that all divine commands and prohibitions are founded upon the benefit for human beings in this life and the next. Following the essentials of his teacher Ibn Abdul Salam, Shihab Al Din Al Qarafi clarified and organised the principles and theories that his teacher formulated (Al-Raysoni, 2011). However, his real contribution to the theory of Maqasid Al Sharia’a is the differentiation between different actions taken by the Prophet based on his intents. He added a new meaning for Maqasid Al Sharia’a as the purposes or intents of the Prophet himself in his actions. Al Qarafi had another significant contribution to Maqasid Al Sharia’a theory as he proposed that while means that lead to prohibited ends should be blocked, means that lead to lawful ends should be opened (Auda, 2008).
The contribution of Imam Taqi Al-Din Ahmad Ibn Taymiyah to Maqasid Al Sharia’a knowledge is significant. His reference to Maqasid Al Sharia’a is related to the inborn nature (Fitrah), by means of which people recognise and believe in the truth, and likewise recognise untruth and reject it. He continued that human beings recognise what is beneficial and appreciate and accordingly incline, just as they also recognise what is harmful and incompatible and respond to it with an instinctive aversion (Attia, 2007). As stated by Al-Raysuni (2011), almost everything ever written by Imam Ibn Taymiyah has something to tell about the law and the rulings, explanations of their purposes, the interests that they serve and the sources of harm that they seek to avert. The primary foundation for Islamic legislation by Ibn Taymiyah is that Islamic law came to realise and enhance human well-being, and to minimise sources of harm and corruption. That gives priority to the greater of two goods and to the least of two evils, realising the greater of two benefits by tolerating the lesser of the two and averting the greater of two evils by tolerating the lesser of them. In continuation to Ibn Taymiyah, his student Shams Al Din Ibn Al Qayyim summarised his juridical methodology as follows: Sharia’a is pure justice, mercy, benefit, wisdom and good; it is based on wise purposes and the best interest of individuals in this life and the afterlife (Attia, 2007). The real contribution of Ibn Al Qayyim to the theory of Maqasid Al Sharia’a was his detailed critique of juridical tricks (al hiyal al fiqhiyyah) as they contradict with Maqasid in two ways: first, they go against the wisdom of the legislation; and secondly, they have forbidden intents. He
confirmed that Sharia’a laws are the cure for human sicknesses because of their realities, not their outlooks (Auda, 2008).

Finally, as the last significant scholar of the eighth century AH Abu Ishaq Al-Shatibi’s contribution to the theory of Maqasid was a milestone in this discipline and all that scholars wrote on Maqasid Al Sharia’a after Al Shatibi was a summary or rearranging of his formulated work. He recognised the role of reason and innate understanding in the determination of what is beneficial and what is harmful in cases where there is lack of an explicit text from the Qur’an or Sunnah (Attia, 2007). Al-Shatibi developed the theory of Maqasid Al Sharia’a in three substantial ways: first, he transferred Maqasid Al Sharia’a from a previous position as non-restricted interests to a new position where Maqasid Al Sharia’a are considered to be the fundamentals of religion, the basic rules of the law and the universals of belief; secondly, based on the fundamentality and universality of Maqasid Al Sharia’a, he considered Maqasid Al Sharia’a as the bases of the rulings, and not the wisdom behind the rulings as was considered previously; and finally, in terms of the shift from the uncertainty of Maqasid to the certainty, he argued for the certainty of the inductive process that he used to conclude the Maqasid. Al Shatibi’s work on Maqasid Al Sharia’a is considered as a standard reference in this discipline. However, his proposal in presenting Maqasid Al Sharia’a as the fundamentals of Sharia’a was not widely accepted (Auda, 2008).

From the eighth century AH there was no distinctive contribution to Maqasid Al Sharia’a theory until the thirteenth century AH, when Muhammad Al-Tahir Ibn Ashur developed the work of Al Qarafi in differentiation and adapted it into his
work of *Maqasid Al Sharia’a*. According to Attia (2007), the identification and verification of *Maqasid Al Sharia’a* that is used by most *Usul al Fiqh* scholars now is the phrase and method of *Ibn Ashur*, where he stated that *Maqasid Al Sharia’a* are based upon the inborn human nature (*al fitrah*). Through Islam, being in accordance with the natural disposition that God has instilled into man, the rational legal rulings operate in accordance with what is comprehended by human reason. Bedoui and Mansor (2015) explained the contribution of *Ibn Ashur* as he gives more explicit aspects that cover the promotion of human welfare, the fight against corruption, the judicious use of natural resources and the enhancement of Islamic lifestyle.

According to Attia (2007), in order to give evidence of *Maqasid Al Sharia’a* in the absence of text from *Qur’an* or *Sunnah* different recourses may take place such as reasoning (*Istidlal*), as proposed by *Al Juwayni*; reason and experience, as suggested by *Ibn Abdulsalam*; or *Al Shatibi*s method, which is inductive reading.

To conclude this review, all scholars agreed that the term *Maqasid* is equivalent to serving the benefit and preventing harm to all human beings. They defined *Maqasid Al Sharia’a* through various approaches:

1- The purpose behind the rulings and the role of reason in the determination of what is beneficial and what is harmful, which was the approach of *Ibn Abdulsalam Al Qarafi* and *Al Shatibi*. Or the search for evidence and meaning (*Istidlal*) by *Al Juwayni*. 
2- The inborn nature (fitrah) as a base to Islamic rulings as presented by Ibn Taymiyyah and developed by Ibn Ashur.

3- The nature of Sharia’a as the approach of Ibn Al Qayyim, which includes Sharia’a representing justice, mercy, benefit and wisdom.

4- Levels of necessities and the universal objectives, an approach that was first presented by Al Juwayni and then developed by Abu Hamid Al Gazelle.

The following model is developed to illustrate the approaches to Maqasid Al Sharia’a conceptions.
Fig. 2.1 *Maqasid Al Sharia’a* approaches model

- **Maqasid is to serve the interests of human beings and save them from harm**
  - Levels of necessities and universal objectives by Al Juwayni and Al Ghazali
  - The inborn nature (fitrah) is the base to Islamic rulings by Ibn Taymiyyah and Ibn Ashur
  - The nature of Sharia’a: justice, mercy, benefit and wisdom by Ibn Al Qayyim
  - The purposes behind the rulings and the role of reason by Al Shatibi, Ibn Abdulsalam and Al Qarafi
2.3.4 The Order of Maqasid Al Sharia’a

The universal Maqasid Al Sharia’a or objectives that have been presented by Al Juwayni and developed by his student Abu Hamid Al-Ghazali are said to be the most widely accepted; thereafter, he ordered them as religion, human life, mind, offspring and wealth. A number of scholars follow the order given by Al-Ghazali, where religion was given favour over human life (for example Al Shatibi, Al Amidi, Ibn Al Hajib, Al Isnawi, Ibn Al Subki, Ibn Farhun, Al Badakhshi, Ibn Ashur and Al Raysuni). Other scholars gave religion a lower priority than any of the other universal Maqasid, with Al Razi, Al Qaraffi, Al Baydawi, Ibn Taymiyyah, Al Shatibi and Al Zarkashi among those scholars that hold the position where the preservation of human life is given priority over the preservation of religion. Al Razi, Ibn Taymiyyah and Al Zarkashi are among the scholars who give the preservation of wealth a priority over religion, based on the prophetic hadith that “Anyone who is killed for the sake of his material wealth is a martyr”, whereby the preservation of material wealth is given precedence over the preservation of life (Attia, 2007).

The researcher will adopt the definition of Imam Al-Ghazali and his classification for Maqasid Al Sharia’a, as it is widely accepted and related to human well-being or human development.
2.3.5 The Contemporary Theories of Maqasid Al Sharia’a

According to Imam Al-Ghazali, Maqasid Al Sharia’a is to promote the well-being of all mankind, which lies in safeguarding faith, self, intellect, posterity, and wealth. Whatever ensures the safeguarding of these five objectives serves in the public interest and is desirable, and whatever hurts them is against the public interest and thus its removal is desirable (Chapra, 2008). In other words, to push away what is harmful to all aspects of life, family, assets, and the faith, and to bring what is good and beneficial to all (Abdul-Rahman, 2010).

Chapra (2008) explained the five major Maqasid Al Sharia’a presented by Imam Al Ghazzali and relates them to the well-being of mankind. Within the context of invigorating the human self (Nafs), Chapra classified the major needs of human beings into fourteen categories that include dignity, justice, freedom, education, employment, security, equitable distribution of income, moral uplift and family stability. Strengthening faith has been placed immediately after the human self, faith that will give a meaning and purpose to life and will provide the right path to transform individuals into better human beings with a change in their behaviour and attitude towards themselves and their creator, as well as to other human beings.

Chapra (2008) continued that the enrichment of intellect will improve the individual and his society to promote development and well-being. Relating faith to intellect, he continued that faith requires the service of intellect to maintain its dynamics in order to develop the knowledge and technology needed to accelerate human development. That extends to the enrichment of posterity, as it
is a continuous quality improvement to the future generations in terms of spirituality, physicality and mentally. Chapra confirmed the role of the family as the first school for the moral upbringing of children, in addition to their right to a proper education that will enable them to contribute effectively to the development of their society, and good health care that includes nourishment, a clean and healthy environment and medical care.

Finally, Chapra expressed the important role of wealth, as the development and expansion of wealth is as important as the other four primary Maqasid because it is essential to enable the other four to ensure general well-being. Chapra related wealth development to the fulfilment of the needs of all and to the equitable distribution of income and wealth that will contribute to poverty alleviation. He argued that faith, its values and motivational system are essential to enable wealth to serve its purpose effectively and confirmed the role of human resources in economic development, the strengthening of human resources that should involve a cultural transformation in favour of education, technological advance, and research.

Chapra (2008) drew more attention to monetary, fiscal and commercial policies that should be in the light of Islamic teachings, providing the needed infrastructure and marketing facilities to ensure accelerated development and to bring more justice into the developmental process.

Chapra’s (2008) interpretation of Maqasid Al Sharia’a relates all the elements of invigorating human self, strengthening faith, enrichment of posterity and
development of wealth to the achievement of human development and well-being.

The views of Chapra in safeguarding wealth focus on the role of the state and society in the development and expansion of wealth, keeping the values that faith provides as a necessity for human well-being. However, the interpretation of Chapra (2008) is one of the few significant developments in the contemporary Maqasid Al Sharia’a theory. In their study, Ali and Hasan (2014) drew more attention to the role of the individual in safeguarding wealth, through almsgiving (Zakat), charity and inheritance distribution according to Sharia’a, in addition to the individual pattern in earning and spending wealth. Ali and Hasan presented an index for Maqasid Al Sharia’a-based development, where they classified wealth protection axioms into the transfer of zakat and sadaqah, intergenerational transfer through inheritance, and the exchange of money through borrowing or lending with riba, spending, earning, accumulation of wealth, risk and fairness. The following diagram explains the relation between the Maqasid Al Sharia’a index and those elements.
The second significant contribution to the contemporary Maqasid Al Sharia’a theory is the work of Attia (2007). He suggested the expansion of the five essential Maqasid Al Sharia’a and divides them into four realms: the realm of the individual, the realm of the family, the realm of the nation (Ummah) and the realm of the wider humanity. He suggested Maqasid as they pertain to the individual as first, the preservation of human life, personal freedom and dignity; second, the preservation of mind that includes the development and utilisation of the mind through nourishing the brain with knowledge, skills and training; third, the
preservation of personal piety, by establishing and strengthening sound doctrine avoiding anything that would undermine it, then the performance of the obligatory rites of worship, before finally allowing the character of each one to be shaped by the fundamental morals of Islam; fourth, the preservation of honour, which means to prevent people from causing harm to the person themselves, or one of their forebears, or someone for whom they are responsible; and finally, the preservation of material wealth through moderation in spending and avoiding irresponsibility, extravagance and wastefulness, and furthermore the protection of property rights.

As they pertain to the family, Maqasid Al Sharia’a included the intent to preserve progeny and family lineage through first ordering relations to the framework of marriage; second, the prohibition of homosexual relationships and abortion; third, achieving harmony, affection and compassion between partners; and finally, sanctioning divorce through some conditions while encouraging marriage. The other intent of Maqasid Al Sharia’a is to order the institutional and financial aspects of the family.

As they pertain to the nation or Ummah, the first intent of Maqasid Al Sharia’a is the institutional organisation of the Ummah, which consists of viewing it as a distinctive entity with particular characteristics and components. Then comes the maintenance of security that includes internal security and the protection of human life, honour and wealth, while the external security is ensured by the preparation of all kinds of forces to deter others from contemplating aggression against the Ummah. Finally, there is the establishment of justice at the level of
the judiciary and government to first ensure the preservation of religion and the morals of the *Ummah* as a whole by preventing anything that might undermine the definitive principles of the religion. Then, cooperation, solidarity and shared responsibility, those values that encompass all areas of culture, society and the economy. However, such values cannot be imposed by force of law. Rather, they derive from the wellsprings of faith, as does human brotherhood and the brotherhood of faith. Third, the dissemination of knowledge and the acquisition of some types of knowledge that might be a collective obligation to lead the *Ummah* to achieve self-sufficiency in all areas of life. Finally, in terms of populating and developing Earth and preserving the wealth of the nation, the obligation to achieve sustainable development is not restricted to the ruler. However, Islamic civil society has to play a significant role in this process. Based on the concept of preserving the wealth of the nation, Islamic legal rulings pertain to the payment of *zakat*, and the one-third of the person’s wealth as a bequest for charitable use that should be stated in their will, in addition to the voluntary charitable contributions (*sadaqat*)

The fourth realm of *Maqasid Al Sharia’a* pertains to all of humanity, where the first intent is to achieve mutual understanding, cooperation and integration. With the simple mention of this intent, this is a divinely established law of nature and without going into details of the ways to fulfil it, this provides the flexibility needed for relating to the international scene with its geographical expanses and historical depth. The second intent is realising all humans as vicegerents of God. This enables a conceptualisation that explains the reality of the universe,
humanity and life. Then, achieving world peace based on justice, where justice in this context is not limited to Islamic society, but rather as a fundamental intent in human relations throughout history. The third intent is the international protection of human rights that includes extending assistance to the oppressed anywhere and the protection of freedoms and rights. Finally, the dissemination of the Islamic message to all people, where communication of this message is one of the most significant intents of Islamic law that must be presented through wisdom, gentle exhortation and reasoned dialogue.

Attia (2007) pointed out the humanity dimension that explains the real concept of the universal Maqasid Al Sharia’a. He explained the five Maqasid Al Sharia’a in the context of humanity as shown in the following diagram.
Fig. 2.3 Attia’s interpretation of the universal *Maqasid Al Sharia’a*

**Humanity**
- Mutual understanding, cooperation and integration
- Realising human vicegerency on Earth
- Achieving world peace based on justice
- International protection of human rights
- Dissemination of the Islamic message

**Ummah**
- Institutional organisation of the Ummah
- Maintenance of internal and external security
- Establishment of justice
- Preservation of religion and morals
- Cooperation, solidarity and shared responsibility
- Dissemination of knowledge
- Populating and developing Earth and preservation of the Ummah wealth

**Family**
- Preservation of progeny framework of marriage
- Preservation of family lineage
- Ordering the institutional aspect of the family

**Individual**
- Preservation of human life, security, bodily needs, freedom and dignity
- Development, preservation and utilisation of mind
- Preservation of personal piety
- Preservation of wealth and the protection of property rights
Auda (2008) suggested that current conceptions are closer to addressing current issues than classic conceptions, a *Maqasid Al Sharia’a*-based approach to human rights that supports the Universal Islamic Declaration of Human Rights and the view that Islam could add positive dimensions to human rights. He presents human development as a contemporary expression of the traditional term *maslahah* that could be measured via the United Nation’s Human Development targets. The following table is a summary for the previous approach.

**Table 2.1 Auda’s approach to contemporary conceptions**

<table>
<thead>
<tr>
<th>Classical conceptions</th>
<th>Contemporary conceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preservation of religion</td>
<td>Freedom of belief</td>
</tr>
<tr>
<td>Preservation of mind</td>
<td>Propagation of scientific thinking</td>
</tr>
<tr>
<td></td>
<td>The pursuit of knowledge</td>
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<td></td>
<td>Supporting the herd mentality</td>
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<td></td>
<td>Avoiding brain drainage</td>
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<tr>
<td>Preservation of offspring</td>
<td>Care for family</td>
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<tr>
<td></td>
<td>Civil Islamic social system</td>
</tr>
<tr>
<td>Preservation of honour</td>
<td>Preservation of human dignity</td>
</tr>
<tr>
<td></td>
<td>Protection of human rights</td>
</tr>
<tr>
<td>Preservation of wealth</td>
<td>Economic development</td>
</tr>
<tr>
<td></td>
<td>Diminishing the difference between economic levels</td>
</tr>
</tbody>
</table>

In line with Auda’s (2008) approach, the Universal Islamic Declaration of Human Rights (1981) adopted by the Islamic Council of Europe is based on the Qur’an and Sunnah, and has been complied by Muslim scholars, jurists and representatives of Islamic movements and thought. The following rights are enjoyed by Islam:
1- Right to life, including the protection of human life and the sanctity of a dead body
2- Right to physical, cultural, economic and political freedom
3- Right to equality and prohibition against impermissible discrimination that includes an equal wage for equal work
4- Right to justice and treatment in accordance with law
5- Right to a fair trial, reasonable opportunity to defend and punishment in accordance with the law
6- Right to protection against the abuse of power
7- Right to protection against torture
8- Right to protection of honour and reputation
9- Right to asylum
10-Right of minorities including religious rights and to be governed by their law in civil and personal matters
11-Right and obligation to participate in the conduct and management of public affairs
12-Right to freedom of belief, thought and speech
13-Right to freedom of religion
14-Right to free association and free participation in religious, social, cultural and political life
15-The economic order and the rights evolving therefrom that include the full benefits of natural resources, earning a living according to the law, all
economic activities that are not determinable to the interests of the community and do not violate Islamic law, forbidden monopolies and usury

16-Right to the protection of property, except in the public interest

17-Status and dignity of workers and justified treatment

18-Right to social security that includes food, shelter, clothing, education and medical care, particularly for individuals with temporary or permanent disability

19-Right to found a family and related matters

20-Rights of married women

21-Rights to education and free choice of profession and career, in addition to the full development of natural endowments

22-Right of privacy

23-Right to freedom of movement and residence

To summarise this review of the contemporary theories of Maqasid Al Sharia’a, the interpretation of Chapra (2008) is the most comprehensive explanation of Al-Ghazali’s theory of Maqasid Al Sharia’a, where his work is distinguished by the interaction between the five basic Maqasid Al Sharia’a and the relation to human development and well-being of all mankind. However, Attia (2007) added the four realms to his classification of Maqasid Al Sharia’a to draw more attention to the concept of Umma and the universal humanity to clarify that achieving Maqasid Al Sharia’a is not restricted to Muslim communities but extends to all mankind. In terms of the contribution of Auda (2008) that suggests the use of some contemporary concepts to replace the classical ones, the most relevant to this
research are human development as the traditional term *maslaha*, economic development and diminishing the difference between economic levels as the traditional preservation of wealth. Finally, the addition by the Universal Islamic Declaration of Human Rights confirms that the contemporary human rights are in line with *Maqasid Al Sharia’a*.

The following part discusses human development from the *Maqasid Al Sharia’a* perspective, as from the above review, human development is equivalent to the public interest (*Maslaha*).

### 2.4 Human Development

Starting by defining human development in the framework of *Maqasid Al Sharia’a*, this is directly linked to the concept of benefit (*Maslahah*). *Imam Al-Ghazali* explained the meaning of *maslahah* as the efforts to bring benefit or to prevent harm, confirming that the real meaning of *maslahah* is the preservation of the five entities: religion, soul, reason, progeny and wealth (Qahtani, 2015). *Al Shatibi* draws attention to the non-material aspect of benefit and harm, in addition to the benefit and harm in this life and the next. He confirms that true benefits serve, support and nurture life rather than destroy it (Al-Raysuni, 2005). *Ibn Ashur’s* definition of *maslaha* is more detailed and comprehensive as he includes the public and the individual benefits, whereby he defines *maslaha* as the attribute of the act whereby righteousness takes place, with utility and benefit always or mostly for the public or the individuals; he refers to *maslaha* as an absolute and regular. In his differentiation between the two types of *maslaha*, *Ibn Ashur* explains that the public *maslaha* is what is beneficial and useful for the
whole or most of the community, which includes the safeguarding of public interest from corruption or destruction. Likewise, the individual *maslaha* is the benefit and goodness of the individuals and the well-being of the whole society that they belong to (Ibn Ashur, 2006).

The concept of benefit and harm is mostly employed by *Sharia’a* scholars as the otherworldly benefits and harm, their causes and means by which they are attained; the earthly benefits and types of harm, their causes and means by which they are attained. These include physical, emotional, mental or spiritual benefit or harm (Al-Raysuni, 2005). According to Anto (2014), Islamic scholars derive the common conclusion that the objective of *Sharia’a* or *Maqasid Al Sharia’a* is to promote the well-being of all mankind and offer relief from hardship.

The previous definitions of *maslaha* introduce two direct links to the traditional concept: the first is the link between human development and human well-being or *Falah*, while the second sequential link is to the concept of populating and developing Earth for the benefit of mankind.

The following part will first include the definition of the Islamic concept of human development, and then a discussion about the role of human development to achieve human well-being and the identification of the Islamic approach of development.

The Islamic concept of development is a process that is based on the holistic views of Islam on human life and the universe to achieve the comprehensive welfare of a human being in this life and hereafter, which is commonly called
Falah (Anto, 2014). Falah is the real well-being of all the people living on Earth irrespective of their race, sex or nationality; the term (Fawz) is equivalent to Falah (Capra, 2014).

According to Amir Ud Din (2014), development in an Islamic context is a multidimensional activity to establish a balance between different factors and forces. It is comprehensive and includes the moral, spiritual and material dimensions where human beings and their basic needs are at the centre of the development effort. Chapra (1993) used the term ‘development with justice and stability’ to explain the development that is needed in every Muslim society to attain general need fulfilment, full employment and the equitable distribution of income and wealth. He illustrates four basic elements of the strategy for development with justice and stability. The first element is the equitable filtering of excess claims that requires preventing extravagance and the wasteful use of resources, and to recognise a price filter to keep claims on resources within human limits. The second factor is the motivation to realise the harmonisation of individual and social interests and to give the individual self-interest a spiritual and long-term perspective extending beyond this life. The third element is the socioeconomic restructuring through transforming the human factor to play a constructive role in the efficient allocation and distribution of resources, the raising of savings for investment and the reforming of the financial system. The last element in development with justice and stability is the role of the state through the implantation of Islamic values in the society and the creation of a
healthy socioeconomic environment, in addition to the development of proper enabling institutions.

The previous strategy of development with justice and stability focuses on three major requirements: need fulfilment, full employment and the equitable distribution of income and wealth. The right path to achieve this strategy is based on justice and stability, and builds on the following elements: equitable filtering of excessive claims on resources, motivation for individuals and societies, socioeconomic restructuring, and the role of the state.

Chapra (1998) added to his previous work by justifying the kind of development that Islam visualises and the rationale behind it as the socioeconomic justice and the well-being of all humans, because they are all vicegerents of God and brothers to each other. He emphasises that Islam sets a balanced assurance on both the material and the spiritual aspects of life. He prefers the model of Ibn Khaldun for development, as it is directly linked to the Muslim society during the lifetime of Ibn Khaldun, in addition to the multidisciplinary and dynamic nature of the model. In this model, the human being is the end and the means of development—the end as his well-being is desired, the means as efficiency and creativity are not ensured without human well-being. In other words, if the human being is right, then everything can work effectively as this individual is the input of the market, government, family and society. If the individual is not right then the market, government, family and society may not be able to carry out all aspects of development. Other variables in the model of Ibn Khaldun—political authority, Sharia’a values and institutions, wealth or economy, development and justice—
affect human beings and determine their willingness and ability to do their best for themselves and their societies. Development and justice are the two factors that affect the well-being and development of all aspects: economic, institutional, intellectual, social and political development is needed to ensure well-being, while societies do not remain stagnant, they move forward or backward. Justice, on the other hand, induces the individual to work hard and to be honest and creative. The rules of behaviour or values and institutions should encourage the right behaviour and discourage the wrong; it is the job of the government to ensure the enforcement of the rules of behaviour and to reflect that in the laws and constitution of the country. Finally, the financial system as an integrated part of the economy is the way to ensure the mobilisation and the efficient and equitable use of the resources to further development and justice, which will promote an equitable distribution of income and wealth within the framework of Sharia’a.

*Ibn Khaldun’s* dynamic model highlights two concepts in relation to human development. First, the role of the human being in the process of development from the perspective of the means and the end of this process, whereby the human being is the end of the development, mankind’s well-being is the goal to be achieved by development, and the human being is the means that undertakes the obligations needed to achieve the development. Consequently, the human being as a core element in the development process is the key factor that may affect the whole achievement of the development. The second concept in *Ibn Khadun’s* model is the influence of some factors on the human being, with the
major influence being from justice and development, and then political authority, Sharia’a values and finally wealth and the economy.

Oladapo and Rahman (2016) defined the dimensions of Islamic human development as health, education, equitable income distribution, social justice, comfortable housing, clean environment, human rights and religious accountability. The effective policy mechanism has a direct positive impact that emphasises the provision of basic human needs, which are created in the Maqasid Al Sharia’a human development paradigm. They introduce an Islamic human development model that incorporates five variables: social justice, human rights, education, health and income. The human development within this model focuses on human capital enhancement through skills training, health care, protection, employment creation and overall development that will have an impact on the society in the short and the long run. Finally, they draw more attention to the implementation of the proposed human development model and how policy can play an important role in producing good individuals for a good society.

This review presents the basic elements of human development in an Islamic framework, incorporating five variables in an Islamic human development model as follows: social justice, human rights, education, health and income. However, the study emphasises the role of an effective policy mechanism that reflects the provision of Maqasid Al Sharia’a human development.
Within the same concept that emphasises the role of policies, Zaman and Asutay (2009) presented a conceptual model of development in Islam that suggests a political economy approach to demonstrate the major role of institutional implantation and to identify the prerequisites for achieving that including the political vision, will and leadership. Dusuki and Bouheraoua (2011) used a pyramid of maslaha that includes three levels of importance in terms of the fulfilment of responsibility: the essentials, the complementary and the embellishments. They related the decision making to these levels, where the degree of decision making will be more fundamental on the level of essentials and less when it moves downwards in the pyramid. They confirmed that the pyramid of maslaha with the concept of harm prevention contributes to the establishment of guidelines for decision making in managing Islamic financial institutions.

The second link to the concept of Maslaha is the population and developing of Earth to the benefit of all mankind. This is discussed by Al-Qahtani (2015), who confirmed the foundational role to populate and cultivate Earth to strengthen and benefit all mankind that includes developing the land through construction, agriculture, manufacturing and the extraction of minerals and other resources, in addition to any other aspect of development. All these activities are included among the objectives of Sharia’a that Muslims are obligated to fulfil. He emphasises that this development is the outcome of the moral awareness of the individuals of their responsibilities towards others and the planet that they live on,
and the integration of the sciences, arts and humanities with the various fields of Islamic studies.

From this review it can be seen that Islamic human development is a dynamic process that is carried out by and for the benefit of human beings. Justice and sustainable development are the major factors that enable human beings to be more efficient and creative to achieve their obligations. However, the political vision, will, leadership and an effective policy mechanism influence the whole process of development. The dimensions and elements of the Islamic human development from the previous studies are summarised in the following table.

### Table 2.2 The dimensions and elements of Islamic human development

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice</td>
<td>Social justice</td>
</tr>
<tr>
<td></td>
<td>Equitable filtration on the excessive claims on resources</td>
</tr>
<tr>
<td></td>
<td>Socioeconomic restructuring</td>
</tr>
<tr>
<td>Sustainable development and human rights</td>
<td>Equitable distribution of wealth and income</td>
</tr>
<tr>
<td></td>
<td>Need fulfillment</td>
</tr>
<tr>
<td></td>
<td>Full employment</td>
</tr>
<tr>
<td></td>
<td>Education</td>
</tr>
<tr>
<td></td>
<td>Health</td>
</tr>
<tr>
<td></td>
<td>Comfortable housing</td>
</tr>
<tr>
<td></td>
<td>Clean environment</td>
</tr>
<tr>
<td>Political authority</td>
<td>The role of the state</td>
</tr>
<tr>
<td></td>
<td>Political vision and will</td>
</tr>
<tr>
<td></td>
<td>Political leadership</td>
</tr>
<tr>
<td></td>
<td>Effective policy mechanism</td>
</tr>
<tr>
<td>Sharia’a values and institutions</td>
<td>Motivation for individuals and societies</td>
</tr>
<tr>
<td></td>
<td>Religious accountability</td>
</tr>
</tbody>
</table>
The human development in the Islamic framework is linked consequently to the obligation of every Muslim as the vicegerent of God on Earth to populate and develop it for the benefit of all humankind. Developing Earth includes construction, minerals and other resource extraction, manufacturing, trading, agriculture, farming and all other activities or means of livelihood within the Sharia’a framework. The effective implementation of this process needs to be based on moral awareness of the individuals and their responsibilities towards others and the planet that they live on, in addition to enhancing the power of knowledge through the integration of the sciences, arts and humanities with the various fields of Islamic studies.

To achieve the ultimate goal of Maqasid Al Sharia’a that lies in human well-being, wealth must be preserved, developed and utilised to realise the other four Maqasid in order to achieve general human well-being. The following is a review of the concept of wealth preservation and the relation to human development and well-being.

2.5 The Preservation of Wealth

As this research focuses on the preservation of wealth to approach the compliance of Sukuk with Maqasid Al Sharia’a, the following review attempts to define the conceptions of the preservation of wealth in the context of human development.

According to Lahsasna and Hassan (2011), the preservation and protection of wealth is classified under the category of necessity, where finance is recognised
by Maqasid Al Sharia’a as a valuable aspect in life that is protected by Islamic law. Ahmad (2011) confirmed that Islamic finance is considered as an infrastructure for the proper implementation of complementary Maqasid, which is built on rules and ethical values to utilise financial resources for the realisation of Maqasid Al Sharia’a. As stated by Chapra (2008), the preservation of wealth as a primary Maqasid is essential to the other four Maqasid in order to achieve general human well-being, Al Razi places the preservation of wealth immediately after the human self in the ordering of the five Maqasid Al Sharia’a. According to Attia (2007), the Islamic preservation of wealth emerges from an acceptance that wealth is a trust that belongs to God and that human beings are responsible for populating and developing Earth. In summary, the preservation of wealth plays a crucial role in the realisation of the other Maqasid Al Sharia’a and to achieve human well-being, while the foundation of the rules and ethics that the preservation of wealth is built on is linked to a major concept: wealth is a trust from God that requires very efficient use to utilise this wealth in populating and developing Earth.

Islam as a way of life is based on innate human nature (fitrah); therefore, the sanctity of human ownership and possession is recognised in Islamic teaching. This way of life reflects two parameters—moderation and balance—while enjoying bounties in this life must be without any waste or extravagance in life pleasures (Ibrahim et al., 2014). According to Ibn Ashur (2011), Islamic law realises the natural human impulse to acquire wealth by showing all aspects of good and evil that may follow the different ways of earning and spending wealth.
Chapra (2008) explained the preservation of wealth as the development of wealth that is imperative for realising the crucial Islamic goal of minimising the inequalities of income and wealth. In his model the development of wealth includes the following dimensions: 1) the uplift of human resources, through a cultural transformation in favour of education, technological advance and research; 2) economic development to reduce poverty and inequalities; 3) reorienting of monetary, fiscal and commercial policies in the light of Islamic teachings to ensure accelerated development; 4) promoting micro-enterprises to expand employment and self-employment opportunities; and 5) providing the needed infrastructure and marketing facilities.

Attia (2007) presented the preservation of wealth through two different levels: the first is the individual level whereby wealth is preserved through moderation in spending and avoiding irresponsibility, extravagance and wastefulness, in addition to the protection of property rights; while the second level is the nation (Ummah), where the obligation is built on populating and developing Earth and preserving the wealth of the nation to achieve sustainable development. His focus is on the role of zakat payments and voluntary charitable contributions to preserve the wealth of the nation.

Ibn Ashur (2011) summarised the objectives of Sharia’a concerning wealth in five dimensions: 1) marketability (rawaj), which implies the fair circulation of wealth among the hands of as many people as possible, encouraging financial activities and confirming the importance of trade in Sharia’a, and that any obstacles to trade should be removed; 2) transparency (wuduh), required in wealth and
property to avoid harm and disputes; 3) preservation (hifth), which includes both the wealth of individuals and public wealth and properties; 4) durability (thabat), as the owner of the wealth or property should have the exclusive right to what has been earned lawfully without any kind of delay or risk; and 5) equity (adl), whereby wealth and properties should be acquired lawfully in the first instance, with the other aspect the protection of the public interests and the prevention of public misfortune.

In a very similar approach to Ibn Ashur, Lahsasna and Hassan (2011) presented a significant approach to achieving the preservation and protection of wealth in financial transactions within the context of Maqasid Al Sharia’a. They concluded the objectives of Maqasid Al Sharia’a in a business transaction as: 1) the circulation of wealth in the business transaction; 2) the preservation and protection of wealth; 3) transparency in wealth and finance; 4) the development and investment of wealth; 5) the prevention of harm and hardship in wealth and finance; and 6) ensuring justice in the circulation of wealth.

Dusuki and Bouheraoua (2011) used the same approach in their study, where their five dimensions to preserve wealth are: 1) protection of ownership; 2) acquisition and development of wealth; 3) preservation of wealth from damage, which includes protecting wealth from risk that can cause damage to it and prevent wealth from harmful purposes; 4) circulation of wealth, which includes the transfer of wealth in the community among as many people as possible without causing harm to those who acquired it lawfully, in addition to facilitating
the transactions insofar as possible; and 5) the value protection of wealth and natural movement of commodity pricing.

In the previous three similar approaches, the marketability in the work of Ibn Ashur is equivalent to the circulation of wealth in Dusuki and Bouheraoua (2011), and to the two dimensions in the approach of Lahsansa and Hassan (2011): the circulation of wealth in financial transactions and ensuring justice in the circulation of wealth. The durability in Ibn Ashur is equivalent to the preservation of wealth from damage in Dusuki and Bouheraoua (2011) and the prevention of harm and hardship in wealth and finance in the approach of Lahsansa and Hassan (2011). The concepts of transparency and preservation of wealth are almost the same in both approaches; however, Ibn Ashur (2011) focused on equity as a concept that is applied to all other dimensions, while Lahsasna and Hassan (2011) and Dusuki and Bouheraoua (2011) added another significant dimension: the development and investment of wealth. Finally, Dusuki and Bouheraoua (2011) added two dimensions: the protection of ownership and the preservation of the wealth value.

Farooq (2014) presented three major dimensions for the preservation of wealth. The first is the development of wealth, which is directly linked to economic prosperity and human development, as stated by Ibrahim et al. (2014). He added that the hoarding of wealth must be addressed by a participatory system where wealth is channelled to the capital market, employed in productive resources, and utilises resources in the service of humanity. The second dimension is the expansion of investments to produce more wealth. Finally, there is equitable
distribution and preventing the concentration of wealth, which is much more significant than the concentration in income. It is the collective responsibility of society in general and every member of the society, especially the wealthy and privileged, as well as the government, to mitigate the problem of the concentration of wealth. According to Ibrahim et al. (2014), justice is a central principle in Islam; therefore, wealth must not circulate only among the wealthy, which requires a system that achieves a fair distribution of wealth and avoids unjust concentration. Farooq (2014) suggested some aspects to achieve the fair distribution of wealth and would be relevant to Islamic wealth management. The first aspect is the real economy, where the measure of economic production is reflected in the real sector. Therefore, wealth should be employed in channels that add to productive economic activities and foster the real economy not merely as a vehicle for wealth accumulation. Financial institutions need to support the real economy not by helping in wealth creation at the same level for the wealthy, but to embrace the notion of greater circulation of wealth. The second aspect is job creation, where new and productive enterprises are expected to create jobs. However, as part of expanding productive activities it is the creation of good paying jobs that helps in poverty alleviation and building a larger middle class, where wealth accumulation becomes broad-based and wealthy people are provided opportunities to enhance their capital through expanding development. The third aspect is the emphasis on going public by turning private companies into public securities to give the opportunity for participation by the broader
investing public. Consequently, the aspect of spreading assets and capital ownership will be achieved.

The previous approach to the preservation of wealth focuses on three dimensions: the development of wealth, where development means to expand and increase the wealth that is available for investments; the expansion of investments to increase the wealth; and finally, fair distribution to prevent the concentration of wealth. The fair distribution of wealth that is built on justice may be achieved through real productive economic activities, creating good paying jobs and turning private companies into public securities.

From the previous review, the concept of wealth preservation is not the accurate term of safeguarding wealth; the term preservation is limited to the protection of wealth against harm, and it is one of the dimensions to achieve wealth safeguarding.

Wealth safeguarding is a necessity that represents the infrastructure for the implementation of Maqasid Al Sharia’a and to achieve general human well-being. Wealth is a trust from God that should be ruled by ethical values to populate and develop Earth. Safeguarding wealth has been explained from different approaches; it is associated with wealth development and expansion, fair circulation, protection from harm and fair distribution.

To conclude on the basic dimensions for the safeguarding of wealth, these are 1) wealth preservation or protection from harm, that includes enabling the environment and natural resources, in addition to the needed monetary and
commercial polices that will protect the public wealth from harm and excessive use; 2) wealth development and expansion, which includes the uplift of human resources through education and technological advance, economic prosperity and real economic productive activities; 3) fair wealth circulation, which includes providing the needed infrastructure and marketing facilities to increase the marketability of wealth, in addition to the facilitation of trade and financial transactions; and 4) fair distribution of wealth, including fair employment opportunities and promoting microenterprises and microfinance that will contribute to employment and self-employment.

The above review is developed to present the following first model of wealth safeguarding in the light of Maqasid Al Sharia’a.
2.6 Conclusion

The first part of this chapter includes a review about Islamic law to illustrate the following points: first, the continuity and the shared basic moral values in the basic worldview and value system of all revealed religions and philosophies; second, that Islam prohibits riba while permitting and encouraging trade, with trade having played an important role in spreading Islam worldwide through Muslim merchants; third, the shared principle among divine religions including Islam, that God is the owner of wealth and all humankind should be responsible to use this wealth wisely and avoid squandering to remove poverty and promote the equitable distribution of income. Islam has a clear set of values and principles
against negative behaviours, with fundamental implications for all aspects of life including the financial system. *Ijtihad* as a secondary source of Islamic jurisprudence is a method by which the scholar recognises the legal meaning of the texts and rules of the Qur’an and Sunnah. All the ideas that have developed in relation to Sukuk structures and use are the result of *Ijtihad*.

*Maqasid Al Sharia’a* are a set of moral concepts and ethical values that covers every aspect of human life to achieve the ultimate goal of Islamic law and *Maqasid Al Sharia’a*, which is to bring benefits and alleviate harm to all mankind. The early theories of *Maqasid Al Sharia’a* started to evolve between the third and fifth Islamic centuries, where the influence of the scholars at that early time and their work was the inspiration for later scholars in the same chain of knowledge. The early theories of *Maqasid Al Sharia’a* realise three positions: first, the wisdom behind moral obligation that has been illustrated by *Al-Tirmithi*, *Al-Qaffal Al-Kabir* and *Ibn Babawayh Al-Qummi*; second, the wisdom behind religious dealings and practices that has been done by *Abu Zeyad Al-Balkhi*; and third, the wisdom behind criminal punishment in Islamic law by *Al Amiri Al-Faylasuf*. *Al-Baqillani* (referred to as the scholar of the Sunnah and spokesman for the Muslims) influenced scholars and their work that was written thereafter on this discipline, among them *Al-Juwayni*, *Al-Shirazi*, *Al-Ghazalli* and others.

The fifth century AH witnessed the advanced development of *Maqasid Al Sharia’a* theories: the classification of *Maqasid al Sharia’a* according to levels of necessity developed in that era, in addition to introducing the concept of unrestricted interest (*al maslaha al mursalah*) as a method that covers what was
not mentioned in the scripts and compensates for the limitations of analogy (qiyaṣ). All scholars agreed that the term *Maqasid Al Sharia’a* is equivalent to serving the benefit and preventing harm to all human beings. They realised *Maqasid Al Sharia’a* in various approaches, among them being the level of necessities and the universal objectives, the approach developed by Imam Abu Hamid Al-Ghazali and the approach adopted in this research due to the wide acceptance of this approach and the close relation to human development and well-being.

The contemporary theories of *Maqasid Al Sharia’a* add to the knowledge in this discipline, where the interpretation of Chapra (2008) is the most comprehensive explanation of Al-Ghazali’s theory of *Maqasid Al Sharia’a*. His work is distinguished by the interaction between the five basic *Maqasid Al Sharia’a* and the relation to human development and well-being of all mankind. However, Attia (2007) placed more attention on the concept of *Umma* and universal humanity to clarify that achieving *Maqasid Al Sharia’a* is not restricted to Muslim communities but extends to all mankind. The contribution of Auda (2008) suggests the use of some contemporary concepts to replace the classical ones, with the most relevant to this research being human development as the traditional term *maslahā*, economic development and diminishing the difference between economic levels as the traditional preservation of wealth. A review of the Universal Islamic Declaration of Human Rights was added at the end of that part to confirm that contemporary human rights are in line with *Maqasid Al Sharia’a*. 
The review of Maqasid Al Sharia’a was followed by a review to define human development in the context of Maqasid Al Sharia’a, which is directly connected with the concept of Al Maslahah. The traditional concept of Maslaha is associated with two direct links: the first is the link between human development and human well-being (Falah), and the second sequential link is to the concept of populating and developing Earth for the benefit of all mankind.

Islamic human development is a dynamic process where the human beings are the means and the end result of the process, Justice and sustainable development are the major factors that lead human beings to be more efficient and creative to achieve their obligations. Meanwhile, the whole process of development is influenced by the political vision, will, leadership and an effective policy mechanism. Islamic human development is also linked to the obligation of every Muslim as the vicegerent of God on Earth to populate and develop it for the benefit of all humankind. Developing Earth includes construction, minerals and other resource extraction, manufacturing, trading, agriculture, farming and all other activities or means of livelihood within the Sharia’a framework. The effective implementation of this process needs to be based on moral awareness of the individuals of their responsibilities towards others and the planet that they live on, in addition to enhancing the power of knowledge through the integration of the sciences, arts and humanities with the various fields of Islamic studies.

Wealth must be preserved, developed and utilised to realise the other four Maqasid in order to achieve general human well-being. Considering this relation, a review was conducted for the discussion of the concept of wealth preservation
and the relation to human development and well-being. The discussion indicates that the concept of wealth preservation is not the accurate term of safeguarding wealth, the term preservation is limited to the protection of wealth against harm and it is one of the dimensions to achieve wealth safeguarding. Therefore, safeguarding wealth is associated with wealth development and expansion, fair circulation, protection from harm and fair distribution. The review is developed to present the first model of wealth safeguarding in the light of Maqasid Al Sharia’a.

Sukuk as a financial instrument can effectively serve the human development goals and realise Maqasid Al Sharia’a in terms of the preservation of wealth, as Sukuk may play a crucial role in the fair circulation of wealth, the development of wealth, the preservation of wealth and the equal distribution of income and wealth.

The following chapter will provide a discussion on a range of characteristics to define the concept of Sukuk, which includes the definition of Sukuk, a comparison between Sukuk and conventional bonds, and the structuring, rating, trading and valuation of Sukuk. The second part of the chapter is a review on the existing global Sukuk market and the challenges that have appeared within the market, followed by a discussion about some issues that are considered in the literature around Sukuk issuance. Finally, the role of Sukuk in safeguarding wealth will be discussed.
CHAPTER 3  THE CONCEPTUAL UNDERSTANDING

3.1 Introduction
This chapter will provide the explanations of the concept of Sukuk and the related
characteristics, starting with a definition of Sukuk and then explaining the major
differences between Sukuk and conventional bonds, as they are very similar
financial products. This will be followed by a summary of Sukuk issuance-related
concepts: the structuring, rating, trading, and valuation of Sukuk. The third part of
this chapter focuses on the dynamic global Sukuk market and the challenges
apparent within the market that have been divided into financial, regulatory and
legal challenges. The final part will review some issues explored in the literature
around Sukuk issuance, which are divided into regulatory and technical issues.
The chapter ends with a discussion on the role of Sukuk in safeguarding wealth
and human well-beings.

3.2 Sukuk Conceptions
The Arabic word Sukuk is a plural form of Sakk, which is a permanent legal
document kept as evidence of events, rights, ownership or privileges. The
earliest evidence of the term sakk comes during the emerging trade patterns of
the latter Middle Ages, where a sakk referred to a payment obligation for a long-
distance trade transaction. Documental historical records allude to the creation of
Sukuk as a borrowing instrument that the Islamic legal scholars in the Ottoman
Empire helped to design when the emperor needed to borrow large amounts of
money to reconstruct after the devastation of the crusades that ended in AD 1285 (Ariff et al., 2012). The socioeconomic scholar Fernand Braudel points out that the word cheque comes directly from sakk and was transmitted to Europe as a term and concept by Jewish merchants from the Muslim world (Adams and Thomas, 2004).

One of the first definitions of the modern day Sukuk was given in February 1988 during the fourth session of the Council of the Islamic Fiqh Academy in Jeddah. Resolution No. 30(5/4) was on investment certificates, and specifically muqaradah bonds, also known as mudarabah Sukuk. The Council defines these Sukuk as investment instruments which allocate the muqaradah capital by floating certificates, as evidence of capital ownership, on the basis of shares of equal value, registered in the name of the owner, as joint owners of shares in the venture capital or whatever shape it may take, in proportion to (Saeed and Salah, 2012).

In financial terms, Sukuk are participation certificates of ownership of a given class of assets that grant investors a return based on profitable investment resulting from actual asset ownership. Therefore, Sukuk security is an instrument that first requires the creation of assets in a separate entity. These assets should be owned by the fund providers in proportion to the amount of funds provided (Ariff et al., 2012).

The Islamic Financial Services Board (IFSB) defined Sukuk as certificates, with each sakk representing a proportional undivided ownership right in tangible
assets, or a pool of predominantly tangible assets, or a business venture. These assets may be in a specific project or investment activity in accordance with Sharia’a rules and principles. This definition is highly applicable to financial institutions, and it emphasises asset transfer and ownership, while ignoring the trading aspects (Ariff et al., 2012).

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defined Sukuk as certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services, or in ownership of the asset of a particular project or special investment activity. However, this is true after receipt of the value of the Sukuk, the closing of the subscription and the employment of the funds received for the purpose for which the Sukuk are issued. (Sharia’a Standard No.17 on Investment Sukuk).

As per the previous definitions, Sukuk represent the actual ownership of the underlying assets, where regular returns are paid to Sukuk holders, and the whole process is Sharia’a compliant: the underlying assets, the contracts for structuring, the proceeds of Sukuk and the link to the real sector activities. However, most of the definitions lack the trading of Sukuk in a secondary market. The use of Sukuk has been confirmed as a viable alternative means to mobilise long-term savings and investment from a huge investment base to raise funds for sovereign entities and corporate institutions in formats compliant with Sharia’a and at attractive rates. Raising funds from the Sukuk market has been up to 20 basis points (bps) (bps is a common unit to measure interest rates) lower than mainstream bonds (Al-Amin, 2012).
Sukuk also offer a solution to the liquidity management problem that has slowed the growth of the Islamic finance industry. Many observers believe that Sukuk is a long-term solution to enable Islamic banks and Islamic financial institutions to manage liquidity through a range of maturity profiles that will develop a deeper and more liquid Islamic capital market (Al-Amine, 2012).

Sukuk in general are consistent with Western securities rules, which means that Sukuk allow for the export of Islamic financial products to the West, providing efficient development of the Islamic mortgage market and offering investment opportunities in mortgage-backed securities (MBS) -type structures or real estate investment trusts (REITs). Sukuk will also benefit from the latest developments in the asset and mortgage-backed securities market (Adam and Thomas, 2004).

To conclude, Sukuk represent a proper alternative to playing an essential role in the justified circulation of wealth. This could be classified at three levels. The first is the investors, whereby Sukuk offer an attractive Sharia’a-compliant rate of return on investments, while also allowing small investors to engage in the capital market through pooled assets, which will mobilise long-term savings and investments. The second is the financial market, where Sukuk is an adequate tool to manage liquidity. Furthermore, with adaptable regulations Sukuk are exported to the international financial market. The third level is the public sector, where raising funds for sovereign entities through Sukuk will facilitate financing more projects in meeting the social and financial needs.
3.3 Sukuk and Bonds

Sukuk offer some beneficial qualities that are similar to bonds: first, Sukuk are real assets that are easily transferred and added to in the financial markets; second, Sukuk are analysed by international and regional rating agencies; third Sukuk may allow for credit enhancements that broaden their appeal to risk-averse investors; and finally, the variety of Sukuk structures allow for structuring across legal and tax domains of products that meet diverse financing needs.

Albeit that there is this similarity between Sukuk and conventional bonds, there are significant differences in the ethical, operational, structural, funding arrangements and risk exposures perspectives.

Adam and Thomas (2004) and Al-Amin (2012) clarified the differences in the commitment of the two products to ethical, structural and operational perspectives. The first difference is that the bondholders may lose all their wealth in the event of a default by the issuer, while the asset-backed nature of Sukuk assures the investors of their ability to retrieve part of their investments in case of a default. Unlike bonds, asset-related expenses may attach to Sukuk holders.

The third difference is that Sukuk issuers are limited in the amount that they can raise from subscribing investors, whereby the total subscription cannot exceed the market value of the underlying asset of the Sukuk. On the contrary, if a bond issue is oversubscribed, the issuer endeavours to retain the maximum possible amount. Another difference is that bonds frequently have a number of different tranches of securities issued against a pool of assets, with rating being dependent on the seniority of the cash flow. However, a senior subordinate of
cash flows arising from the same pool of assets is not compliant with Sharia’a principles. Therefore, in any Sukuk issuance only one tranche of a security would be permissible for each asset pool. Finally, in the case that the assets are transferred to an SPV as a true sale, the financing of the SPV is not treated as debt on the balance sheet of the originator.

Basic differences in Sukuk funding arrangements compared to conventional bond-based or bank-lending arrangements could be summarised as follows. The first difference is that Sukuk represent ownership stakes in existing well-defined assets, and asset-related expenses may attach to Sukuk holders, where bonds represent pure debt obligations due from the issuer to the investor with no asset-related expenses attached to the obligations (Adam and Thomas, 2004), and the sale of Sukuk represents a sale of a share of an asset, while the sale of a bond is the sale of a debt, except for the case of asset-backed securities (Al-Amine, 2012).

The second difference is that Sukuk prices are market-driven and depend on appreciation and depreciation of the market value of the underlying asset and the market forces of supply and demand, while the pricing of the bond depends on the creditworthiness of the issuer. Regarding rewards, they are given only if profits are earned, and if the project fails with no proof of wilful negligence, the principle is lost to the extent of the market value of the assets in the SPV, which is owned by the fund providers (Ariff et al., 2012). In relation to the underlying assets, religious doctrine dictates that the underlying assets mentioned in a Sukuk issuance must be permissible and fulfil Sharia’a principles in both nature
and use, while bonds may be issued to finance any legal purpose in its jurisdiction. Bonds are often used to finance the casino industry, for example.

From an investor point of view, the asset-backed nature of Sukuk reasonably assures the investors of their ability to retrieve part of their investment even if things go wrong, while bond investors may lose all their wealth in the event of a default by the borrower (Al-Amine, 2012).

Afshar (2013) compared conventional bonds and Sukuk from a risk exposure perspective, namely that the risks that Sukuk encounter vary according to their structure, and certain types of risk are only applicable to either conventional bond or Sukuk, and yet certain risks are common among them. Sukuk and conventional bonds share some types of risk, the first is the business/financial risk, which is the risk that the bond issuer will default on interest or face value or both. Sukuk are exposed to the same risk. However, their remedial methods are different: in conventional bonds, bondholders have recourse to the issuer for the unpaid amount; in the Sukuk case, the Sukuk holders have recourse to the asset. Then there is the call risk, which is the risk that a bondholder is obligated to sell the outstanding bond back to the bond issuer. When a large market interest rate change occurs, the bondholders encounter a problem since they will be deprived from the higher original interest rate. Sukuk are not susceptible to this type of risk.

The liquidity risk is the risk that the bond is not saleable at a reasonable price and in a reasonable time due to a lack of or inefficient secondary market. This type of risk is also applicable to the non-tradable Sukuk. The next risk is the interest rate risk, which is associated with any change in market interest rates.
Two opposite changes/risks are created for existing bonds: 1) there is an inverse relationship between the market interest rate and price of bonds, and 2) as the market rate changes so does the return a bond investor will receive from reinvesting their interest/coupon. Regarding purchasing power risk, a high inflation rate can cause conventional bond yields to lag behind the inflation rate. High inflation rates affect the Sukuk in a positive way, since as the inflation rate goes up so does the market price of the Sukuk assets at maturity. The risk of foreign exchange risk is when there is a substantial change in an exchange rate between different currencies. Sukuk that are liquid or short term in nature are less exposed to this type of risk.

The price risk is applied only to Sukuk; it is the risk that the value of an asset at maturity dates in Sukuk al-Ijara is different from the market price due to rapid depreciation. The other risk that is only applied to Sukuk is the Sharia’a risk that results from the violation of Sharia’a provisions. Finally, there is the legal risk when there is a conflict between the provisions of Sharia’a and the regulations of the country in which the Sukuk were initiated.

According to Ariff et al., (2012), Sukuk has some characteristics that distinguish this type of financing method from other securities. The first is the finite period of funding or debt arrangement, with no periodic rewards paid over the entire period of the contract and the intention of repayment at the terminal period. The second characteristic is the asset-backing principle. There should be assets to back a loan for the funding, and the removal of the backed assets into a SPV owned by
the fund providers. The last characteristic is the use of the profit ratio in the contract to determine the rewards to investors.

3.4 Types of Sukuk

Sukuk can be of many types depending upon the type of classification used to sort them. They may be classified according to the type of trading contract used in structuring the Sukuk, or another way which is common in classifying conventional bonds is by reference to the issuer. Sukuk may also be classified according to the market type.

The first and most common classification is the AAOIFI classification, which depends on the type of Islamic modes of financing and trades used in its structuring. There are fourteen eligible types identified by the AAOIFI:

- **Sukuk Al-Ijarah**: certificates of equal value issued either by the owner of a leased asset or a tangible asset to be leased by promise. They can be issued by a financial intermediary acting on behalf of the owner with the aim of selling the asset and recovering its values through subscription, so that the holders of the certificates become the owners of the assets. This is the most widely used Sukuk structure; it is flexible and has some similarities to a conventional asset-backed securitisation mechanism (Al-Amine, 2012).

- **Musharaka Sukuk**: certificates of equal value are issued with the aim of using the mobilised fund for establishing new projects or developing an existing project or financing a business activity on the basis of any partnership contract so that the certificate holders become the owners of
the project or the asset of the activity as per their respective shares. The *Musharaka* certificates are managed on the basis of an investment agency (*Mudarabah*).

- **Mudarabah** Sukuk: certificates that represent projects or activities managed on the basis of *Mudarabah* by appointing one of the partners or another person as a *mudarib* for the management of the operation. Sukuk based on *Mudarabah* are among the Sukuk structures to hit the international market; however, AAOIFI (2008) guidelines have curtailed these structures (Al-Amine, 2012).

(Note that *Al-Ijarah, Musharaka*, and *Mudarabah* Sukuk are freely tradable in the secondary market and are part of the global Sukuk market.)

- **Al-Salam** Sukuk: certificates of equal value issued for the purpose of mobilising *Salam* capital so that goods to be delivered on the basis of *Salam* come to be owned by the certificates holders.

- **Murabaha** Sukuk: certificates of equal value issued for the purpose of financing the purchase of goods through a *Murabaha* contract so that the certificates holders become the owners of the *Murabaha* commodity.

- **Istisna’a** Sukuk: certificates of equal value issued with the aim of mobilising funds to be employed for the production of goods so that the goods produced will be owned by the certificates holders.

These are not tradable Sukuk except at par value (Al-Amine, 2012).

(Note that *Al-Salam, Murabaha*, and *Istisna’a* Sukuk are not tradable in the secondary market.)
• *Muzara’a* Certificates: certificates of equal value issued for the purpose of using the funds mobilised through subscription for financing a project on the basis of *Muzara’a* so that the certificate holders become entitled to a share in the crop according to the term of the agreement.

* No Sukuk have been issued under this structure so far (Al-Amine, 2012).

• *Musaqah* (Irrigation) certificates: certificates of equal value issued for the purpose of using the mobilised funds through subscription for the irrigation of fruit-bearing trees and undertaking the work and expenses required by such plantation so that the certificate holders become entitled to a share in the crop as per agreement.

* No Sukuk have been issued under this structure so far (Al-Amine, 2012).

Hybrid Sukuk or mixed-asset Sukuk emerged in the market to meet the demands of investors. This type of Sukuk is based on various types of Sharia’a-compliant transactions. The underlying pool of assets can comprise an *istikna’a* contract, a *murabaha* contract and an *ijarah* contract, and are only tradable if at least 51% of the underlying transactions do not represent debt. Hybrid Sukuk allows for a greater mobilisation of funds, and gives the possibility to use financing contracts for refinancing means. The structure of this type of Sukuk involves the following steps:

First step: the originator transfers tangible assets with underlying *ijara, murabaha* and *istikna’a* deals to the SPV.
Second step: the SPV issues Sukuk to the Sukuk holders and receives Sukuk proceeds from them, which are then used to pay the originator.

Third step: the revenues realised with these *ijara*, *murabaha* and *istisna’a* contracts are paid through to the Sukuk holders.

Fourth step: at the maturity date, the originator buys back the assets, consisting of tangible assets with *ijarah*, *murabaha* and *istisna’a* contracts from the SPV.

Fifth step: the Sukuk holders receive fixed payment of return on the assets and the Sukuk will be redeemed (Saeed and Salah, 2012).

One popular classification of Sukuk is by reference to the issuer, as it is also done in conventional bonds;

   i. Risk-free government issues as Treasury Sukuk, or Sovereign Sukuk.
      They are similar to conventional fixed-income bonds and default free.
   ii. The agency Sukuk issued by special-purpose institutions.
   iii. Private firms or institutions issue Sukuk securities with a higher risk.

They are rated by rating agencies, the more common being Moody’s, S&P and RAM of Malaysia. The market accepts this rating process as reasonable to compute the similarities and differences in rating, and it is widely accepted by regulators and the *Sharia’a* supervisors (Ariff *et al.*, 2012).

The ratings are as follows: AAA to AA as excellent, A to BBB as good, BB to B as poor or not of investment grade. According to the basic form of Islamic finance Sukuk could be classified as:

   - Debt-based contracts, as *murabaha*
• Asset-based contracts, as *ijarah*

• Equity-based contracts, as *musharaka, mudarabah*

(Jobst, 2011)

Another way the Sukuk have been classified is by market type based on the cash flow pay-off patterns of Sukuk securities (Ariff *et al.*, 2012):

Class 1: share-like securities (*musharaka* Sukuk) are with full control possibly over an infinite period, in which case it is the risk-shared profit-shared common share or simply *musharaka* contract.

Class 2: discount Sukuk (no pay-off during intermediate periods) where the pay-off occurs at the end period, be it less than one year, in which case it is a bill, or more than one year, in which case it is a loan arrangement.

Class 3: fixed pay-off Sukuk (*ijarah* or lease) and constant growth pay-off (*bai bithaman aijal* Sukuk).

Class 4: variable pay-off that is determined by incomes of the SPV (*mudarabah* Sukuk), where a *mudarabah* contract provides for mark-up and not profit-share, and is appropriate if the bank buys an asset at a price, and then sells the item to a borrower at a mark-up so that the funding is equal to the price plus mark-up recovered over a period of time.

Class 5: *Istisna’a* Sukuk is a case of working capital funding where a fund provider provides capital to manufacture/produce an item.

Class 6: *Salam* Sukuk is where the item purchased will materialise in a forward period and a payment is made immediately to secure ownership of that item to
be delivered at a future time. It is widely used as a forward contract in agriculture and extracting industries.

A comprehensive classification by Sairally *et al.*, (2017) based on the underlying *Sharia’a* contracts seems to cover all types of Sukuk available in the Islamic capital market, where they classified Sukuk into four categories: 1) sale-based, which includes *murabahah*, *salam* and *istasna’a*; 2) lease-based, like *ijarah*; 3) partnership-based, which includes *musharakah*, *mudarabah*, *munaqah* and *muzara’a*; and 4) agency-based, as *wakalah* and *wakalah bi al istithmar*.

### 3.5 Structuring Sukuk

Securitisation is the process of transforming dormant illiquid assets into tradable and liquid assets. As a funding technique it allows risks to be diversified to a large number of investors who are able to choose the type of risk profile that matches their investment needs. The cash-generating underlying assets are pooled and sold in a true sale by the originator of the assets to a bankruptcy-remote SPV, which issues securities to investors in return for cash, the proceeds of which are paid to the originator as a purchase price for the underlying assets. Investors rely on the performance of the assets for returns on their investments and to get back their principle at maturity (Al-Amine, 2012).

Skully (2012) defined securitisation as the creation and sale of new, usually liquid, financial assets backed by the security of other existing, usually illiquid, assets. The process is through the shifting of risks and cash flow streams so that otherwise illiquid assets owned by a firm become marketable. He divided Islamic
securitisation structures into two parts: structures where the underlying assets are financial and structures based on real assets.

A standard well-documented securitisation transaction should comply with some basic requirements (Al-Amine (2012)):

i. The transaction has to involve a true sale of underlying assets to be securitised to a special SPV with minimal risk of the characterisation as a second loan; the transfer must also be enforceable against third parties. There are four key criteria for a transaction to be considered as a “true sale”:
   - The transfer must be such that it cannot be re-characterised by a court or other body as a second loan.
   - The bankruptcy of the originator should not affect the assets that have been transferred to the issuer.
   - The transfer must be perfectible at the election of the issuer.
   - The sale must be free of all prior overriding of the issuer.

ii. The SPV itself must be bankruptcy-remote by imposing restrictions on the purpose and powers of the SPV so that only actions and decisions necessary for securitisation transactions are allowed.

iii. The SPV purpose should be limited to transaction-related activities only and all transaction creditors or investors shall agree not to initiate any bankruptcy or insolvency proceeding against the SPV while they are not outstanding. All investors should agree that the liability of the SPV to pay
any principle and profit claims will be made only from the proceeds of the securitised assets and any facilities available for this purpose.

iv. It is critical for investors to have the benefit of first-priority security interests over the collateral.

v. A base level of certainty about legal outcomes is fundamental; the transaction documents must be valid, binding and enforceable in accordance with all applicable laws.

According to Moini and Stanley (2011), for a first-time issuer the process takes around 13 weeks and it is divided into four stages:

i. Structuring: *Sharia'a* board review process, commencing with obtaining approval in principle from the *Sharia'a* board.

ii. Documentation: legal preparation, focusing on issuer due diligence conducted by the lead bank, preparation of offering circular, obtaining requisite comfort letters from auditors and final legal opinions.

iii. Sukuk offering process: involving a roadmap showing the trade, contacting potential investors to build up the order book and pricing the issue.

iv. Closing: finalising and signing of documentation and cash settlement of the trade when the issuer receives investor funds.

A parallel process, which takes around 12 weeks, concludes with the issuance of the rating, which is released publicly once it has been discussed and agreed with the issuer.
3.5.1 The Role of the Special Purpose Vehicle

An SPV is a legal entity formed as a limited company to carry out a specific business purpose. Large companies often create SPVs and operating businesses to segregate certain assets from their other assets, as this structure provides additional protection from liability and facilitates an easier transfer of the assets held. The SPV is formed as a wholly owned subsidiary that is managed by the employees of the entity establishing the SPV. The SPV is dissolved once its purpose has been achieved. SPVs are commonly used in Islamic finance transactions, as the issuing vehicles for Sukuk based on a number of underlying Sharia’a-compliant structures. The common structure of SPV used to issue Sukuk is the orphaned status, where the issuer in Sukuk transactions is structured as an orphan entity. Its ownership and management are independent from the sponsor of the transaction. An orphan SPV as issuer can transact at an arms’ length with the sponsor, and if structured and operated properly, the orphan SPV issuer will be bankruptcy-remote from the sponsor. In the event that the sponsor becomes bankrupt, the creditors of the sponsor will not have a claim against the SPV or the SPV assets. Under the laws of several international financial centres, an SPV issuer can be orphaned if it is structured as a company with its ordinary shares held by a trustee on trust either for charitable purposes, through the use of charitable trust, or for the purpose of the transaction itself through the use of a special purpose trust. The charitable trust is the most common trust structure used to orphan SPVs in Sukuk transactions. The trust company establishing the charitable or special purpose trust will act as administrator to the issuer, providing the SPV with a registered and business
office, and providing members of staff to act as directors of the company (Belmontes and Jawed, 2011).

Papazian (2010) proposed a standard model for an entity called the central Islamic trustee (CIT). The mission of such an entity is to be a facilitator and a source of standardised Sukuk contracts. The CIT is also expected to provide the market with a genuine third party that would be in a better position to safeguard and pursue the interests and rights of Sukuk. This CIT must be organised as a charitable trust, and the CIT will establish an SPV, monitor it, and facilitate different relationships by the trustee/issuer with other parties for the purpose of Sukuk issuance. The SPVs created and owned by the CIT must be segregated from each other in order to avoid the potential systemic risks. According to this study, the services that will be provided by the CIT are:

i. Facilitating Sukuk issuance for interested parties
ii. Establishment of SPVs for Sukuk issuance
iii. SPV administration for Sukuk
iv. Administrative and secretarial support to SPVs for Sukuk
v. Provision of a full set of incorporation documentation for SPVs, and to provide a registered office service and address for SPVs
vi. Provision of legal documentation to create the Sukuk structure
vii. Audit coordination
viii. Transaction accounting
ix. Security issuance and accounting
3.5.2 Sukuk Rating

There are three major international rating agencies based in the United States (US): S&P, Moody’s and Fitch. There are also many regional rating agencies. Mseedi and Naifar (2013) presented an overview of the rating Sukuk methodology that is used by S&P, Moody’s, Fitch, and another two regional agencies that have experience in rating Sukuk: the Malaysian Rating Corporation (MARK) and the Islamic International Rating Agency of Bahrain (IIRA):

(i) Standard & Poor’s Sukuk rating methodology: the rating of S&P is an opinion about the ability and willingness of an issuer to meet their financial obligations in a timely manner. The methodology of rating Sukuk is similar to that of a conventional bond and it distinguishes between the following three types of Sukuk:

- Sukuk with full credit enhancement mechanisms. Those are Sukuk that receive an irrevocable third-party guarantee, usually by a parent or original owner of the underlying collateral. The rating on this type of Sukuk depends on the creditworthiness of the guarantor. The guarantee covers the principle amount of the Sukuk payable at the maturity date or in the case of predefined default events. It also covers the periodic payments from the SPV to the Sukuk holders.

- Sukuk with partial credit enhancement mechanisms, with a third-party guarantee absorbing limited shortfalls from otherwise asset-backed transactions. S&P ratings depend on its estimate of the capacity of the
underlying assets to meet the SPV financial obligations and the terms of the guarantee, in addition to the creditworthiness of the guarantor.

- Sukuk with no credit enhancement mechanisms, which resembles pure asset-backed Sukuk. The S&P ratings for this structure of Sukuk are based on the performance of the underlying assets under different stress scenarios with the expected value of these assets at maturity.

(ii) Moody’s Sukuk rating methodology: Moody’s ratings address credit risk, using English law as a reference for contractual obligations. Moody’s considers Sukuk as an immature asset class, distinguishing between the following two broad categories of structure:

- Unsecured Sukuk, or asset-based Sukuk, which benefit from the guarantee of the originator. Ratings are dependent on the riskiness of the sponsor.

- Asset-backed Sukuk, where the ratings depend on a risk analysis of the underlying assets.

In April 2007, Moody’s established rating methodologies applicable to Sukuk depending on whether they are asset-based or asset-backed. For asset-based Sukuk the rating focuses on the creditworthiness of the sponsor, while in asset-backed Sukuk the applicable ratings approach is analogous to that for securitisation transactions, with some meeting points on Islamic features.

(iii) Fitch Sukuk rating methodology: the greater part of Sukuk are asset-based securities that differ in structure from conventional bonds, are not different in
terms of cash flow or principle repayment and therefore tend to receive the same issuer default rating (IDR) as the originator.

(iv) MARK and IIRA Sukuk rating methodology: the analytical components in the MARK rating methodology can be classified into five categories: 1) analysis of the basic structure of Sukuk, 2) assessment of the key transaction parties, 3) asset and cash flow analysis, 4) assessment of credit enhancement and structural protections, and 5) legal analysis.

The IIRA has a comparable methodology for rating Sukuk. Recently, both agencies have added fiduciary rating to their approach to rating Sukuk. Maseddi and Naifar (2013) proposed a new methodology for rating Sukuk. As Sukuk are real hybrid financial instruments that combine the characteristics of both conventional bonds and shares, investors should have a degree of risk aversion smaller than the holders of conventional bonds but higher than shareholders. Their rating methodology consists of assessing both the credit rating and fiduciary rating of Sukuk. The credit rating assessment is focused on 1) the Sukuk structure, asset-based versus asset-backed; 2) the role and credit quality of the participants in the transaction; 3) the cash flow generated by the specific underlying assets; 4) the legal implications of Sharia’a on the structure; and 5) the internal credit enhancement and a third-party guarantor that may be provided by the borrower. Fiduciary rating is related to asset manager quality, governance and compliance with Sharia’a principles.
Sukuk ratings mostly remain within the same standards and guidelines that govern similar conventional instruments. Sukuk investors are considered as creditors, where Sukuk are recognised as financial obligations. More risk exposures are applicable to Sukuk, such as price risk and operational/Sharia’a
risk; certain regulation is needed to protect the Sukuk market. Mseddi and Naifar’s (2013) study highlighted the Sharia’a risk exposure in their rating methodology.

3.5.3 Trading of Sukuk

According to Zin (2011), the tradability of Sukuk at the time of issuance, in the primary market, and in the secondary market must follow some rules. The first is that if Sukuk are issued against specific assets or services, then this issue implies the sale of these assets to the Sukuk holders in return for cash money based on the current values of assets or services. The second rule is that if Sukuk are issued against described assets or services to be manufactured or constructed in the future, then this issue implies the sale of these assets to the Sukuk holders in return for the cash money; these Sukuk are not tradable until the delivery of assets or services. The third rule is that if Sukuk are issued for the purpose of utilising the proceeds to acquire some assets, then Sukuk do not become tradable until those assets or services are purchased. Finally, if there is any mixture of assets and debts, then assets must dominate debts in Sukuk issuance.

Sukuk listing on stock exchanges

A stock exchange is a known entity for trading and listing stocks and securities; it is an avenue for companies to raise funds and for investors and traders to trade financial instruments. The development of the Sukuk market has seen the introduction of Sukuk listing on major exchanges across the globe. Due to the nature of Sukuk, some exchanges have had to customise their listing
requirements and obligations for Sukuk. Classifying Sukuk as a single identifiable asset class has posed challenges for some exchanges to admit Sukuk for listing in their markets.

Exchange trades enhance Sukuk liquidity and enable easier access for investors to the securities, where they are able to buy and sell Sukuk in their investment portfolio. It also provides market access for a broader network of players encompassing both institutional and retail investors. The trading of Sukuk facilitates price transparency as bids and offers are displayed in real time, facilitating timely investment decisions. In addition, price transparency facilitates price discovery, that in turn facilitates greater activity in the primary Sukuk market.

Sukuk issuers seek shelf listing of their instruments for governance reasons. Shelf listing provides greater visibility to the issuer and facilitates in the distribution of the Sukuk in the primary market with a view to enhanced pricing. A shelf listing of Sukuk also provides investors with added comfort in terms of governance and transparency. With greater transparency, issuers expect to draw greater interest from a wider audience and drive up demand for their issues (Maimunah, 2011).

**Sukuk-listing avenues**

There are various Sukuk-listing avenues across Asia, Europe and the Middle East. The main listing destinations are the Luxembourg Stock Exchange, the London Stock Exchange, Bursa Malaysia and Nasdaq Dubai:
i. Luxembourg Stock Exchange (LuxSE) was the first European stock exchange to enter the Sukuk market, having listed Sukuk since 2002 and therefore participating in the globalisation of Islamic finance and its success in Western economies. Since 2002, the Exchange has attracted the listing of 15 different Sukuk issues, representing more than $7.3 billion in value, and where international issuers benefit from an independent marketplace with a high quality of services. Listing is provided in an efficient and timely fashion in accordance with the needs of the market participants and their advisors. The Luxembourg Stock Exchange offers a one-stop shop because it is the listing authority for all issues officially listed on its markets, and will be the reviewer of the documentation in the context of a listing on the Euro MTF market. The Exchange functions as a trading platform for Sukuk secondary trading (Dumoulin, 2011).

ii. London Stock Exchange (LSE), where the issuer must meet the requirements laid out in the UK listing rules, which is managed by the UK Listing Authority (UKLA) and the division of the Financial Services Authority (FSA) responsible for reviewing the necessary prospectus documentation and admitting securities to the official list (the FSA has now become two separate regulatory authorities; The Financial Conduct Authority FCA, and The Prudential Regulation Authority PRA). For admission to trading, the issuer must meet the requirements of the London Stock Exchange and must comply with the admission and disclosure standards of the Exchange. The listing process in London is highly efficient and the UKLA has a solid reputation as a fair,
effective and responsive regulator. By complying with the UKLA disclosure and regulation standards, issuers of Sukuk can enhance their standing within the global investment community and be confident of a robust regulatory environment in which they are listing (Walmsley, 2011).

iii. Bursa Malaysia offers a Sukuk listing avenue under an exempt regime introduced in 2008, where Sukuk are traded off the exchange but the details of trading are updated to the system of the exchange. This also enables the profiling of issuers to promote governance and transparency among listed or non-listed issuers who list their Sukuk on Bursa. Listing of any currency Sukuk by local or international issuer including listed or non-listed issuers is accepted at Bursa Malaysia, which has a competitive upfront and annual listing fee as compared to other exchanges. Sukuk may be de-listed in consequence to its maturity; some issuers may also seek a voluntary de-listing (Maimunah, 2011).

iv. Nasdaq Dubai Sukuk Market is situated in the Dubai International Financial Centre (DIFC) and regulated by the Dubai Financial Services Authority (DFSA), where the DIFC is an independent entity based and governed under English common law as an onshore capital market. DIFC is a financial free zone and therefore has obvious tax advantages. Nasdaq Dubai allows for both a single issuance as well as a Sukuk issuance programme. This programme gives the listing companies the flexibility to tap the capital market at different periods within the approval period granted for the Sukuk Programme, which is preferred by issuers as it is cost- and time-efficient. Issuers wishing to list need to appoint a listing sponsor, which is an entity registered with the DFSA that
provides guidance on the listing process to the issuers. For a secondary listing, a listing sponsor is not needed (Shah, 2011).

v. Borsa Istanbul introduced Sukuk in November 2014 to be traded on its debt securities outright purchases and sales market. Sukuk are expected to have a significant role in making Istanbul an international financial centre (Borsa Istanbul, 2014).

3.5.4 Valuation Models
Valuation is a necessary process to discover the true worth of any security for investment purposes and in estimating performance. It is the process of reducing a financial contract to the cash flows, the pay-offs from an instrument, to understand the nature of the pay-offs as to whether the pay-off is fixed, variable, growing, or stochastic, and then applying an appropriate discount rate to find the present value of promised pay-offs. Any security with fixed terminal payment, principle plus profit share, at the end of next period and with no other payments in between can be valued simply, as in the following equation:

\[ V_0 = \frac{TREW_N}{(1 + d)^N} \]

where \( TREW = \) terminal reward, \( d = \) discount rate, and \( N = \) number of periods. This pattern of pay-off with no risk can be used to valuate pure Sukuk with fixed pay-offs so long as the pay-off of the pure Sukuk is not stochastic, and the end period payment is pre-determined.
More complex Sukuk could, instead of a 1-year term, be a 10-year fixed payments of reward (REW) over each of the next 10 years, which is a class 2 Sukuk. The valuation will be a present value of n=10 pay-offs, REW, discounted at the appropriate discount rate d, with the present value of the terminal value of the SPV also discounted at the same rate, at the end period. The last value M, must be pre-determined. The equation is:

\[ V_0 = \frac{REW_1}{(1+d)^1} + \frac{REW_2}{(1+d)^2} + \cdots + \frac{REW_N}{(1+d)^N} + \frac{M_N}{(1+d)^N} \]

More technical security valuation models are used to valuate more complex Sukuk (Ariff et al., 2012).

3.5.5 Basel III Impact on Sukuk Issuance

Basel III focuses on new capital and liquidity regulations aimed at ensuring the firmness of banks operating internationally. The objective is to require banks to hold high-quality capital to absorb losses in the event of financial market disruption, and to maintain higher levels of liquidity that enable them to cope with the risk of financial markets malfunctioning and to lower their dependence on the money market (Lackmann, 2014).

According to Lackmann (2014), Basel III will affect the global Sukuk market, as an increase in domestic and international Sukuk issuance by Islamic banks can be counted toward capital to meet the increase in capital adequacy ratios relative to Basel III, in addition to an increase in the issuance of Sukuk by highly rated
governments and companies aimed at meeting the increased demand for investing in investment-grade Sukuk from Islamic banks trying to meet Basel III liquidity requirements. Finally, a decline in the cost of Sukuk issuance via legislative and regulatory reform made by countries is aimed at facilitating Sukuk issuance.

3.6 Global Sukuk Market

Activities in the global Sukuk market started in 2000 in Bahrain, and later in Malaysia with the first global sovereign Sukuk issuance in 2012, followed by Qatar, Pakistan, Dubai and Germany. The Sukuk market is linked to assets based in the UK, Europe, Asia and the US, with this global expansion of the Sukuk market being fuelled by the exceptional growth of the industry, which is increasing at an average annual rate of 35–40% (Al-Amine, 2012).

The global financial crisis had a direct impact on the Sukuk market (mid-2008 to 2009), where Sukuk issuance declined by more than 50% compared to 2007. However, once several defaulting Sukuk were restructured the market confidence returned and the year 2010 showed the true potential of Sukuk as the market had returned back to the 2007 level of issuances worth $52.987 billion. As shown in Figure 3.2, the market continued its dramatic growth in 2011 with almost double the value of issuances worth $92.403 billion. The year 2012 saw the largest level of Sukuk issuance at $137.5 billion.

Total global Sukuk issuance volume came in at $119.7 billion in 2013, which was 8.9% lower than 2012 (KFHR, 2014). The issuance activity remained modest and
within the same issuance level during 2014, while a reduction in issuances was experienced in 2015 as a direct response to the withdrawal of Bank Negara as an issuer of short-term liquidity management Sukuk in the Malaysian market, in addition to the depreciation of many emerging market currencies in comparison to the US Dollar (IFSB stability report, 2016). Sukuk issuances in 2016 reached $67.4 billion with slight growth compared to $60.7 billion in 2015, where this increase was due to steady issuances from Asia, the GCC and Africa. Eighty-nine percent of the issuances were represented by only 5 countries: Malaysia (55%), Saudi Arabia (14%), the UAE (9%), Indonesia (8%), and Qatar (3%), followed by Turkey (2.5%) and Bahrain (1.7%) (IIFM Sukuk report, 2017). As a result of the jumbo issuances of some GCC countries, Sukuk issuance volume in 2017 increased by 45%, reaching $97.9 billion. The $9 billion Sukuk issued by Saudi Arabia was the largest globally to date. Meanwhile, some countries like Hong Kong are tapping the market for the third time, while others like Nigeria are seeing their first issuance of Sukuk (S&P Global Sukuk Market Outlook, 2018).
Regarding Sukuk structure, *ijarah* Sukuk has been the most popular structure for issuance comprising 47% during the 2001–2009 period, followed by a drop of 5% during the 2010–2014 period, with a major shift during 2015 to the *Wakalah* model, and this continued where the Sukuk *Al Wakalah* share rose to 77% of the total global issuances in 2016 (IIFM Sukuk report, 2017).

The geographical break-down of the global Sukuk market is very diversified, although Asia continues to be the dominant player with 73.6% of the global Sukuk issuances. However, the number of countries that are issuing Sukuk are increasing every year within a wider geographical spread. The following table

**Fig. 3.2 Global Sukuk Issuance 2011–2017**
summarises the regional break-up of global Sukuk issuances (IIFM Sukuk report, 2017):

**Table 3.1 The regional breakdown of global Sukuk issuances**

<table>
<thead>
<tr>
<th>Asia and Far East</th>
<th>Number of issuances</th>
<th>Per cent of total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>4</td>
<td>0.004%</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>137</td>
<td>1.03%</td>
</tr>
<tr>
<td>China</td>
<td>1</td>
<td>0.01%</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>4</td>
<td>0.26%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>208</td>
<td>4.94%</td>
</tr>
<tr>
<td>Iran</td>
<td>1</td>
<td>0.02%</td>
</tr>
<tr>
<td>Japan</td>
<td>3</td>
<td>0.02%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>5.17</td>
<td>65.43%</td>
</tr>
<tr>
<td>Maldives</td>
<td>1</td>
<td>0.004%</td>
</tr>
<tr>
<td>Pakistan</td>
<td>74</td>
<td>1.70%</td>
</tr>
<tr>
<td>Singapore</td>
<td>16</td>
<td>0.17%</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>1</td>
<td>0.004%</td>
</tr>
<tr>
<td>GCC and Middle East</td>
<td>Number of issuances</td>
<td>Per cent of total value</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Bahrain</td>
<td>366</td>
<td>2.81%</td>
</tr>
<tr>
<td>Jordan</td>
<td>3</td>
<td>0.003%</td>
</tr>
<tr>
<td>Kuwait</td>
<td>16</td>
<td>0.34%</td>
</tr>
<tr>
<td>Oman</td>
<td>5</td>
<td>0.16%</td>
</tr>
<tr>
<td>Qatar</td>
<td>28</td>
<td>2.87%</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>95</td>
<td>7.41%</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>104</td>
<td>8.00%</td>
</tr>
<tr>
<td>Yemen</td>
<td>2</td>
<td>0.03%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Africa</th>
<th>Number of issuances</th>
<th>Per cent of total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gambia</td>
<td>210</td>
<td>0.02%</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>2</td>
<td>0.05%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>2</td>
<td>0.02%</td>
</tr>
<tr>
<td>Country</td>
<td>Number of issuances</td>
<td>Per cent of total value</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Senegal</td>
<td>2</td>
<td>0.05%</td>
</tr>
<tr>
<td>South Africa</td>
<td>1</td>
<td>0.06%</td>
</tr>
<tr>
<td>Sudan</td>
<td>28</td>
<td>2.26%</td>
</tr>
<tr>
<td>Togo</td>
<td>1</td>
<td>0.03%</td>
</tr>
</tbody>
</table>

### Europe and others

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of issuances</th>
<th>Per cent of total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>1</td>
<td>0.0001%</td>
</tr>
<tr>
<td>Germany</td>
<td>3</td>
<td>0.02%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>3</td>
<td>0.03%</td>
</tr>
<tr>
<td>Turkey</td>
<td>116</td>
<td>1.89%</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>9</td>
<td>0.16%</td>
</tr>
<tr>
<td>USA</td>
<td>5</td>
<td>0.16%</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>1</td>
<td>0.01%</td>
</tr>
</tbody>
</table>

(Source: IIFM Sukuk report, 2017)

The Sukuk market is driven by oil prices, and although most of the market reports do not link the Sukuk market directly to oil prices, the market is driven by oil price
as Sukuk are an alternative for governments to cover their budget deficits caused by the drop in oil prices. The following diagram illustrates how the oil prices drive the Sukuk market, depicting the surge of oil prices in 2009 while the decline of the Sukuk market continues after the financial crisis in 2008. On the other hand, the drop of oil prices in 2014 caused budget deficits in those countries that depend on oil for their gross national income, where these governments needed to issue Sukuk to cover the deficits in the budgets, which increased the volume of Sukuk issuance.
Fig. 3.3 Oil price impact on the Sukuk market

Low oil prices drive sukuk markets

Global sukuk markets – Islamic bonds that comply with Sharia law – surged in the first half of 2017 to $48 billion, driven by governments covering budget deficits caused by weak oil prices.

Challenges appearing within the Global Sukuk Market

The global Sukuk market has grown strongly over the last few years; however, the market is still not fully integrated. Challenges have appeared within the industry that could be classified into financial, regulatory and legal challenges.

(Source: S&P Global; 2018)
3.7.1 Financial Challenges

The Sukuk market in general is an institutional market. Estimations suggested that about 40% of the issues are taken by financial institutions (Ariff et al., 2012). Most of the countries where Sukuk are issued or listed lack an active secondary market. Where they are traded, trading usually takes place over the counter (OTC), even where Sukuk are listed on the exchange (Casey, 2012). The first challenge facing the market is liquidity, which presents a priority area for sustaining markets. Several factors seem to have contributed to the state of illiquidity and the lack of an active Sukuk secondary market. First, the limited number of Sukuk listed, whereby most Sukuk are not listed. It is estimated that only about 25% of total outstanding Sukuk are listed, which leads to limited trading opportunities and less efficient pricing of Sukuk. According to Al-Amine (2012), the second factor is a lack of standard regulations and standard settlement procedures. The market makers or the central banks need to be actively involved in the markets, and the institutional investors need to be permitted to move in and out of the markets freely. Saidi (2012) discussed the buy-and-hold attitude of many investors, where securities are held to maturity. Most participants agreed that increased issuance is a major key to build an active secondary market.

The procedures for valuing the securitisation process have been adapted to Sukuk markets to ensure the correct valuation and application of modern book-making procedures, to discover a market price for the initial issue. The real
challenge is the need for innovation in Sukuk valuation, especially in how the risk of the SPV should be estimated (Ariff et al., 2012).

According to Jobst (2011), the Sukuk market is still plagued by illiquidity in the secondary market, due to the combination of high originator concentration and regional fragmentation. Structured credit transactions are few and far between, where financial transactions have to follow the precepts of Sharia’a. The current level of Sukuk issuance still remains a fraction of the global fixed income markets since only a few large banks and managers are behind the bulk of transactions completed by a small number of repeated issuers, while origination and servicer risk come from a narrow asset supply that poses challenges to investor diversification. In addition, the prevalence of (buy-and-hold) investments and the lack of information from private sources about securitised assets in many Sukuk inhibit efficient price discovery and information dissemination.

Ahmed et al., (2013) identified the contemporary challenges facing Sukuk as 1) Sukuk lack an international credit rating, which is needed for Sukuk to rate their marketability, performance, risks and demands; 2) Sukuk need to be assessed by the international credit rating agencies in order to reduce the risks through process subscription for some Sukuk issues, to compete with other conventional products in the credit rating market; 3) the rising cost of Sukuk issuance being due to the transactions of issuance and subscription, which are taking place in an open and competitive bond market by fund managers; and 4) the preparation of the financial statements under different accounting standards, which may lead to problems of comparability, compliance level measurement and reliability.
To summarise these challenges, the Sukuk market is still an institutional market with OTC trading and a buy-and-hold attitude by many investors, that consequently will affect the activity and the liquidity of the secondary market. This is caused by the very limited Sukuk issuances compared to the high demand in the market. The second factor affecting the Sukuk market is the lack of standards in regulations, settlement procedures and Sukuk valuation. Finally, there is the lack of an international credit rating assessment for Sukuk that allows competition with other conventional products in the market.

Credit crunch is a factor that affects the whole financial capital market, including the Sukuk market, as follows. The Sukuk market slowed by the end of 2007 due to credit market conditions and as liquidity dried up. Some Sukuk issuances were postponed, while others were issued but the return to the investors had been raised.

According to Al-Amine (2012), the clearest impact of the credit crunch on Sukuk is evident from examining the HSBC DIFX Sukuk Index, where the spread over LIBOR on Sukuk rose from 62 bp on June 1st to 117 bp by 31st August, rising to 174 bp by the end of December. However, the decline in the Sukuk market during 2008–2009 had been managed. During the crisis of 2009, the Sukuk index gave a better return than the conventional bond index. The Middle East conventional bond total return index rose 120.1%, contrary to a 127.1% increase in the Dow Jones Citi Global Sukuk total return index.
As these challenges are almost related and affected by each other, increasing Sukuk issuances with a diverse base of issuers may be the resolution in order to have an active secondary market, efficient pricing and rating for Sukuk, and an adequate cost for Sukuk issuance. Consequently, reaching a vibrant capital market will be accompanied by better regulations, leading to standardised procedures. The Sukuk global market is hindered by some financial challenges; however, this market has much potential, promising high demand that exceeds the actual market. Sukuk markets recovered from the credit crunch in less than 3 years, while many of the conventional institutions are still suffering from the financial crisis.

3.7.2 Regulatory Challenges

As the Islamic capital markets develop, two issues have become the subject of discussion and debate—standardisation and regulation—where the aim is to bring some form of stability and certainty to Islamic capital markets (Ali and Kamal, 2011).

The Islamic product markets are not coordinated; there are many regulatory bodies and the products are not standardised. This increases uncertainty and more importantly increases the contracting costs (Ariff et al., 2012). The introduction of standards to Islamic financing would lead to more certainty in transaction methods. Consequently, transaction costs would be reduced. The clear enshrining of Islamic finance principles into documentary form would be established in order to assist the practitioners of Islamic financings and the investors. It could also save time by making the process of obtaining Sharia’a
approval from the Sharia’a supervisory boards (SSBs) more efficient and documenting out legal risk (Ali and Kamal, 2011).

According to Ahmed et al., (2013), a comprehensive legislative and regulatory framework on Sukuk is needed for promising Sukuk product development. A further problem is that not all Muslim countries have adopted Islamic financial systems, which prevents a coordinated development of its market. Furthermore, the Islamic financial industry suffers from a lack of human resources qualified in the area of Islamic finance and economics, which threatens the industry through operational risks and impedes development and growth of the Islamic financial industry.

There are several Islamic financial institutions that effectively participate in cooperation to set standard regulations to the Islamic finance industry, among them the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB), the International Islamic Financial Market (IIFM), the General Council for Islamic Banks and Financial Institutions (CIBAFI) and the World Islamic Economics Forum (WIEF).

Since 1991, the AAOIFI has led the way in cooperation between Islamic financial institutions around the world, with the aim of developing Sharia’a standards for major Islamic financing techniques. The AAOIFI has the ability to bring together the top Sharia’a scholars specialising in financial transactions, which has meant that committees have been able to develop more than 20 Sharia’a standards. This specifically documents the general Sharia’a consensus on Islamic financial
products (Ali and Kamal, 2011). Alongside Sharia’a standards, the AAOIFI issues accounting standards that cover accounting for investment in Sukuk, where AAOIFI Standard No.17 addresses investments in Sukuk covering the classification and reclassification of investments, as well as presentation and disclosure requirements (Maimunah, 2011).

The IFSB has become an important entity concerned with the standardisation of market practices in the Islamic finance industry. The IFSB has issued more than 10 standards and guiding principles. In relation to Sukuk, the IFSB has introduced Capital Adequacy Requirements for Sukuk securitisation and real estate investment (IFSB-7).

The establishment of the IIFM was the direct consequence of a collective effort of various central banks to achieve uniformity in documentation, products, best practices, infrastructure and systems. The IIFM and the International Swaps and Derivatives Association (ISDA), launched the ISDA-type tahawwut master agreement in 2010, giving the Islamic capital markets model documentation for hedging transactions that are Sharia’a compliant. Ali and Kamal (2011) stated that the IIFM has also published the IIFM Sukuk report and analysis, which contains comprehensive market analysis and statistics on the global Sukuk market.

The CIBAFI is an international organisation based in the Kingdom of Bahrain. The Council aims to promote the Islamic financial services industry, advocating regulatory, financial and economic policies that foster the development of the
Islamic financial services industry. CIBAFI is guided by its strategic objectives, which are research and publications, awareness and information sharing and professional development, in addition to its core objectives in policy and regulatory advocacy.

The World Islamic Economic Forum foundation was formally established in 2006 to enhance the economic well-being of people in Islamic nations and Muslim communities worldwide through increasing trade and business opportunities, as well as attracting foreign investors and business partners from various countries. It plays an essential role in promoting dialogue and fostering cooperation between Muslim and non-Muslim businessmen. The process of implementing regulations related to Sukuk is often preceded by wide-ranging consultations with industry players, Islamic finance experts, legal experts and other key stakeholders (Ali and Kamal, 2011). The respective authority in the jurisdiction of the issuer domicile must approve all issuances of Sukuk. In relation to international issuance, issuers must be aware of US securities law requirements, which apply to offers within the US or to US persons (Maimunah, 2011).

Compliance with international standards is needed, such as the risk and capital adequacy requirements set out by Basel and the creation of the Islamic finance passport similar to the “European financial passport”. Governments and central banks need to take the initiative in developing the potential of the Islamic securities market by developing the regulatory framework as well as developing issuance programmes (Saidi, 2012). Malaysia has emerged as a leader in Sukuk regulation. Since 1993 the securities commissions of Malaysia has tailored
capital market regulations to facilitate the development of the Islamic capital market, in addition to guidelines on offering Islamic securities that consist of a series of practice notes for parties intending to issue. The Malaysian government introduced further incentives to promote Sukuk issuances and listings on the Bursa Malaysia by providing cost-efficient issuance infrastructure. The Malaysian Securities Commission (SEC) has signed a mutual recognition agreement with the Dubai Financial Services Authority, to facilitate the cross-border flow of Islamic funds, which will open and increase the investment space between the Gulf and Malaysia, increasing the accessibility of issues and enabling the mutual recognition of products and services (Ali and Kamal, 2011).

The UK is another example where the government has developed a regulatory framework to facilitate an Islamic securities market. The UK government has expressed its desire to establish London as a global centre for Islamic finance by introducing tax and regulatory changes, and has made significant progress towards its goal of facilitating Sukuk transactions. Moreover, the UK has cemented the position of London as a hub for Islamic finance by becoming the first country outside the Islamic world to issue sovereign Sukuk. The GBP £200 million *ijara* Sukuk with maturity on 22nd July 2019 and a profit rate of 2.036% is listed in the London Stock Exchange (Sukuk).

The previous challenges have been caused by the lack of effective coordination between the different regulatory bodies in the Islamic capital market. The Islamic financial institutions are working to set standard regulations to the Islamic financial industry. However, full coordination has not yet been achieved as some
of the institutions are pushing their own standards as a model to be followed in the market. Moreover, most of the previous regulatory challenges are commonly shared among the whole Islamic financial products industry. Standardisation in regulations, documentation and procedures, similar to that of conventional bonds in reference to US securities law requirements, would be the right comprehensive approach to initiate the huge potential for growth.

3.7.3 Legal Challenges

There are nine schools of thought in Islamic Fiqh: Hanafi, Shafi’, Maliki, Hanbali, Ja’fari, Zaydis, Zahiris, Ibadis and Mu’tazilah (Auda, 2008). These evidence the potential for diversity of opinions in Islamic law. This arises from a diversity of interpretive tools that are used in the process of ijtihad (independent judicial reasoning to deduce rules for new legal issues). An example of this diversity is the Malaysian exception. According to Adam and Thomas (2004), Malaysia has built its system allowing for the trading of receivables based on true transactions as opposed to the lending of money. Sharia’a interpretations of the Shafi’ school of Fiqh in Malaysia permit debt trading from sales receivables, while Shafi’ scholars elsewhere do not.

The view on what is Sharia’a compliant differs drastically between Malaysia and the rest of the Muslim world. Consequently, the need for a uniform institution representing the basic schools of Fiqh is highly recommended. The most recognised institution is the International Islamic Fiqh Academy. The Academy was established in 1981 and is based in Jeddah, Saudi Arabia. It gathers Muslim scholars and experts of religious and secular knowledge, representing different
Fiqh schools of thought. The Islamic Fiqh Academy promotes the interpretational reflection (ijtihad) of Islamic jurisprudence.

The first formal resolution issued on Sukuk by the International Islamic Fiqh Academy was Resolution No. 30(3/4), adopted in February 1988 and concerning muqaradah bonds and investment certificates. This was followed by a series of equally important resolutions addressing more issues about the non-permissibility of conventional bonds, namely the establishment of an Islamic capital financial market and the use of Islamic contracts such as salam, istsna’a, ijarah and murabaha in developing the Islamic capital market. The Sukuk al-ijarah structure was discussed in more detail in March 2004 and adopted in Resolution No. 137(3/15), followed by Resolution No. 178(19/4) regarding the contemporary applications and trading of Sukuk.

All of the resolutions that have been issued by the Islamic Fiqh Academy have only addressed the general theoretical aspects of Sukuk. There has been no clarification on the practical aspects of the Sukuk market and there is no discussion regarding the pricing of Sukuk or the Sharia’a requirements for establishing SPVs for Sukuk issuances (Al-Amine, 2012).

The other dynamic international institution is the AAOIFI. The AAOIFI standard represents one of the major contributions in establishing the Sharia’a basis for Sukuk. It clarifies the characteristics, requirements and conditions that govern the issuance and trading of Sukuk. One of the areas that have been well addressed by the standard is the nature of the Sukuk assets.
The standard does not elaborate on how practically the different types of Sukuk are structured in practice. Also, it has not been reviewed since being issued in 2005, despite the fact that the dynamic Sukuk market has witnessed continuing development during the last few years, whereby new products and structures are being regulatorily introduced to the market. The first review of the standards came late after the controversial statement by Sheikh Usmani on Sukuk. A statement on Sukuk was released in February 2008 to provide guidance in relation to Sukuk issuance and structures, and represents a courageous move towards improving transparency and bringing the substance of the Sukuk structure closer to the basic principles of Sharia’a. The main Sukuk structures affected by the AAOIFI statement are mudarabah, wakala, and musharaka (Al-Amine, 2012).

Albeit that there is the advantage of diversity in Fiqh opinions that meet the challenges of market growth, it may become a serious constraining element to market stability and growth when not regulated or announced in an arbitrary means. The announcement during the last quarter of 2007, when Sheikh Taqi Usmani announced that 85% of the Sukuk in the market did not comply with Sharia’a, is without doubt evidence of the tremendous effect on the Sukuk market.

This statement created a wave of controversy in the Sukuk industry and it went public to the press without taking into consideration its impact on the market. This clearly shows that there is an institutional shortcoming and lack of proper mechanisms to address urgent issues and appropriate ways to issue new rules
and guidelines without having a negative impact on the market (Al-Amine, 2012). Before 2008, *musharaka* Sukuk was one of the common structures that was adopted in the Sukuk Islamic financial system. After 2008, a decline of 83% was observed (Bukhari *et al.*, 2014).

The following is an abstract from the statement of Sheik Taqi Usmani. Apparently, the original statement did not include any indication that 85% of Sukuk are not Islamic.

**Sheik Taqi Usmani’s Statement on Sukuk:**

Sheikh Taqi Usmani, the chairman of the *Sharia’a* board of AAOIFI expressed his criticism of the Sukuk industry, Sheikh Usmani addressed three issues:

- **The Sukuk holder’s ownership rights of enterprise assets:** Sheikh Usmani noticed that the Sukuk market had witnessed several structures in which there is doubt regarding their representation of ownership rights. He also addressed that a careful review is required of the proliferation of the mixed assets or hybrid Sukuk structure, due to the presence of debts in the pool of assets.
- **Regular distributions to Sukuk holders:** Sheikh Usmani criticised the payment of any surplus to the originating partner; it is a way of fixing the return to the investors and limits profit-and-loss sharing between them. Also, the payment of interest-free loans is basically a form of fixing the periodic returns to the investors, and thus they are not taking the risk that entitles them to a reward (Saeed and Saleh, 2012).
Guaranteeing the return of principle: Sheikh Usmani stated that all of the Sukuk issued today guarantee the return of principal to the Sukuk holders at maturity, and this is not in line with the concept of profit-and-loss sharing.

According to Hanefah et al., (2013), differences of opinions between scholars complicate regulation and product offering, which affects investor confidence. The harmonisation of Sharia’a rulings globally is essential in order for the industry to be more transparent, in addition to an international regulatory framework agreed on by all nations that should include procedures to standardise legal documentation that will reduce ambiguity, expedite processes, boost investor confidence, and create a wider investor-base globally.

To conclude on these previous challenges, the major factor that could have a negative impact on the stability of the Sukuk market is the Sharia’a compliance of the product. The tremendous effect of Sheikh Taqi Usmani’s statement in 2008 is clear evidence that Sharia’a compliance may affect the industry more than a global financial crisis. The diversity in Fiqh opinions is very helpful to meet the needs of the growing market and to create and develop Sukuk structures. However, the standardisation of the basic Sharia’a rulings globally and an international regulatory framework are central to achieving the market stability and growth with a wider investor-base.
3.8 Issues in Sukuk Structuring

Issues in Sukuk structuring can be divided into regulatory issues and technical issues. The regulatory issues are linked to the SSB, while the technical issues are related to the Sukuk structuring process.

3.8.1 Regulatory Issues in Sukuk Structuring

One of the major issues is the SSB’s fiduciary responsibilities towards the institutional stakeholders. The AAOIFI defines the SSB as an independent body of specialised jurists in Islamic commercial jurisprudence (*Fiqh almua’malat*). The SSB is entrusted with the duty of directing, reviewing and supervising the activities of the Islamic financial institution to ensure that they are in compliance with Islamic Sharia’a rules. The SSB is appointed by the shareholders during the annual general meeting based on the recommendation of the board of directors.

It consists of at least three members. In its effort to reduce divergences in the opinions of the SSBs, the AAOIFI (2004) issued 21 Sharia’a standards covering a wide range of topics. According to Godlewski *et al.*, (2014), there is a beneficial influence of the reputation and proximity of Sharia’a scholars in terms of the stock market reactions to Sukuk issuance. Both the choice of Sukuk structure and scholars hired for certification matter for the market valuation of the issuing firm. In addition, investors attach value to the selection of Sharia’a scholars with certain characteristics.

This influence of the selection of Sharia’a scholars on the Sukuk market and the limited number of Sharia’a scholars are two highly controversial issues. According to Garas (2012), the shortage of the number of Sharia’a scholars...
might create conflicts of interest when the member sits on several SSBs and takes advantage of the information from the different Islamic financial institutions. Sitting on several SSBs will enable the member to have access to a lot of crucial information such as new products and managerial violations inside or outside the operation that might lead to potential losses. This information can bring tangible or intangible benefits to the SSB member, such as moving investments from one institution to another in the case of potential losses and sharing the information of one institution with its competitors, clients or other stakeholders. These conflicts of interest do not only arise from multiple memberships in several SSBs, but also from holding executive positions in the organisation beside their initial position as SSB members. The relation between the SSB members and the board of directors BoD might lead to conflicts of interest, since the number of qualified Sharia’a scholars is limited and their names are popular due to their religious position. There is a possibility of building an influential relationship between the two boards outside the workplace, which may have an impact on the recruitment of the SSB members.

The other regulatory issue is Sharia’a regulation. According to Casey (2012), different regulators have different views, ranging from an active avoidance of any religious issue to full control through some form of Sharia’a council. The first position, as in many Western countries, considers that it would be unlawful for them to be involved in religious matters. At the other end are those jurisdictions in which the regulator effectively takes full control of Sharia’a matters, such as in Malaysia, by setting up a Sharia’a council that represents the ultimate authority
within that jurisdiction. The third approach, which has been taken by Dubai Financial Services Authority, is that of a Sharia’a system regulation. For a Sukuk issuer there is a requirement for a fatwa to be issued from a properly constituted SSB, and this approach allows greater diversity, which would be more appropriate for an international centre.

To summarise the prevailing opinions around the SSB, the limited number of qualified Sharia’a scholars is affecting their role, causing a form of criticism of the process of Sharia’a supervision inside the Islamic financial institutions as follows: first, SSB members are sitting on several SSBs, which may cause a conflict of interest; second, another conflict of interest may arise from the close relation between SSB members and the board of directors; and third, the Sukuk market is influenced by the selection of Sharia’a scholars, which is a major challenge due to the limited number of popular Sharia’a scholars. The other issue around the SSB is the role of the regulators and how it may affect the Sharia’a supervisory process, where in some jurisdictions regulators do not involve in Sharia’a matters, while other regulators take full control of Sharia’a matters.

3.8.2 Technical Issues in Sukuk Structuring

The technical issues in Sukuk structuring are discussed here from different perspectives. The first perspective is related to Sharia’a requirements through the process of Sukuk structuring that includes the underlying assets needed to issue Sukuk and the ownership of these assets by Sukuk holders, the periodic payments that must be the return on the underlying transactions, the nature of the underlying assets being tangible or intangible, and the principle of profit–loss
sharing and risk sharing. The second perspective is the Sharia’a requirements that govern the relations between different parties that are involved in the process of Sukuk structuring, including all the relations between the asset managers, investors, originator, issuer, servicer, asset manager, arranger and guarantor. Finally, an important study by Aziz et al., (2013) that analysed the Sukuk structure from the Maqasid Al Sharia’a perspective concluded that the fulfilment of the requirements of Maqasid Al Sharia’a is expected to be very difficult.

The strict Sharia’a requirement of underlying tangible assets that the SPV needs to hold in order to issue Sukuk, and the ownership of these assets by the Sukuk holders was raised by Lahsasna and Hassan (2011). First, they classified the products of Islamic finance into two major types. The first type is the Sharia’a-based products that have been produced by Sharia’a on the basis of the rules of the Qur’an, Sunnah and other sources of Islamic law. The Muslim jurists through the ages have deliberated contracts such as mudarabah, musharaka, and ijarah. The further development of some of these contracts will not change their nature and criteria. The second type is the Sharia’a-compliant products that have been imported from conventional finance and converted into Islamic products. They are conventional-based products in principle and are used by conventional finance with a specific structure and mechanism, but due to their importance, the Islamic financial institutions have modified them to suit Sharia’a rules and implemented them in their business.
Sukuk as an innovative product is considered as being a conventional-based product according to this classification. Lahsasna and Hassan (2011) related the periodic payments on bonds to *riba*, confirming the prohibition of *riba* and all forms of interest according to the majority of Sharia’a scholars. All the transactions must be structured so that no interest payments are present in the entire transaction. This is opposed to conventional bonds where the periodic payments are interest payments. Sukuk periodic payments must be the return on the underlying transaction. Consequently, the presence of underlying tangible assets in the transaction is required. This means that the SPV needs to hold the underlying tangible assets in order to issue Sukuk, and the Sukuk holders must hold some degree of ownership in the underlying tangible assets as a consequence of the prohibition on *bay’ al-dayn*. Ang (2013) highlighted the same point, where his concern was that most Sukuk adopt pre-determined rates of return that are either capital-based fixed rates or floating rates based on benchmark interest rates. That violates the prohibition of *riba* and the fixed percentage is not linked to the performance of the underlying asset. He added that the securitisation of *murabaha* receivables violates the prohibition of *riba* and *bay’ al-dayn*.

Ngadimon (2008) argued that the Islamic jurisprudence has recognised an intangible asset as an asset; the *al-Maliki*, *al-Shafi’i* and *al-Hanbali* schools defined the term (*mal*) in its widest context that covers tangible and intangible matters. The scope of intangible assets covers anything that is worth money including goodwill, trade markets, patents, intellectual property, copyrights,
franchises, leases and permits, as well as research and development. The validity of such intangible assets could be promoted as another form of assets’ class in structuring Sukuk. Due to the high demand for Sukuk, which significantly exceeds the supply, and the constraints on the availability of tangible assets, practitioners should explore other opportunities and asset types to create a wider base of Islamic financial instruments.

Jobst (2011) raised another issue about the Islamic principles that govern the relations between the different parties that are involved within the process of Sukuk issuance:

- Between asset manager and investor:
  - The prohibition of both gambling (*maysir*) and speculation (*gharar*) prevents excessive risk taking and commands clear objective characteristics and delivery results as part of the contractual certainty at the time of inception.
  - The trading activity of asset managers is restricted to authentic merchant transactions on real debt, while investor return must be derived from defined asset value associated with effective ownership interest.
  - Since there is definite performance underpinned by actual direct transfer of the asset as an object of unconditional sale in Islamic contracts, any contingency risk from unfunded claims is limited to the predefined timing mismatch of delivery or payment in accepted contracts.
- True-based contracts in Islamic law limit the liability of the asset manager to cases of negligence, misconduct or breach of contract.

- Between originator and issuer:
  - The Sharia’a approval and certification process promote adequate disclosures underpinned by a solid foundation of religious standards.

- Between issuer and investor:
  - Investor return is derived from the effective ownership of real assets underlying the securitisation structure, which generates indebtedness and amounts subject to direct recourse.

- Between servicer and investor/asset manager:
  - Contract certainty rules out the potential for inflated, back-loaded and variable servicer expenses. Servicer fees are fixed and defined.

- Between borrower and originator:
  - The Islamic principle of social benefits as public interest (maslaha) and the precept of supporting a system of distributive justice would preclude any moral hazard of originators or borrowers; Sharia’a also prohibits debt modification and unilateral gains, which are considered exploitation.

- Between arranger and guarantor:
  - Only funded agency contracts with pre-specified terms would be deemed sufficient to rule out the contingency risk of payment and actual delivery.
The other regulatory issue that has been raised by Ang (2013) is related to the compliance of Sharia’a-compliant products in line with Sharia’a principles, where his concern is that the contemporary practice of Islamic finance is directed towards replicating the practices of conventional finance, and in doing so contemporary Islamic finance products are Sharia’a compliant in form but not in substance and spirit. Hilton (2014) criticised the speed of movement by financial institutions to become Sharia’a compliant. As a result, most Sukuk offerings violate the conditions laid down by Sharia’a scholars and standard setting bodies, which lay down the theoretical application of Sukuk securities. These include the basic principle of asset backing for Sukuk securities that is violated since investors sometimes do not legally own asset securitisation constructions. In addition, investors are guaranteed payback of their principle investment, defying the principle of profit–loss sharing and risk-sharing as the basis of Islamic finance. The rates of return to investors are benchmarked to basic interest rates, which eliminate their compliance with Sharia’a.

In relation to the previous concerns, the wide use of credit enhancement in various Sukuk structures raises some Sharia’a concerns. According to Dusuki (2010), the liquidity facility and purchase undertaking apart do not conform to Maqasid Al Sharia’a. Many mechanisms adopt Sharia’a principles like undertaking promise (wa’ad), which is Sharia’a compliant if analysed as a stand-alone element in equity-based Sukuk. The combined effect of wa’ad and its price play the role of guarantee in providing the investors with resource to the obligor.
This assertion supports the pronouncement by the AAOIFI that the two strategies in combination are unlawful.

Several Sharia’a issues via Sukuk current practices have been raised and discussed by Lahsasna and Lin (2012) as follows:

- The imposition of a late payment penalty on a Sukuk issuer upon default is a common issue that affects all Islamic finance products because there is no consensus across jurisdictions on this issue.
- Trading at a discounted price for Sukuk representing debt, the sale of debt except at its face value, is not generally acceptable by Sharia’a scholars.
- Purchase undertaking in musharaka and mudarabah structures, where both Sukuk types are commonly structured with purchase undertakings to assure that 100% of the invested capital is returned to the investors. Sharia’a standards and resolutions are aligned on the rightful application of purchase undertaking to reflect the risk- and profit-sharing principles of musharaka and mudarabah structures.
- Ownership of assets in asset-based Sukuk, which are more consistent with the ideal of granting the investor an ownership share of the asset. This type of Sukuk may be more suitable where the legal title to assets cannot be transferred to investors.

Finally, a study was held to analyse one of the common types of Sukuk structures from a Maqasid Al Sharia’a perspective. Aziz et al., (2013) analysed the structure of ijarah Sukuk from the view of Maqasid Al Sharia’a using the following scale of Maqasid: first, in the form of benefit or maslaha and harm or
mafsada; second, the element of hardship elimination in the structure; third, blocking the means (sad al-zara’i) to prohibited elements in the structure; and fourth, how far legal stratagems are being used in the structure of the Sukuk. The study analysed the following issues:

- Securitisation: how securitisation fits with the principle of Maqasid Al Sharia’a? Whether it is for the benefit of the Sukuk issuer, or to avoid hardship in executing financial transactions in that mechanism. Is the benefit of Sukuk securitisation representing a forbidden legal stratagem that scholars are unanimous in prohibiting in a financial transaction? Sad al-zara’i is a concept that needs to be reflected upon in terms of whether it provides precautions for the parties involved in Sukuk to protect their rights and wealth as one of the objectives of Sharia’a.

- The formation of SPV: the Maqasid Al Sharia’a view on SPV will go around the discussion about the benefits of creating an SPV, the priority of creating an SPV that costs highly from the investors’ money than without an SPV that will reduce the cost in Sukuk issuance where it can allow high return on investment, how the SPV deals with the concept of sad al-zara’i and hardship elimination.

- Pricing of Sukuk: the benefit of taking LIBOR as a benchmark in Sukuk pricing; the hardship that will be faced by the Sukuk player by neglecting LIBOR or any other prevailing rate.

- Listing Sukuk: what is the relationship of Sukuk to the rate, either as compulsory or necessity or embellishment?
• The governing law: how far the governing law which is predominantly derived from British common law can perform justly as Sharia’a law; how Maqasid Al Sharia’a may solve the problem that emerges from this scenario and what standpoint it is based on in terms of the benefit and harm concept, or the science of prioritisation and hardship elimination.

The general finding of the study shows that fulfilment of the requirements of Maqasid Al Sharia’a is expected to be difficult for any new financial product in the capital market, as the market itself is predominated by conventional financial products. However, a proper consideration from the perspective of Maqasid Al Sharia’a is needed in order to structure Ijara Sukuk.

Previous study focused on the process of Sukuk structuring that concludes in the difficulties of fulfilling Maqasid Al Sharia’a requirements. However, this research focuses on the role of Sukuk in the preservation of wealth, analysing the purpose of Sukuk issuance and the impact of Sukuk investments on the societies by using two major scales of Maqasid Al Sharia’a: human development and well-being, and populating and developing Earth. The role of Sukuk in wealth preservation to achieve human well-being and populating Earth will be discussed in the following section.

3.9 The Role of Sukuk in Safeguarding Wealth and Human Well-being

Sukuk as a financial instrument can effectively serve the human development goals and realise Maqasid Al Sharia’a in preservation of wealth as Sukuk may play a crucial role in the fair circulation of wealth, the development of wealth, the
preservation of wealth and the equal distribution of income and wealth. As stated by Ibrahim et al., (2014), Sukuk has emerged as the dominant Islamic capital market instrument in many Islamic countries that can go a long way in circulating wealth and preventing hoarding if the product is properly structured, keeping Maqasid Al Sharia’a in perspective. Regarding the role of Sukuk in the preservation and development of wealth, they added that Sukuk is a tool to channel wealth into the financial market and the capital market, where even small investors will be able to participate through pooled instruments or mutual funds in addition to increasing liquidity and dynamism in the financial market. Sukuk can be used for private-sector projects as well as public-sector projects, and is suitable for major public-sector projects in infrastructure and other sectors, such as agriculture and industry. That will help in achieving the equitable distribution of income and wealth through the created jobs in those mega projects.

Sukuk as a modern innovative concept in Islamic financial securities represent the rights and obligations arising out of specific types of shared asset ownership, with Sukuk securities providing investors with opportunities to contribute to the circulation of wealth. Therefore, Sukuk in the Islamic capital market are supposed to spread ownership (Ibrahim et al., 2014).

Sukuk provide an important mode of large-scale Islamic financing for issuers including governments, corporates, SMEs and international organisations. For example, governments are able to meet their policy programmes and fund development projects such as building roads, hospitals, airports and undertaking other key infrastructural facilities that contribute to the real economy (Sairally et
al., 2017). These types of mega projects will produce huge opportunities for job creation of different qualities, and according to Ahmed (2009) human labour is more important in ranking than natural or man-made wealth. This will contribute to the alleviation of poverty and a gradual upgrading in the standard of living, which will be followed by better health care conditions, higher level of education, comfortable housing and sufficient infrastructure. All the previous elements are a contribution to wealth circulation, development and a fair distribution. As stated by Sairally et al., (2017) and according to Usmani (2007), Sukuk represent a crucial means of promoting equal distribution of wealth as they allow investors to share in the actual profits from the underlying assets, which will contribute to the circulation of wealth among the wider society instead of keeping wealth within the hands of the wealthy.

As mentioned by Ahmed (2009), the utilisation of natural resources and man-made wealth are important complementary Maqasid, and both may be achieved by Sukuk; Sukuk are instruments that raise funds from capital assets to be invested in infrastructure projects, which may include natural resources. According to Sairally et al., (2017), the sustainable and responsible investment (SRI) Sukuk has been developed mainly in Malaysia, with the SRI Sukuk framework launched in 2014. Natural resources and renewable energy are among the major categories in that framework. Natural resources include sustainable land use and agriculture, water infrastructure and waste management; while renewable energy includes solar, wind, hydro and geochemical energy. Both factors contribute to the preservation of wealth. The
SRI Sukuk framework also contains *waqf* and assets development, in addition to the economic and community development.

Adding to the role of Sukuk in the circulation of wealth, Sukuk are an important tool for investors that are looking for *Sharia’a*-compliant investments. According to Sairally *et al.*, (2017), Sukuk are a suitable instrument for investors such as governments, *takaful* companies, pension funds and others that are looking for long maturity products. In addition, Sukuk as a tradable instrument play an important role in liquidity management and the development of a liquid secondary market.

A study by the IDB (2015) about the role of Islamic finance in achieving sustainable development goals (SDGs) concluded that Sukuk can be used to achieve some of the following: Sukuk resources can finance clean water and sanitation projects (SDG-6), sustainable and affordable energy (SDG-7), build resilient infrastructure (SDG-9) and shelter (SDG-11). However, the Sukuk role can extend to achieve more than the four goals mentioned in the study, as Sukuk contribute to poverty alleviation (SDG-1), hunger alleviation (SDG-2), improving health and well-being (SDG-3), improving education quality (SDG-4), work and economic growth (SDG-8) and reducing inequalities (SDG-10).

### 3.10 Conclusion

To conclude, Sukuk are an important tool to achieve human well-being and sustainable development through the preservation of wealth, although only when keeping *Maqasid Al Sharia’a* in perspective for the purpose of Sukuk issuance and the use of the mobilised resources of Sukuk. Sukuk represent a major
element in wealth circulation at two levels: first, the funding that is raised from investors or Sukuk holders is a shift of wealth from the hands of the wealthy to the Sukuk issuer to invest; and second, the investments or the projects involve a shift of wealth among the wider society in the form of real economic activities. Sukuk represent a tool for wealth development when the investments are related to the real economy and produce real productive activities, as development is not limited to material wealth, but it extends to the prosperity and the socioeconomic development of human labour.

Regarding the fair distribution of wealth, Sukuk play an important role in circulating the wealth among the wider society, thus avoiding the concentration of wealth among the rich, in addition to the fair opportunities for employment and livelihoods that will be created through the large projects. Finally, Sukuk as a fixed-income instrument will protect the wealth from any excessive risk that may waste or destroy it.

Sukuk may be an efficient instrument to achieve human well-being through the safeguarding of wealth if the decision of the issuer and the policy mechanism satisfies *Maqasid Al Sharia’a*. According to Ali and Hasan (2014), there has been a need to build an information base on *Maqasid Al Sharia’a* to assist policymakers in realising these goals, which not only covers social and economic dimensions but also includes values, morality, family, and faith, and thus provide an encompassing framework for development in Muslim countries. Bedoui and Mansor (2015) added that the individual decisions stemming from the beliefs of top-ranking persons such as presidents and CEOs could affect the organisations.
Regarding policies and implementation mechanisms, Oladapo and Rahman (2016) confirmed the role of an effective policy mechanism as having a direct positive impact that emphasises the provision of basic human needs, which are created in the *Maqasid Al Sharia’a* human development paradigm to produce good individuals for a good society. Within the same concept that emphasises the role of policies, Zaman and Asutay (2009) demonstrated the major role of institutional implantation and identified the pre-requests for achieving that including the political vision, will and leadership.

According to the previous approach, the researcher will generate data from elite interviewing with decision makers in positions related to the Sukuk issuance process, as their personal perspectives on *Maqasid Al Sharia’a* may have a clear impact on the Sukuk issuance and the compliance of Sukuk with *Maqasid Al Sharia’a*. In addition, their broad experience will be the base knowledge to develop a *Maqasid Al Sharia’a* model that will be applied to examine the compliance of the IDB Sukuk Programme with *Maqasid Al Sharia’a*. 
CHAPTER 4  RESEARCH METHODOLOGY

4.1  Introduction
Research is carried out in order to discover something that is not already known. According to Marshall and Rossman (2016), it is a process of trying to gain a better understanding of the complexities of human experience by asking basic questions and through collaborative strategies. The researcher gathers information about actions and interactions, and evaluates conclusions before putting forward an interpretation in written form.

This chapter will cover the basic concepts of research methodology. It starts with the research philosophy that will direct the research method and design. This is followed by the data generation approach and analysis, then the case study protocol and finally a pilot case study that was carried out by the researcher to test the data generation plan and the procedures to be followed.

4.2  Research Philosophy
According to Gray (2014), epistemology provides a philosophical background for deciding what kinds of knowledge are legitimate and adequate. Furthermore, epistemology or the philosophy of knowledge according to Byrne (2001) is the separation between knowing and being. Mason (2006) defined epistemology as the researcher’s theory of knowledge and should concern the principles and rules by which the researcher decides whether and how social phenomena can be known and how knowledge can be demonstrated. According to Billings (2000),
epistemology is a system of knowing that has an internal logic along with external validity linked intimately to the worldview. The conditions of living and learning shape both personal knowledge and worldviews. All the previous definitions could be applied to this research and its social nature, in addition to the morals and religious values that frame the subject of the research.

During the renaissance era in the sixteenth and seventeenth centuries, European thought saw tremendous changes. Thought was gradually freed from the theological bond that had been implanted by the alliance between political absolutism and the Roman Catholic Church. The groundwork was being laid for a secular vision of the traditional theological images of the natural and social worlds. The proximate origins of positivist epistemology lie within that period. Positivism recognises only two bona fide forms of knowledge: the empirical, represented by natural science, and the logical, represented by logic and mathematics. From the perspective of social research, positivism implies first, the methods of studying society; second, what it claims about proper knowledge to be gained from such study; and third, the criteria necessary to assess that knowledge and distinguish it from beliefs and understanding that cannot qualify as knowledge (Hughes and Sharrock, 1997). Gray (2014) argued that positivist reality consists of what is available to the senses. An inquiry should be based upon scientific observation, and the natural sciences share common methodological principles in dealing with facts rather than values.

Bryman (2004) defined positivism as an epistemological position that advocates the application of natural science methods for the study of social reality.
Positivism goes beyond this principle and is taken to entail other principles: the principle of phenomenalism, whereby only phenomena and hence knowledge confirmed by the senses can be warranted as knowledge; the principle of deductivism, where the purpose of a theory is to generate hypotheses that can be tested to allow the explanations of laws to be assessed; and the principle of objectivism, where science must be conducted in a way that is value free.

As stated by Hughes and Sharrock (1997), the distinction between mind and matter for the social sciences became a prominent issue through the debates in Germany in the late nineteenth century. They rejected the conception of the rational, asocial individual in favour of a conception of the individual as belonging to a wider social and cultural entity; the moral and political association of society. In Germany, they established a tradition that tried to develop theories of history, considered as the distinctively human science. The disputes were about historical method and whether the study of history could be a natural science or whether it had to develop its own distinctive methods as a distinctively human inquiry; this debate inevitably spread into the social sciences. In rejecting the philosophical route to a science of history, the question was how to turn history into a soundly founded empirical discipline given that its object of study is human life in all its manifestations? How to come to terms with the fact that history involves the understanding and self-understanding on the part of those human beings under study? By complementing grammatical interpretation with psychological identification, hermeneutics was introduced into the study of
human activities, elevating interpretative understanding to a prominent position in the methodology of the social sciences.

A major anti-positivist position is interpretivism, which according to Gray (2014) is closely linked to constructivism. Interpretivism asserts that natural social sciences are looking to deal with the actions of the individual. Bryman (2004) defined interpretivism as an alternative to the positivist orthodoxy that has held sway for decades, with a view that a strategy is required that respects the differences between people and the objects of the natural sciences, requiring that the researcher grasp the subjective meaning of social action.

Defenders of the positivist position hold the view that the purpose of any science is to explain social behavioural and physical phenomena, while defenders of interpretivism argue that the human sciences aim to understand human actions. The core of the dispute is the claim that the human sciences are different in nature and purpose from the natural sciences. The issue of whether there is a critical distinction between the natural and the human sciences regarding different aims versus understanding remains unresolved (Schwandt, 2000).

Taking an interpretative stance may lead the researcher to surprising findings. From an outside position, the researcher will be aiming to place the interpretations that have been elicited into a social scientific frame. There is a double interpretation taking place where the researcher is providing an interpretation of others’ interpretations. A third level of interpretation is going on,
because the researcher’s interpretations should be further interpreted in terms of the concepts, theories and literature (Bryman, 2004).

The process of interpreting is represented differentially according to differences in the philosophies of interpretivism, and between interpretivism and philosophical hermeneutics, although they all share some features. First, they view human actions as meaningful. Second, they show an ethical commitment in the form of respect for the living world. Third, from an epistemological standpoint, they emphasise the contribution of human subjectivity to knowledge. Interpretivist epistemologies can be characterised as hermeneutic, as they emphasise that one must acquire meaning in order to say one has an understanding of a particular action (Schwandt, 2000).

Interpretivism is the epistemological paradigm of this research, asserting that natural reality and social reality are different, and thus require different kinds of method. Interpretivist approaches explore people and their interpretation, perceptions, meanings and understandings of the phenomena under study as the primary data sources. For Gray (2014) and Mason (2006), questions of social ontology are concerned with the nature of social entities, organisation and culture. Ontological assumptions and commitments will feed into the ways in which research questions are formulated and research is carried out. There are two ontological positions: objectivism, where social entities are considered objective entities that have a reality external to social actors, asserting that social phenomena and their meanings have an existence that is independent of social actors; and constructionism, also referred to as constructivism, which asserts that
social actors are continually accomplishing social phenomena and their meanings by negotiation (Mason, 2006).

4.3 Research Methods

According to Silverman (2010), the qualitative/quantitative distinction seems to assume a fixed preference of what is good or bad research. However, methods are more or less appropriate to specific research questions. Methods should be servants to the research and not rules, with the proper use of methods as tools when needed. The choice of method should not be predetermined, as it should be chosen to be appropriate to what the researcher is trying to find out.

Quantitative studies, according to Denzin and Lincoln (2000), imply an emphasis on the measurement of relationships between variables not processes. In such studies, work is done from within a value-free framework. In contrast, qualitative studies have an emphasis on processes and meanings that could not be examined or measured experimentally.

As stated by Bryman (2004), quantitative and qualitative research differs according to their epistemological foundations and ontological considerations. Quantitative research could be constructed as a research strategy that emphasises quantification in the collection and analysis of data that entails a deductive approach to the relationship between theory and research, positivism in the practices of the natural scientific model, and an objective reality where the view of social reality is external. In contrast, qualitative research could be constructed as a research strategy that mostly implies words rather than
quantification in the collection and analysis of data that emphasises an inductive approach to the relationship between theory and research, practices in which individuals interpret their social world, and a view of social reality that is the creation of the individual.

Silverman (2010) combined reasons for students attracted to qualitative method because the other approach is limited to *how*, rather than *how many*. Questions, finding the good stuff, and where the depth is. Some are just doing what they like to do. Others find that a qualitative methodology is a good way of bridging social distance and ending in a better understanding for another social world. Finally, it is just a good fit for the research questions.

The phenomenological paradigm of this research is concerned with understanding human behaviour from the participants’ own frame of reference. This qualitative approach stresses the subjective aspects of human activity by focusing on the meaning of social phenomenon.

There have been many attempts to define qualitative research in the social sciences. According to Mason (2006) and Denzin and Lincoln (2000), there is no consensus, because qualitative research is not a unified set of techniques or philosophies. It has no theory or paradigm that is distinctly its own. Janesick (2000) stated that the qualitative researcher is like a choreographer at various stages in the design process, situating and reconceptualising the research project within the shared experience of the researcher and the participants in the research study. However, they are similar in another way. Both methods refuse
to separate art from ordinary experience, and refuse to be limited to one technique or just one approach. The qualitative researcher uses various techniques and tested procedures to catch the nuance and complexity of the phenomena under study.

Denzin and Lincoln (2000) defined qualitative research as a situated activity that locates the observer in the world, while the set of interpretive, material practices transform the world into a series of representations that make the world visible. In different words, Byrne (2001) defined qualitative research as inquiries of knowledge that are outside the framework prescribed by the scientific method, as well as assumptions of inferential statistics.

As stated by Gillham (2000), qualitative research methods enable the researcher to investigate situations where little is known about what is going on. Their great strength is that they can illuminate issues and turn up possible explanations. Then, the researcher explores complexities that are beyond the scope of more controlled approaches, and finds out the informal reality, which can only be perceived from the inside. This method allows the researcher to view the case from inside out and to carry out research into the process, leading to results.

Mason (2006) emphasised the rich variety of qualitative research strategies and techniques to develop a sense of what is qualitative about qualitative research. It is grounded in interpretivism as a philosophical position, in the sense that it is concerned with how the social world is interpreted, experienced, produced or constructed, while different versions of qualitative research might approach these
elements in different ways based on the methods of data generation, which are flexible and sensitive to the social context in which the data are produced. Finally, based on the methods of analysis, qualitative research aims to produce rounded and contextual understanding based on rich and detailed data.

Qualitative research is challenging according to Denzin and Lincoln (2000). The challenges to qualitative research are many. For example, the work of qualitative researchers is termed unscientific. It is sometimes called criticism not theory and they are claimed to write fiction not science as they have no way of verifying their true statements. These criticisms from positivists presume a stable reality that should be studied using the empirical methods of objective social science. However, qualitative research is the world of lived experience where individual beliefs and actions meet with culture. Within this model, there is no preoccupation with method as interpretive practices that constitute representation and description.

Manson (2006) summarised what qualitative research should be. According to him, research should be systematically constructed. Researchers should think, plan and act in systemic ways in the research process. This type of research should be accountable for its quality and its claims, providing its audience with material upon which they can judge it. Research should be strategically conducted, flexible and contextual. Researchers should make decisions on the basis of a sound research strategy and maintain sensitivity to the changing contexts in which the research takes place.
Researchers should take stock of their actions and their role in the research process and subject these to the same critical scrutiny as the rest of their data. Finally, this research should produce explanations or arguments, the elements that a researcher chooses to see as relevant for a description or explanation will be based on a way of seeing the social world and on a form of explanatory logic.

4.4 Research Design

The research design incorporates the basic assumptions about the world and the nature of knowledge reflected in the way the researcher designs the research, collects the data and analyses it. The research paradigm refers to the progress of scientific practice based on the philosophies about the world and knowledge of the researcher (Collis and Hussey, 2003).

The research design is defined by Yin (2014) as the logical sequence that connects the empirical data to a study, the initial research questions and to the conclusions. It is the plan from the initial set of questions to be answered to the set of conclusions or answers for these questions, with a number of major steps including the collection and analysis of data. Another definition by Bryman (2004) is that the research design is a framework for the collection and analysis of data that reflects decisions about the priority being given to a range of dimensions of the research process. As stated by Janesick Janesick (2000), the research design depends on several decisions that the researcher should consider: first, the research questions that guide the study and the research strategies, and then the identification of the beliefs and ideology, the timeline and the selection of sites and participants by the researcher.
The case study is commonly associated with qualitative research. Gray (2014) and Denscombe (2007) clarified this correlation, in that case studies are flexible and they allow the researcher to use a variety of sources for the generation of multiple perspectives through multiple data collection methods or through the creation of multiple accounts from a single method, as part of the investigation. A case is defined by Gillham (2000) as a unit of human activity embedded in the real world, which can only be studied in a context existing in the here and now.

Yin (2014) defined the case study as an empirical inquiry that investigates a contemporary phenomenon (the case) in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident. Gray (2014) stated that case studies explore subjects and issues where relationships may be ambiguous, while trying not only to describe a situation, but to attribute causal relationships. This approach is useful to uncover the relationship between a phenomenon and the context in which it is occurring.

Stake (2000) identified three types of case study: the intrinsic case study, undertaken because the researcher wants a better understanding of this particular case where in all its particularity and ordinariness the case itself is of interest; instrumental case study, where a particular case is studied to provide insight into an issue or to redraw a generalisation, as the case plays a supportive role to facilitate our understanding of something else; and the collective case study, where the researcher jointly studies a number of cases in order to investigate a phenomenon or general condition, which is an instrumental study extended to several cases. According to Bryman (2004), other distinctions
between different types of case study made by Yin (1984) are the critical case, where the case is chosen by the researcher on the grounds that it allows a better understanding of a clearly specified hypothesis; the unique case, which is a common focus in clinical studies; and the revelatory case, which exists when the researcher has an opportunity to observe and analyse a phenomenon that is not accessible previously to scientific investigation. However, Bryman (2004) insisted that cases are often chosen because they provide a suitable context to answer the research questions.

According to Stake’s (2000) classification of case studies, this research is considered as an intrinsic case study, studying the nature and background of the case, as well as other contexts—economic, legal and political. The inquiry of this study is geared towards an understanding of what is important about this case within its own world. This will develop case-specific issues, contexts and interpretation.

The single case study has been subject to criticisms; however, it is an appropriate design under several circumstances. Yin (2014) identified five single-case rationales: having a critical, unusual, common, revelatory, or longitudinal case. The first rationale for a single case, selecting a critical case, would be critical to the theoretical propositions. The single study can then be used to determine whether the propositions are correct or some other set of explanations might be more relevant. The single case can represent a significant contribution to knowledge and theory building by confirming, challenging, or extending the theory. This study can even help to refocus future investigations in an entire field.
A second rationale for a single case is where the case represents an unusual case, deviating from theoretical norms. Such cases offer a distinct opportunity worth documenting and analysing, as the findings may reveal insights about normal processes. A third rationale is the common case. The objective of this study is to capture the circumstances and conditions of an everyday situation. It might provide understanding about the social processes related to some theoretical interest. A fourth rationale for a single case study is the revelatory case. This situation exists when a researcher has an opportunity to observe and analyse a phenomenon previously inaccessible to social science inquiry. A fifth rationale for a single case study is the longitudinal case, namely studying the same single case at two or more different points in time. The theory of interest would specify how certain conditions and their underlying processes change over time. The rationale for the IDB single case is that the IDB represents an unusual case.

4.5 Data Sources and Generation
Selecting a data gathering method is influenced by the research methodology and the theoretical perspectives adopted by the researcher and by their epistemological stance (Gray, 2014). A useful distinction between data sources, and methods for generating data from those sources, has been made by Mason (2002). She identified data sources in qualitative research as people, organisations, texts, environments, objects and events. Each of these categories may contain many specific data sources, and they can overlap. Mason identified qualitative data generating methods as follows:
- Qualitative interviewing, referring to in-depth, semi-structured interviewing.
- Observing and participating, referring to methods of generating data that entail the researcher being in a research setting to experience and observe a range of dimensions in and of that setting. These may include social actions, behaviour, relationships, and interactions. According to Marshall and Rossman (2016), some ethical issues arise in participant-observation studies that centre on the principle of respect for persons. The researcher should be diligent about confirming that the participants are aware and willing. As the practice of informed consent could be complex, other complexities may arise when the study focuses on a group setting.
- Visual methods and documents refer to the use of photography that produces at the same moment a document. According to Marshall and Rossman (2016), visual records can help preserve unique, rare and disappearing events; however, interpretation can be problematic. More ethical issues are included in this method in terms of visual representations of people and their consent to be represented in a photo. Furthermore, there is the need to protect their identities and safeguard these representations from spreading without the researcher’s knowledge.

According to this research methodology and the epistemological stance of the researcher, the researcher selected qualitative interviewing to generate data. Yin (2014) presented a different approach focusing on case study data generation, where he identified six sources of case study evidence in addition to the aforementioned interviewing and participant observation as follows:
- Documentation: a variety of documents such as personal documents, written reports, administrative documents, formal studies or evaluations and news clipping and articles must be carefully used. For the case study researcher in particular, documents can provide details to corroborate information from other sources.

- Archival records: including public-use files, service records, organisational records, survey data produced by others, maps and charts. These records could be important and may become the object of analysis.

- Direct observations: these can range from formal to casual data collection activities. Observational evidence provides additional information about the topic being studied.

- Physical or cultural artefacts: including a technological device, a tool or instrument, a work of art or any physical evidence that may be collected or observed as part of a case study. This method is commonly used in anthropological research.

According to Gray (2014), interviewing is a basic form of human activity in which language is used between two human beings in the pursuit of cooperative inquiry. Narratives have been a major medium through which people down the ages have sought to capture their experience. The interview is the favoured approach where the research objectives are based upon understanding experiences, opinions, attitudes, values and processes. This approach is also favoured when there is a need to attain highly personalised data, and a good return rate is important. Interviewing, according to Gillham (2000), is an
inadequate term for the range of ways in which getting people to give the information and insights needed for the research are conducted. The overwhelming strength of the face-to-face interview is the richness of the communication that is possible. However, interviewing is enormously time-consuming, given the time required for the interview itself and the time involved in transcription and analysis. Interview techniques are best used when small numbers of people are involved, they are accessible and they are key participants.

One of the most important aspects of the interviewer approach is conveying the attitude that the participant views are valuable and useful. The generativity of the interview depends on both partners and their willingness to engage in a deep discussion about the topic of interest (Marshall and Rossman, 2016).

Qualitative interviewing refers to in-depth, semi-structured forms of interviewing. With large variations in style and tradition, according to Mason (2006) they share core features in common: the interactional exchange of dialogue, a relatively informal style and a fluid and flexible structure. Qualitative interviewing is appropriate when the ontological position suggests the knowledge and experience of an individual will grant and contribute to the answers to the research questions. Interactions and perceptions are meaningful properties of the social reality that the research questions are designed to explore. Qualitative interviewing is chosen with an epistemological position, which allows that a discussion is a legitimate way to generate data by talking with people, asking
questions to gain access to their articulations and analysing their construction of discourse.

Qualitative interviewing is a creative and active work that requires a great deal of planning to prepare for the structure and flow of the interviews, and the intellectual and social skills needed to carry out smooth-running interviews (Mason, 2006).

As stated by Marshall and Rossman (2016), with the guided interview the researcher explores a few general topics to help uncover the views of the participant while respecting the way the researcher frames and structures the responses. This method is based on an assumption: the participant’s perspective on the phenomenon of interest should unfold as the participant views it, not as the researcher views it.

As stated by Gray (2014), semi-structured interviews are non-standardised and are mainly used in qualitative analysis. The interviewer has a list of issues and questions to be covered, but the order of questions may change depending on what direction the interview takes. Additional questions may be asked, including some which were not anticipated at the start of the interview as new issues arise. The use of semi-structured interviews allows the researcher to probe for more detailed responses where the respondent is asked to clarify what they have said. The semi-structured interview is where the questions are specified, but the interviewer is free to probe beyond the answers. This technique represents an
opening up of the interview method to an understanding of how interviewees generate and deploy meaning in social life (May, 2011).

According to Gillham (2000), the semi-structured interview is the most important technique of interviewing in case study research; it can be the richest single source of data.

To organise the semi-structured interview in this research, the following steps were undertaken:

- Identifying key topics from the initial literature review
- Framing questions according to the key topics, with six open-ended questions framed for the pilot study
- Recording the interview, and taking verbatim notes
- The use of probes, getting the interviewee to reveal more about a particular topic

The researcher adopted the single case study. The data will be generated from semi-structured interviews. This research uses the elite interviewing technique. Gillham (2000) defined elite interviewing as interviewing someone in a position of authority, or especially experts or authoritative people who are capable of giving answers with insight and a comprehensive grasp of what it is you are researching. Interviews with such people are relatively unstructured and have special characteristics. They will know more about the topic and the setting than the researcher does, to an extent that they may tell the researcher what
questions should be asked. By virtue of their authority and experience they will have their own structuring of their knowledge.

Interviewing elites, or individuals in positions of power and influence, is a specialised case of interviewing that focuses on a particular type of interview partner. Elite individuals are considered to be influential, prominent and well informed in an organisation or community. Elite interviewing presents some challenges, such as the difficulty of securing access; however, highly valuable information can be gained from these interviews. Another challenge in elite interviewing is the sophistication of managing the interview process, and the interviewer may have to adapt the planned structure of the interview based on the predilections of the person being interviewed (Marshall and Rossman, 2016). Marshall and Rossman (2016) raised some concerns regarding interviewing, stating that interviewing has limitations as interviews are intimate encounters that depend on trust. Building trust is fundamental and a main feature of the interviewer–interviewee relationship. In some cases, the interviewee may be unwilling or uncomfortable in sharing all that the researcher hopes to explore. Participants may be unaware of recurring patterns in their lives, or they may not be able to find the right words to convey their thoughts. At times, interview partners may have a good reason not to be truthful.

4.6 Data Analysis

Data analysis is one of the important steps towards answering research questions, showing whether the appropriate collected data can answer the research questions and to what extent (Blaikie, 2004). The excellence of this
process rests in large part on the excellence of the coding, since effective coding fractures the data forcing interpretation to higher levels of abstraction, moving towards the ultimate integration of the entire analysis and yielding the desired conceptual density (Strauss, 2003). The researcher will use open coding, which is unrestricted coding of the data, through scrutinising the interviews closely to produce concepts that fit the data. Pattern coding, as a second level of coding will be held to group the initial codes into themes. As stated by Miles and Huberman (1994), pattern codes are explanatory codes that identify an emergent theme to produce more meaningful units of analysis out of the initial material. This will get the researcher into analysis during data collection and helps them to elaborate more integrated schemes for understanding local interactions.

According to Bryman (2004), the nature of the link between theory and research mostly has two strands: the form of theory that the researcher is talking about and whether the data collected are to test or build theories. The term *theory* mostly means the explanation of observed regularities. There are two approaches that represent the nature of the relation between theory and social sciences. The common view, and that mostly associated with quantitative research, is represented by the deductive approach, whereby the researcher deduces a hypothesis or hypotheses on the basis of what is known about in a particular domain and of the theoretical considerations in relation to that domain. Those hypotheses are then subject to empirical scrutiny. The other approach that generates theories out of data is the inductive approach, which is typically associated with qualitative research.
The inductive approach is a systematic procedure for analysing qualitative data, in which the analysis is likely to be guided by specific evaluation objectives. Strauss (2003) defines induction as the actions that lead to the discovery of an idea, converting it into a hypothesis and assessing whether it works provisionally as a partial condition for a type of event, relationships or a strategy. According to Thomas (2006), the primary purpose of the inductive approach is to allow research findings to emerge from the frequent, dominant, or significant themes inherent in raw data, without the restraints imposed by structured methodologies. Some of the purposes underlying the development of the general inductive analysis approach are summarised as follows:

- To condense extensive and varied raw-text data into a brief or summary format.
- To establish clear links between the research objectives and the summary findings derived from the raw data and to ensure that these links are both transparent and defensible.
- To develop a model or theory about the underlying structure of experiences that is evident in the text data.

Through this inductive approach, data is analysed to construct generalisations and relationships between variables. Therefore, the researcher moves towards discovering a binding principle. The inductive approach attempts to establish patterns, consistencies and meanings through the process of gathering data (Gray, 2014). The researcher looks for themes that are present in the whole set
of interviews and creates a framework for making comparisons and contracts between the different respondents (Gomm, 2008).

The analysis of case study evidence depends on the personal style of the researcher, their rigorous empirical thinking and the sufficient presentation of evidence along with the consideration of alternative interpretations. The inductive strategy starts by searching the data for patterns, insights or concepts that seem promising, where noticing a pattern or a useful concept can become the start of an analytic path, leading farther into the data and suggesting additional relationships (Yin, 2014).

Data will be derived in a literal manner. The researcher will look at aspects of the interaction, the literal dialogue including its form and sequence, and the literal substance. In Mason (2006), according to Yin (2014), the analytical technique that has been used by the researcher is explanation building. It is a special type of pattern matching. The aim is to analyse the case study data by building an explanation about the case. The eventual explanation is a result of a series of iterations:

- Devising an initial explanatory proposition.
- Comparing the findings of initial data against such a proposition.
- Revising the proposition.
- Comparing other details of the case against the revision.
- Comparing the revision to the findings from a second data set.
- Repeating this process as needed.
4.7 Case Study Protocol

According to Yin (2014), the case study protocol is a major way to increase the reliability of case study research and to guide the researcher in carrying out the data collection. The protocol is important to keep the researcher targeted on the topic of the case study. As suggested by Yin (2014), a case study protocol should have four sections:

- **Section 1:** an overview of the case study, which should cover the background information about the case study, the mission and goals of the case study, the substantive issues of the case study and the rationale for selecting the case, the propositions being examined and the broader theoretical relevance of the inquiry.

- **Section 2:** data collection procedures, which need to emphasise the major tasks in collecting data, including gaining access to organisations or interviewees, making a schedule of the data collection activities within a specific period of time, and providing for unanticipated events, such as changes in the availability of interviewees, while a final part of this portion should clearly describe the procedures for protecting human subjects.

- **Section 3:** data collection questions, where a set of substantive questions reflect the actual line of inquiry.

- **Section 4:** a guide for the case study report, with most reports following a similar outline: the posing of research questions, a description of the research design, the data collection procedures, the presentation of the
data collected, the analysis of the data, and finally a discussion of the results and conclusions.

4.7.1 Overview of the Case Study

The aim of this study is to investigate the compliance of Sukuk products with the basic goals and values of *Maqasid Al Sharia’a* in safeguarding wealth (*hifth al-mal*). In order to carry out this mission, several objectives must be achieved:

- To deliver a literature review on the development of *Maqasid Al Sharia’a* theories.
- To deliver a conceptual understanding about Sukuk.
- To develop a theoretical framework of *Maqasid Al Sharia’a* in relation to finance.
- To critically assess the role of Sukuk in safeguarding wealth.
- To critically analyse the impact of the compliance of Sukuk with *Maqasid Al Sharia’a* on human development and well-being.
- To examine the compliance of Sukuk with *Maqasid Al Sharia’a* from the perspectives of *Sharia’a* scholars and Islamic economists.
- To examine the compliance of the Islamic Development Bank’s Medium Term Note Sukuk with *Maqasid Al Sharia’a*.

The IDB’s MTN Sukuk Programme is the case study for this research. Several reasons are underlying this choice; some of them are related to the IDB as an organisation with more reasons lying behind choosing the IDB Sukuk Programme itself. The following are the reasons for choosing the IDB as an organisation:
- Consistent with *Maqasid al Sharia’a*, the purpose of the IDB is to foster the economic and social development of its member countries, as well as Muslim communities in non-member countries.

- The IDB is an international organisation that derives its legal personality from public international law, is not subject to national banking regulation and is not supervised by any external regulatory authority. Consequently, the IDB is not subject to some of the regulatory challenges that are facing other national financial institutions.

- All IDB operations are carried out according to the principles of *Sharia’a* (regularly clarified by the Islamic *Fiqh* Academy), which is considered as the most respected SSB that represents all Muslim countries in terms of the diverse *Sharia’a* schools of thought.

- The IDB’s SSB represents five *Sharia’a* schools of thought, the typical *Hanafi, Maliki, Hanbali* and *Shafi’i*, in addition to the *Ja’afari* school of thought that is considered as the *Sheia’at* doctrine and is not commonly represented at the SSB of other financial institutions. This will accommodate more diversity in the opinions on *Sharia’a* issues.

- With the highest credit rating of AAA and a capital of $150 billion, the IDB is not a subject of financial challenges that are related to liquidity and credit worthiness.
Some of other reasons behind choosing the IDB’s Sukuk Programme include:

- The IDB’s Sukuk Programme is distinguished by its highest credit quality. It is the first AAA-rated notes in conventional and Islamic fixed-income securities.
- The IDB’s Sukuk structure is an innovative product. The hybrid structure or mixed-asset Sukuk is based on various different types of Sharia’a-compliant transactions. The IDB continues in their efforts to meet the demands of the global market for more diverse Sukuk structures through their Islamic financial engineering department.
- The standing set of MTN Programme documentation and contracts reduces cost, time and efforts that are usually spent in the process of structuring and documenting per Sukuk issued.

4.7.2 Data Collection Procedures

The researcher will generate data for this study through elite interviewing as a primary source of evidence. A review of the IDB’s organisational chart was carried out to select the elites to be interviewed according to their relation to the MTN Sukuk Programme’s planning, structuring, issuing and assessing. A list of elites in senior positions at the IDB was produced to be invited for interview. Semi-structured interviews were planned to take place at the IDB’s headquarters in Jeddah. The following procedures will be applied to each interview:

- Contact the IDB to request an hour-long appointment with the selected interviewee. With elites, it is difficult to have an hour-long appointment, but
the researcher will try to use probes to get the interviewee to give more time to answer the questions.

- The researcher will introduce herself and explain her research topic and the major aim that she is looking to achieve. Then, the questions will be provided in a written format and it underscored that answering the questions according to their knowledge and experiences will be a real contribution to the theoretical framework of this research.

- Permission will be requested to record the interview, and to start asking questions and taking notes.

- Probes will be used when needed to get the interviewee to say more about a specific issue or to clarify a particular point.

- The audio record of the interview will be filed by the name and position of the interviewee, the date and the location. Then, the transcription will be added to each file.
Fig. 4.1 The IDB’s organisational chart

(Source: IDB: 2016)

4.7.3 Data Collection Questions

From the literature review, the first set of questions has emerged:
- Q1: How do Islamic beliefs and morals reflect on duties to safeguard wealth?
- Q2: What is the role of safeguarding wealth in human development and well-being?
- Q3: How would faith affect wealth?
- Q4: How is finance recognised by Maqasid Al Sharia’a?
- Q5: What is the role of Sukuk in the circulation of wealth-keeping from the Maqasid al Sharia’a perspective?
- Q6: What is the limit between permissibility and necessity to approve a new structure in Sukuk?

Analysing the data generated from the elite interviews will generate new literature that will be tested against the theoretical framework of the research, before the results will be directly linked to the aim of this study, which is to investigate the compliance of Sukuk products with the basic goals and values of Maqasid al Sharia’a in safeguarding wealth. Further interviews will take place if needed.

In terms of the IDB projects that are financed by Sukuk, secondary data will be generated from the IDB’s annual reports and the project data received from the IDB and other IDB publications.

**4.7.4 Data Analysis**

The primary data will be analysed on the basis of an inductive approach. This will allow the research findings to emerge from significant themes that are implicit in data. The researcher will look for themes that exist in the set of interviews to
create a framework for comparing and contrasting between the different respondents.

The secondary data will be used to examine the compliance of Sukuk projects with *Maqasid Al Sharia’a*. The completed projects from 2007 to 2017 will be analysed through three levels: the first level will analyse the different projects of the same sector and then conclude on the impact of the projects on the societies; the second level analysis will focus on the whole sector achievements of *Maqasid Al Sharia’a* and conclude on the impact of each sector on the societies; finally, the analysis of the MTN Sukuk Programme including all the sectors will conclude on the compliance of the programme with *Maqasid Al Sharia’a*, and will conclude on the impact of the programme on human well-being and sustainable development.

The three levels of analysis will investigate each project against the main four aspects and their elements in the *Maqasid Al Sharia’a* model (Figure 5.1): wealth preservation, wealth development, wealth circulation and the fair distribution of wealth.

### 4.8 Conclusion

To summarise this chapter, the researcher is taking an interpretative stance to explore the IDB participants and their interpretations, perceptions, meanings and understanding, aiming to place the interpretations that emerge into a theoretical and ethical frame. The phenomenological paradigm of the research is intended to understand human behaviour from the participants’ own frame of reference;
therefore, the qualitative approach is leading this research through a single case study that will be investigated in depth within the theoretical framework of the research. Data will be generated via semi-structured elite interviewing, with this type of interviewing suitable for people in positions of power that are considered to be influential, prominent and well informed. The inductive approach to analysing data will used in this research to allow the research findings to emerge from the dominant themes inherent in raw data.
CHAPTER 5  EXPERT OPINIONS ON MAQASID AL SHARIA’A IN HIFTH AL MAL

5.1 Introduction

This chapter will review and analyse the outcome of the elite interviews with the experts of the IDB, the data will be analysed on the basis of an inductive approach. This will allow the researcher findings to emerge from significant themes that are implicit in data. The researcher will look for themes that exist in the set of interviews to create a framework for comparing and contrasting between the different respondents.

With the review categorised into six themes. The first three themes are related to the concept of faith and how it reflects on Maqasid Al Sharia’a in hifth al mal, as the personal conceptions and perceptions of the policy makers as individuals will have a major impact on the purpose and the process of their decisions related to Sukuk issuance. The second set of themes emerged from the controversial debate about the fulfilment of the requirements of Sharia’a in Islamic finance products in general, and in Sukuk products in particular, in addition to the role of Sukuk in circulating wealth as a major requirement of Maqasid Al Sharia’a in hifth al mal.
5.2 Islamic Beliefs and Safeguarding Wealth

The first theme is the impact of Islamic beliefs on safeguarding wealth, where the following question was asked:

Q1: How do Islamic beliefs and morals reflect on duties to safeguard wealth?

Most of the experts agreed that it is the obligation of the Muslim to earn his living and income from legitimate resources and spend it on legal purposes. A Muslim is also required to observe the Islamic rules on earning and spending money that include wise spending, avoiding squander and avoiding any element of riba, gharar and uncertainty. Expert B pointed to the rationale behind Muslims’ obligation to safeguard wealth, as this asset is given to all mankind by God for a certain purpose, namely to develop and populate Earth. Therefore, it is Muslims’ duty to safe the wealth of God from waste or destruction and to develop it.

Expert C argued that the individual responsibility perspective is extended to different levels: the society on the first level and then the country, before reaching the humanity level. He focused on the hadeth from Sahih Al Bukhari of “He who dies while defending his property is a martyr” to illustrate the importance of the protection of wealth as part of belief and the moral responsibility.

Good governance, transparency, trustworthiness, responsibility, accountability and fairness should be the main pillars when we are considering the crucial factors to safeguard the wealth. Islam has always defended these values and called for monitoring them in business as well as personal practices.

(Expert E)
The opinion of Expert D is clearly pointing out a significant perspective. He differentiated between the impact and effect of morals on believers and non-believers, while clarifying that the believers are deeply influenced by Islamic morals, duties and the fear of God. Consequently, they devote all their efforts to protecting and developing this wealth as a trust of God. Moreover, this is applied to public and individual wealth. He adds that Islam urges Muslims to use the blessings given by God wisely without any waste, that extends to all types of wealth such as water, clothing, and food; for example, Muslims are asked to use water very carefully for ablution, and it is forbidden to have longer clothes than needed.

Expert G expressed his concerns about the practice of Islamic finance, as it provides financing to customers without questioning the ethics and moralities of this financing, and how it is contributing to the welfare of the public. He confirmed that morality and ethics should be applied under the whole umbrella of *Maqasid Al Sharia’a*.

Even in the West, [there is] discussion of bringing the ethics in the investment decision-making. The idea is to bring Islamic finance into the mainstream and to apply the ethics of Islamic finance into finance under the foundation of responsible finance.

(Expert G)

To conclude on these perspectives, the individual is the core of the wealth safeguarding process. His own behaviour in earning and spending wealth will directly affect the preservation of the wealth. As confirmed by Attia (2007), the preservation of wealth through moderation in spending while avoiding
extravagance and wastefulness will extend to affect his community and the whole society on the state level as he is the basic component at all levels. This classification of the extended responsibility to different levels is in accordance with the classification of Attia (2007), which includes four realms: individual, family, *Ummah* and humanity.

Wealth being a trust from God is a basic ground for beliefs and morals that will govern the behaviour of the individual towards this wealth, to preserve and develop in order to achieve his main mission in populating Earth as a vicegerent. Finally, the beliefs and morals of the individual create an integrated behaviour that will cover all aspects of his life and all his dealings at all levels, which will lead to highlighting a significant issue: the moral-based behaviour is applied to all believers and not Muslims only, as in fact not every Muslim is a believer and not every believer is a Muslim. The universal concept of morals and ethics should unify all mankind to serve humanity and develop Earth with shared values, morals and ethics that will indeed bridge the gap between different cultures and religions for the benefit of all mankind.

### 5.3 Safeguarding Wealth and Human Development

The second theme concerns the impact of safeguarding wealth on human development, where the following question was asked:

> Q2: *What is the role of safeguarding wealth in human development and well-being?*
Some of the experts confirmed that developing wealth is crucial to fulfilling the requirements of all societies. Expert B pointed to the increasing needs of people and the rising population that demand the development of wealth to fulfil the needs of all, adding that the role of technological development is very significant. Expert D contributed to this point by saying that all types of development require resources to achieve the well-being of all mankind, as it is essential to safeguard all types of resources to be able to secure the requirements for the development and the well-being of all.

Safeguarding wealth plays a great role in human life development in all aspects to benefit the individuals and the whole society. Wealth is a trust given by God to the human to use it for the benefit of the whole society.

(Expert D)

Expert E’s opinion adds a more comprehensive aspect to the previous, where he argued that applying characteristics such as transparency, trustworthiness, responsibility, accountability and fairness to the minds and hearts of the individuals since their young age will ensure a holistic approach of safeguarding wealth, and for that to become part of their living culture leads to fairer and more equal distribution of wealth among the society, which is important for the long-term stability of any nation. He added that that is exactly what development policies need to flourish in any society.

The opinion of Expert A echoed the opinion of Expert C in terms of the levels of responsibility, where Expert A stated that the general duty includes the duty of individuals, the community, government and state to ensure that any behaviour at any level in earning or spending wealth should be according to Islamic
Sharia’a. He expressed the role of the state in setting the rules and regulations to ensure justice among people and no discrimination either on religious grounds, sex, origin or any other kind of discrimination. All individuals should have the same rights to access wealth and to earn their living.

According to a number of studies it is always consistent that if you bring in ethics, faith and morality this is good for wealth protection. (Expert G)

The previous opinions confirm Lahsansna and Hassan’s (2011) theory that classifies the preservation and protection of wealth under the category of necessity, with all the experts confirming that the preservation of wealth is crucial to fulfil the needs of all societies. Furthermore, the increasing population and the growing demands of communities require the development of wealth to respond and fulfil the needs of all. The other concept that is confirmed by the experts is that the preservation of wealth is essential to achieve the other Maqasid. This role was reviewed through the priority of Maqasid Al Sharia’a, whereby some Sharia’a scholars gave a higher priority to the preservation of wealth over other Maqasid. Both concepts are homogeneous with Chapra (2008), whereby he confirmed that the development and expansion of wealth are important to ensure the fulfilment of the needs of all, and to achieve the other Maqasid of Sharia’a. Moreover, Attia (2007) confirmed that the preservation of the nation’s wealth is crucial to achieve sustainable development.

It is significant to consider the role of government at this level, which will include i) setting the rules and regulation to protect personal and public properties, ii) the
allocation of resources, iii) ensuring fair access to wealth for all individuals, and iv) ensuring justice in wealth distribution. That was confirmed by Chapra (2008) in his discussion on the significant role of the government in economic development, including the reorientation of monetary policies and regulations, and promoting the equitable distribution of wealth.

5.4 Faith and Wealth

This theme concerns faith and how personal beliefs affect the personal dealing with wealth, where the following question was asked:

Q3: How would faith affect wealth?

All opinions confirmed that faith deeply affects the behaviour of the individuals towards wealth, including feeling the responsibility to preserve wealth and all resources as a trust from God. Expert D extended this point and added that all known religions urge the believers to be wise in using all the blessings given by God, and accordingly the believer should save wealth and resources from waste and preserve the wealth of the society or the institution. Confirming the role of faith, Expert C defined wealth according to belief, where he related wealth to the halal means of acquiring. He added that the composition of this build is affected by belief, and that is different in Muslim and non-Muslim societies.

Expert A added that Muslims who follow closely the rules of Islam and the teaching of the Prophet Muhammed will earn their living and their wealth and spend it in accordance with the lawful means. People with weak faith do not care about the means of earning and spending wealth.
Faith will ensure that we acquire and spend wealth within the permitted and prescribed Islamic values and practices in a moderate manner while respecting and not transgressing other people’s rights. The act of voluntary sadaqah in addition to obligatory zakat when it falls due and to be distributed to the rightful recipients would ensure fair distribution of wealth, which is crucial for the long-term objectives to create social harmony and economic justice. Islam also calls for preserving wealth for the next generations so that societies are built on strong and fair foundations.

(Expert E)

The first three question are related and most of the answers to the questions are interconnected, with all experts confirming that wealth is a trust from God, which is similar to the statement of Attia (2007) that wealth belongs to God and it requires the responsibility of human beings to develop wealth and populate Earth. There are several more points to highlight in this part. First, in terms of the different perspectives of Expert C and Expert D, whereby Expert C differentiated between Muslim and non-Muslim societies regarding the effect of faith on their behaviour towards wealth, while Expert D clearly used the term believer and pointed out that all religions urge their believers to be wise in using the blessings from God, which means that faith is not related exclusively to Muslims and not every Muslim is a believer. The perspective of Expert D elaborated more on the universal concept of Islam as it confirms the shared morals and values between the believers of all religions. The second point to mention in this theme is the role of the voluntary charity and the obligatory zakat as a major element to achieve a fair distribution of wealth, which is highly promoted by faith.

5.5 Maqasid Al Sharia’a and Finance

The following theme is related to the debate about the fulfilment of the Sharia’a requirements in terms of Islamic finance products, where the answers could be
applied to Sukuk as a major instrument in the Islamic financial market. The following question was asked:

**Q4: How is finance recognised by Maqasid Al Sharia’a?**

The experts had mixed opinions in answering this question, with their significant contribution mostly related to their profession. Expert E stated that the current Islamic finance practices and services have not been geared enough towards achieving *Maqasid Al Sharia’a* as aspired by Islamic economics, although they have still helped Muslim communities by providing *Sharia’a*-compliant banking and financial services which were not available 20–30 years ago. Moreover, preserving wealth for productive purposes is one of the most important objectives of *Sharia’a*. He added that providing commercial opportunities and creating employment for young people are also important objectives of *Sharia’a*, which are all targets of efficient financial systems and paradigms.

Expert C related financial development to economic development, pointing to the broad conventional literature in this discipline. He addressed European history to illustrate his final statement to answer this question, mentioning that when Italy started development, they had been using a modified form of *mudaraba* that was called *comenda*. According to the expansion of trade, there was a similar financial innovation that included the development of joint companies. Referring to the Roman Empire, he added another factor that affects finance, which is the law order. Although the Roman Empire expanded, trade declined as a consequence of the weak implantation of laws. According to the verse “who has fed them [saving them] from hunger and made them safe [from fear]” (S.4, 180
Vs. 106), he summarises his opinion that the two fundamental factors in any society to develop are protection from hunger and protection from threat.

One of Maqasid Al Sharia’a stated by Imam Al Ghazalli is safeguarding wealth. Money is one of the five principles and we have not only to safeguard it, but also to develop it to be able to take care of the needs of the society.

(Expert B)

The opinion of Expert A is built upon the concept that finance is a means to develop, where he refers to the role of humans as caliphs, adding that God made some individuals wealthy and others poor, but that all of them should behave according to the principle of Islamic law. In his opinion, finance is a means to develop as a person, community or the state as a whole. While he confirmed that finance at each level should be related to the real economy, he raised an alert towards some of the practices of conventional finance that aim to just make money, print papers and hedge, or all other exercises that have resulted in a number of very serious financial collapses. Moreover, the Islamic financial industry was recognised even by the Western countries, as it was able to avoid the very negative results of the last financial crisis. He added that the traditional loan with interest is not allowed in Islamic law and Sharia’a scholars consider any kind of favour as an interest that is prohibited. Islam only allows interest-free loans (qard hassan).

Expert G differentiated between two perspectives: the economic perspective and the Sharia’a scholars or legal perspective. Avoiding explaining the legal perspective, he focused on the economic perspective. The economic view considers the impact of the finance on the society; in their perspective of
economics it is believed that applying *Maqasid Al Sharia’a* will achieve a great benefit to the communities. He illustrated this perspective in a simple example: when financing a public road that is considered a basic infrastructure project, analysing such a project from an Islamic finance perspective will result in positive indications as all contracts are *Sharia’a* compliant and it looks to be a *Sharia’a*-compliant project. However, analysing the project from the *Maqasid Al Sharia’a* perspective may indicate a negative impact such as destroying the communities that used to live in that area and not protecting the environment, where the end result will be that this project is not compliant with *Maqasid Al Sharia’a*.

*Halalan tayyiban* [lawful and good] is used to explain applying *Maqasid Al Sharia’a*; *tayyiban* is the part of *Maqasid Al Sharia’a*.

(Expert G)

Expert F reported that the foundation of Islamic economics and finance is based on the concepts of economic well-being, universal brotherhood and justice, equitable distribution of income and the freedom of the individual within the context of social welfare. He continued that these objectives promote a society of well-being, where every individual and organisation commit to justice, equity and freedom.

He then expressed in detail *Maqasid Al Sharia’a* and its categories as an introduction to his opinion on *Maqasid Al Sharia’a* in finance, stating that the very objective of *Sharia’a* is to promote the well-being of the people, which lies in safeguarding their faith, self, intellect, posterity and wealth. He added that *Maqasid Al Sharia’a* are designed to promote benefits and repel harms. Referring
to Imam Al Ghazalli’s theory in Maqasid Al Sharia’a, he said that the Imam categorised the objectives into two primary categories: one related to the religion and the other related to the material world. The category related to the material world is further classified into three broad categories: the essentials (daruriyyat), the supporting (hajiyyat) and the embellishments (tahseeniyat). The essentials are those which are necessary with no exception, for the benefit of religion and the material world, and the absence of which will lead to chaos. The supporting are those interests that are required for the betterment of the society, the absence of which may lead to hardship and difficulty. The embellishments are interests leading to a desirable status.

Regarding Maqasid Al Sharia’a in Islamic finance, Expert F stated that the framework of Maqasid Al Sharia’a in financial transactions is categorised as specific objectives, which only apply in specific disciplines. He referred to Muslim jurists’ classification and the five main dimensions to be achieved for wealth preservation: the preservation of wealth through the protection of ownership, through its acquisition and development, through damage protection, through its circulation, and through the protection of its value.

To summarise the opinion of Expert F, Maqasid Al Sharia’a in Islamic finance is to protect the rights of every party involved in the contract in the sense of their capital, with profit gaining simultaneously promoting the transparency and trust in the relationship as the specific approaches; while for the general approach, it aims to promote justness and fairness in financial dealings in terms of
harmonising the relationship between the customer and trader in the market as the condition.

Expert D expressed his opinion that Maqasid Al Sharia’a urge the believer to safeguard all aspects of life, where the believer should keep all the elements of Maqasid Al Sharia’a: “life, faith, intellect, posterity and wealth”. To do so the believer needs resources, and there are close ties between living up to Maqasid Al Sharia’a and preserving the resources; utilising and keeping the resources under qualified management and using them wisely in order to keep Maqasid Al Sharia’a. He continued his explanation about the wise use of resources and how this is related to the Islamic concept of moderation, reminding that we are ordered that everything in our life should be moderate. According to this, squandering and carefree spending are not allowed, as spending or using resources should be limited to the necessity to achieve the purpose.

Wealth should be invested in lawful purposes and limited to Sharia’a that includes preserving wealth from waste or destruction and to spend in legal purposes. For example, if the wealth belongs to orphans then it is a trust until they grow and return back to them. If the wealth is a public trust then you should preserve and spend it according to the state law and protect it from any risk.

(Expert D)

As mentioned earlier, the answers are related to the profession of the experts, in addition to their current positions and practices. Experts at more senior positions focused on the general concept over the details; this concept is applied to all their decisions and not only limited to Sukuk issuance. Speaking about moderation, for example, moderation as an Islamic concept could be applied to
each human action. Using this concept as a link to the preservation of wealth is a unique approach to explaining the allocation of resources. To conclude, the opinions and concepts that they addressed are as follows: the first concept is that finance is a means to development as an individual, community and the whole state; second, finance should be related to the real economy; third, resources should be utilised under the responsibility of a qualified management; fourth, wealth should be invested in lawful purposes and spent wisely in legal purposes; and finally, the impact of finance on the communities should be considered.

Most of the opinions of the experts with a financial profession and a closer position to the daily work on Sukuk are specific and linked to their practice. The elements pointed out by this group on the role of finance in recognising *Maqasid Al Sharia’a* are: i) providing a *Sharia’a*-compliant banking and financial system, ii) preserving wealth for productive purposes, iii) providing commercial opportunities, iv) creating employment, and v) promoting all the elements that will protect the rights and maintain trust between the parties in the contract.

All of the previous elements should be in the context of economic well-being, universal brotherhood, justice and the equitable distribution of wealth to achieve *Maqasid Al Sharia’a*. The previous elements will be applied to the *Maqasid Al Sharia’a* model that is developed to analyse the MTN Sukuk Programme.
5.6 Sukuk and the Circulation of Wealth

This theme concerns a major requirement to achieve Maqasid Al Sharia’a in *hifth al mal*, which is the fair circulation of wealth, where the following question was asked:

Q5: *What is the role of Sukuk in the circulation of wealth-keeping from the Maqasid Al Sharia’a perspective?*

The mixed opinions of the experts towards this question represent a great contribution to this research and the literature of this discipline. However, the basic thoughts of the experts are very close and support each other. The opinion of Expert E was very focused as he is working closely with Sukuk. He divided the role of Sukuk in the circulation of wealth into two basic roles. The first is income generation for the savings of investors and resource mobilisation for the investments of the business, which gives an opportunity to the Muslim *Ummah* in particular to participate in the income generated from projects of large corporations for a certain period of time without taking excessive equity risks.

The second role is providing a mechanism for raising capital directly from the capital markets, which gives opportunities for providers and users of money to benefit through finance and investment channels to support societies and progress economic development.

Sukuk enable us to shift the wealth from one part to another, from the savers to users, this what the financial system generally does. Sukuk is one of the important instruments used for this purpose. The financial system overlies resources from the savers and makes them available to the users to help in developing and then fulfilment of the needs of all.

(Expert B)
The opinion of Expert A is not different in thoughts than in Practice. He stated that Sukuk is a replacement of the bonds in conventional finance, with Sukuk and bonds serving the same purpose of raising funds either for a certain project or for liquidity purposes. However, the bond is a form of loan, whereby the issuer is considered a borrower and the investors are considered as creditors, and the bond issuer is required to pay interest to the bondholders. In the case of Sukuk there is no borrowing, but rather it is a reality round action of assets. He continued by giving a direct example of the IDB case, where IDB sells its assets to an SPV that issues the Sukuk. The investors are considered as the beneficiary owners of the assets, and they get a return on the assets that they own. In all these stages, there is no borrowing, credit or interest; there are only real economic transactions. Moreover, Sharia’a scholars require the assets that are sold to an SPV to be recognised as “off the balance sheet”, but in bonds the loan is on the balance sheet. He added that money itself is not capable of generating money, only real economic activity is capable of that, while stating that now Western countries have become more familiar with the contribution of Sukuk, the UK was very interested and they issued their first Sukuk that was very successful—they had approached the IDB in this respect. Also, the Islamic banks in the UK have asked the IDB to issue British Sterling Sukuk, and the central Bank of England has recognised the IDB Sukuk for liquidity purposes. Our member countries are also exercising: Malaysia is now the centre for Sukuk in the Muslim world, Indonesia issued their first sovereign Sukuk, and Bahrain, Dubai, Tunisia and Egypt are on the way.
Expert G confirmed, as per other experts, that the role of Sukuk as an alternative way of financing for many countries allows access to funds for countries and a Sharia’a-compliant instrument for investors, takaful companies and others. He raised another point about trading Sukuk as part of wealth circulation, pointing at the Indonesian experience whereby they create retail Sukuk issued by the government for individual investors. This will give the opportunity for individuals to participate in the economy, and they can sell Sukuk when they need money, which is another phase of circulation.

We have to question the purpose of Sukuk assets, asking for the details of the use for these assets: What is the asset used for? Covering debt, infrastructure or others? What is the end result to the community? Having a composite index to measure Maqasid Al Sharia’a will be very helpful to check if Sukuk meets Maqasid Al Sharia’a.

(Expert G)

The opinion of Expert C was quite different as he reported that Sukuk are not contributing significantly to the circulation of wealth. He spoke about two roles for Sukuk, the potential role and the actual role, and the considerable unrealised potential, since despite both the sovereign Sukuk issued by governments and corporate Sukuk contributing to development, circulation is still limited. The only exception is the retail Sukuk, whereby you issue Sukuk in small dominations in which individuals can participate. However, the actual situation now is institutional participation only. Then he gave an example to illustrate the scope of Sukuk in microfinance of an organisation in Bangladesh that issued microfinance bonds, explaining this as follows. Most of the microfinance started as a non-profit activity, but now it has become a profit activity as they are earning money out of this activity. He continued that microfinance Sukuk are a good alternative to
microfinance bonds, and that the type of Sukuk will naturally be short-term Sukuk that are linked directly to the economy. Finally, he confirmed the significant advantage of Sukuk in liquidity management.

Expert F’s opinion was more detailed according to his financial experience and his involvement in Sukuk structure innovation. He started with an introduction, defining the concept of Sukuk as the outcome of a process in which the ownership of the underlying assets is transferred to a large number of investors through certificates representing the proportionate value of the underlying assets. Sukuk has the characteristics of having large investors or Sukuk holders to invest in the pool of assets for productive purposes. Since the characteristic of Islamic finance and in particular for Sukuk issuance must have the underlying assets to be securitised, Sukuk has been highly associated with financial instruments that are very useful for economic development, and as a result they are directly linked to real economic activities.

Sukuk issuance is an alternative to raising sizeable amounts of funding for development projects; for example, in the case of sovereign Sukuk, the country of issuance is able to raise funding for infrastructure projects. In Malaysia, a government-linked company (Plus Berhad) successfully raised RM 9 billion to fund the construction of a Malaysian highway as part of the government efforts to enhance infrastructures. In this regard, the Sukuk is a viable and vibrant financial instrument which is able to support any productive economic activities. He also spoke positively about the Indonesian experience in the issuance of retail-based Sukuk that is considered as a recent innovation to enable extended opportunities.
to larger investors, including the public, to be involved in Sukuk. The pioneering Indonesian experience is part of comprehensive financial-inclusion initiatives.

He used the *ijarah* Sukuk as a plain (*vanilla*) structure to analyse the current practice: *Ijarah* Sukuk are based on the *ijarah* contract, whereas Sukuk are issued by the issuer for the investors to participate in the ownership of the underlying asset, for example a plot of land, where the proceeds from Sukuk issuance will be used to finance any productive related activities. The land is subsequently leased to the issuer/obligor, who will fulfil the financial obligation on a periodic time frame as part of the rental payment to the Sukuk holder. Basically, in this structure, the issuer will have access to a large pool of investors through participation in the ownership of land evidenced by the Sukuk certificate.

He then expressed his opinion about the role of Sukuk in wealth circulation, whereby Sukuk has a role and full potential to ensure an efficient wealth circulation medium for productive economic activities, adding that Sukuk are the instruments that enable the involvement of many parties for development purposes. Unlike financial instruments offered by conventional finance that mobilise deposits and distribute finance, Sukuk are integrated and give benefit to individuals, the public and private sectors through effective partnership. Sukuk issuance either from the public sector through sovereign Sukuk or the private sector through corporate Sukuk will be issued to the large investors and the public. The benefit from Sukuk will be further intensified if there is an effective partnership between the public and private sectors, through which the private sector also contributes to the economic development. In assessing this in the
light of *Maqasid Al Sharia’a*, the financing requirements for economic development are forecasted to be massive, in particular to the developing countries that are seeking huge amounts of capital to fund infrastructure projects and to support economic development.

Sukuk are viable and vibrant financial instruments for economic development, particularly for infrastructure development, promoting inclusive growth and reducing poverty by generating economic linkages that provide access to economic activities for many individuals, thereby creating jobs. These direct and indirect effects of Sukuk as financial instruments are in line with all *Maqasid Al Sharia’a* in wealth preservation through the protection of wealth, acquisition and development, damage protection, circulation and the protection of its value. Sukuk are financial instruments fulfilling all the characteristics above, which will enable them to support *Maqasid Al Sharia’a* in wealth protection.

(Expert F)

The opinion of Expert D is in line with the opinion of Expert G, as he addressed Sukuk as merely a tool that can be used for any purpose. In his judgment about Sukuk depending on the issuer and his purpose for issuing Sukuk, he gave an example of a housing project carried out by the government in order to enable young people to marry, as a project that could be financed by Sukuk and will play a very important role in helping this society in the light of *Maqasid Al Sharia’a*. In contrast, when Sukuk is issued for consuming purposes and realising profits only without full consideration for the community service and benefit, this is not a way to achieve *Maqasid Al Sharia’a*.

Sukuk themself are just a tool that could be used for helping to achieve *Maqasid Al Sharia’a*, or it could be the opposite. That depends on who is issuing the Sukuk.

(Expert D)
Expert D continued that the IDB is issuing Sukuk to mobilise resources in order to finance specific projects for the serving of the people, such as infrastructure projects and financing agricultural projects that will help the poor to be part of the economic circle, while supporting the food security for the whole community and benefiting trading and the whole market. Simply put, it is of benefit for everyone. In comparison to bonds, he stated that most of the legitimate purposes of the bonds could be served by Sukuk, with the big difference being that bonds are in the market for hundreds of years, while Sukuk are in the market for only around twenty years. He continued that he could not see any reason that prevents Sukuk in the future from serving almost all the legitimate purposes that are served by bonds today.

Sukuk are instruments to mobilise the surplus funds from individuals or institutions to invest for the benefit of all, including the fund owners and the whole community. To achieve Maqasid Al Sharia’a and consequently the benefit of all, funds should be managed by experts that have the capability, knowledge and technology to invest those funds and achieve the best return for all.

(Expert D)

The previous opinions represent an agreement on major issues that affect the role of Sukuk in the circulation of wealth. First, there is the confirmation of all experts that all the transactions that take place during Sukuk structuring should be real economic transactions, and that all the investments should be in real economic activities. This is related to the circulation of wealth in the theory of Ibn Ashur, as the real economic transactions and activities will result in a multi-shift of wealth and circulation among as much of the population as possible. The conclusion from that is that there is a direct correlation between the shift of
wealth among parties and the compliance of *Maqasid Al Sharia’a*. Second, there is agreement about the significant role of Sukuk in liquidity management, which was raised by a number of previous studies, and the growing demand in relation to the growth of the Islamic capital market and *takaful* companies. Third, the investments carried out by Sukuk funds should be for the benefit of all including individuals, institutions, societies and the whole country. We can conclude on the direct correlation between the parties involved in this benefit and the compliance with *Maqasid Al Sharia’a*. Fourth, the end result of Sukuk that includes human development, economic growth, poverty reduction, job creation and any other result that achieves sustainable development, is considered in the context of populating and developing Earth. This should be extended to the positive impact on communities, such as education, health care, housing and other benefits that serve human well-being.

A further single opinion that contributed to the previous agreement indicates that regarding the role of trading Sukuk in the circulation of wealth, although the Sukuk market is still an institutional market, the circulation is achieved at the level of institutions, which curtails the involvement of individuals; this could be accomplished through retail Sukuk in small dominations or the involvement of microfinance Sukuk. Moreover, it becomes clear that Sukuk are just tools that could be used in different means, which means that even if Sukuk are *Sharia’a* compliant, the purpose of issuing Sukuk is critical to judging their compliance with *Maqasid Al Sharia’a*. This supports the concept of this research in differentiating between *Sharia’a*-compliant products and *Maqasid Al Sharia’a*-
compliant practices, which was mentioned by one the experts as *halan taiiban* (legitimate) according to *Sharia’a* and good according to *Maqasid Al Sharia’a*.

The final point that was highlighted by one the experts is the role of quality management in investing the funds raised by Sukuk, whereby this task should be assigned to the most capable experts skilled in knowledge and technology to invest the funds and accomplish the best return for all.

### 5.7 *Sharia’a Limitations in Sukuk Structuring*

The final theme is related to the important role of the SSB and how the policy makers are reacting to this board and their responsibilities.

**Q6: What is the limit between permissibility and necessity to approve a new structure in Sukuk?**

One of the distinguished opinions was the response of Expert D as he started by clarifying that the expression “*Sharia’a* compliant” does not mean that it is *Sharia’a* identical, which means that all efforts are being made to have products that best comply with *Sharia’a*. Clearly, those products did not exist during the early days of Islam, whereby the full foundation of Islamic law was built on the *Qur’an* and *Sunnah*.

Expert C added to this point saying that Sukuk are not 100% *Sharia’a* compliant. He continued that every institution draws the line according to its necessity, pointing to the role of the SSB in an example: Bank A (a private Islamic bank in Saudi Arabia) does not buy IDB Sukuk because the SSB of Bank A says that
those Sukuk are not *Sharia’a* compliant. However, many other institutions are buying IDB Sukuk.

The opinions of the experts are divided into two major groups, basically according to their perspectives, where the first group’s focus is on the form of Sukuk contracts and how they comply with *Sharia’a*, while the second group’s focus is on the substance of the contract that leads directly to compliance with *Maqasid Al Sharia’a*.

The experts from the first group, focused only on the form of the contracts in their discussions, almost all agreed on some concepts that should be considered carefully while structuring Sukuk. Most of their concerns were that assets should securitised, and to what extent they can securitise something that is yet to be produced or not a physical asset. Other concerns raised were the requirement of at least a certain percentage of physical assets as underlying Sukuk assets that will regulate Sukuk issuers to limit leverage emerging from *murabaha*-based assets.

The requirement to have the income generated from assets to be, to the extent possible, the base for income distribution of Sukuk holders would add another layer for not depending on the issuer creditworthiness for issuing Sukuk rather than the ability of assets to generate income.

(Expert E)

The opinion of Expert A was very positive, where he considered the legal prospective of Sukuk besides the flexibility of the *Sharia’a* that generate a number of Sukuk structures. He stated that there are different Sukuk structures that are indeed working well, such as *ijarah* Sukuk, *istisna’a* Sukuk, *murabaha*
Sukuk, *mudarabah* Sukuk and then *salam* Sukuk. He raised two main points that should be considered by *Sharia’a* scholars: the real (not fictional) transaction in the structure, and ensuring that the structure does not contain any element of trying to go around or breach Islamic rules. He added that there is no limit for Sukuk to be structured, and according to that the structure of the IDB Sukuk is very unique, unlike any other structure. He referred to the *Fiqh* Academy rules of Sukuk, and the old (*sanadat almuqaradah*) and the recent (*tawreeq*) as a basic reference to the IDB’s *Sharia’a* committee. As to what appeared to be differences in opinion, Expert A showed his full support for the process of adopting *mudarabah* Sukuk by the IDB as it will allow them to go to the market at any time and with any amount of money, especially after the approval to increase the programme value from $10 billion to $25 billion. However, the *Sharia’a* committee is not allowing this quick movement. He explained more about this argument by stating that the current programme requires a pool of assets. While the *Sharia’a* committee insists that the portfolio contains at least 33% tangible assets, it is not easy to get this percentage and they are trying to convince the *Sharia’a* committee to accept Sukuk as part of the tangible assets.

Expert F shared his thoughts, stating that although Sukuk have become one of the main financial instruments in the Islamic financial world, Sukuk are facing many challenges, especially the prerequisite of the *Sharia’a* requirements. He refers to the AAOIFI when it criticised a number of Sukuk structures used in the market to illustrate the impact of the *Sharia’a* issues on the industry, and how this is limiting the growth of the Sukuk market. He continued that in responding to the
needs of the industry to have guidance in Sharia’a parameters, in 2008 the AAOIFI issued guidelines on Sukuk issuance. Based on the strict requirements imposed by the AAOIFI’s Sharia’a standards on Sukuk issuance, there is more potential for the industry players to innovate the product structuring. All the limitations imposed by right should stretch the industry to bring more economically viable Sukuk instruments without compromising any Sharia’a requirement.

Speaking about the necessity of Sukuk, he mentioned that this is an argument among the concerned parties in the Sukuk industry, as they think that Sukuk as a financial instrument are highly needed as part of the necessity of the market. That is due to various reasons, including the requirement of liquidity instruments for the Islamic financial industry. As such, the Sharia’a sanctions on the Sukuk issuance should not be a hindrance for the market participant to find solutions and to be innovative.

The second group of experts who considered the Maqasid Al Sharia’a perspective from the substance of Sukuk over the form almost all agreed that of most concern is the end result of Sukuk. Expert B criticised the level of permissibility that is present in Sukuk business and in Islamic finance; he clearly disagreed with using Sharia’a instruction to approve the products separately from considering Maqasid Al Sharia’a. He stated, “we have to approve what is permissible and serves Maqasid Al Sharia’a”. Expert G contributed to this opinion by confirming that the basis of Sharia’a is always permissibility. However, he fully agreed with Expert B on two points: the focus on the end result of Sukuk, and the
consideration of *Maqasid Al Sharia’a*. Expert G gave an example of the Malaysian experience, stating that as economists are involved with *Sharia’a* scholars at the SSBs, this will enable them to work and plan in full collaboration. He continues that a common debate takes place between the two parties: the economists are always raising the issue of *Maqasid Al Sharia’a*, confirming that it is not enough to say *Halal* without considering *Maqasid Al Sharia’a*.

During an interview with one the most senior *Sharia’a* scholars, he clearly stated that all *Maqasid Al Sharia’a* issues are just made by economists, he justifies his criticism by confirming that every *Sharia’a*-compliant purpose will defiantly serve *Maqasid Al Sharia’a* in one way or another.

The opinion of Expert D is unique among all the other opinions, as he clearly confirms that this is a task that only the *Sharia’a* committee is able to decide on. He confirmed that the management is considered within the *Sharia’a* framework only after the approval of the *Sharia’a* committee and continued that Islamic banking institutions should obey *Sharia’a* rulings, which depend on the juristic deduction of the *Sharia’a* committee. Their judgment is to satisfy *Sharia’a* principles, which by necessity cannot be considered as a justification to violate the Islamic rules. He again confirmed that the role of the *Sharia’a* committee is to interpret, rethink and deeply understand to be able to find the ways and means of solving the issues, but if anything is against any clear Islamic ruling then no necessity whatsoever will justify crossing the line of *Sharia’a*. He added:

> From my experience with *Sharia’a* committees, they are very capable usually of finding ways and means to serve the benefit. Benefit itself is a
source of legalisation, when there is a clear benefit without any clear interdiction with Qur’an or Sunnah, they solve such a difficulty.

Most of those issues will be solved if there is a reference to the whole Islamic finance industry. Although the IDB has its Sharia’a committee, the Fiqh Academy of the Organization of Islamic Cooperation is the IDB’s main Sharia’a reference. The Fiqh Academy represents the Muslim nation and its juristic deduction represents a legal source. We are working very hard to make the Sharia’a committee of the IDB a reference for the industry under the supervision of the Fiqh Academy; in fact, some of the institutions consider the IDB a Sharia’a reference to some of their financial operations.

(Expert D)

The diversity of opinions regarding this issue is remarkable. First, while some experts referred to the resolutions of the Fiqh Academy as a reference to all Sharia’a issues, one of the experts referred to the AAOIFI as a reference to justify his opinion. Second, some concerns were raised around the SSB: i) the role of the SSB in accepting or rejecting the Islamic financial products of other institutions that are approved as Sharia’a-compliant products at the same jurisdiction, which could be considered as a serious obstacle in the Sukuk market; ii) the focus of the SSB on Sharia’a instructions to approve the products without more consideration to serve Maqasid Al Sharia’a, with the urgent need for an index to measure Maqasid Al Sharia’a raised by one of the experts; and iii) the concern of some experts that the SSB is holding up the expected growth of Sukuk issuance, where there is a continuing argument between practitioners and Sharia’a scholars about the details of Sukuk structuring. However, one opinion was very supportive of the SSB relying on their capability to resolve all the crucial issues, referencing the Malaysian experience that involves economics with Sharia’a scholars at the SSB in full collaboration to approve financial products.
that serve *Maqasid Al Sharia’a*. The urgent need to have a *Sharia’a* reference for the industry was raised by one the experts as a solution to all the previous issues, with previous studies concluding that standardisation is the resolution to most of the legal and *Sharia’a*-related issues in Sukuk, which will allow those Islamic financial products to compete with conventional products in the global capital market. The other point to raise around the diversity of opinions is the nature of the organisational relations with the SSB, which could be detailed as follows: the more senior executives are confident to rely on the SSB to hold the responsibility of the *Sharia’a* approval for new products, while senior practitioners are more engaged with the SSB process of products’ approval through trying to convince *Sharia’a* scholars to adapt some issues to their resolutions. This is due to the gap between the two different disciplines that are involved in the Sukuk structuring process: the financial engineering that is needed to structure Sukuk, and the Islamic law or *Sharia’a* to approve the final product, which requires a full understanding by the *Sharia’a* scholars of the process details in order to approve the final product.

Some experts specified the limit of permissibility as follows: i) the nature of securitised assets; ii) the requirement of a certain percentage of physical assets in the underlying Sukuk assets; iii) the base for income distribution of Sukuk holders should depend on the ability of assets to generate income, not on the issuer creditworthiness; iv) the real transaction in Sukuk structuring; and v) the Sukuk structure should be free of any element that breaches Islamic law in a direct or indirect way.
5.8 Conclusion

The first set of themes that are related to the philosophy of faith and wealth indicates that the policy makers are speaking about their own values and morals; they are not conceptualising the answers. To give some examples: 1) considering that wealth is a trust at all levels that includes the resources available for them at work, which shows their perceptions regarding wealth; 2) referring to the fear of God that governs the duties to protect and develop the wealth; and 3) matching all their answers to the daily life examples, such as using water carefully for ablution as part of wealth preservation, which shows how they believe and apply Islamic morals to their daily life. The narrative presentation of the interviews gives an opportunity to the reader for more interpretation.

Regarding the impact of safeguarding wealth on human development, there was agreement among the experts that wealth is important to achieve the other Maqasid that lies in safeguarding faith, human self, intellect and posterity, which involve all aspects of human development and well-being. However, some of the experts highlighted the urgent need to develop and expand wealth as a crucial requirement of safeguarding wealth to fulfil the needs of the increasing population. They added the role of the holistic approach in the minds and hearts of the new generation through the educational system, in addition to the role of technological development. As confirmed by many scholars such as Ibn Ashur, Ibn Khaldon and others, justice is the pillar that ensures achieving Maqasid Al Sharia’a in hifth al mal. The outcome of this theme confirms the dimensions and
elements of the Islamic human development from the previous theoretical framework, as presented in the following table.

**Table 5.1 Dimensions and elements of the Islamic human development from the previous theoretical framework**

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Elements</th>
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<tbody>
<tr>
<td>Justice</td>
<td>Social justice</td>
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<td></td>
<td>Equitable filtration on the excessive claims on resources</td>
</tr>
<tr>
<td></td>
<td>Socioeconomic restructuring</td>
</tr>
<tr>
<td></td>
<td>Equitable distribution of wealth and income</td>
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<tr>
<td>Sustainable development and human rights</td>
<td>Need fulfillment</td>
</tr>
<tr>
<td></td>
<td>Full employment</td>
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<td></td>
<td>Education</td>
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<td></td>
<td>Health</td>
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<td></td>
<td>Comfortable housing</td>
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<td></td>
<td>Clean environment</td>
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<tr>
<td>Political authority</td>
<td>The role of the state</td>
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<td></td>
<td>Political vision and will</td>
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<tr>
<td></td>
<td>Political leadership</td>
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<tr>
<td></td>
<td>Effective policy mechanism</td>
</tr>
<tr>
<td>Sharia’a values and institutions</td>
<td>Motivation for individuals and societies</td>
</tr>
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<td></td>
<td>Religious accountability</td>
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</table>

The following theme is *Maqasid Al Sharia’a* in Islamic finance, which contributes to this research, as this particular aspect is not a common subject in the literature. Most of the studies focus on the *Sharia’a* requirements in the contracts, while this research focuses on the purpose and the impact of Sukuk as an Islamic financial product. The outcome of the interviews with the more senior position holders indicates the following points regarding *Maqasid Al Sharia’a* in Islamic finance:
• Finance is a means to develop individuals, communities and the whole state.
• Finance should be related to the real economy.
• Resources should be utilised under the responsibility of qualified management.
• Investing and spending wealth in lawful and legal purposes.
• The positive impact of finance on the communities.

These elements will be added to the *Maqasid Al Sharia’a* model developed through the theoretical framework. On the other hand, the outcome of the interviews with the financial profession experts was similar to the opinions discussed in the theoretical framework, where they confirm the importance of providing an Islamic banking and financial system, preserving wealth for productive purposes, providing commercial opportunities and creating employment.

The fifth theme is the role of Sukuk in the circulation of wealth, which indicates the following significant points:

• The direct relation between the shift of wealth among parties and the compliance of *Maqasid Al Sharia’a*.
• Sukuk are significant instruments in the liquidity management process, particularly with the growth of the Islamic capital market.
• The investments by Sukuk funds should be for the benefit of all; individuals, institutions, societies and the whole country. There is a direct
relation between the parties involved in this benefit and the compliance with *Maqasid Al Sharia’a*.

- The end result of Sukuk, including human development, economic growth, poverty reduction and job creation, which achieves sustainable development that is considered in this context as populating and developing Earth.
- The positive impact of the investments on communities, such as education, health care, housing and other benefits that serve human well-being.
- Sukuk are just tools that could be used in different means; even if Sukuk are *Sharia’a* compliant, still the purpose of the issuance should be clearly achieving *Maqasid Al Sharia’a* in *hifth al mal*.
- The task of investing the Sukuk funds should be assigned to the most capable experts skilled with knowledge and technology to invest the funds, accomplishing the best returns for all.

The last theme was the role of the SSB and their relation to the policy makers, whereby the outcome diversified between the full support of the SSB members and their capability to resolve the crucial issues, and on the other hand blaming them for not approving some products that are approved in the same jurisdiction. Some of the opinions highlighted a significant point, that the concern and focus of the SSB members is usually for the *Sharia’a* instruction to approve the products without more consideration to *Maqasid Al Sharia’a* that will be achieved through the product.
From the previous conclusion and the theoretical framework of this research the MTN Sukuk *Maqasid Al Sharia’a* model is now developed by the researcher to analyse the IDB Sukuk Programme’s compliance with *Maqasid Al Sharia’a*. The model presents the relations through the process of Sukuk issuance until the end result of the Sukuk investments within the context of *Maqasid Al Sharia’a*. Sukuk issuance is influenced by two variables: the mission of the institution that is issuing Sukuk and the decision makers at that institution. Realising *Maqasid Al Sharia’a* at this stage is related to the aim and purpose of the Sukuk issuance, which is determined by the vision and mission of the institution and the impact of the decision makers.

Sukuk issuance is followed by utilising Sukuk funds into projects, while realising *Maqasid Al Sharia’a in hifth al mal* at this stage is affected by four correlated dimensions: wealth preservation, wealth development, wealth circulation and fair wealth distribution.

The final and end result of the process is the impact of the projects on the individuals, society and the country. Realising *Maqasid Al Sharia’a* at this stage is illustrated by achieving 1) human well-being, which is mostly related to the positive impact on individuals and societies; and 2) sustainable development, which is relates to the positive impact of the projects on the wider community and the whole country.
Fig. 5.1 The MTN Sukuk *Maqasid Al Sharia’a* Model

**Decision makers**
- high standard of quality management
- enabling environment and natural resources
- reduce excessive claims on resources

**Sukuk issuer**
- fair circulation among many parties
- facilitating trading, providing infrastructure, transportation, marketing facilities
- promoting financial activities

**IDB mission**

**Sukuk funds projects**

**Wealth Preservation**
- productive real economic activities
- socioeconomic prosperity
- increasing productivity, research, technology improvement

**Wealth Development**

**Wealth Circulation**
- livelihood
- fair opportunities for employment
- promoting microenterprises and microfinance

**Fair Wealth Distribution**

**The end result**
- Sustainable development
- Human well-being

**Impact**
CHAPTER 6  IDB PROJECTS FINANCED BY THE MTN SUKUK PROGRAMME

6.1 Introduction

This chapter will include the analysis of IDB projects that are financed by Sukuk. Analysing the projects will take place on three levels: the first level is analysing each project against the four dimensions in the MTN Sukuk *Maqasid Al Sharia’a* model. A 0–100 scale is given to measure the elements in each dimension. The second level analyses all the projects in each sector, applying the same scale to measure the elements in each sector. The final level of analysis is done for the whole projects that presents the utilised funds of the MTN Sukuk Programme.

IDB projects that are financed by Sukuk in the 2007–2017 period are fostering inclusive and development of the member countries by targeting the following sectors:

- Improving quality of life through education and health projects, where education sector projects include higher education, vocational and technical education, in addition to the basic education that is targeted via the IDB Bilingual Programme.

Health sector projects include the construction of health facilities, procurement of medical equipment, training of healthcare providers and awareness raising.
• Investing in infrastructure that includes the following sectors:
  - Energy projects such as the 225 MW high-efficiency combined-cycle power plant project in Bhola district in Bangladesh, which was successfully completed in September 2015 and is now providing more than 1,300 GWh units of electricity to the national grid. This megaproject itself created 3,500 direct new jobs.
  - Transportation, to finance the construction and development of roads, rail, ports and airports to meet the needs of the member countries for sustainable transportation.
  - Urban development, to support the living standards in terms of providing water, sanitation, transportation and housing as per the two completed integrated social housing projects in Mali that facilitate about 2,000 households along with electricity, sewerage services, adequate drainage and road infrastructure.
  - Public–Private Partnership (PPP), targeting non-sovereign infrastructure projects to promote economic development through job creation and regional integration that will serve the sustainable growth in the member countries, as per the three completed projects in 2016 that were put into operation—gas-fired combined-cycle plants in Pakistan and Bangladesh, and an Islamic participation bank.
• Boosting agriculture to increase production, empowerment and an overall increase in economic activities in member countries. Special programmes are targeting the smallholder agricultural productivity enhancement
(SAPEP) to support small entrepreneurs in the agriculture sector in member countries. Water resources and irrigation development projects are designed to mitigate climate change and the environmental impacts on water resources and agriculture to improve the livelihoods of the population, in addition to empowering communities to exercise control over the planning, decisions and resources of the development intervention through promoting best practices of the Integrated Community-driven Development Programme (ICDD).

The total number of IDB projects in the 2007–2017 period is 542 projects, where 125 projects are completed while 417 projects are still active. This research will focus on the completed projects for analysis purposes. The completed projects are divided by size as follows: transportation (28%); energy (27.2%); agriculture (11.2%); industry and mining (11.2%); finance (8%); water, sanitation and urban development (7.2%); education (4%); health (1.6%); and information and communications (1.6%). The following charts illustrate the completed and active projects by size.
The analysis for the completed projects will be carried out through three levels. The first level will analyse the different projects of the same sector, which will
include the analysis of serving Maqasid Al Sharia’a according to the main four aspects as in the MTN Sukuk Maqasid Al Sharia’a Model presented in Figure 5.1 (hereafter referred to as the MS model), and then conclude on the impacts of each project. The second level analysis aims to analyse the whole sector achievements of Maqasid Al Sharia’a according to the MS model, and to conclude on the impacts on each sector. Finally, the third level analysis will conclude on the compliance of the MTN Sukuk Programme with Maqasid Al Sharia’a and define the impacts of the programme on human well-being and sustainable development.

6.2 Agricultural Projects

The agriculture sector is highly significant among IDB projects due to the importance of agriculture in several member countries as being their main source of food security and livelihood. The IDB engaged to overall support this sector through a total of 122 projects—14 are completed while 108 are still active. Agricultural projects are classified into the following categories:

i. Fishing sector: including fishery and fisheries development, inland aquaculture and artisanal fisheries development.

ii. Rural development: including integrated rural development, rural access improvement, water supply and sanitation, and the construction of modern rural housing

iii. Seeding: aiming to enhance the quality of seed supply, productivity enhancement and corps value chain development.
iv. Support for smallholders: extending to agricultural entrepreneurship development, value chain development for smallholders and linking them to the markets.

v. Irrigation: including irrigated perimeter development, hydro-agricultural development, spate irrigation development, irrigation and drainage pumping station development, irrigation networks and system construction, and improvement of water resources.

vi. Dams: including dam construction and reconstruction for water supply, irrigation, industrial, power generation and flood protection.

vii. Agricultural development: aiming to develop agriculture production and productivity, agricultural land and irrigation infrastructure, enhancing farmers and rural institutional capacity, rehabilitation of agricultural schemes, and warehouse construction with railways links.

viii. Building resilience to recurring food insecurity: aiming to secure the livelihood of rural populations, increase the productive capacity of the rural population assets and to adapt to climate change by improving the capacity of the decision makers to manage food crises.

ix. Community-driven development: including improved physical and social community infrastructure and improving the socioeconomic conditions of communities.

x. Youth employment: including the sustainable development of community assets with labour-intensive public works, the creation of income generation opportunities for young labour and farmers in rural regions, support for
smallholders in key agricultural sectors with potential, SME financial services, business and market network with active private sectors, market-oriented training and entrepreneurship facilities, and basic business services for productive households.

xi. Natural resources management: aiming to preserve the natural resources and develop agricultural production where the climate is favourable and a labour force is available.

xii. Post-conflict reconstruction: including rural infrastructure, developing local institutions and groups, and enhancing the skills and capacities of the rural poor.

xiii. Animal resources development: to improve the livestock value-chain.

xiv. Housing: aiming to assist temporarily populations in tribal areas to rebuild their damaged houses and resume their lives sustainably.

xv. National slum upgrading: to improve the quality of life in targeted areas through sewage projects.
The illustrations from the first analysis of the completed agricultural projects are summarised as follows. All the projects are highly serving the preservation of wealth, which includes enabling the environment and natural resources that is considered as a major element for any agricultural project. All IDB projects in this sector aim to preserve natural agricultural resources as in the production, productivity enhancement and quality seed supply; enable the environment, as in the fisheries and fisheries development projects; and reduce the excessive claims on resources that are served through the irrigation development projects and dams.

The projects of youth employment and community development are the highest in serving all aspects of *Maqasid Al Sharia’a*, from the development of wealth aspect; the projects contribute specially to the socioeconomic prosperity and the uplift of human resources. Those projects also add to the fair distribution of wealth, as they include promoting microfinance and microenterprises that are
considered as a basic element to achieving a fair distribution of wealth. To conclude, both types of projects are directed to deal with and support the individuals directly, which is an indication of the correlation between this specific type of projects and the realisation of Maqasid Al Sharia’a. In line with this conclusion, the other projects that partially include direct support to the farmers such as the quality seeds supply projects, irrigation development, corps value chain development and hydro-agriculture land development are serving Maqasid Al Sharia’a more than the projects that are directed to infrastructure construction. The huge dam construction projects are serving many basic economic objectives such as water supply, irrigation, industrial use, power generation and flood protection. In addition, such projects create thousands of employment opportunities. However, those projects are not covering as many elements of Maqasid Al Sharia’a as other projects, but the impact is outstanding on the countries as all infrastructure projects add to the national economic growth and development.

To summarise the impact of agriculture projects, the major effects are i) food security and food self-sufficiency, ii) poverty alleviation, iii) supporting rural populations, iv) improving living conditions, and v) economic growth.

6.3 Energy Projects

The energy sector continues to be one of the primary focuses of the IDB’s developmental financing, in order to support the governments of the member countries to achieve the electricity-for-all aims, the development of infrastructure,
to support the regional integration and to promote renewable energy in member countries. The energy projects are classified into the following categories:

i. Hydropower projects: including the reconstruction and development of hydropower and power stations to increase the reliability of the electricity supply, power generation and annual energy sales.

ii. Power plants: to increase the efficiency of the power generating systems.

iii. Waste to energy: constructing waste-to-energy plants.

iv. Electrical transmission: to increase the electricity supply through reinforcing 220/66 KV transmission networks.

v. Combined-cycle independent power plants: aiming to construct a combined-cycle gas-fired generation facility, whereby the plant will operate with natural state-owned gas.

vi. Power transmission: to increase the reliability of the supply of electrical energy through environmentally friendly and efficient underground transmission cables.

vii. Foundation wind: aiming for the construction and operation of wind power firms.

viii. Petrochemical projects: including the use of technology transfer to produce high added-value products, which are raw materials for other industries.

ix. Rural electrification concession: including the construction and operation of electricity transport and distribution networks to rural areas.

x. Renewable energy programme: to enable SMEs to grow and develop in the field of renewable energy production capacity and improving energy efficiency.
through a line of financing, while the programme will also enable eligible private sector beneficiaries to construct renewable energy production facilities (e.g. hydropower, geothermal, wind and biomass, including landfill gas), in addition to the energy efficiency projects.

**Fig. 6.4 Energy projects’ compliance with Maqasid Al Sharia’a**

![Bar Chart]

The analysis of the completed energy projects shows that most of the projects are similar in their achievement of *Maqasid Al Sharia’a* elements, although some differences are noted in the wealth preservation aspect as follows: some of the energy projects failed to announce that they are environment friendly, with only those projects that are clearly stated as environment friendly being considered as environment-enabling projects, in addition to the waste-to-energy projects and foundation wind projects.
The only type of projects that serves all the elements of *Maqasid Al Sharia’a* is the renewable energy programme, due to the direct link and support to the individuals, while it includes SMEs and microfinance. The other projects highly achieve in the development and circulation aspects, as energy is a major factor in infrastructure that fulfils all activities such as industrial, commercial, personal, educational, and others.

The impact of energy projects on the communities and the whole country is very significant and could be concluded in the following points: the first and most significant is the impact on the country and the promoting of economic growth and economic sustainability, which will help and support the government to carry out the development plan; second, improving the standard of living; third, the impact of the environmentally friendly projects on improving the ecological and health conditions of the population and maintaining a sustainable environment; and finally, thousands of new job are created by those huge projects which will have a role in poverty alleviation.

### 6.4 Transportation Projects

Transportation is a distinguished interest area for the IDB that includes the regional transport networks that facilitate the integration of the member countries through financing roads, railways, ports and airports to meet the needs of sustainable transportation. Transportation projects are classified into the following sectors:
i. Roads construction: including the construction of grade interchange and the improvement of the operational efficiency of the transportation system and the level of services. The aims of those projects are at the first level to secure the uninterrupted flow of traffic, to reduce vehicles operating costs, to reduce traffic accidents and to save travel time. At the second level the constructed roads will provide the population with access to all essential services and economic opportunities, facilitate the transportation of goods and services, and connect rural areas with the economic centre, all of which will support the national integration.

ii. Highways construction: including constructing dual carriageways and expressways to meet the traffic growth, in addition to an effective maintenance system. The aims of these projects are to improve transportation efficiency and safety, and to increase the transportation of goods and services.

iii. Seaports: to develop existing ports to accommodate larger vessels that require greater depth of water, or to upgrade industrial ports to sustain the increased transport activities. This includes the improvement of physical infrastructure and all the acquired equipment for the port operation.

iv. Airports: including the rehabilitation, expansion and improvement of operations such as upgrading existing facilities, developing new terminals, upgrading the airside infrastructure and managing the existing operations. This extends to the purchasing of aeroplanes to enhance economic efficiency and competitiveness, flight safety and to increase the carrying capacity for the passengers.
v. Harbours: constructing harbours and providing facilities to existing ones to facilitate travel and to support fishing and other economic activities.

vi. Mining ports: including mining infrastructure at mining ports to increase productivity.

vii. Railways: including station building and other associated facilities and various structures such as bridges and tunnels, developing railways to achieve greater operational efficiency and credibility, increasing the line capacity, increasing the export capacity, enhancing safety and reducing travel time. This extends to improving the comfort, speed and safety to achieve high credibility for the overall transportation system in terms of cost and quality. Other projects link the railway to the harbour with all associated facilities as logistic free zones, industrial zones and trade activity zones.

eiii. Segment construction: to improve living standards and support the economy and development through tourist and agro-base industries.

ix. Rural infrastructure: including the reconstruction of rural infrastructure for earthquake victims, and socioeconomic development through upgrading the social and physical infrastructure facilities such as education, health, power and communications.

x. Procurement of oil tankers: to enhance the export capacity for energy resources to regional and international markets.
According to the analysis of the transportation sector projects, the rural infrastructure projects serve almost all aspects of *Maqasid Al Sharia’a*. This is related to the direct involvement with the population through the socioeconomic development programme that contributes to their education, health, communications and all other socioeconomic services that fulfil all their needs. The other project is the segment construction, where all the construction targets the population in that area and their well-being to support the economy and the development process.

All the other projects achieved a high level of wealth circulation, as transportation is considered as a crucial element that will facilitate trading and marketing and all other economic and financial activities that will achieve more circulation of wealth. In addition, transportation will support socioeconomic prosperity, as it will provide access to all the socioeconomic services, including education and
training, health and economic opportunities, which will achieve the development of wealth. The lack of microfinance and microenterprises at this level of projects is affecting the wealth distribution aspect, as the two elements are basic in the context of the fair distribution of wealth.

The impact of the transportation projects is crucial to individuals, communities and the country. A verse in the Qur’an states clearly the importance of transportation in human life: “We have honored the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of our creation” (S.17, Vs.70). Transportation is a key factor that facilitates all economic activities, in addition to providing access to reach social, educational and economic opportunities.

To summarise the impact of transportation projects, poverty alleviation is a major impact as transportation offers i) access to economic opportunities in addition to the thousands of jobs that are created through those mega construction projects, ii) economic growth that is strongly supported by transportation, iii) improved living conditions, iv) regional integration, v) support from the government to undertake the development objectives, and vi) the construction of basic infrastructure that is built as a co-factor to transportation projects such as building bridges, tunnels, and markets.
6.5 Industry and Mining Projects

Infrastructure continues to be one of the primary concerns of the IDB’s developmental financing, responding to the demand from member countries to address infrastructure deficits by building new assets and the enhanced resilience of existing infrastructure. The projects in this sector are classified as follows:

i. Urban infrastructure: urbanisation is a challenge that needs the IDB’s help and support for member countries to cope with it through investing in critical infrastructure development and urban services’ projects. This involves providing decent and affordable properties facilitated with all basic services and functionalities, basic social infrastructure at a low cost, connection to electricity and water supplies, sanitation infrastructure and constructing main and secondary roads.

ii. The other type of projects targeting urban infrastructure is the reconstruction of rural housing for victims of earthquakes that aims to restore their lives.

iii. Coal mining: including the constructing, developing and operating of underground mining complexes to be capable of producing at full output and increasing coal production capacity to meet the demands of industry.

iv. Steel and aluminium production: to expand the industrial base that will increase the annual production capacity at the lowest productive cost to meet the growing demand.

v. Petrochemicals: to diversify non-oil industries and to develop a portfolio of diversified mineral projects that includes the establishment of a world scale
petrochemical complex with a highly competitive cost base and the construction of minerals’ production such as phosphate.

vi. Petroleum: including single point mooring, which aims to improve the efficiency of the existing method of decanting crude oil and high-speed diesel from vessels in order to increase petroleum products in an efficient and cost-effective manner.

vii. Sugar production: to fulfil the domestic sugar demand and to enable sugar export to key markets, which will promote agricultural development.

Fig. 6.6 Industry and mining projects’ compliance with Maqasid Al Sharia’a

The analysis of industry and mining projects shows that most of the projects are almost the same in providing preservation, development, circulation and the fair distribution of wealth. They serve the circulation of wealth at a high level as the
mega industrial projects create a cycle of wealth circulation among the related economic activities that are involved in the project, and the support of this sector to trading and export. Regarding wealth development, this is also served by those projects as they involve research and technology improvement to increase productivity and they have to educate and train the human capital for recruitment. The only project that is significant in achieving Maqasid Al Sharia’a is the urban infrastructure, which includes direct support to individuals and communities.

To conclude on the impact of the industry and mining projects, they i) offer poverty alleviation as those projects create thousands of jobs, ii) reduce economic disparities as they provide social affordable housing, iii) improve living standards, iv) promote other economic activities such as agriculture, export, and trading, and v) encourage economic development.

6.6 Water, Sanitation and Urban Services
The financing in the water sector focuses on climate-smart irrigation development, rural water supply, the sustainable management of water resources and multipurpose dams. The projects tend to focus on infrastructure development in addition to the promotion of efficient and sustainable water management practices and modern technologies to improve water use efficiency.

The projects in this sector can be classified into the following:

i. Flood protection and expansion of the irrigated areas: aiming to improve water management and to protect the lands, which will increase water resources for irrigation, improve efficient water conveyance, increase irrigated land, increase
agriculture production and most importantly decrease flood damage and erosion.

ii. Water supply: to improve water supply through the increase of water production and the extension and reinforcement of water supply distribution networks. This includes drilling boreholes, equipment for the boreholes, the construction of access pathways to the boreholes, supply of high voltage connections, new water treatment plants and the reinforcement of water distribution systems.

iii. The other type of projects in this sector is the development, financing, construction and operation of new power generation and potable water production facilities, and the procurement and installation of water transmission systems.

iv. Sewerage networks: the installation of wastewater collection and treatment facilities to enhance irrigation systems to the surrounding areas that includes the construction of wastewater treatment plant, approach roads, main truck lines, main sewer lines, weirs, sub-main sewer lines, collectors and house connection.

v. Water desalination: to facilitate multi-stage flash system desalination distillers for the production of potable water.
Fig. 6.7 Water, sanitation and urban services projects’ compliance with Maqasid Al Sharia’a

From the above chart, all water projects are the same type in serving Maqasid Al Sharia’a; wealth preservation is highly served due to the nature of the projects as all projects aim to improve water management through different objectives. According the verse “we made from water every living thing” (S.21, Vs.30), water is a vital element for life and that extends to include all activities including economic activities that will not persist without the element of water. The availability of water will affect trading, industry, export and other activities besides supporting the active sector of agriculture that will achieve a higher level of wealth circulation.

Regarding wealth development, the projects are improving the environmental conditions and public health that will add to the socioeconomic prosperity of individuals and communities. Using modern technologies to improve water
management will include research and technology improvement that needs the uplift of human resources to carry out the activities.

The impact of water projects is significant. The major impact is the preservation of water resources that will extend to the future generation’s benefit. The impact on agricultural development will also add to the food security and poverty alleviation. Finally, the projects will improve environmental conditions and living standards, in addition to the impact of the clean environment on public health.

6.7 Education Projects

Investing in education promotes inclusive social development and provides social infrastructure to the member countries. The projects in this sector are targeting higher, vocational, basic and technical education to provide adequately equipped graduates with the necessary and relevant skills to fit the labour market demand. This research is limited to the completed projects, which are the projects that target higher education.

The upgrading and development of university projects aims to provide quality modern education and a better place for lifelong learning. This includes upgrading and expanding the academic and research facilities, and updating the curriculum and training of the faculty. In addition, the projects will enhance the quality of teaching and research through the procurement of modern teaching and research equipment.
The development of university projects highly achieves *Maqasid Al Sharia’a* in terms of the preservation and the development of wealth, as education serves the preservation and the development of human capital and vital resources to process all the social, economic, financial and all other activities to promote development. However, these projects are not adding as much as others to the wealth circulation as they do not involve many economic activities such as trading, the circulation that takes place within the construction of the facilities and the jobs that are created upon this process.

The impact of education projects is focused on the quality of education and research, in addition to the jobs created by the projects that will add to the economic growth. The real impact of the education sector projects is a long-term impact on the social and economical development of the country.
6.8 Health Projects

The projects of health cover the construction of health facilities, procurement of medical equipment, training for healthcare providers and awareness-raising.

The two types of health projects that are considered are as follows:

i. Hospitals construction, which includes medical equipment.

ii. Support for polio eradication, to stop the wild polio virus transmission through countrywide mass polio vaccination campaigns, with extensive community sensitisation and mobilisation, and high standard surveillance activities. As a result of those projects all children will be immunised against polio for life, in addition to enhancing the country’s capacity to undertake effective massive public interventions and strengthen the routine immunisation delivery system.

Fig. 6.9 Health projects’ compliance with *Maqasid Al Sharia’a*

![Graph showing compliance of health projects with Maqasid Al Sharia’a](image-url)
The above chart shows that hospital construction projects achieved more in the development of wealth than polio eradication projects. The reason for this is that constructing hospitals involves high-quality education and the training of human capital, in addition to the involvement of research and technology improvement. Regarding the circulation of wealth, constructing hospitals will include more parties involved and more financial and economic activities undertaken.

The impact of such projects is directly linked to the highest aim of Sharia’a, that is, the preservation of human life, since healthy individuals will be able to mobilise the social and economic development, which promotes economic growth and improving the living conditions. The jobs that are created through those projects will support poverty alleviation.

6.9 Finance Projects

The aim of this sector is to provide access to longer-term funds that will highly contribute to economic growth, and increase finance to SMEs. The projects are of two types:

i. Line of financing to enhance the production capacity of farmers.

ii. General directorate foundations, to support Islamic banking by providing resources to grow Sharia’a-compliant modes of finance that will add to economic growth. Some foundations include support for waqf initiatives to achieve human and economic development objectives.
Finance projects are highly achieving *Maqasid Al Sharia’a*. The special characteristics of those projects are that they are linked directly to individuals who are receiving funds to finance their economic activities; while finance projects are projects that support individuals and institutions through the direct funding of their activities, which will be involved immediately in the wealth circulation cycle. This supports the concept of the crucial role of wealth to achieve all other aspects of *Maqasid Al Sharia’a*.

The huge impact of this sector could be summarised as follows: i) the contribution to social and economic growth, ii) human development, iii) support to both the public and private sector, and iv) contribution to the Islamic banking and finance industry.
6.10 Information and Communications Projects

The projects in this sector are designed to support and improve information and communication technology (ICT) connectivity infrastructure, which will facilitate regional and national trade and innovation, and will support regional and national socioeconomic integration. The result of this effective connectivity will add to the economic growth, reduce poverty and improve living conditions.

Fig. 6.11 ICT projects’ compliance with *Maqasid Al Sharia’a*

Information and communications projects are highly serving *Maqasid Al Sharia’a* as they facilitate the connectivity among individuals, communities, and institutions from the private and public sectors. The active access to the social and economic services will support socioeconomic growth, provide access to real economic activities, especially for SMEs, facilitate trading and marketing facilities, promote financial activities and will create a large cycle of wealth.
circulation. However, this is limited due to the lack of physical activities and physical infrastructure projects that do not exist in this sector. Providing this level of connectivity will represent an active tool for education and training, which will support an efficient uplift of human resources at a competitive cost base.

The impact of information and communications projects could be concluded as follows: i) a significant impact on economic growth, ii) poverty alleviation, iii) improving living conditions, and iv) supporting regional and national integration.

**Fig. 6.12 IDB projects’ compliance with *Maqasid Al Sharia’a***

![Graph showing IDB projects’ compliance with *Maqasid Al Sharia’a*]

The second level of analysis for the projects shows that most achieve very high levels of wealth preservation. However, some other projects show less achievement in wealth preservation levels such as energy, transportation and industry projects that are usually combined with an uncontrolled side-effect on the environment.
Education and ICT projects serve wealth development more than other types, as these projects play a crucial role in human uplift and socioeconomic prosperity. These are followed by health projects that deeply affect the socioeconomic prosperity and the productivity of all social and economic activities. Finance projects are among those projects that highly serve wealth development due to the direct finance that is provided to support individuals and institutions to establish and develop their social and economic activities. Other projects such as transportation and agriculture add to socioeconomic prosperity, increase productivity and technology improvement. Energy and industry projects add to research, technology improvement, training and increased productivity.

The circulation of wealth is highly served by transportation and finance projects, where the active trading and export will involve more circulation among different parties in addition to promoting financial activities. Other projects positively affect wealth circulation as they provide infrastructure, facilitate trading and promote financial activities.

Finance and ICT projects are the sectors that most serve a fair distribution of wealth due to the direct support to microfinance and microenterprises. All other projects add to livelihoods and provide fair opportunities for employment. The major impacts that are shared through all the projects are poverty alleviation, reducing economic disparities, improving living standards and enhancing economic growth. These enable both public and private sectors to undertake the fulfilment of development obligations.
Food security is the main impact of agricultural, water and urban development projects, in addition to food self-sufficiency. The other impacts of both projects are on the rural population and development.

The significant impact of environmentally friendly energy projects and sanitation projects is improving environmental conditions that will improve the health condition and public health, in addition to maintaining a sustainable environment. The second impact of both projects is providing infrastructure and basic services to rural areas that will affect urban development.

Industry and mining projects, in addition to energy projects, share a distinguished impact, which is promoting other related economic activities, such as the trading of raw materials. The second long-term impact is the contribution of these projects to social and economic development. Regional and national integration is a direct impact of both transportation and ICT projects, with transportation projects accompanied by other related infrastructure construction such as building bridges and constructing tunnels.

Health and flood-protection projects’ impact is the preservation of human life, which is the most significant purpose within the context of Maqasid Al Sharia’a. Other impacts of different projects are as follows: education projects provide quality education and research; finance projects contribute to the Islamic banking and finance industry; and water sector projects play a crucial role in the preservation of water resources, a benefit that will extent to future generations.
Third-level analysis is carried out to conclude the MTN Programme’s achievement of Maqasid Al Sharia’a, considering the ratio of the sectors to the whole projects. The above chart shows that the programme serves 90% of wealth preservation, then 86% of both development and circulation of wealth, and 81% of the fair distribution of wealth.

The impact of the MTN Programme could be summarised as follows. The most significant impact is the preservation of wealth, food security and food self-sufficiency. The high number of job created by the projects in addition to the direct support to some specific line of activities are a great help to poverty alleviation, reducing the economic disparities, improving living standards and adding to the economic growth. Investing in education and health will support human development with quality education and research, while improving public
health. Further impacts of the programme are urban development, sustainable environment, the preservation of natural resources, regional and national integration, support to both public and private sectors, social development and finally the significant contribution to the Islamic banking and finance industry.

6.11 Conclusion
The MTN Sukuk Programme includes diversified sectors targeting socioeconomic and human development, which include improving the quality of life, human capital uplift, infrastructure, urban development, transportation, agriculture, industry and mining. The MTN Programme is highly effective at serving the basic elements in the Maqasid Al Sharia’a model, scoring 90% in terms of the preservation of wealth, 86% in both development and circulation of wealth, and 81% in the fair distribution of wealth. The analysis for the purpose of this research includes only 30% of the total projects, and thus 70% of the projects are still active, with the number of projects increasing every year. The potential of the programme is very high, with the active projects targeting consecutively agriculture, transportation, energy, urban services, education, health, finance, industry, information and telecommunications. Further sectors are added to the projects, which are public administration and trade projects.

The other positive indicator about the MTN Programme is the increased number of projects with high achievements of Maqasid Al Sharia’a, such as agriculture, urban services, education and health projects.
The impact of the MTN Programme in the MS model is divided into two major parts: human well-being and sustainable development. The following chart summarises the impact.

**Fig. 6.14 The impact of the MTN Sukuk Programme**

![Diagram showing the impact of MTN Programme]

The impact of the MTN Programme is highly compliant with the OECD’s well-being indicators and the UN’s SDGs, which emphasises the universal objectives of Islam as human well-being and population of Earth. Sharia’a scholars have developed the theories of *Maqasid Al Sharia’a* since the third century AH; the unprecedented model of human well-being and Earth development in the context of *Maqasid Al Sharia’a* is well ahead of the global effort that presents the SDGs,
the Millennium Development Goals (MDGs), the OECD’s well-being indicators and others. To conclude, applying *Maqasid Al Sharia’a* to financial contracts will serve the purpose of human well-being and global development.

The other imperative perception is the role of Islamic finance in financing for development to achieve the SDGs. Islamic finance as a system promotes economic activities toward poverty alleviation and inequality, economic and social stability, and supports comprehensive human development and fairness, which are all relevant to the SDGs (IDB, 2015).
Fig. 6.15 OECD well-being indicators

(Source: OECD: 2011)
Fig. 6.16 Sustainable Development Goals

CHAPTER 7 CONCLUSION

This chapter will provide a summary of this research followed by the general findings and the contribution to knowledge that may be added by this work. Further studies will be discussed, in addition to the limitations of this research, before the chapter ends with concluding remarks.

7.1 Summary of the Research

Sukuk are among the most rapidly growing products of Islamic finance that are receiving widespread attention with no boundaries to religion or culture. With a market that was the least affected by the financial crisis of 2008, Sukuk achieved a broad geographical distribution, besides increasing interest from the leading global centres of conventional finance. The importance of Sukuk as a financing tool lies in the key role of Sukuk in financing large-scale investments and infrastructure projects in developing and developed countries, where this role of Sukuk in human and economic development may serve the ultimate intent of Islamic law generally, and *Maqasid Al Sharia’a* in *hifth al mal* specifically.

This research’s main aim was to investigate the compliance of Sukuk with *Maqasid Al Sharia’a* in *hifth al mal*, with the IDB’s MTN Sukuk Programme chosen as the case study for this research. The IDB’s Sukuk are significant with a AAA rating and a unique hybrid structure, while the creation of the MTN Programme with a standing set of documentation and contracts that can be
finalised at the outset is more cost effective and provides flexibility in size, issuance and rate.

To carry out the investigation of the compliance of Sukuk with *Maqasid Al Sharia’a* in *hifth al mal*, the researcher developed the theoretical framework through reviewing *Maqasid Al Sharia’a* conceptions and theories. The agreement among all scholars is that the term *Maqasid Al Sharia’a* is equivalent to serving the benefit and preventing harm to all human beings. They realised *Maqasid* in various approaches, among them the levels of necessities and the universal objectives, an approach developed by *Imam Abu Hamid Al Ghazelli*, and it is this approach that was adopted in this research due to its broad acceptance and the close relation to human development and well-being.

The review of *Maqasid Al Sharia’a* was followed by a review to define human development in the context of *Maqasid Al Sharia’a*, which is directly connected with the concept of *Al Maslahah* (benefit). The traditional concept of *Maslaha* is associated with two direct links: the first is the link between human development and human well-being or *Falah*, and the second sequential link is to the concept of populating and developing Earth for the benefit of all mankind.

A review was conducted for the discussion of the concept of wealth preservation and the relation to human development and well-being. The discussion indicated that the concept of wealth preservation is not the accurate term of *Maqasid Al Sharia’a* in *hifth al mal*, where the term *preservation* is limited to the protection of wealth against harm and thus it is one of the dimensions to achieve *Maqasid Al*
Sharia’a in hifth al mal. Therefore, the researcher used the Arabic term Maqasid Al Sharia’a in hifth al mal, that is associated with wealth development and expansion, fair circulation, protection from harm and fair distribution. The review was developed to present the first model of Maqasid Al Sharia’a in hifth al mal.

Then, the researcher presented a conceptual understanding for Sukuk as an important tool to achieve human well-being and sustainable development, keeping Maqasid Al Sharia’a in hifth al mal in perspective as follows. Sukuk represent a major element in wealth circulation at two levels: first, the funding that is raised from investors or Sukuk holders is a shift of wealth from the hands of the wealthy to the Sukuk issuer to invest this wealth; and second, through the investments or the projects that involve a shift of wealth among the wider society in the form of real economic activities. Sukuk also represent a tool for wealth development, when the investments are related to the real economy and produce real productive activities, while development is not limited to material wealth but it extends to the prosperity and the socioeconomic development of human labour. Regarding the fair distribution of wealth, Sukuk play an important role in circulating the wealth among the wider society by avoiding the concentration of wealth among the wealthy, in addition to the fair opportunities for employment and livelihood that will be created through large projects. Finally, Sukuk as a fixed income instrument will preserve the wealth from any excessive risk that may waste or destroy it.
Sukuk may be an efficient instrument to achieve human well-being, but only if the decision of the issuer and the policy mechanism is complaint with *Maqasid Al Sharia’a*.

The primary data were generated from elite interviews with senior experts and decision makers at the IDB, where their highly significant experience contributed to this study, particularly in defining the criteria of the preservation of wealth according to *Maqasid Al Sharia’a*. Most studies remarkably focus on the compliance of the form of the contracts over the substance. However, a *Maqasid Al Sharia’a* model was developed by this researcher from the *Maqasid* theories and the data generated from the interviews. The model was used to analyse the IDB’s completed projects financed by the MTN Sukuk Programme from 2007 to 2017.

### 7.2 The Main Results

The empirical analysis indicates the following findings of this research according to the MTN Sukuk *Maqasid Al Sharia’a* model:
Fig. 7.1 The MTN Sukuk *Maqasid Al Sharia’a* Model

- **Wealth Preservation**
  - high standard of quality management
  - enabling environment and natural resources
  - reduce excessive claims on resources

- **Wealth Development**
  - productive real economy activities
  - socioeconomic prosperity
  - increasing productivity, research, technology improvement

- **Wealth Circulation**
  - fair circulation among many parties
  - facilitating trading, providing infrastructure, transportation, marketing facilities
  - promoting financial activities

- **Fair Wealth Distribution**
  - livelihood
  - fair opportunities for employment
  - promoting microenterprises and microfinance

- **Decision makers**
  - Sukuk issuer
  - IDB mission

- **Sukuk funds projects**

- **The end result**
  - Impact
  - Sustainable development
  - Human well-being

(IDB mission)
i. The first of two factors that affects the Sukuk issuance is the mission of the IDB, which is to foster the socioeconomic development of the member countries and Muslim communities in non-member countries in accordance with the principles of Sharia’a. According to assessment by the Boston Consulting Group, the achievements of the IDB Group through their 40-year journey have enabled it to build key strengths and uniqueness that include a trust-based relationship with member countries due to its political neutrality and unconditional support; the IDB Group having a strong financial capacity for resource transfer to member countries, together with confidence in the financial stability of the IDB, as reflected in its AAA rating; a leadership and facilitation role in the expansion of the Islamic financial sector; the role of the IDB Group in pioneering trade finance and trade promotion with the aim of increasing intra-trade and linking trade to development; the IDB Group gaining expertise in Islamic finance and infrastructure financing, and specific in-depth knowledge of the development context and global relationships and partnerships; and finally, the IDB Group accumulating experience in supporting the delivery of services to disadvantaged groups in member countries and Muslim communities in non-member countries.

As a multi-lateral development financial institution based on Sharia’a principles, The IDB Group has many reasons to be proud of its achievements. It is now well-positioned to be an effective agent of change to prepare its members in facing numerous challenges brought about by the factors of globalization and rapid technological change. The collective group of the IDB member countries can be a formidable one, taking into account its multi-faceted resources. The greatest challenge in this group is to focus on common development issues facing us all.

H.E. Tun Dr. Mahathir Mohamad
First IDB 1440H Vision Commission Meeting
Dubai, United Arab Emirates, 14/09/2005
The second factor is the decision makers, as their own perceptions and perspectives will affect the Sukuk issuance. The observation from the interviews indicates that the experts are talking about their own values and morals, rather than conceptualising the answers. They provide examples of their own real experiences that reflect their perceptions. To give some examples from the interviews: 1) using the term *wealth is a trust* at all levels that includes the resources available for them at work, which shows their perceptions regarding wealth; 2) referring to the fear of God that governs the duties to protect and develop wealth; and 3) matching all their answers to the daily life examples, such as using water carefully for ablution as part of wealth preservation, which shows how they believe and apply Islamic morals in their daily life.

ii. The MTN Sukuk Programme includes different sectors that target socioeconomic and human development, which include improving the quality of life, human capital uplift, infrastructure, urban development, transportation, agriculture, industry and mining. The MTN Programme is effectively serving the basic elements in the *Maqasid Al Sharia’a* model, with 90% in terms of preservation of wealth, 86% in both development and circulating wealth, and 81% in the fair distribution of wealth. The potential of the programme is very high, with active projects consecutively targeting agriculture, transportation, energy, urban services, education, health, finance, industry, information and telecommunications. Further sectors are added to the projects, which are public administration and trade projects. The other positive indicator about the MTN Programme is the increased number of projects with high achievements of
Maqasid Al Sharia’a such as agriculture, urban services, education and health projects.

iii. The impact of the MTN Programme in the Maqasid Al Sharia’a model is divided into two major categories: human well-being and sustainable development. In human well-being the achievements include the preservation of human life, poverty alleviation, improving living conditions, reducing economic disparities, human development, improving public health, improving ecological condition, quality education and research, and social development. The achievements in the sustainable development sector include economic growth and sustainability, food security and sufficiency, urban development, sustainable environment, preservation of natural resources, regional and national integration, support to the public and private sectors and contribution to the Islamic banking industry. The impact of the MTN Programme is highly compliant with the OECD’s well-being indicators and the UN’s SDGs, which emphasises the universal objectives of Islam that are human well-being and populating of Earth.

The MTN Sukuk Programme includes different sectors that target socioeconomic and human development, which include improving the quality of life, human capital uplift, infrastructure, urban development, transportation, agriculture, industry and mining. The developed theories of Maqasid Al Sharia’a since the third century AH and the unprecedented model of human well-being and global development in the context of Maqasid Al Sharia’a are some way ahead of the global effort that presents the SDGs, MDGs, OECD well-being indicators and others.
iv. Applying *Maqasid Al Sharia’a* to financial contracts will serve the purpose of human well-being and global development. The other imperative perception is the role of Islamic finance in financing development to achieve the SDGs. Islamic finance as a system promotes economic activities towards poverty alleviation and inequality, economic and social stability, and supports comprehensive human development and fairness, which are all relevant to the SDGs.

### 7.3 Contribution to Knowledge

This research is among few studies in Sukuk, particularly in terms of the compliance of Sukuk with *Maqasid Al Sharia’a*. Therefore, this research adds to the body of knowledge in *Maqasid Al Sharia’a* as well as Sukuk. The MTN Sukuk *Maqasid Al Sharia’a* model is a contribution to the discipline, in addition to the contribution of the IDB Sukuk as a case study. This research may contribute to Islamic financial institutions policies and practices in realising *Maqasid Al Sharia’a*. The other contribution is the criteria of issuing Sukuk and utilising Sukuk funds for greater realisation of *Maqasid Al Sharia’a*.

### 7.4 Further Studies

Further research may continue the work of this study in generalising the MTN Sukuk *Maqasid Al Sharia’a* model, conducting interviews with *Sharia’a* scholars, as well to contributing to and developing the model. More studies may investigate the compliance of the Sukuk contracts with *Maqasid Al Sharia’a* in *hifth al mal*. 
Sukuk in general is a rare subject among the other subjects in Islamic banking and finance; thus, further studies are needed to coincide with the tremendous growth of the Sukuk industry.

More studies may research the concept of standardisation as a way forward to promote Sukuk market growth, as many challenges that are facing the Sukuk industry today are caused by the lack of standards.

The role of the SSB is another subject of related research, as some of the interviewees from this research claimed that the SSB members are primarily concerned with *Sharia’a* requirement in the financial products, without sufficient concern for *Maqasid Al Sharia’a*.

### 7.5 Limitations of the Study

The first limitation is the limited available studies on the subject. As previously mentioned, Sukuk are a rare subject in the available literature on Islamic banking and finance, while research on *Maqasid Al Sharia’a* in finance is also very limited.

The second limitation is the translation of traditional Arabic terms that do not coincide with the terms that are commonly used in the field; for example, the Arabic term *Maqasid Al Sharia’a in hifth al mal* that is not equivalent to any of the commonly used terms, but which approximates to safeguarding wealth and the preservation of wealth.
The third limitation is related to the empirical work of Sukuk projects, where it was not possible for the researcher to track specific Sukuk funds, since all Sukuk funds are usually in a pool that cannot be tracked.

Analysing elite interviews was another limitation, as the data gathered from the interviews was important due to the senior experts that were interviewed. The researcher preferred the narrative presentation of the data to include all the statements of the interviews.
REFERENCES


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### APPENDIX: GLOSSARY OF ARABIC TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Ahadith</td>
<td>Plural of hadith: Sayings, deeds and endorsements of the prophet Muhammad (peace be upon him) narrated by his companions</td>
</tr>
<tr>
<td>Ahkam</td>
<td>Plural of hokm: Sharia’a ruling having general applicability</td>
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<tr>
<td>Alhiyal</td>
<td>Extra-legal devices or ruses/tricks that are used by late Muslim jurists to circumvent the rulings of Sharia’a in achieving economic ends that could not otherwise be readily realized through oridanay jurisprudential venues</td>
</tr>
<tr>
<td>Alfiqhiyahh</td>
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<tr>
<td>Amanah</td>
<td>Trust</td>
</tr>
<tr>
<td>Awqaf</td>
<td>Plural of waqf: appropriation or tying up a property in perpetuity for specific purposes. No property rights can be exercised over the corpus. Only the usufruct is applied towards the objectives (usually charitable) of the waqf</td>
</tr>
<tr>
<td>Ayah</td>
<td>A verse of the Qur’an</td>
</tr>
<tr>
<td>Bay’ al-ayan</td>
<td>Sale of tangible objects such as goods (as against the sale of services or rights)</td>
</tr>
<tr>
<td>Bay’ al-dayn</td>
<td>Sale of debt. According to a large majority of fuqaha’a, debt cannot be sold for money except at its face value but can be sold for goods and services</td>
</tr>
<tr>
<td>Bay’ al-inah</td>
<td>Selling of something to someone at a given price (usually on credit) and then buying it back from him at the same time at a different price (usually lower but cash). This kind of sale and buy-back is prohibited because it effectively means exchanging a given amount of money with a different amount of money, which amounts to riba. It can be used as a subterfuge for riba dealings</td>
</tr>
<tr>
<td>Bay’ bithaman al-ajil</td>
<td>Sale on credit, i.e. a sale in which goods are delivered immediately but payment is deferred</td>
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<tr>
<td>Darar</td>
<td>Damage, harm, injury</td>
</tr>
<tr>
<td>Darurah</td>
<td>Necessity (usually used for the doctrine of necessity, whereby something otherwise prohibited becomes temporarily permissible)</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<td>----------</td>
<td>---------------------------------------------------------------------------</td>
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<tr>
<td>Falah</td>
<td>Working out of latent faculties to the best ability</td>
</tr>
<tr>
<td>Fasad</td>
<td>Mischief, trouble-making, corruption</td>
</tr>
<tr>
<td>Fatwa</td>
<td>Religious verdicts by fuqaha’a</td>
</tr>
<tr>
<td>Fitrah</td>
<td>Inborn human nature</td>
</tr>
<tr>
<td>Fiqh</td>
<td>Refers to the whole corpus of Islamic jurisprudence. In contrast with conventional law, fiqh covers all aspects of life: religious, political, social, commercial or economic. The whole corpus of Fiqh is based primarily on interpretations of the Qur’an and the Sunnah and secondarily on ijma’a (consensus) and ijtihad (individual judgment). While the Qur’an and Sunnah are immutable, Fiqh verdicts may change due to changing circumstances.</td>
</tr>
<tr>
<td>Fiqh almua’malat</td>
<td>A branch of Islamic jurisprudence that deals with commercial and business activities in an economy</td>
</tr>
<tr>
<td>Fuqaha’a</td>
<td>Plural of faqih meaning jurist, who gives rulings on various juristic issues in the light of the Qur’an and the Sunnah</td>
</tr>
<tr>
<td>Gharar</td>
<td>Literally, it means deception, danger, risk and uncertainty. Technically it means exposing oneself to excessive risk and anger in a business transaction as a result of uncertainty about the price, the quality and the quantity of the counter-value, the date of delivery, the ability of the buyer or the seller to fulfil his commitment, or ambiguity in the terms of the deal, thereby exposing either of the two parties to unnecessary risks</td>
</tr>
<tr>
<td>Halal</td>
<td>Things or activities permitted by Sharia’a</td>
</tr>
<tr>
<td>Hanafi</td>
<td>A school of Islamic jurisprudence named after Imam Abo Hanifa</td>
</tr>
<tr>
<td>Hanbali</td>
<td>A school of Islamic jurisprudence named after Imam Ahmed bin Hanbal</td>
</tr>
<tr>
<td>Haq</td>
<td>Right</td>
</tr>
<tr>
<td>Haram</td>
<td>Things or activities prohibited by Sharia’a</td>
</tr>
<tr>
<td>Ibadat</td>
<td>Duties of man due to God</td>
</tr>
<tr>
<td>Ibadah</td>
<td>Worship, permissibility from a Sharia’a point of view</td>
</tr>
<tr>
<td>Ijarah</td>
<td>Leasing, sale of usufruct of an asset. The lesser retains the</td>
</tr>
<tr>
<td>Term</td>
<td>Meaning</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td><strong>Ijarah muntahiyah bil tamlik</strong></td>
<td>Lease ending in ownership</td>
</tr>
<tr>
<td><strong>Ijma’a</strong></td>
<td>A consensus (of fuqaha’a). Ijma’a is one of the sources of Islamic law</td>
</tr>
<tr>
<td><strong>Ijihad</strong></td>
<td>In technical terms, it refers to the endeavour of a jurist to derive a rule or reach a judgement based on evidence found in the Islamic sources of law, predominantly the Qur’an and the Sunnah</td>
</tr>
<tr>
<td><strong>Ismah</strong></td>
<td>Infallibility, a spiritual grace of Allah to a person which enables him to abstain from sins by his own free will</td>
</tr>
<tr>
<td><strong>Israf</strong></td>
<td>Extravagance, excessiveness (especially in expenditure)</td>
</tr>
<tr>
<td><strong>Istidlal</strong></td>
<td>To use an argument or proof in establishing a point or hypothesis</td>
</tr>
<tr>
<td><strong>Istislah</strong></td>
<td>To seek the best solution in order to serve the general interest of the Muslim community</td>
</tr>
<tr>
<td><strong>Istisna’a</strong></td>
<td>Refers to a contract whereby a manufacturer (contractor) agrees to produce (build) and deliver a well-described good (or premise) at a given price on a given date in the future. As against salam, in istisna’a the price need not to be paid in advance. It may be paid in instalments in step with the preferences of the parties or partly at the front end and the balance later on as agreed</td>
</tr>
<tr>
<td><strong>Ja’fari</strong></td>
<td>Sheia’at legal thought and jurisprudence named after the sixth Imam Jafar al-Sadiq (d.748)</td>
</tr>
<tr>
<td><strong>Mafsada</strong></td>
<td>Anything declared harmful by the Sharia’a or anything hampering the achievement of Maqasid al Sharia’a</td>
</tr>
<tr>
<td><strong>Maysir</strong></td>
<td>Literally, it refers to an ancient Arabian game of chance with arrows used for stakes of slaughtered animals. Technically, gambling or any game of chance</td>
</tr>
<tr>
<td><strong>Mal</strong></td>
<td>Asset, property</td>
</tr>
<tr>
<td><strong>Maliki</strong></td>
<td>A school of Islamic jurisprudence named after Imam Malik</td>
</tr>
<tr>
<td><strong>Maqasid al Sharia’a</strong></td>
<td>Basic objectives of Sharia’a. These are the protection of faith, life, progeny, property and reason</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Maslaha mursalah</strong></td>
<td>Public interest as determined in the light of the rules of Sharia’a</td>
</tr>
<tr>
<td><strong>Maslaha</strong></td>
<td>Literally, it means benefit. Technically, it refers to any action taken to protect any one of the five basic objectives of the Sharia’a</td>
</tr>
<tr>
<td><strong>Mua’amalat</strong></td>
<td>Relationships/contracts among human beings as against ibadat which define the relationship between God and his creatures</td>
</tr>
<tr>
<td><strong>Mudarabah</strong></td>
<td>A contract between two parties, capital owner or financiers’ (called rabb al-mal) and an investment manager (called mudarib), where profits are distributed between the two parties in accordance with the ratio upon which they agree at the time of the contract. Financial loss is borne only by the financier. The entrepreneur’s loss lies in not getting any reward for his services</td>
</tr>
<tr>
<td><strong>Murabaha</strong></td>
<td>Sale at a specified profit margin. The term, however, is now used to refer to a sale agreement whereby the seller purchases the goods desired by the buyer and sells them at an agreed marked-up price, the payment being settled within an agreed time frame, either in instalments or in a lump sum. The seller bears the risk for the goods until they have been delivered to the buyer. Murabaha is also referred to as bay’a mua’jal</td>
</tr>
<tr>
<td><strong>Musaqah</strong></td>
<td>A partnership in which one party presents designated plants/trees that produce edible fruits to another (irrigating worker) who undertakes irrigation works in consideration for a common defined share in the fruits</td>
</tr>
<tr>
<td><strong>Musharakah</strong></td>
<td>Partnership. A musharaka contract is similar to a mudarabah contract, the difference being that in the former both the partners participate in the management and the provision of capital, and share in the profit and loss. Profits are distributed between the partners in accordance with the ratios initially set, whereas loss is distributed in proportion to each one’s share in the capital</td>
</tr>
<tr>
<td><strong>Mu’tazilah</strong></td>
<td>A religious movement founded at Basra, in the first half of 2nd/8th century by Wasil b. Ata (d. 131/748) becoming one of the theological school of Islam</td>
</tr>
<tr>
<td><strong>Muzara’a</strong></td>
<td>A partnership in corps whereby one party (land owner) presents a piece of land to another (agricultural worker) for the latter to</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Nafs</td>
<td>Self or soul</td>
</tr>
<tr>
<td>Qard Hassan</td>
<td>An interest-free loan (fungible, marketable wealth) that is extended by a lender to a borrower on the basis of benevolence</td>
</tr>
<tr>
<td>Qiyas</td>
<td>Derivation and application of a rule/law if the basis of the two is the same. It is one of the secondary sources of Islamic law</td>
</tr>
<tr>
<td>Qura’an</td>
<td>The holy book of Muslims, consisting of the revelations made by God to the Prophet Muhammad (peace be upon him). The Qura'an lays down the fundamentals of the Islamic faith, including beliefs and all aspects of the Islamic way of life</td>
</tr>
<tr>
<td>Riba</td>
<td>Literally, it means increase or addition or growth. Technically it refers to the premium that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or an extension in its maturity. Interest as commonly known today is regarded by a predominant majority of scholars to be equivalent to riba</td>
</tr>
<tr>
<td>Sad al zara’i</td>
<td>A Sharia’a approach which is applied to prevent, on a pre-emptive basis, anything that can open the door to the commitment of forbidden acts or violations (evil/haram)</td>
</tr>
<tr>
<td>Sadaqah</td>
<td>An act of charity</td>
</tr>
<tr>
<td>Salam</td>
<td>The sale of a commodity that will be delivered at a future date for a specific price paid in advance</td>
</tr>
<tr>
<td>Shafi’i</td>
<td>A school of Islamic jurisprudence named after Imam Shafi’i</td>
</tr>
<tr>
<td>Sharia’a</td>
<td>Refers to the corpus of Islamic law based on divine guidance as given by the Qura’an and the Sunnah and embodies all aspects of the Islamic faith, including beliefs and practices</td>
</tr>
<tr>
<td>Sunnah</td>
<td>Sunnah is the second most important source of the Islamic faith after the Qura’an and refers to the Prophet’s (peace be upon him) example as indicated by his practice of the faith. The only way to know the Sunnah is through the collection of ahadith, which consist of reports about the sayings, deeds and endorsements of the Prophet (peace be upon him)</td>
</tr>
<tr>
<td>Surah</td>
<td>A chapter of the Qura’an</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Takaful</td>
<td>An alternative for the contemporary insurance contract. A group of persons agree to share certain risk by collecting a specified sum from each. In case of loss to any one of the group, the loss is met from the collected funds</td>
</tr>
<tr>
<td>Tawreeq</td>
<td>A transaction whereby a person buys an asset/commodity from a seller on the basis of deferred payment and sells it to a third party on cash basis at a given price</td>
</tr>
<tr>
<td>Ummah</td>
<td>Muslim community, a fundamental concept in Islam expressing the essential unity and theoretical equity of Muslims from diverse cultural and geographical setting</td>
</tr>
<tr>
<td>Wakalah</td>
<td>Contract of agency. In this contract, one person appoints someone else to perform a certain task on his behalf, usually against a fixed fee</td>
</tr>
<tr>
<td>Wakalah bi al istithmar</td>
<td>A method whereby Islamic financial institutions manage funds on behalf of their customers</td>
</tr>
<tr>
<td>Waqf</td>
<td>Appropriation or tying up a property in perpetuity for specific purposes. No property rights can be exercised over the corpus. Only the usufruct is applied towards the objectives (usually charitable) of the waqf</td>
</tr>
<tr>
<td>Zakat</td>
<td>The amount payable by a Muslim on his net worth as a part of his religious obligations, mainly for the benefit of the poor and the needy. It is an obligatory duty on every adult Muslim who owns more than a threshold wealth</td>
</tr>
<tr>
<td>Zaydis</td>
<td>Moderate branch of Shii Islam that diverged from other Shii denominations in a dispute over succession to the imamate. The Zaydis favored Zayed Ibn Ali</td>
</tr>
</tbody>
</table>

Sources:


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