THE ORETICAL ANALYSIS OF THE UNIQUENESS OF SUKUK SECURITIES AND THEIR FUNDAMENTAL DIFFERENCES FROM TRADITIONAL SECURITIES

Маматмуродов Фаррух Фарход угли
Тьютор факультета Частного права
Ташкентского государственного
юридического университета.
Ташкент, Узбекистан

Аннотация: Сукук и облигации — это две разные формы. Сукук может быть похож на традиционные обязательства по некоторым своим характеристикам, но технически это не долг и не капитал. У сукук много особенностей, и их трудно отличить от их обязательств. В то время как традиционные облигации представляют собой бездолговую ценную бумагу, сукук, по сути, представляют собой инвестиционные сертификаты, активы которых состоят из денежных требований на право собственности. Таким образом, требование, отраженное в сукук, является требованием материальных сбережений, но также и требованием права собственности. Хотя существуют различные фундаментальные различия между сукук и традиционными обязательствами, оба инструмента решают проблему наличия одинакового общего кредитного плеча с точки зрения требуемого капитала. Они подходят к одной и той же проблеме по-разному. По этой причине в этой главе делается попытка контролировать личность и базу знаний людей, практически не имеющих доступа к исламскому инструменту, такому как сукук, его сложной природе и его производству на сегодняшнем глобальном финансовом рынке.

Ключевые слова: сукук, облигация, исламские финансовые услуги, рибо, сакк, сертификаты сукук.

Abstract: Sukuk and bonds are two different forms. Sukuk may be similar to traditional obligations in some of its characteristics, but technically it is not debt or equity. Sukuk have many features and are difficult to distinguish from their obligations. While traditional bonds are a debt-free security, sukuk are essentially investment certificates whose assets consist of monetary claims to ownership. Thus, the requirement reflected in the sukuk is a requirement for material savings, but also a requirement for ownership. Thus, the requirement reflected in the sukuk is a requirement for material savings, but also a requirement for ownership. While there are various fundamental differences between sukuk and traditional bonds, both instruments address the issue of having the same overall leverage in terms of capital

required. They approach the same problem in different ways. For this reason, this chapter attempts to control the identity and knowledge base of people who have little or no access to an Islamic instrument such as the Sukuk, its complex nature and its production in today's global financial market.

Key words: sukuk, bond, Islamic financial services, ribo, sakk, sukuk certificates.

Sukuk is generally viewed as an Islamic bond in Western countries and some predominantly Muslim countries. The origin of the modern sukuk goes back several years. As an Islamic bond, sukuk securities are a financial instrument that complies with Islamic law (Sharia principles), prohibiting interest-based (riba) financial transactions. Before exploring the general concepts, principles, and forms of sukuk in detail, it is necessary to review its historical background.

The word "sukuk" is derived from the term "sakk," which linguistically means a legal instrument, certificate, or check. "Sukuk" is an Arabic word, the plural form of "sakk," and it represents a document of ownership or entitlement, similar to a check, in Persian.[1]

The initial ideas and concepts about Islamic financial instruments began to grow rapidly in the 1970s. During this time, countries like Saudi Arabia, Egypt, and Sudan established their first banks based on Islamic principles. Later, interest-free banks were also established in Iran and Pakistan.

As transaction structures evolved within Islamic banks, the idea of Islamic financial instruments also advanced in capital markets. The concept of issuing lease certificates as an Islamic financial instrument was supported by Professor Monzer Kahf in 1997. According to Professor Kahf, the issuance of international sukuk in countries like Malaysia and Bahrain in the late 1990s laid the foundation for the first Islamic financial instruments.

There are numerous definitions of sukuk from various internationally and locally recognized organizations. According to Al-Jumuah, sukuk represents a certification of ownership. Sukuk is also sometimes referred to as Islamic bonds. However, compared to traditional bonds, sukuk carries a broader meaning and scope.

Additionally, sukuk are securities characterized by their compliance with Islamic Shariah principles, which prohibit and avoid dealings involving interest. As highlighted by Al-Buolayan, sukuk can be regarded as a certificate of trust due to its stability, asset-backed structure, and adherence to Shariah principles.[2]

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines sukuk as equal certificates (shares) representing indivisible

---

[1] Sukuk: History and Development, Essia Ries Ahmed, Md. Aminul Islam, Fathyah Hashim. (https://www.researchgate.net/publication/338778041_Sukuk_-History-and-Development_chapter)

[2] Sukuk: History and Development. Essia Ries Ahmed, Aminul Islam, Fathyah Hashim.

ownership interests in tangible assets, services, specific investment activities, or asset portfolios related to a particular project. There are several types of sukuk, which, according to AAOIFI, include the following:

- Mushorakah sukuk;
- Ijarah sukuki;
- Murobaha sukuk;
- Muzoraba sukuk;
- Istisna sukuk;
- Salam sukuk;
- Hybrid sukuk.

The Islamic Financial Services Board (IFSB) recognizes sukuk (the plural of "sakk") as Islamic bonds, where each sakk represents ownership rights in tangible assets or a portfolio of tangible assets. These assets can be part of investment activities or specific projects that comply with Shariah principles and rules. Additionally, the Malaysian Debt Securities and Sukuk Market (BNM) uses the following definition for sukuk: "equal-value certificates representing indivisible ownership in investments in specific projects, services, or designated assets." The sukuk security model is based on traditional securitization processes involving a Special Purpose Vehicle (SPV) that acquires assets and provides financial returns based on these assets.

Sukuk certificates provide investors and sukuk holders with stable returns, enhance liquidity in government and corporate reserves, and facilitate the mobilization of market resources. They incorporate certain functions of traditional securities, allowing for effective investment and financing mechanisms while adhering to Islamic financial principles.[3]

A bond is a fixed-income instrument that represents a loan made by an investor to a borrower, typically a corporation or government, which provides a predetermined return. Bonds are viewed as a debt contract between the creditor and the borrower, encompassing all the terms of the loan. They can be issued by governments, states, and companies to finance specific projects or operations.[4]

However, it can be said that there are numerous differences between sukuk and traditional securities, specifically traditional bonds. Below are the key distinguishing characteristics:

First, one of the most important distinguishing factors is the method of asset pooling for sukuk and traditional securities. For example, in musharakah sukuk, the contracts established between the sukuk issuer and the investor are based on partnership principles. According to the contract, the sukuk issuer earns profits only if

[3] https://www.researchgate.net/publication/263653189_Islamic_Sukuk_Pricing_Mechanism_and_Rating
[4] https://www.investopedia.com/terms/b/bond.asp

the investor receives a share proportional to the amount of sukuk held. In contrast, traditional bonds are structured based on the lender-borrower relationship, leading to debt agreements that specify fixed interest payments regardless of the issuer's performance..[5]

Second, the profits earned by investors from sukuk are derived from the margins generated within partnership agreements. In traditional bonds, however, the profit comes from a fixed interest rate based on the principal amount of the debt.

Third, the issuance of sukuk must be directly linked to services and goods or specific tangible assets, which must comply with Shariah laws and principles. In contrast, traditional bonds do not require the bond issuances to be directly tied to specific assets; they can be based on general debt obligations.[6]

Fourth, the pricing mechanisms for sukuk and traditional bonds differ from one another. In sukuk issuance, the price assigned to each sakk is determined by market demand and supply. As a result, the specified value of the asset may decrease or appreciate. In contrast, the returns on traditional bonds are tied to the creditworthiness of the issuer, meaning their performance is influenced by the issuer's ability to repay the debt.[7]

Fifth, sukuk holders are considered absolute owners of the asset. In contrast, in the case of bonds, the lender (investor) does not gain ownership of the underlying asset but rather holds a claim based on their contribution to the bond issuance.

Through the points mentioned above, we can see the fundamental differences between bonds and sukuk. Indeed, both belong to the category of securities, and the issuance process is largely similar. However, there are also several similarities between them, including:

First, both sukuk and bonds provide their investors with a steady stream of income through specific agreements and contracts (in sukuk, this is typically linked to the profits generated).

Second, companies issue sukuk and bond offerings to raise capital for initiating or expanding their operations.

Third, both sukuk and traditional bonds can be traded in secondary markets. As a result, sukuk and bondholders looking to access cash at any time have the option to sell their securities to other buyers before maturity. This liquidity allows investors to manage their portfolios and adapt quickly to changing market conditions.

---

[5] Sukuk Market: Innovations and Challenges. Muhammad Al-Bashir Al-Amine

[6] Compare and Contrast Sukuk (Islamic Bonds) with Conventional Bonds, Are they Compatible? T. Afshar

[7] Sukuk -History-and-Development. Essia Ries Ahmed, Md. Aminul Islam and Fathyah Hashim.

Fourth, governments, private companies, state-owned enterprises, and even international organizations can issue sukuk and bonds to finance various projects and entrepreneurial activities.

Fifth, both sukuk and bonds can have specified payment terms. The duration of a bond ends on the payment date, after which the bond issuer repays the investor their principal amount. Investors are often provided with a clear timeline for their investment plans.

The legal and structural components of both types of securities are very similar. For example, both have payment terms, conditions for issuing securities, and the rights and obligations of the issuer that are alike. Despite significant differences in the underlying principles of sukuk and bonds, there are notable similarities, which is why scholars approach the term "sukuk" from various perspectives.

Renowned scholar Ibrahim Varde describes sukuk as "investment certificates that comply with Shariah principles," while the financial reference source Investopedia states that "sukuk is an Islamic financial certificate resembling bonds in Western finance that complies with Islamic law."

Russian economist G. Gafurova, analyzing the aforementioned similarities, noted that sukuk has been used in the Islamic financial system as an alternative service to traditional bonds, emphasizing the necessity of viewing sukuk as Islamic bonds.

Primarily, many Western scholars view sukuk as a type of bond due to the general similarities mentioned above. This is why we often encounter the term "sukuk bonds" in various literature and regulatory documents. Overall, referring to sukuk as a bond can create conflicting concepts in understanding its foundations and principles.

In Islamic law, interest-based (usury) lending relationships are strictly prohibited, and since the core principles of bonds involve such interest-bearing debt relationships, viewing sukuk as a bond hinders a sufficient understanding of its nature. This perspective can obscure the unique characteristics and compliance of sukuk with Shariah principles, emphasizing the need for a clearer distinction between the two financial instruments.

A LIST OF REFERENCES

I. ARTICLES

1.1 Sukuk: History and Development, Essia Ries Ahmed, Md. Aminul Islam, Fathyah Hashim.

1.2 A qualitative analysis on the determinants of legitimacy of sukuk. Essia Ries Ahmed, Md. Aminul Islam, Tariq Tawfeeq Yousif Alabdullah.

1.3 Sukuk Legitimacy A New Measurement Based on Content Analysis. Essia Ries Ahmed.

1.4 Sukuk Market: Innovations and Challenges. Muhammad Al-Bashir Al-Amine

1.5 Compare and Contrast Sukuk (Islamic Bonds) with Conventional Bonds, Are they Compatible? T. Afshar

1.6 Sukuk -History-and-Development. Essia Ries Ahmed, Md. Aminul Islam and Fathyah Hashim.

II. WEBSITES

2.1 https://aaoifi.com/ss-17-investment-sukuk/?lang=en

2.2 https://www.researchgate.net/publication/263653189_Islamic_Sukuk_Pricing_Mechanism_and_Rating

2.3 https://www.investopedia.com/terms/b/bond.asp

2.4 https://www.linkedin.com/pulse/similarities-between-sukuk-bonds-conventional-altinvestng?trk=public_post

2.5 https://islommoliyasi.uz/uz/1027/#_ftn3

2.6 https://www.investopedia.com/terms/s/sukuk.asp