Sukuk Legitimacy: A New Measurement Based on Content Analysis

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Abstract

Islamic Sukuk have recently emerged as one of the important instruments for the Islamic finance and investment. Sukuk have a key influence and high impact in different economic and banking operations where they have got an estimable position in stock markets and international money. Recently, Islamic sukuk have been considered as the most successful financial tool among the Islamic financial institutions and also considered as one of the fastest sectors in its growth in global financial landscape. Islamic Sukuk, in addition, need to have their own Shariah committees to ensure compliance with the Shariah principles, and such committees should be composed of Shariah experts. The main objective of this paper presents a novel choice of new measurement of sukuk legitimacy based on content analysis. The novelty of this paper adds a significant contribution to enhancement of the area of Islamic finance. In that, this new measurement is useful for disclosure practices in the pronouncement of shariah in Islamic financial institutions.

Keywords: Sukuk, Shariah report, Shariah committee, Content analysis.

1. Introduction

The Shariah Committee members have main and important tasks which lie in overseeing and controlling the operations that respect to Islamic sukuk, direct the implementation of Islamic financial products and give more attention to its development, in addition to ensuring that these investments and development products are compliant with Shariah requirements (Qureshi, 2011). Hence, as mentioned by Nabil (2013), self-auditing is done by the Shariah committee for its services and products (Such as Sukuk) in order to make sure that all transactions under its supervision are extremely compatible with the conditions and terms of the Shariah. Like any other financial institute, the Islamic Financial Institution (IFI) has to follow the best practices and rules required in corporate management. However, IFI has an additional stratum of supervision derived from the rules imposed by the religious boards. The religious boards of IFI perform dual functions of supervision and consultation. The Shariah scholars who preside over the religious boards have great responsibility (Kuen, 2007). Therefore, it is of paramount importance that Islamic scholars with high caliber and reputation are selected to be members of the religious boards. Additionally, an Islamic sukuk requires that its Shariah committee be composed of highly educated, knowledgeable, and erudite Islamic scholars. Such a board's primary role in IFI is to make sure that the models,

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policies, sharing ratios, and investments of Islamic sukuk are in accord with the mandates of the Shariah.

Islamic financial institutions include any financial intermediary that follows business transactions operating under Islamic principles and laws (IAIB, 2001). There is an expectation that there is no difference in the disclosure practices in relation to legitimacy of the Islamic financial tools since Islamic financial institutions achieve their operations based on Shariah rules/principles. This viewpoint has no objection with both notion that religion and culture might influence the accounting practices and procedures (Baydoun and Willett, 2000; Gambling and Karim, 1991; Hamid, Craig, & Clarke, 1993). Previous studies, such as Sulaiman and Willett (2003), show that all Islamic financial institutions that operate in Muslim community should focus and give more attention to the practices of transparency and disclosure principles, especially in the field of Islamic business activities.

Due to the fact that sukuk are structured based on Shariah principles, Shariah Advisory Council (SAC) in central banks in general have made it with a requirement for a Shariah committee to be included in the sukuk issuance. Thus, to guarantee the Islamic aspect of sukuk, the requirement of the Shariah Advisory Council (SAC) of Malaysia is that the structure of the sukuk and all legal documents of the sukuk must be examined and endorsed by the Shariah advisors of the sukuk issuance. This is also true in the international arena. Consequently, Shariah advisors can be considered as the backbone of the industry and without them the compliance aspect may be at stake. The current paper has its own interesting feature which is considered as a novel work that adds its contribution to the literature review; in that, the current paper uses a new measurement for measuring sukuk legitimacy and its disclosure practices in the pronouncement of shariah in Islamic financial institutions.

2. Concept of Sukuk

Sukuk is originally, as Ibn Manzur argues, an Arabic word that comes from the word SAK, which means certificate. Al-Jumuah (2000) mentioned that Sukuk is a property certification. Sukuk refers sometimes to Islamic bonds or sukuk sanadat and ownership (Al-Bastawaisi, 2006). In general, to compare sukuk to bonds, sukuk has more general meaning than bonds (Engku Ali, 2005). Furthermore, Sukuk refers to securities characterized as compliant with the Islamic Shariah rules and with the principles of investment which prohibit and prevent dealing with the interest charge (LMC, 2008). In addition, as mentioned by AlBuolayan, (2006) and LMC (2008), sukuk is represented by its stability, an asset-backed, compatible with sharia rules and could be considered as trust certificates. Sukuk has essential conditions in order to be issued, such as its existence of assets in the government's balance sheet, it should has corporate body, financial firms which want to mobilize the financial resources, the monetary authority.To determine assets to be as a suitable one is the first and important step of the procedures of sukuk issuing. Shariah admits that the group of assets must not only consist of debts from Islamic financial contracts like Murabahah or Istisna.

In addition, the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOFI, 2012) explains the definition of Sukuk as "*Certificates of equal representing undivided shares in ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity*.". Moreover, there are several kinds of sukuk nevertheless the common ones, as mentioned by AAOFI, are; Musharakah Sukuk, the Ijarah Sukuk, Murabahah Sukuk, Mudarabah Sukuk, Istisna Sukuk, salam sukuk and hybrid.

Islamic Financial Services Board (IFSB) defines "*Sukuk (plural of sakk), frequently referred to as 'Islamic bonds', are 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 Shariah rules and principles"* (IFSB, 2009).
One other hand, Malaysia Debt Securities and Sukuk Market (2009) show another definition to explian Sukuk as followed *"certificates of equal value that represent an undivided interest (proportional to the investor's interest) in the ownership of an underlying asset (both tangible and intangible), usufruct, services or investments in particular projects or special investment activities".* Based on this concept, sukuk has a good feature and benefit of being backed by assets, thus stakeholders of sukuk are characterized by having a level of protection which might not be existed in the conventional bonds. Additionally, unlike conventional bonds that mirror debts or loans which base on interest (Riba), structure of sukuk which bases on innovative implementation of Shariah principles and concepts. However, some kinds of sukuk are similar and have some charactristics with conventional bonds, that means their structure is similar based on assets that generate revenue. The essential revenue from such assets refers to the income source to distribute the payment of profit on the sukuk holders. Also, the Malaysia Securities Commission (2012) has defined the sukuk *"... any securities issued pursuant to any Shariah principles and concepts approved by the Shariah Advisory Council ("SAC") of the SC as set out in Appendix 1 ... (and subsequently) Appendix 1 (B) : A document or certificate which represents the value of an asset"* (SC Malaysia, 2004 Para 1.05 a) (SC Malaysia. Lexis Mexis, 2009).

On the other hand, as explained by (LMC, 2008), sukuk issuing lies in a few steps as followed:
• A feasibility study must be prepared in detail.
• A general framework is prepared in addition to setting up an organizational structure.
• The work should be in line with Shariah structure.
• Conduct as lead manager.
• Arrange agreed Islamic legal documentation.
• Arrange a special purpose vehicle (SPV) to represent sukuk holders.
• Eventually, put the Sukuk into circulation in financial markets.

AlBuolayan (2006) reveals that the Sukuk security model is derived from the traditional securitization procedures that are based on special purpose vehicle (SPV) which lies in gaining assets and to issue financial compensation on the assets. Such assets represent appropriate aspects with beneficial ownership to the Sukuk investors.

3. *Shariah* Auditing by *Shariah* Committee

As per the principles of the Shariah, Islamic banks are primarily involved with the development of financial products in order to cater to the requirements of a variety of interested parties. It is very important, therefore, that these Islamic banks can innovate and operate within the domain of the principal mandates of the Shariah. Thus, any Islamic financial company or institution must be properly supervised according to the rules of the Shariah. This safeguard or check and balance is only possible if the Islamic banks have a legitimate control body (Lahsana, 2010). It is essential that these banks found a Shariah committee consisting of experts who are well versed in fiqh muamalat. Such a board can then guide the operations and transactions of the bank according to the mandates of the Shariah. Malaysia, along with many other Islamic countries, has enacted laws to govern and aid in the development and realization of such Shariah committees. Hence, Shariah committee undoubtedly constitutes the integral and most influential part of any Islamic financial institution (Mass, 2010).

The main duty of the Shariah committee's members is to oversee the operations of a particular institute and govern the proper development of its Islamic financial products. They also ascertain whether such activities and investments are compliant with the Shariah principles. The board has to undertake its own audit in order to determine whether any of the operations developed involve any element prohibited or mashbuh by the rules of the Shariah.

Islamic banks are therefore mandated to develop operating procedures which make certain that none of their business activities or investments is implemented without the prior approval of their Shariah board. The managements of such banks are required by law to update and seek approval of the Shariah committee members regarding the actual businesses undertaken and the investments made by their banks. The management must ensure, in this way, to adhere to the preapproved practices by the Shariah committee. Therefore, Islamic banks, which have financial products and services, must be overseen by an independent Shariah committee comprising a minimum of three Shariah scholars having the requisite specialized knowledge of the Islamic laws for transacting, fiqh al muamalat, in order to comply with the Shariah. The scholars must also possess knowledge of modern business and economics. The main role of these experts or scholars is to ensure that the banks business activities, services, and other operations are compliant with the rules of the Shariah. The Shariah committee is therefore required to give an independent certificate of the bank's Shariah compliance (Mass, 2010).

The routine implementation of Shariah mandates by the concerned Shariah committee members is a role that has two parts. First, they have the great responsibility to understand the complexities of the sophisticated and modern world of finance and ascertain whether a proposal for a new type of financial venture or product is in agreement with the Shariah. Second, they act as investigators or watchdogs to continually review the Shariah compliance of the financial operations undertaken by the Islamic banks.

According to DeLorenzo (2010), the supervision and required advice on a financial operation in the context of the Shariah should be introduced in the initial phase. This will review the relevant elements of a business proposal or contracts and determine whether modifications are necessary. Subsequently, as the product is realized or the practice implemented, Shariah mandates should be used as guidelines for their continual monitoring with the aid of routine audits. Such audits can be accomplished using various means like visits to sites, reviews of documents, or consultation with the concerned management at periodic intervals.

4. Requirements of *Shariah* Auditing

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) GSIFI No 2,: states that the principal role of a *Shariah* Review is to ensure that all financial operations by an IFI are compliant with the principles of the *Shariah* and that the regulations enacted properly and effectively reflect the *fatwas*, rulings, and guidelines articulated by the *Shariah* committee members (Haji Besar, Sukor, Abdul Muthalib & Gunawa, 2009). To this effect, the AAOIFI recommends many procedures which must be adhered to by the *Shariah* reviewers of IFIs. These consist of the proper planning of the review procedures, execution of the review procedures, preparation and review of the working paper as well as procedures in documenting conclusions and finally the generation of the report. In the first stage, i.e. the planning and development of the *Shariah* review, the concerned reviewer must develop a comprehensive outline (Aida, 2012). This plan must deal with pertinent information related to the operations of the IFIs including such items as its products, size, locations, branches, and subsidiaries. These are required to be stated explicitly in the plan thus developed in order to make certain that the *Shariah* reviews can be completed successfully and systematically. Also, along with the above list, all relevant *fatwas*, rulings, and guidelines should be detailed in the plan so developed. Thus, for the *Shariah* reviewer to give accurate and relevant *Shariah* opinions regarding the total operations of a particular IFI, it is absolutely essential that he is cognizant of the intricacies regarding the structure, operations, transactions, and other related activities of that IFI. The planning will enable the *Shariah* reviewer to determine that the transactions and products of the IFIs, which need to be approved by the SSB, are undertaken according to the requirements (Hassan Scott, 2009).

The next phase of the *Shariah* review concerns the implementation of the planned procedures as discussed previously. At this step, the *Shariah* reviewer needs to make a judgment on the level of understanding of the IFI's management regarding the commitment and the control procedures for adherence to the *Shariah* rulings. After this the *Shariah* review is in many ways similar to the review procedures undertaken by an auditor (Haji Besar, Sukor, Abdul Muthalib & Gunawa, 2009). The *Shariah* reviewer, at this stage, will peruse the contracts, agreements, and transactions as recorded by the IFI in order to determine whether they violate the *Shariah* mandates. The *Shariah* review will also include reviews of other vital information in the IFI like circulars, minutes of meetings, operating and financial reports, and policies and procedures (Shafi, Salleh & Shahwan, 2010). An effective *Shariah* reviewer, thus, is recommended to consult and work with other external auditors.

All reviews by the *Shariah* reviewer must be properly documented in appropriate working papers. When complete, the *Shariah* reviewer should discuss the findings with the management of the IFI and suggest any remedial actions that need to be taken. The final step in the *Shariah* review, as recommended by AAOIFI, is the proper filing and recording of all relevant conclusions and the generation of the *Shariah* review report. This report will then be read at the IFI's annual general meeting and subsequently published in its annual report (Omar, 2009).

5. *Shariah* Committees procedures in Sukuk issuance

In general, Shariah committees are a group of experts in Shariah who are delegated to give guarantees that instruments and products used in the Islamic finance industry are comparable to the Shariah aspects, which usually consist of the capital market, Takaful and banking (ISRA, 2013). Organizations competent in Auditing and Accounting for Islamic Financial Institutions (AAOIFI), mentioned in their Governance Standard that the Shariah Board of Islamic Finance Institution is defined as:

"Specialized jurists, particularly in Fiqh Muamalah and Islamic Finance, entrusted with the duty of directing, reviewing and supervising the activities related to Islamic finance in order to ensure that they are in compliance with Shariah rules and principles."

Following the Sukuk Guidelines issued by the Securities Commission Malaysia (2012), Shariah Committe has to be either as a committee that meets the standards registered under the guidelines of Shariah advisors; or as an Islamic institution or bank approved by Bank Negara Malaysia to carry out Skim Perbankan Islam Shariah advisors or Islamic Banking

Scheme. In this respect, the procedures start from sukuk inception till its issuance (such as the related part in directing to the intended product and then reviewing the product and consequently to the supervision of the product's execution for the purpose of effectively ensuring that it is compatible with the standards and requirements recommended by Shariah.

Thus, the responsibilities and role of Shariah Committee are not only limited to stakeholders, but they go apart of this to cover other important religious duties that must be upheld. In this regard, dealing with sukuk issuance, Shariah committees play an important role that should be concurrent with the product, starting from the moment of advising the product. Based on this role, Shariah committees should keep on due diligence through their continued and permanent supervision, procedures, and transactions. Here arises an important role played by Shariah committees. This role lies in two stages related to the Sukuk issuance: pre-sukuk issuance and post-sukuk issuance (Lahsasna and Lin, 2012).

5.1 Pre-sukuk Issuance

Shariah committees play an important and significant role in this stage. The whole processes regarding sukuk rely on this stage; in that, the negligence or failure in this stage leads to bad reaction in the long term on the whole procedures of sukuk. In this stage, there are four main tasks that must be taken into consideration:

1) Sukuk structure must be ensured that it is compatible with Shariah compliant. The proposed diagram and transaction flow by the arrangers have to be understood by Shariah committees and moreover to identify Shariah issues in order to prepare and submit solutions to the interested parties. One of the important matters that needs to be tested at this stage is the compliance with all building blocks and terms with Shariah principle use; for instance, the capability whether or not there is a building block to ensuring sukuk structure’s capital or return in case, for example, using musharakah, wakalah bi al-istithmar or mudarabah as essenical contracts. In the same vein, dealing with purchase undertaking, liquidity facility or sale undertaking and how it could be constructed and arranged in order to finally lead to guarantee and ensure capital or return.

2) Using auditing procedures through checking the conditions and terms in the documents regarding sukuk issuing: These documents should be checked accurately by Shariah committees in order to ensure that there are no conditions contrary to any principle in Shariah. The important issues that need to be checked are:

a) Facility Description: to guarantee that the description and its illustration submitted in this section is accurate and compatible with the approved aspects of Shariah committees.

b) Underlying assets: to guarantee that the assets used in sukuk issuance are compatible to Shariah requirements.

c) Utilization of proceeds: to guarantee that there is an obvious statement on the outcome of the sukuk that is used only in activities compliant with Shariah requirements, in addition to ensuring that the returns submitted on the list are totally compatible with Shariah requirements. This part is so important, especially if the activities of the issuer are inconsistent with the requirements of Shariah.

d) Designated account: to guarantee that only Shariah compliant accounts will be taken into consideration.

e) Purchase price: This part is pretty important which needs to have careful observation. It is important for several countries. For example, Malaysia, with respect to sukuk issued, the structure of sukuk based on mu`awadah contract in Guidelines on Sukuk issued by the Securities Commission of Malaysia admitted the following:

"Sukuk bai` bithaman ajil, sukuk murabahah, sukuk istisna' and sukuk ijarah involves the sale and purchase of underlying assets. When the investors purchase the underlying assets, the purchase price must comply with the following requirements:

a) the purchase price must not exceed 1.51 times the market value of the asset; or
b) in cases where the market value of a particular asset cannot be ascertained, a fair value or any other value must be applied."

This admission protects all relevant parties who are involved in sukuk issuance from the incompatibility with the real price against the underlying asset.

f) ta`widh contract (Compensation contract): it is to guarantee that the compensation rate is compatible with the decision made by the competent authority, like Shariah Advisory Council in the central banks.

3) Audit the legal documents to guarantee that all conditions and terms in such documents do not conflict with the Shariah.

Different legal documentations in sukuk issuance have to be arranged. This actually needs accurate examination through Sharia committees to give guarantee that there are no items incompatible with the Shariah guidelines.

4) To guarantee that the admission (decision) of the Shariah committee is extremely understood and implemented by the issuer.This is a tough mission especially there are so many issuers w fho are focused on and are familiar with the traditional training only while there is a lack in the knowledge about the issuance under the Shariah requirements. Thus, it is extremely important that the Shariah committee be in the same line of satisfaction with the Shariah understanding of the issuer in the sukuk issuance; in that, it might implement and fulfil the decisions accordingly.

Finally, Shariah committee must give more attention to the above illustrated tasks. All documentations must be checked to make sure of their compatibility with Shariah compliance. Thus, any mistake or even negligence might lead to difficulities in issuing the sukuk due to the incompatiblity with such compliance.

5.2 Post-Sukuk Issuance

To audit or review the sukuk issued by Shariah committee is the main role in this stage (Post-Sukuk Issuance). Several vital tasks need to be done in this stage. They are as follows:

1) To guarantee that the sukuk returns are used according to activities which are compatible with Shariah requirements.

2) To guarantee that the sukuk issuer is maintained according to requirements of Shariah compliance status. This principle is suitable and could be applied just in case that the issuer is a company that has mixed activities: whereas in the same time of sukuk issuance, the company has to declare Shariah compliance through the authorities that have the right to give grant in this status to companies that are listed in the capital market. The Securities Commission, for example, in Malaysia announces whether or not that the companies listed in Bursa Malaysia' status are in line with Shariah compliance. The Securities Commission is doing such procedure bi-annually, in May and November. If the status of some or any of these companies are changed, the Shariah committee has to investigate sukuk status and make decision whether or not the sukuk is considerable and this depends on its compliance with Shariah.This matter is important, especially if changes occurred because of primary activities of the company not because of its financial ratio that exceeds the compliance benchmark.

6. Measurement based on Content Analysis

To measure sukuk legitimacy disclosure, the current paper used content analysis as a way for measuring sukuk legitimacy, where the literature review shows that this way is employed in social disclosure (Abdul Rahman et al., 2010; Maali *et al*., 2006; Gray *et al*., 1995; Zeghal and Ahmed, 1990).

Several previous studies were done to develop a relevant list of social information that must be disclosed by Islamic financial institutions. Yet, a few empirical studies have developed disclosure index with Shariah compliant information, particularly for Islamic financial institutions (Haniffa and Hudaib, 2007; Maali et al., 2006; Muwazir et al., 2006).Therefore, the present paper is the first to take in its account the using of three new parts as new structures that compose the Shariah committee report: structure and mechanisms of sukuk legitimacy; sukuk documentation and the last lies in Shariah compliance.

The previous studies in the literature review dealing with content analysis of the social disclosure studies have adopted the number of words, sentences and sometimes pages as the preferred units of analysis as a method to determine the disclosure degree (Gray, Kouhy, and Lavers, 1995). According to (Williams, 1999), these pervious studies theoretically did not give any detailed illustration for preferring/choosing any of them and neglecting the others. The researchers in the current paper suggest using the number of sentences method to measure sukuk legitimacy disclosure for four reasons: Firstly, to ensure increasing the validity of content analysis (Milne and Adler, 1999); secondly, as used by Ingram, & Frazier (1980), they selected sentences as the unit of analysis, reporting that *"a sentence is easily identified, is less subject to inter judge variations than phrases, classes and themes, and has been evaluated as an appropriate unit in previous research"*; and thirdly, as shown by

(Hughes and Anderson, 1995), sentences are more accepted than individual words. Nonetheless, as argued by Milne and Adler (1999), the single word itself is neglected to be as "words" because it doesn't express a certain meaning, without being completed with other words; fourthly, comparing a sentence to words and pages, a sentence could be as a very applicable unit of writing and speech (Walden and Schwartz, 1997; Hackston and Milne, 1996). Finally, as Oxibar and Déjean (2003) believe, among all these methods, a sentence is considered better than other methods in terms of reliable data for analysis.
Milne and Alder (1999) show that the main concern of content analysis is to focus on the reliability and moreover on the instruments used for data collected. They argue that the reliability could be achieved by using two ways. These two ways are employing multiple and single coders who must be given enough time to reach reasonable and acceptable level of skills. While (Krippendorff, 2004) in his study focuses on the types of reliability, he mentions that there are two types of reliability: the first one is stability, which shows the ability of a coder to code data in the same way over time and consequently it can decrease the dire need for multiple coders. The second lies in the accuracy used in measuring a review coding performance with a pre-established standard.

7. Institutional theory and Sukuk legitimacy

Meyer and Rowan (1977) admit that Institutional theory is a theory that is extremely useful because it helps give an explanation why in the Shariah Committee, the disclosure reports as it is. Institutional consistency, as mentioned by (DiMaggio and Powell, 1991), is the mechanism whose practices are adopted by organizations that face the same institutional pressures. Moreover, they show that the kind of consistency is based on the source from which such pressures come. Kasim (2012) explains that this consistency essentially has a relationship with organisational behaviour with the regulative and political impacts for some institutions like policies, and government regulator by its regulations. He illustrates that simulation consistency uses the same practices used by successful organisations in order to reduce uncertainty and to normative the consistency means complying with the norms and expectations of professional bodies and society in general.

Based on the above, the structure of consistency includes three means that organisations can be changed through to become like other firms. This change should be followed by legislations and rules, imitating best practices, and finally compatible with social traditions and expectations. Scott (2001) provides reasons for compatibility to its enhancement for legitimacy, alleviates risk of threat and hopes to get additional resources. The current paper, for two essential reasons, relies on and uses institutional theory in its discussing the findings because there is a clear similarity among all Islamic financial institutions including Shariah committee reports and central banks guidelines, as well as the concept of consistency is derived from such theory.

6. Significance of Sukuk Legitimacy

Shariah could be explained as a way which lights and guides Muslim's life in all its aspects (Kasim, 2012). Shariah consists of a nexus of Islamic rules, parameters and principles. Muslims follow both the Holy Quran that consists of words of Allah as well as they follow Prophet Muhammad' Hadith. The very important source of Shariah is the Holy Quran. For cases that are not addressed obviously / explicitly in both the Holy Quran and Hadith, Shariah uses another source which lies in Ijma, Qiyas, and Ijtihad. All such things refer to the solution for the maters that need a judgment under Islamic law; in that, Islam is the religion characterized by flexibility in explaining issues that need to be clear by giving (sometimes) more than one explanation in terms of the fact that such explanations have no negative impact or even distortion of Islamic identity. Globally, therefore, the business world has witnessed a hard wave of crises, bankruptcy and collapse in large companies in several developed and developing countries. Such harmful crises have led to the collapse of a large number of global companies that have a high and good reputation in business world (Chen et al., 2010; Ongena et al., 2003; Radelet and Sachs, 1998) . Carmassi and Herring (2013) mentioned that these crises revealed that there is a lack and need for coherent business systems in global and large financial institutions.Therefore, the current paper aims to deal with business processes from the Islamic Shariah perspective especially on sukuk business and its legitimacy towards using new measurement based on content analysis. The current paper focuses on such important issue because the previous studies have revealed an important rule of Islamic Shariah principles to the companies during the global crises. Hasan and Dridi (2011) admit about this reality. They examined the impact of crisis on the performance by examining such an impact on asset growth, profitability and credit of both Islamic banks and conventional banks for a group of countries. They chose in their study just the banks that are characterized by having significant and important market share. Their findings revealed that elements related to Islamic banks' business structures mitigate and protect these banks to have a negative impact on their profitability in 2008. Moreover, Islamic banks performed better than conventional banks regarding to credit and asset growth in 2008-2009. In addition, islamic banks contributed positively to the stability of financial and economic aspects of the country.

Sukuk has a feature as a financial instrument that should be undertaken in accordance with Shariah rules. Therefore, as Hamid et al., (1993) argue, it is important that sukuk implementation has to be compliant with Shariah principles in order to be as a vital and preferred alternative choice in the current business environment. The role of Shariah is so important in the business world because of its concern for justice, honesty and goodwill, preventing on the other hand any prohibitions on uncertainties and fraud. The recommendations by Shariah to Muslims for conducting their business transactions are based on ethical behavior side by side in giving attention to social responsibility (Kasim, 2012).

Although gaining profit and pursuing to do so is not forbidden, it could not be gained at the account of underpinning virtues of sukuk that involve social guarantee, mutual risk sharing, cooperation, mutual protection, solidarity and mutual risk sharing. Such virtues are constructed for a wider aim than making profit.

Dawood (2008) demonstrates that it is pretty important for business activities to be compliant with Islamic law in order to meet the growing demand for Islamic sukuk that are totally complying with Shariah rules due to the growing Muslim *Ummah* and increasing awareness and diligence on the importance for complying with Shariah. For Muslims' investors, compliance with Shariah requirements in business transactions is an important issue because it has its impact on purity of the income earned and expenditure incurred, while noncompliance has a negative impact on revenue of the firm as revenue earned from illegal disclosure of Shariah compliance operations to be considered as charity or donation. Shariah compliance refers to the purity factor of operations and as such enables Muslim investors to fulfill their religious duty by choosing sukuk products as their favorite choice. In that, as a sukuk legitimacy and its provision represent a rare valuation that can satisfy the requirements of Muslim investors and their desire for dealing with halal sukuk products. In this regard, the Islamic sukuk are not direct substitutes to the conventional bonds since they could be used to gain competitive advantage. Haniffa and Hudaib (2007) determine the following information and its detail to represent the ethical identity of Islamic financial institutions in the area of reviews by Shariah Committee.

A set of responsibilities should be carried out by Shariah board; in that, advising on documentation, structuring, and all aspects of the sukuk such as a matter dealing with shariah pronouncement that should be based on the rationality of the pronouncement in addition to the structure and mechanisms of the sukuk issue. Moreover, Shariah principles and its concepts used in the sukuk issue should be compliant as recommended by Shariah Advisory Council (SAC). Furthermore, Shariah matters should be compatible with the documentation of the sukuk issue. Finally, to ensure that all conditions related to sukuk are extremely complaint with Islamic law for one hand, and the matters that are not consistent with the concepts and principles endorsed by the SAC on the other hand. Ideally, the Islamic financial institutions are expected to disclose the following information in their Shariah pronouncement:

• Structure and Mechanism:

• Documentation included (Purchase Agreement, Lease Agreement, Servicing Agency Agreement, Purchase Undertaking, Substitution Undertaking, Declaration of Trust, Cost Undertaking, Agency Agreement and Certificate Purchase Agreement.

• Shariah Approval: The Shariah Committee might grant its approval for a Sukuk issue according to conditions including a time limit of 14 business days for offering or inviting to subscribe or purchasing sukuk. In addition, the form related to the approval issued by Shariah Committee programme must be granted and complied with the Guidelines that refer to the terms and conditions issued by the issuer. In case of non – compliance with the terms and requirements admitted by SAC, here Shariah Committee will impose further conditions and obligations that must be carried out until the non-compliance gets the satisfaction of Shariah Committee.

Maali et al. (2006) show that Islamic financial institutions are expected to disclose detailed information on forbidden operations or even unlawful. Non-achievement of compliance if any, the reasons and the nature for the importance of undertaking such operations, the revenue amount or expenditure and how such revenue was disposed has to be disclosed. The rectification should be included in the disclosure to prevent future occurrences of non-Shariah compliance.

In addition, previous studies such as Haniffa and Hudaib (2007) and Maali et al. (2006), admit that Islamic financial institutions and their insights are very useful to improve disclosure in the Shariah Committee report of the Islamic financial instruments. They mentioned that improving disclosure on Shariah compliance is inevitable not only to distinguish amongst the Islamic financial products themselves but also with that of the traditional financial institutions.

8. Conclusion

Shariah committees play a significant role in ensuring the Shariah compliance of each sukuk issued. Thus, Shariah committees should consist of members that have enough experts and knowledge in Fiqh Mu'amelat., testing all the documentations involved accurately and individually. Moreover, issuers usually try to be more innovative and creative in structure of their sukuk to attract and give attention to investors in order to subscribe to their particular sukuk. Any non awareness or even negligence in making sound auditing and controlling for the documentation may lead to noncompliance with Shariah principles. Consequently this might lead also to have negative legal impacts on the sukuk issuance.

Furthermore, it is important that the Islamic financial industry ensures that the role of Shariah committee is played by members with adequate knowledge of the Islamic Capital Market sector; as capital market instruments should use diverse concepts, actually they are more complicated as compared to banking instruments. This needs full understanding by experts to be in line with Shariah aspects and all Shariah requirements in issuing sukuk.

This study suggested a new measurement to deal with the legitimacy of sukuk based on content analysis in pronouncement of Shariah in Islamic financial institutions. We find that Shariah pronouncement consists of three components (structure, documentation, and Shariah agreement), which involved all information regarding the legitimacy of sukuk. Thus, the Shariah committees have to put in their consideration the responsibility of Shariah disclosure in sukuk because sukuk holders need to know all information about legitimacy of sukuk. In addition, Shariah committees have to disclose in their report any noncompliance in sukuk that is not in line with Shariah principles.

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