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Problematics of Islamic Bonds from the Perspective of Islamic Law: An Analysis of DSN-MUI Fatwa No. 32/DSN-MUI/IX/2002

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Abstract

Sukuk (Islamic bonds) are designed as a riba-free investment alternative; however, DSN-MUI Fatwa No. 32/2002 continues to require issuers to repay the principal amount to sukuk holders at maturity—a provision that avoids the term "interest" at the level of wording but potentially departs from the risk-sharing principle that constitutes the essence of mudharabah and musyarakah contracts. This study employs a normative-qualitative approach by examining Qur'anic evidence, Hadith, fiqh maxims (al-'ibrah bil maqashid wal ma'ani, al-ghunmu bil ghurmi, and al-kharaju bi al-dhaman), and the views of classical and contemporary jurists (Ibn Qudamah, Imam al-Nawawi, and Wahbah al-Zuhaili) to assess whether the sukuk structure stipulated in the fatwa is genuinely distinct from qardh (debt) or substantively resembles it. The findings demonstrate that, with respect to principal guarantees and the allocation of loss-bearing responsibility, mudharabah sukuk under Fatwa No. 32/2002 correspond structurally to conventional bonds and classical qardh rather than to the authentic characteristics of mudharabah. This finding is reinforced by Muhammad Taqi Usmani's empirical critique (AAOIFI, 2007), which observed that approximately 85% of global sukuk at that time were not fully Shariah-compliant due to a similar issue. The study concludes that an absolute obligation to repay principal in mudharabah/musyarakah-based sukuk negates the risk-sharing element and shifts the contract toward qardh bi manfa'ah, potentially involving disguised riba and thereby conflicting with maqashid al-shari'ah. Reconstruction of the relevant fatwa provisions is therefore necessary to ensure that venture-based sukuk are substantively, rather than merely formally and legally, Shariah-compliant.
Keywords: sukuk, DSN-MUI fatwa, mudharabah, riba, fiqh al-mu'amalat

Abstrak

Sukuk (obligasi syariah) dirancang sebagai alternatif investasi bebas riba; namun, Fatwa DSN-MUI No. 32/2002 tetap mewajibkan penerbit untuk mengembalikan pokok investasi kepada pemegang sukuk pada saat jatuh tempo—suatu ketentuan yang memang menghindari penggunaan istilah "bunga" dalam redaksinya, tetapi berpotensi menyimpang dari prinsip pembagian risiko yang merupakan inti dari kontrak mudharabah dan musyarakah. Penelitian ini menggunakan pendekatan normatif-kualitatif dengan menelaah dalil-dalil Al-Qur'an, hadis, prinsip-prinsip fiqih (al-'ibrah bil maqashid wal ma'ani, al-ghunmu bil ghurmi, dan al-kharaju bi al-dhaman), serta pandangan para ulama klasik dan kontemporer (Ibn Qudamah, Imam al-Nawawi, dan Wahbah al-Zuhaili) untuk menilai apakah struktur sukuk yang diatur dalam fatwa tersebut benar-benar berbeda dari qardh (utang) atau secara substansial mirip dengannya. Temuan-temuan tersebut menunjukkan bahwa, terkait jaminan pokok dan pembagian tanggung jawab atas kerugian, sukuk mudharabah berdasarkan Fatwa No. 32/2002 secara struktural lebih sesuai dengan obligasi konvensional dan qardh klasik daripada dengan karakteristik otentik mudharabah. Temuan ini diperkuat oleh kritik empiris Muhammad Taqi Usmani (AAOIFI, 2007), yang mencatat bahwa sekitar 85% sukuk global pada saat itu tidak sepenuhnya sesuai syariah karena masalah serupa. Studi ini menyimpulkan bahwa kewajiban mutlak untuk melunasi pokok pinjaman dalam sukuk berbasis mudharabah/musyarakah meniadakan unsur pembagian risiko dan mengubah sifat kontrak menjadi qardh bi manfa'ah, yang berpotensi melibatkan riba terselubung dan dengan demikian bertentangan dengan maqashid al-shari'ah. Oleh karena itu, rekonstruksi ketentuan fatwa yang relevan diperlukan untuk memastikan

bahwa sukuk berbasis usaha tersebut secara substansial, bukan sekadar secara formal dan hukum, sesuai dengan syariah.

Keywords: sukuk, DSN-MUI fatwa, mudharabah, riba, fiqh al-mu'amalat

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Introduction

In Islam, investment constitutes a form of mu'amalah that is strongly encouraged, as it enables wealth to become productive and to generate benefits for others.[1] Investment may be defined as the placement or commitment of assets, whether property or funds, in an undertaking expected to yield income or appreciate in value in the future. From a Shariah perspective, financial investment may relate to trading or business activities, whether involving products and assets or the provision of services.[2]

To implement this encouragement of investment, appropriate investment vehicles are required, one of which is the capital market—a market for various long-term financial instruments or securities that may be traded, whether in the form of debt or equity. In the development of the modern economy, the financial system plays a central role in supporting the growth and stability of a country.

As Muslim awareness of Shariah values has increased, there has emerged a demand for a financial system that is not only efficient and productive but also consistent with Islamic principles of justice, transparency, and freedom from ribawi practices. It is within this context that the Islamic capital market has developed as an alternative regarded as more ethically grounded, with Islamic bonds or sukuk constituting one of its prominent instruments.

Conventional bonds are generally understood as debt instruments or acknowledgements of indebtedness issued by a debtor to a creditor, containing a promise to repay the principal together with coupon interest at a predetermined time.[3] In the Islamic capital market, this concept is adapted to Islamic principles and formulated as Islamic bonds or sukuk. According to DSN-MUI Fatwa No. 32/DSN-MUI/IX/2002, an Islamic bond is "a long-term security based on Shariah principles issued by an issuer to holders of Islamic bonds, which obliges the issuer to pay income to the holders in the form of profit sharing/margin/fee and to repay the bond funds at maturity.[4]"

[1] Adhi Prasetyo Totok, "Investasi Dalam Perspektif Ekonomi Islam," *At-Tawazun, Jurnal Ekonomi Syariah* 11, no. 01 (2023): 47–67.
[2] Gita Tiara Marhayu Putri and Bambang Santoso, "Sistem Investasi Di Indonesia," *TOMAN: Jurnal Topik Manajemen* 1, no. 2 (2024): 303–16.
[3] Tarmiden Sitorus, *Pasar Obligasi Indonesia: Teori Dan Praktik* (PT. RajaGrafindo Persada-Rajawali Pers, 2023).
[4] Dewan Syariah Nasional Majelis Ulama Indonesia., "Fatwa DSN-MUI No. 32/DSN-MUI/IX/2002 Tentang Obligasi Syariah," 2002.

Several previous studies have examined DSN-MUI fatwas and sukuk instruments from various perspectives. Andriansyah analyzed twenty-four DSN-MUI fatwas relating to the capital market, including fatwas concerning sukuk, and found that these fatwas were formulated according to a particular pattern—beginning with evidence from the Qur'an and Hadith, followed by fiqh maxims and scholarly opinions, and concluding with the official position of DSN-MUI—reflecting the principle of tadarruj (gradualism) in Islamic legal determination.[5] This study provides a comprehensive overview of the characteristics and development of DSN-MUI fatwas; however, it does not critically examine whether the substantive provisions of a particular fatwa—in this case, the obligation to repay principal under Fatwa No. 32/2002—are consistent with the principles of the underlying contract.

Meanwhile, Nadhifah and Muflihatin examined Islamic bonds by referring directly to DSN-MUI Fatwa No. 32/DSN-MUI/IX/2002, describing its general and specific provisions and mapping the differences between sukuk and conventional bonds through various indicators, such as the nature of the instrument, the basis of returns, and the representation of ownership.[6] Their study is descriptive-explanatory: it presents the fatwa provisions as they stand, including the clause requiring the issuer to "repay the bond funds at maturity," without questioning the fiqh implications of this clause for the validity of the underlying mudharabah or musyarakah contract.

These two studies indicate that research on DSN-MUI Fatwa No. 32/2002 has thus far remained at the level of describing the pattern of fatwa formulation and mapping the structural differences between sukuk and bonds. It has not yet proceeded to a critical examination of the substantive consistency of the mudharabah/musyarakah contracts stipulated in the fatwa from the perspective of fiqh al-mu'amalat. The novelty of the present study lies in its critical inquiry into whether the obligation to repay principal under Fatwa No. 32/2002 remains substantively consistent with the risk-sharing principle that constitutes the essence of mudharabah and musyarakah, or whether it instead shifts toward the characteristics of qardh, potentially giving rise to disguised riba.

Although the wording of the definition of Islamic bonds in the fatwa appears to avoid the term "interest," there remains a substantive similarity with conventional bonds in respect of the obligation to repay principal. This issue becomes particularly crucial when "repayment of principal" is treated as an absolute obligation irrespective of whether the underlying business incurs a loss, whereas a syirkah-based contract should expose the capital to business risk.

Based on these issues, this study aims to analyze the structure of Islamic bonds as set forth in DSN-MUI Fatwa No. 32 of 2002 from the perspective of Islamic law and to identify potential Shariah problems arising from the provision requiring repayment of the principal. The findings are expected to contribute to strengthening Islamic financial instruments so that they are genuinely aligned with the values of fiqh al-mu'amalat and maqashid al-shari'ah.

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[5] Yuli Andriansyah, "Analysis of Fatwas by the National Sharia Board-Indonesian Council of Ulama on the Stock Market," *Millah: Journal of Religious Studies* 22, no. 2 (2023): 525–52, https://doi.org/10.20885/millah.vol22.iss2.art9.

[6] Noor Iffatin Nadhifah and Siti Imaniatul Muflihatin, "Obligasi Syari'ah : Antara Teori Dan Implikasi," *Jurnal Publikasi Manajemen Informatika* 3, no. 2 (2024): 01–05, https://doi.org/10.55606/jupumi.v3i2.3675.

Results and Discussion

The Substantive Nature of Islamic and Conventional Bonds

The term "obligasi" derives from the Dutch word obligatie, which etymologically means a binding contract or agreement.[7] From a formal legal perspective, a Minister of Finance Decree defines a bond as a type of security constituting an acknowledgement of debt arising from funds borrowed from the public, issued for a period of at least three years, with a promise to pay interest whose amount and payment date are predetermined by the issuer.[8]

This definition was subsequently reaffirmed and updated through Article 1 paragraph 34 of the Minister of Finance Decree on the Capital Market, which defines a bond as a security evidencing indebtedness of the issuer, containing a promise to pay interest or another form of return, as well as an obligation to repay the principal debt at maturity.[9]

From these two positive-law references, three definitive elements inherent in the legal construction of conventional bonds may be identified:

1. Contractual basis: a bond is an instrument acknowledging debt, rather than an instrument of business cooperation or equity participation;
2. Return scheme: the return takes the form of fixed interest, whose amount is predetermined with certainty from the outset irrespective of the issuer's business profit or loss;
3. Obligation to repay principal: the principal debt must be repaid at maturity irrespective of the issuer's financial condition or business performance.

These three elements are interrelated and form a single legal construction: because a bond constitutes debt (element 1), the creditor (bondholder) is entitled to certainty of principal repayment (element 3), together with compensation for the deferment of payment in the form of interest (element 2). In contemporary fiqh al-mu'amalat, this structure is regarded as a representation of riba al-nasi'ah, namely riba arising from the deferment of debt repayment accompanied by an additional amount stipulated in advance.

Normative Foundations of the Prohibition of Riba in the Qur'an and Hadith

To understand why the interest structure of conventional bonds constitutes a serious Shariah concern, it is first necessary to refer to the principal textual evidences concerning the prohibition of riba. Allah, Glorified and Exalted, says in Surah al-Baqarah verse 275:

Allah, Glorified and Exalted, says in the Qur'an, Surah al-Baqarah verse 275:

اَلَّذِيْنَ يَأْكُلُوْنَ الرِّبٰوا لَا يَقُوْمُوْنَ اِلَّا كَمَا يَقُوْمُ الَّذِيْ يَتَخَبَّطُهُ الشَّيْطٰنُ مِنَ الْمَسِّۗ ذٰلِكَ بِاَنَّهُمْ قَالُوْٓا اِنَّمَا الْبَيْعُ مِثْلُ الرِّبٰواۘ وَاَحَلَّ اللّٰهُ الْبَيْعَ وَحَرَّمَ الرِّبٰواۗ

"Those who consume riba cannot stand except as one stands who is being beaten by Satan into insanity. That is because they say, 'Trade is only like riba,' whereas Allah has permitted trade and prohibited riba." (Qur'an, al-Baqarah [2]: 275)

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[7] Abdul Manan and S SH, "Obligasi Syariah," *Direktorat Jenderal Badan Peradilan Agama: Http://Www. Badilag. Net/Data/ARTIKEL/EKONOMI% 20SYARIAH/OBLIG ASI% 20SYARIAH. Pdf (Diakses 29 Agustus 2026)*, 2008.

[8] Menteri Keuangan Republik Indonesia, "Keputusan Menteri Keuangan Republik Indonesia Nomor 775/KMK.001/1982" (Jakarta, 1982).

[9] Menteri Keuangan Republik Indonesia, "Keputusan Menteri Keuangan Republik Indonesia Nomor 1548/KMK.013/1990 Tentang Pasar Modal" (Jakarta, 1990).

This verse explicitly distinguishes between sale/business transactions (bay'), which involve risk and productive activity, and riba, which constitutes an increment without corresponding risk or productive effort. This distinction is further emphasized in the following verse:

يَمْحَقُ اللّٰهُ الرِّبٰوا وَيُرْبِى الصَّدَقٰتِّ

“Allah destroys riba and gives increase for charities.” (Qur'an, al-Baqarah [2]: 276)

Furthermore, verses 278–279 contain an explicit command to relinquish any remaining riba, accompanied by a severe warning to those who fail to comply:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ وَذَرُوْا مَا بَقِيَ مِنَ الرِّبٰوٓا اِنْ كُنْتُمْ مُّؤْمِنِيْنَ فَاِنْ لَّمْ تَفْعَلُوْا فَأْذَنُوْا بِحَرْبٍ مِّنَ اللّٰهِ وَرَسُوْلِهٖۚ وَاِنْ تُبْتُمْ فَلَكُمْ رُءُوْسُ اَمْوَالِكُمْۚ لَا تَظْلِمُوْنَ وَلَا تُظْلَمُوْنَ

“O you who believe, fear Allah and relinquish what remains of riba, if you are truly believers. If you do not, then be informed of a war from Allah and His Messenger. But if you repent, you may retain your principal; you shall neither wrong nor be wronged.” (Qur'an, al-Baqarah [2]: 278–279)

A crucial point in verse 279 is the phrase lakum ru'usu amwalikum (“you are entitled to your principal”). The verse affirms that only the principal capital may lawfully be recovered, whereas any increment above the principal that is stipulated without exposure to business risk constitutes riba and must be abandoned. This provides strong evidence that the Shariah problem in conventional bonds does not lie in the repayment of principal per se, but rather in the certainty of an additional return without corresponding risk.

The prohibition of riba is also emphasized in Surah Ali 'Imran verse 130:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَأْكُلُوا الرِّبٰوٓا اَضْعَافًا مُّضٰعَفَةًۖوَّاتَّقُوا اللّٰهَ لَعَلَّكُمْ تُفْلِحُوْنَ

“O you who believe, do not consume riba, doubled and multiplied, and fear Allah so that you may prosper.”

The prohibition is likewise affirmed in the Hadith. The Messenger of Allah, peace and blessings be upon him, said, as narrated by Imam Muslim from Jabir ibn 'Abdillah:

لَعَنَ رَسُوْلُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ آكِلَ الرِّبَا وَمُوْكِلَهُ وَكَاتِبَهُ وَشَاهِدَيْهِ وَقَالَ هُمْ سَوَاءٌ

“The Messenger of Allah, peace and blessings be upon him, cursed the consumer of riba, its payer, its recorder, and its two witnesses, and he said: ‘They are all alike [in sin].’” (Narrated by Muslim)

This Hadith demonstrates the gravity of the prohibition of riba, extending liability to all parties involved in the mechanism and documentation of the transaction, rather than merely to the party directly receiving the ribawi gain.[10]

[10] Muslim ibn al-Hajjaj, *Sahih Muslim*, ed. Muhammad Fu’ad ’Abd al-Baqi, 1st edition (Cairo: Dar Ihya al-Kutub al-’Arabiyyah, 1955).

Conceptual Tension: Can an Instrument Based on Riba al-Nasi'ah Be "Shariah-Compliant"?

On the basis of the foregoing textual evidences, a fundamental question arises.[11] When the three definitive elements of conventional bonds—a debt basis, a fixed return, and an obligation to repay principal—are combined, they structurally produce the pattern of dhaman ra's al-mal ma'a ziyadah muqarrarah (guarantee of principal together with a predetermined increment). The majority of classical and contemporary jurists, including decisions of Majma' al-Fiqh al-Islami and fatwas of contemporary scholars such as Yusuf al-Qaradhawi, categorize this as riba al-nasi'ah, because the increment is purely a function of time and certainty rather than the outcome of a real business activity involving risk.

Accordingly, the use of the term "Islamic bond" was initially regarded as a terminological contradiction (tanaqudh lafzhi): how can an instrument that is definitionally constructed upon a pattern of riba al-nasi'ah be coupled with the term "Shariah," when the Qur'an and Hadith categorically prohibit riba? Historically, this question prompted the Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) not merely to change the label, but to restructure the contractual basis of the instrument comprehensively.

The New Scheme and Indicators of Change in DSN-MUI Fatwa No. 32/DSN-MUI/IX/2002

In response to this tension, DSN-MUI Fatwa No. 32/DSN-MUI/IX/2002 defines Islamic bonds as long-term securities issued in accordance with Shariah principles, under which the issuer is obliged to pay income to bondholders in the form of profit sharing, margin, or fee, and to repay the principal bond funds at maturity.[12] The fatwa employs two principal indicators to claim a transition from an interest-bearing debt scheme to Shariah-based cooperation:

First, the contractual basis is replaced. Islamic bonds are no longer founded upon a generic debt contract but upon various mu'amalah contracts recognized in classical fiqh: mudharabah, musyarakah, murabahah, salam, istisna', and ijarah. Under mudharabah/musyarakah structures—which, together with ijarah, are among the contracts most commonly used in sukuk issuance—the issuer is positioned as the mudharib (fund manager), while the bondholder acts as the shahib al-mal (capital owner/investor). The fatwa also requires that the issuer not conduct business activities contrary to Shariah principles, a condition of halal al-nasyath (lawfulness of business activity) that is absent from conventional bonds.

Second, the nomenclature of returns is replaced. The fatwa classifies investor returns into three categories: profit sharing (for mudharabah/musyarakah), margin (for murabahah, salam, and istisna'), and ujrah/fee (for ijarah). The term "interest" is expressly avoided and replaced by terminology that, prima facie, refers to returns generated by real economic activity rather than an increment attributable to the deferment of debt.

Through these two changes, the fatwa succeeds at the level of wording (lafzhan) in departing from the framework of riba al-nasi'ah characteristic of conventional bonds and positions

[11] Jurnal Sosial et al., "The Concept Of Riba In Contemporary Business (Maaliyah Fiqh Study) Jurnal Sosial Sains Dan Komunikasi (Ju-SoSAK)" 3 (2024): 3–4.

[12] Dewan Syariah Nasional Majelis Ulama Indonesia., "Fatwa DSN-MUI No. 32/DSN-MUI/IX/2002 Tentang Obligasi Syariah."

sukuk as an instrument that appears to be based on profit-and-loss sharing rather than debt-based fixed returns.

Elements Retained and Fiqh Maxims as an Analytical Test

Of the three definitive elements of conventional bonds described above—(1) debt basis, (2) fixed return, and (3) obligation to repay principal—the fatwa explicitly changes the second element. The third element, namely the issuer's obligation to repay the principal amount to sukuk holders at maturity, remains unchanged and is retained in the same manner as the obligation to repay principal debt under KMK No. 1548/1990 jo. No. 1199/1991.[13]

This point becomes crucial when examined through the fiqh maxim that constitutes one of the methodological foundations of this study:

اَلْعِبْرَةُ فِي الْعُقُوْدِ لِلْمَقَاصِدِ وَالْمَعَانِيْ لَا لِلْأَلْفَاظِ وَالْمَبَانِيْ

“In contracts, consideration is given to their objectives and substantive meanings, not merely to their wording and formal structures.”[14]

This maxim requires the analysis of a contract not to stop at a change in nomenclature—from “interest” to “profit sharing”—but to investigate whether the legal consequences of the contract have genuinely changed.[15] If the most fundamental distinguishing feature between a debt contract, which requires certainty of principal repayment, and a business partnership, in which capital is exposed to the risk of loss, remains unchanged, then the alteration of nomenclature in the second element may be merely cosmetic and formalistic rather than substantive.

Accordingly, the following question becomes the point of departure for the subsequent discussion: is changing the nomenclature of returns sufficient to establish that a contract has genuinely shifted in character from debt (qardh) to business cooperation (mudharabah)? Or does the retained obligation to repay principal instead indicate that the sukuk structure has not substantively departed from the pattern of riba al-nasi'ah explicitly prohibited in Qur'an 2:275–279 and the aforementioned Hadith narrated by Muslim?

The Fiqh Framework of Qardh and Mudharabah as a Test of Contractual Substance

The question left open at the end of the preceding subsection—whether changing the nomenclature of returns is sufficient to transform the nature of a contract from debt into business cooperation—can only be answered by examining two contractual concepts side by side: qardh and mudharabah. They are selected as analytical tests because each represents an opposing pole: qardh is a tabarru' contract characterized by certainty of principal repayment, whereas mudharabah is a tijari (commercial) contract in which exposure to uncertainty and business risk is intrinsic.

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[13] Menteri Keuangan Republik Indonesia, “Keputusan Menteri Keuangan Republik Indonesia Nomor 1548/KMK.013/1990 Tentang Pasar Modal.”

[14] Imam Al-Kasani, *Bada'i as-Sana'i Fi Tartib Al-Shara'i,* (Dar al-Kutub al-‘Arabiyyah, 1974).

[15] Saheed Abdullahi Busari, Haruna Babatunde Jaiyeoba, and Mohamad Sabri Zakaria, “Interest Rate versus Profit Rate in the Light of Islamic Maxim: Al-Ibratu Fil Uqūdi Lil Maqāsidi Wa Ma'ānī Lā Lil Alfāzi Wal Mabani,” *Journal of Emerging Economies and Islamic Research* 10, no. 3 (September 30, 2022), https://doi.org/10.24191/jeeir.v10i3.18796.

The Concept of Qardh: Certainty of Principal without Additional Benefit

Qardh (a loan) is a non-commercial tabarru' contract in which one party lends property to another on the condition that an equivalent amount be returned.[16] It has two definitive characteristics. First, the principal must be repaid with certainty, irrespective of the borrower's profit or loss. Second, the contract categorically prohibits any stipulated additional benefit for the lender. This prohibition is reflected in the well-known maxim:

كُلُّ قَرْضٍ جَرَّ نَفْعًا فَهُوَ رِبًا

"Every loan that draws a benefit [for the lender] is riba."[17]

Although its chain of transmission as a marfu' Hadith is disputed, its substantive meaning is reinforced by scholarly consensus that a benefit stipulated in a loan contract falls within the category of riba. Ibn Qudamah (d. 620 AH) states in al-Mughni:

وكل قرض شرط فيه أن يزيده، فهو حرام بغير خلاف

"Every loan in which an increase is stipulated is prohibited, without disagreement."[18]

Accordingly, the fiqh formula of qardh may be stated as follows: principal is guaranteed (madhmun) + an additional benefit is stipulated = riba. This formula constitutes the first analytical parameter for assessing the sukuk structure.

The Concept of Mudharabah: Profit Sharing that Necessitates Exposure to Loss

Mudharabah is a business partnership between the capital owner (shahib al-mal) and the manager (mudharib), under which profits are distributed according to an agreed ratio. The element that fundamentally distinguishes it from qardh is that financial loss is borne entirely by the capital owner, provided that no negligence (taqshir) or misconduct (ta'addi) is attributable to the mudharib. Imam al-Nawawi (d. 676 AH) states in al-Majmu':

وَلَوْ خَسِرَ رَأْسُ الْمَالِ فَالْخُسْرَانُ عَلَى صَاحِبِ الْمَالِ، وَلَا يَضْمَنُ الْعَامِلُ إِلَّا بِتَعَدٍّ أَوْ تَقْصِيرٍ

"If the capital incurs a loss, the loss is borne by the capital owner, and the manager is not liable except in cases of misconduct or negligence."[19]

Wahbah al-Zuhaili likewise emphasizes in al-Fiqh al-Islami wa Adillatuhu:

يَدُ الْمُضَارِبِ يَدُ أَمَانَةٍ عَلَى الْمَالِ، فَلَا يَضْمَنُ مَا يَتْلَفُ بِيَدِهِ إِلَّا بِالتَّعَدِّي أَوِ التَّقْصِيرِ، وَيَجُوزُ لِرَبِّ الْمَالِ أَخْذُ أَوِ اشْتِرَاطُ تَقْدِيمِ رَهْنٍ، أَوْ طَلَبُ كَفِيلٍ مِنَ الْمُضَارِبِ لِاسْتِيفَاءِ حَقِّهِ فِي حَالِ التَّعَدِّي أَوِ التَّقْصِيرِ، وَلَكِنْ لَا يَجُوزُ اشْتِرَاطُ الضَّمَانِ لِرَأْسِ الْمَالِ أَوِ الرِّبْحِ، عَلَى الْمُضَارِبِ، لِأَنَّهُ مُجَرَّدُ أَمِينٍ أَوْ وَدِيعٍ.

"The mudharib's possession of the property is a fiduciary possession. Accordingly, he is not liable for property that is damaged or lost while in his possession except in cases of misconduct or negligence. The capital owner may take or stipulate collateral, or request a guarantor from the mudharib, in order to secure his rights in the event of misconduct or

[16] Nafisatuzahra Raysa Islami et al., "Akad Ariyah Dan Akad Qardh Serta Pengintergrasiannya Dalam Analisis Kasus Kontemporer," *AL-BAYAN: JURNAL HUKUM DAN EKONOMI ISLAM* 5, no. 2 (2025): 178–97.
[17] Zayn al-Din Ibn Nujaym, *Al-Ashbah Wa Al-Naza'ir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1999).
[18] Abdullah ibn Ahmad Ibn Qudamah, *Al-Mughni*, 4th ed. (Cairo: Maktabah al-Qahirah, 1968).
[19] Yahya ibn Sharaf Al-Nawawi, *Al-Majmu' Sharh Al-Muhadhdhab* (Beirut: Dar al-Fikr, 1997).

negligence. However, it is not permissible to stipulate that the mudharib guarantee the principal capital or profit, because he is merely a fiduciary."[20]

From this, the fiqh formula of mudharabah may be formulated as follows: principal is not guaranteed (ghairu madhmun) + the risk of business loss is borne by the shahib al-mal = a valid contract free from riba. The logical consequence is that once the principal is guaranteed absolutely by the mudharib/issuer without being conditional upon negligence, the contract loses its defining element and shifts outside the category of mudharabah.

Using the two foregoing formulas as parameters, the position of mudharabah-based sukuk under DSN-MUI Fatwa No. 32/2002 may be systematically mapped against conventional bonds and classical qardh:

Parameter	**Obligasi Konvensional**	**Sukuk Mudharabah (Fatwa 32/2002)**	**Classical Qardh**
Contractual basis (wording)	Interest-bearing debt	Kerjasama usaha (mudharib–shahibul mal)	Tabarru' loan
Principal guarantee	Dijamin mutlak, jatuh tempo	Dijamin mutlak, jatuh tempo	Dijamin mutlak, jatuh tempo
Nature of return	Tetap (bunga %), ditentukan di muka	Nominal "bagi hasil", namun kepastian pengembalian pokok tetap dijaga	Tidak boleh ada tambahan yang disyaratkan
Penanggung risiko kerugian usaha	Issuer entirely	Seharusnya shahibul mal (investor), *namun praktiknya pokok tetap aman*	Tidak relevan (bukan akad usaha)
Konsekuensi bila usaha merugi	Emiten tetap wajib bayar bunga + pokok	Pokok tetap kembali; risiko usaha secara substansi tidak dibebankan ke investor	Peminjam tetap wajib kembalikan pokok
Kategori fikih (formula)	Riba nasi'ah (qardh + ziyadah)	*Menyerupai* qardh + ziyadah bernomenklatur "bagi hasil"	Qardh murni (sah bila tanpa syarat manfaat)

A reading of this table reveals a clear pattern: with respect to the guarantee of principal and the consequences of business loss—the two parameters most determinative of the nature of a contract under the foregoing fiqh formulas—mudharabah sukuk under Fatwa No. 32/2002 correspond instead to conventional bonds and classical qardh, rather than to the authentic characteristics of mudharabah. The only aspects that change are the "contractual basis

[20] Wahbah ibn Mustafa al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*, 5th ed. (Damascus: Dar al-Fikr, 2004).

(wording)" and the designation of the return, while the risk and guarantee structure continues to follow the qardh pattern.

The findings in the table require a methodological justification as to why substantive similarity should be accorded greater weight than differences in terminology. The following three fiqh maxims (qawa'id fiqhiyyah) provide the foundation:

First, the principal maxim concerning the assessment of contracts:

اَلْعِبْرَةُ فِي الْعُقُوْدِ لِلْمَقَاصِدِ وَالْمَعَانِيْ لَا لِلْأَلْفَاظِ وَالْمَبَانِيْ

"In contracts, consideration is given to their objectives and substantive meanings, not merely to their wording and formal structures."[21]

This maxim requires the assessment of mudharabah sukuk to go beyond the designation "profit sharing" and examine the actual consequences: who truly bears the risk?

Second, the maxim concerning the relationship between gain and risk:

اَلْغُنْمُ بِالْغُرْمِ

"Entitlement to gain corresponds to the risk borne."[22]

This maxim serves as a measure of transactional justice in Islam: the party entitled to business profit is also the party that must be willing to bear the possibility of loss. If sukuk investors receive "profit sharing" while their principal remains fully protected from business loss, the structure directly contravenes the maxim al-ghunmu bil ghurmi.

Third, a corresponding and mutually reinforcing maxim:

اَلْخَرَاجُ بِالضَّمَانِ

"The benefit or yield may be enjoyed only by the party who bears its liability/risk."[23]

This maxim derives from a Hadith of the Prophet, peace and blessings be upon him, narrated by Abu Dawud and al-Tirmidhi, and is widely employed by jurists as a general principle that entitlement to yield must correspond to willingness to bear the risk of damage or loss relating to the asset that generates that yield.[24]

These three maxims coherently lead to a single methodological conclusion: because substance rather than wording determines the validity of a contract, and because legitimate profit must be coupled with exposure to risk, a sukuk structure that absolutely guarantees principal while continuing to characterize the return as "mudharabah profit sharing" strongly risks departing from the essential requirements of mudharabah and shifting toward a qardh that draws benefit (qardh jarra naf'an), as discussed above.

The Position of Sukuk between Mudharabah and Disguised Qardh

Based on the foregoing mapping, it is found that on the two parameters most determinative of contractual character—the guarantee of principal and the party bearing business-loss

[21] Imam Al-Kasani, *Bada'i as-Sana'i Fi Tartib Al-Shara'i,* .

[22] Ibn Rajab al-Hanbali, *Al-Qawa'id* (Riyadh: Dar Ibn al-Jawzi, 1999).

[23] Jalal al-Din Al-Suyuti, *Al-Ashbah Wa Al-Naza'ir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1990).

[24] Tawfik Azrak and Hani Hazaa, "The Profit/Gain from Islamic Law of Contract Perspective and The Issue Of Ownership Risk (Daman Al-Milkiyyah)," *Journal of Islamic Finance* 10, no. 1 (2021): 111–16, https://doi.org/10.31436/jif.v10i.533.

risk—the mudharabah sukuk structure under Fatwa No. 32/2002 corresponds to conventional bonds and classical qardh rather than to the nature of mudharabah itself. Sukuk have indeed departed at the level of wording (lafzhan) from the term “interest,” replacing it with “profit sharing,” “margin,” or “ujrah.” Yet wording is not the criterion of contractual validity, as affirmed by the maxim al-'ibrah bil maqashid wal ma'ani.

In terms of economic consequences, a structure that guarantees full repayment of principal at maturity, together with payment of a return that in practice is treated as a fixed obligation rather than being dependent upon the actual profit or loss of the business, produces a pattern identical to the formula of a qardh that draws benefit: guaranteed return of principal plus an additional amount determined in advance. This is precisely the formula prohibited by the maxim:

كُلُّ قَرْضٍ جَرَّ نَفْعًا فَهُوَ رِبًا

“Every loan that draws a benefit [for the lender] is riba.”[25]

Accordingly, the sukuk model contemplated in DSN-MUI Fatwa No. 32/2002 has not fully departed from the interest-bearing debt scheme prohibited in Islam. It has shifted in nomenclature and formal legal characterization, but in its economic substance and legal consequences the pattern of dhaman ra's al-mal ma'a ziyadah muqarrarah (guarantee of principal accompanied by a predetermined increment) remains. It therefore resembles qardh bi manfa'ah wrapped in Shariah nomenclature rather than an authentic business partnership contract.

The clause imposing an absolute obligation upon the issuer to repay principal at maturity—as stipulated both in Fatwa No. 32/2002 and Law No. 19/2008 concerning SBSN—stands in direct tension with the validity requirements of mudharabah/musyarakah articulated by Imam al-Nawawi (al-khusranu 'ala shahib al-mal, loss is borne by the capital owner) and Wahbah al-Zuhaili (la yadhmanu al-mudharib illa idza ta'adda aw farrata, the mudharib is not liable except in cases of misconduct or negligence).

This contradiction is not merely a technical administrative difference; rather, it negates the defining element of the contract itself. Risk-sharing is not an ancillary feature of mudharabah—it is its essence and the effective cause distinguishing it fundamentally from riba. When repayment of principal is absolutely guaranteed without being conditioned upon negligence by the mudharib, the position of the shahib al-mal shifts from that of a “bearer of business risk” to a “protected lender,” while the mudharib shifts from a “fiduciary manager” to a “borrower obliged to repay.” This transformation of roles constitutes the core of the problem: the contract is not merely “less than ideal,” but has shifted legal categories while continuing to bear the label mudharabah.

Therefore, the answer to RQ2 is that an absolute obligation upon the issuer to repay the principal directly conflicts with the principles of fiqh al-mu'amalat governing mudharabah/musyarakah because it eliminates the element of risk that constitutes an essential requirement of both contracts, as recognized by classical and contemporary jurists.

This issue is not merely a theoretical or textual concern; it has manifested as a real problem in the global sukuk market. In November 2007, Muhammad Taqi Usmani, Chairman of the Shariah Board of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), publicly stated that approximately 85% of sukuk then in circulation—

[25] Ibn Nujaym, *Al-Ashbah Wa Al-Naẓa'ir*.

particularly those structured on musyarakah and mudharabah—were not fully Shariah-compliant because they incorporated a purchase undertaking at the nominal principal value upon maturity rather than at the actual market value of the assets.[26] Usmani identified two principal defects: risk was not genuinely shared, and sukuk investors were insulated from the real consequences of their investment.

This statement significantly affected the global sukuk market: sukuk issuance declined sharply from approximately USD 30.8 billion in 2007 to USD 1.4 billion in 2008, prompting AAOIFI to convene an emergency meeting in Bahrain in February 2008 to formulate new guidance.[27] This episode provides empirical confirmation of the fiqh findings discussed above: the problem of principal guarantees in venture-based sukuk is not merely hypothetical but has been expressly recognized and criticized by an international Shariah standard-setting authority for Islamic finance.

A common counterargument advanced by some contemporary Islamic finance practitioners must also be considered: that a principal guarantee may be justified under Shariah through a wa'd (unilateral promise) or purchase undertaking by a third party outside the core contract—as commonly applied in ijarah sukuk structures, where the originator promises to repurchase the asset at nominal value upon maturity and the promise is regarded as separate from the lease contract itself.[28]

Nevertheless, as Usmani himself emphasizes, this argument is valid only for ijarah sukuk because the basis of the return is rent from a real asset (rental income), which may naturally be fixed without eliminating the relevant Shariah principle; the leased asset remains exposed to the risk of total destruction beyond the control of either party. The wa'd argument cannot be applied by analogy to mudharabah/musyarakah sukuk because their returns arise from a business venture that is inherently variable and cannot be guaranteed in advance. Guaranteeing principal in mudharabah sukuk through a purchase undertaking at nominal value is equivalent to guaranteeing that the venture will never incur a loss—a certainty incompatible with the very nature of a risk-based venture. Thus, this counterargument does not remove the criticism directed at the mudharabah sukuk structure under Fatwa No. 32/2002, because the same Shariah standard-setting body (AAOIFI) that permits wa'd in ijarah is among the strongest critics of its application to mudharabah/musyarakah.

Implications for Maqashid al-Shari'ah and Recommendations for Strengthening the Contractual Structure

The foregoing finding—that mudharabah sukuk under Fatwa No. 32/2002 substantively shift toward disguised qardh—is not merely a technical matter of contractual selection, but concerns the objectives of Shariah (maqashid al-shari'ah) themselves.

The Principle of Justice ('Adl) as the Primary Standard

Islamic economics is founded upon the principle that gain (ghunm) and risk (ghurm) must operate together as an expression of transactional justice ('adl fi al-mu'amalah), as elaborated through the maxims al-ghunmu bil ghurmi and al-kharaju bi al-dhaman above. When a sukuk structure permits investors to enjoy a share of business returns while fully shielding them

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[26] Muhammad Taqi Usmani, "Sukuk and Their Contemporary Applications" (Makkah, 2007), https://aaoifi.com/members-2/?lang=en.

[27] Tasawar Nawaz, "Balancing Shariah Authenticity and Market Stability: A Scenario-Based Framework for Implementing AAOIFI Shariah Standard No. 62 in the Global Sukuk Market," *Journal of Risk and Financial Management* 18, no. 11 (2025): 1–20, https://doi.org/10.3390/jrfm18110604.

[28] Auwal Adam Sa'ad, "Structural Development of Ijarah Sukuk: An Appraisal," *Journal of Islamic Finance* 8 (2019): 107–16, https://doi.org/10.31436/jif.v8i0.350.

from the risk of business failure through a guarantee of principal repayment, the result is the receipt of benefit without willingness to bear the consequences of the source from which that benefit arises. In fiqh, such a pattern may be characterized as a form of zhulm (injustice) in mu'amalah, because one party enjoys returns generated by work and risk that are effectively borne by another party (the mudharib/issuer), without assuming a proportionate burden.[29]

As the Messenger of Allah, peace and blessings be upon him, said:

اتَّقُوا الظُّلْمَ، فَإِنَّ الظُّلْمَ ظُلُمَاتٌ يَوْمَ الْقِيَامَةِ

"Beware of injustice, for injustice will be darkness on the Day of Resurrection." (Narrated by Muslim)[30]

An apt analogy is that of a person who boards a trading vessel and is entitled to a share of the profits of the voyage, yet bears no loss whatsoever if the vessel sinks. Such a structure, however much it is framed in Shariah terminology such as "profit sharing" or "mudharabah," contains a subtle imbalance (latent exploitation): formally valid in wording, yet substantively inconsistent with justice.

The Principles of Responsibility (Mas'uliyyah) and Balance (Tawazun)

In addition to justice, maqashid al-shari'ah in the sphere of mu'amalah also require proportional responsibility (mas'uliyyah) between the fund manager and the capital provider, as well as balance (tawazun) between the right to enjoy profit and the obligation to bear risk.[31] When repayment of principal is guaranteed absolutely without regard to the actual condition of the business, this balance becomes one-sided: the issuer/mudharib bears the entire burden of business risk together with a fixed payment obligation, while the investor/shahib al-mal—who should function as a business partner sharing the risk—is instead positioned similarly to a creditor in a conventional debt arrangement.

This shift ultimately undermines the function of mudharabah as an instrument of distributive justice in Islamic economics. Rather than serving as a mechanism through which capital owners and business managers share risk fairly for their mutual benefit, such a structure reproduces the logic of a ribawi economy behind Shariah nomenclature. This directly conflicts with the objective of Shariah in preserving wealth (hifzh al-mal) justly, rather than preserving the wealth of one party at the expense of justice for the other.

The foregoing analysis demonstrates that the issue of mandatory principal repayment in mudharabah sukuk is not merely a furu'iyyah debate—a technical subsidiary matter that may readily be tolerated as an area of ijtihad. Rather, it touches directly upon the ushul of Islamic economic philosophy: the elimination of riba cannot be achieved merely by changing nomenclature, but must be accompanied by a genuine transformation in the structure of risk and responsibility. If risk-sharing—the substantive distinction between Islamic and ribawi economics—is removed in practice while its label is retained, what is threatened is not merely the validity of a single contract, but the integrity of the maqashid underlying Islamic financial instruments as an authentic alternative rather than a mere rebranding of the conventional system.

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[29] Ghunmu Ghurm, Sharia Asset, and Guarantee Mechanisms, "Analysis of Sukuk Default from the Perspective of the Principle of Al-" 5, no. 2 (2026): 328–41.

[30] Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.).

[31] Sahban and Zainuddin, "Risk Justice in Non-Profit Sharing Contracts in Indonesian Islamic Banking from the Perspective of Maqashid Shariah," *Vifada Assumption Journal of Law* 3, no. 2 (2025): 74–86, https://doi.org/10.70184/zeqqbn18.

These findings indicate the need to reconsider the provisions of DSN-MUI Fatwa No. 32/2002 and related regulations (Law No. 19/2008 concerning SBSN), particularly the clause requiring principal repayment for mudharabah/musyarakah-based sukuk. Strengthening the framework may be directed toward several measures. First, an absolute principal guarantee should be expressly confined to sukuk structures based on real assets and leases (ijarah), in accordance with the purchase undertaking mechanism recognized in AAOIFI standards. Second, for mudharabah/musyarakah-based sukuk, the amount returned to investors should be linked to the market value of the assets or the actual performance of the business at maturity rather than a nominal value predetermined in advance. Third, stricter Shariah supervision is required to ensure that sukuk issuance practices do not deviate from the contracts stated in their prospectuses.

Through these measures, Islamic financial instruments are expected genuinely to represent the values of fiqh al-mu'amalat and maqashid al-shari'ah in substance—not merely to satisfy formal legal requirements, but also to possess authentic Shariah validity, in accordance with the original objective of this study.

Conclusion

This study reaches two principal conclusions that directly answer the research questions formulated at the outset. First, the sukuk model contemplated in DSN-MUI Fatwa No. 32/2002 has not fully departed from the interest-bearing debt scheme prohibited in Islam. Although the term "interest" has been replaced in wording by "profit sharing/margin/fee," the structure that absolutely guarantees repayment of principal—corresponding to the formula of a qardh that draws benefit (qardh jarra naf'an)—indicates that the change is nomenclatural and formal rather than substantive. Second, the issuer's obligation to repay principal directly conflicts with the validity requirements of mudharabah/musyarakah as formulated by Imam al-Nawawi and Wahbah al-Zuhaili because it eliminates risk-sharing, which is an essential element—not merely an ancillary feature—of both contracts.

This finding is not merely a technical furu'iyyah issue; rather, it concerns the integrity of maqashid al-shari'ah as a whole: justice ('adl), responsibility (mas'uliyyah), and balance (tawazun) between entitlement to profit and willingness to bear risk. As an implication, this study recommends that DSN-MUI and the relevant regulators—particularly in the context of Law No. 19/2008 concerning SBSN—review the provisions governing principal guarantees in mudharabah/musyarakah-based sukuk by linking the amount returned to investors to the market value of assets or actual business performance rather than to a fixed nominal value, as reflected in AAOIFI standards concerning the relevant sukuk structures.

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