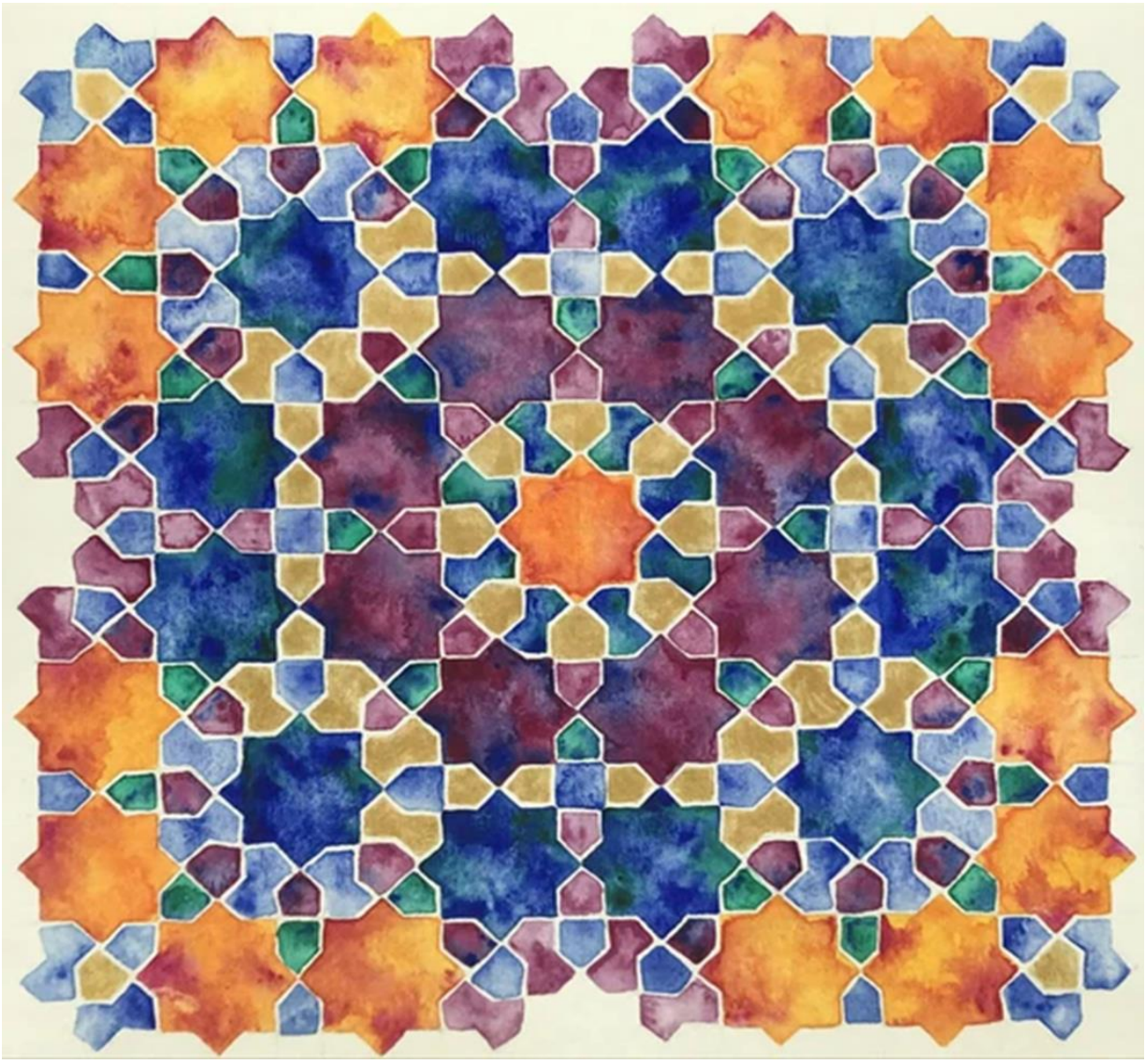
LEGAL TRANSFORMATION IN MUSLIM SOCIETIES

Print ISSN 3029-0961 Online ISSN 3029-097X

Volume 1, Issue 1, 2024



REVIVAL PRESS

Legal Transformation in Muslim Societies

The Legal Transformation in Muslim Societies is a quarterly journal offering a platform for intellectually stimulating and critical commentaries and new discourses on issues that shape the law in Muslim societies around the globe. Legal transformation in societies is broadly construed as the processes and forms of reform of legal systems and their rules that reflect and promote values, goals, cultures, customs, structures, interests, and working mechanisms of societies. Legal transformation can involve creating new laws, reforming existing laws, or abolishing unjust or oppressive laws. Legal transformation can also affect the way law is interpreted, applied, enforced, and challenged by different actors and institutions.

Islamic law is not a stagnant system and has continuously transformed reflecting to the changing needs and circumstances of Muslim societies around the globe. There are many factors that influence the transformation of Islamic law including, for example, the general conceptions of Islamic law, the role of customs and cultures in the adaptation and developments in Islamic law, and the intersections of Islamic law with non-Islamic legal systems. Islamic law scholars have different views on different aspects of Islamic law and often debate how it should be interpreted and applied. They place different degrees of emphasis on the primacy of the Qur'an and the Sunnah (the teachings and practices of Prophet Muhammad (PBUH)) as the sources of Islamic law whilst relying in different proportions on consensus (*ijma*) and rational arguments such as analogical reasoning (*qiyas*) or public interest (*maslaha*) as additional sources. Amidst scholarly debates on sources of Islamic law and methods of their interpretation, Islamic law has lived through a long and complex history that spans over fourteen centuries covering different regions, societies, and cultures. As Islamic law has replaced or reformed existing customs in societies that were incompatible with Islamic principles, local customs, traditions and cultures have also influenced the interpretation and progress of Islamic law. When Muslim societies expanded their influence, or when Muslims and Islam reached across different regions and continents, they encountered various legal norms and systems that have different origins, sources, methods, and outcomes. Islamic law has incorporated elements from other legal systems existing in societies when appropriate and it has also reshaped or repudiated element of other legal systems when necessary, giving rise to questions related to rejection, harmonisation, and reconciliation of these legal systems with Islamic law.

The Legal Transformation in Muslim Societies welcomes contributions seeking to assess the existing or develop new legal concepts and categories to deal with issues that arise from the transformation, reform, reinterpretation, re-evaluation, and reconstruction of Islamic law, diversity and pluralism within Islam, and its cross-cultural interactions. We are also interested in new ideas on the implementation and administration of Islamic law in an efficient and effective manner in Muslim societies through transformation of institutions such as politics (*siyasa*), judgeship (*qadayya*), market inspection (*hisba*), consultation (*shura*), law schools (*madrasas*), colleges (*madrasas al-tayyibah*), etc. as these institutions play important roles in developing Islamic jurisprudence (*fiqh*), codifying legal norms (*usul al-fiqh*), resolving legal disagreements (*fiqh al-madhdhab*), producing legal scholarship (*ijtihad*), and building culture and civilisations (*tamudan*). We also seek contributions on aspects such as challenges and opportunities for modernisation. As modernity brings about social changes in the shape of, for example, technological advancements, industrialisation, urbanisation, secularisation, capitalism, liberalism, and globalisation, it also poses new challenges for Muslims in terms of

preserving their identity, values, and traditions while making positive advancements to new realities, demands, and expectations from within and outside of their communities. Authors may also focus on modernisation as a source of new opportunities for Muslims in terms of promoting their interests, rights, and welfare while contributing to global peace, justice, and development, through innovation, dialogue, and cooperation with other actors.

The journal welcomes submission of scholarly articles for consideration with a view to publication. The normal word length for article contributions in the journal is between 5000-15000 words. All submissions are peer reviewed, and it is a requirement that they are original and not previously published elsewhere. Please take a look at our **Detailed Guidelines for Journal Contributors** page for further instructions for authors and an explanation of our peer review process.

REVIVAL PRESS LIMITED

UNITED KINGDOM

The Revival Press Limited furthers the objectives of excellence in research, scholarship, and education by publishing worldwide.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the Editor in Chief. Permissions to use this content must be obtained from the copyright owner. Please apply to: Ahmad Ghouri via email: a.a.ghouri@outlook.com.

Links to third-party websites are provided by contributing authors in good faith and for information only. Revival Press disclaims any responsibility for the materials contained in any third-party websites referred to in this journal.



© 2023 Revival Press Limited. All rights reserved.
Revival Press Limited is a registered company in England and Wales under company registration number 15280723.

Legal Transformation in Muslim Societies

Volume 1
Issue 1
2024

Print ISSN 3029-0961 ☪ Online ISSN 3029-097X

Editor-in-Chief

Dr Ahmad Ghouri, Senior Lecturer in Commercial Law & Director of Internationalisation
University of Sussex, UK.

Deputy Editor-in-Chief

Dr Zubair Abbasi, Oxford Brookes University, UK.

Associate Editors

Sufi Shahab Saqib, Kings College London, UK.
Dr Shoukat Ahmad Wani, Alliance University, India.
Yousef Wahb, University of Windsor, Canada.

Assistant Editors

Asif Belal, Aligarh Muslim University, India.
Amina Karim, University of the Punjab, Pakistan.
Kaif Hasan, Aligarh Muslim University, India.

Editorial Board

Prof. Md Maimul Ahsan Khan, Leading University, Bangladesh.
Prof. Nisrin Mahasneh, Qatar University, Qatar.
Prof. Faizan Mustafa, Chanakya National Law University, India.
Prof. Adnan Sarhan, University of Sharjah, UAE.
Prof. Muhammad Faruque, University of California, USA.
Prof. Mahmoud Masud, Coventry University, UK.
Prof. Ali Khaled Qtaishat, Al-Ahliyya Amman University, Jordan.
Prof. Malahayati Rahman, Universitas Malikussaleh, Indonesia.
Prof. German Rodriguez Moreno, IE University, Spain.
Prof. Jabeur Fathally, University of Ottawa, Canada.
Prof. Saeid Nazari Tavakkoli, University of Tehran, Iran.
Qudsia Mirza, University of East London,UK.
Dr Safdar Ali Sohail, Executive Director, Social Protection Resource Centre, Pakistan.

Volume 1 2024 Issue 1

Contents

Articles:

Securitisation of Sovereign Assets for Sukuk in Nigeria
Aishat Abdul-Qadir Zubair 1

A Shari'ah Appraisal of Virtual Currencies Based on Historical Perspective, Recent Legal Development and Financial Trends
Badreddine Berrahliai, F. B. Lalaymiaii, M. Kabir Hassaniii, Aishath Muneezaiv, and Ismail Mohamedv 14

A Critical Analysis of the Legal Framework Addressing Violence Against Women and Marital Rape in Lebanon
Beata Polok, Caroline Attie 30

Nikah-Halala in India: Practice, Precept, and Perception
Mohd Imran 42

Ensuring Economic Security for Women After Divorce: A Comparative Analysis of Alimony Rights
Syeda Izza Maryam Rizvi 58

Trial of Civilians by Military Courts in Pakistan: Insights Through Constitutional, Islamic and International Law Lenses
Amina Karim 69

Islamic Law and the Protection Against Enforced Disappearances
Heidi Kandiel 82

The Role of Majority Muslim Littoral States to Establish a Prosperous and Stable Indian Ocean
Hasan Yaser Malik 92

Legal Implications of Environmental Crimes in Islamic Jurisprudence
Iftikhar Hussain Bhat 109

The Jus ad Bellum and Jus ad Bello Predicament in the Context of Israel – Hamas Conflict
Nehaluddin Ahmad, Aqilah Walin Ali 130

Book Reviews:

***Saudi Arabia's Vision 2030, Shariah, and Contemporary Legal Trends*, Mohammad Bashayreh (ed), Revival Press, UK, 2024, vi + 110 pp. 978-1-917099-00-4 (eBook)**
German Rodriguez Moreno 160

Legal Transformation in Muslim Societies
Volume 1, Issue 1, 2024: 1-13

Securitisation of Sovereign Assets for Sukuk in Nigeria

Aishat Abdul-Qadir Zubair[i]

Abstract: According to the Nigerian Debt Management Office (DMO), the volume of Nigeria's sovereign *Sukuk*, an Islamic instrument for funding infrastructure projects, reached over 600 billion Naira realised from five issuances between 2017 and 2022. Despite the success recorded in the issuance and the increasing interest by investors globally in the Nigerian Islamic Capital Market, the securitisation of sovereign assets for the issuance of *Sukuk* remains controversial due to various Shari'ah issues identified with the process. This article reviews the existing literature on the securitisation of sovereign assets for *Sukuk* in Nigeria. By synthesising a wide range of scholarly works, policy documents, and empirical studies, the literature review undertaken in this article aims to elucidate the key factors, challenges, and implications associated with the approach to securitisation. The review reveals that while securitisation of sovereign assets can offer benefits such as diversification of funding sources, unlocking dormant assets, and attracting foreign investment, it also presents challenges such as ownership complexities, potential loss of control over assets, and market volatility. The analysis presented in this article contributes to a deeper understanding of the securitisation of sovereign assets for *Sukuk* issuance in Nigeria. As Nigeria seeks to sustainably meet its funding requirements and align with Islamic finance principles, the insights presented in this article serve as a valuable guide for informed decision-making in the realm of sovereign asset-backed *Sukuk* issuance.

Keywords: Nigeria; Securitisation; *Shari'ah; Sukuk*; Sovereign Assets

I. INTRODUCTION

The infrastructure deficit in Nigeria amounts to almost USD878 billion by 2040, as is being projected.[1] The Nigerian economy is currently confronted with a significant infrastructural deficit. The 'National Integrated Infrastructure' is the Federal government of Nigeria's 30-year Nigeria plan, which is said to require a considerable sum of money of around USD2.9 trillion.[2] Hence, it is no longer news that the use of *Sukuk* as a means of raising funds has proved to be an essential pillar for the continuous growth of the global Islamic finance industry and has thus been an intrinsic element in the industry. In Nigeria, there is a tremendous demand for infrastructure development finance, which includes funding for the road, aviation, railway, and power industries, among other things.[3]

[i] Ph.D.; MCL; B.L; LL. B; PCIBF; PCIED; CSAA. Lecturer, Islamic Law Department, Faculty of Law Kwara State University Malete – Nigeria (KWASU) Email: aisha.zubair@kwasu.edu.ng; ayyeesha@gmail.com.

[1] Esther Onyegbula, 'Nigeria's infrastructure deficit to hit 878bn by 2040' <https://www.vanguardngr.com/2018/12/nigerias-infrastructure-deficit-to-hit-878bn-by-2040-sec/> accessed 01 April 2023. See also: Dawud Abdus-Saboor, 'Nigeria: Striving to be Africa's Islamic finance hub' *Islamic Finance News Supplement* (Nigeria 05 March 2014) 73 <https://www.islamicfinancenews.com/contents/supplements/2014/nigeria/nigeria.pdf> accessed 12 July 2022.

[2] ibid.

[3] Anthony Ailemen, 'Nigeria needs N348trn for Infrastructure development-Buhari' *Business Day* (23 September 2022) <https://businessday.ng/news/article/nigeria-needs-n348trn-for-infrastructure-development-buhari/> accessed 4 September 2023.

In the third quarter of 2013 (3Q13), the Osun State sub-sovereign *Sukuk*, one of the significant sovereign *Sukuk* issuances, welcomed the Islamic capital market to Nigeria. Also, 2017 saw the successful issuance of Nigeria's first sovereign *Sukuk*, which received a large amount of interest, four years after it was initially issued by a state government. This was followed by four others issued in December 2018, December 2020, December 2021, and December 2022, which were also hugely oversubscribed. The oversubscription invariably shows the strong investors' appetite for *Sukuk* in Nigeria.[4]

Other literature focused on the use of *Sukuk* for infrastructural development in Nigeria while this literature analysis focuses on five main themes, based on which this article is structured: (1) the conceptual framework of securitisation of Sovereign Assets, (2) the benefits and risks of securitising sovereign assets for *Sukuk* issuance, (3) the socio-economic impacts of this financing strategy on Nigeria's economy, (4) the Structure of *Sukuk* and (5) the legal and regulatory landscape of sovereign asset-backed *Sukuk* in Nigeria, challenges and Shari'ah issues. This review underscores the importance of a robust legal and regulatory environment for facilitating sovereign asset securitisation, along with the need for transparent structuring and risk mitigation mechanisms.

II. THE CONCEPTUAL FRAMEWORK OF SECURITISATION OF SOVEREIGN ASSETS

Securitisation of sovereign assets represents a sophisticated financial strategy that involves transforming illiquid or dormant government-owned assets into tradable securities.[5] This process allows governments to raise capital from the financial markets by issuing securities backed by these assets, thereby tapping into a previously untapped source of funding. The practice of securitising sovereign assets has gained traction globally as governments seek innovative ways to meet their funding needs, optimise resource utilisation, and adhere to fiscal discipline. This framework becomes particularly significant when applied to *Sukuk* issuance, aligning the process with Islamic finance principles.

Several works have previously provided insight into the meaning of sovereign *Sukuk*. In Clifford Chance's *Introduction to Sukuk*,[6] it was posited that *Sukuk* is best described as an "asset-based investment" because it is based on the ownership of an undivided interest in an underlying tangible asset that is commensurate to such an investment. As a result, the authors regard the common 'Islamic bonds' for which *Sukuk* is described as inappropriate. Thus, according to the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI):

> "Investment Sukuk are certificates of equal value representing undivided shares in ownership of tangible assets, usufructs, and services or (in the ownership of) the assets of particular projects or unique investment activity. However, this is true after receipt

[4] Emma Ujah, 'FGN Sukuk: Investors' interests remain strong' *Vanguard* <https://www.vanguardngr.com/2022/12/fgn-sukuk-investors-interests-remain-strong/> accessed 07 December 2022.

[5] Andreas Jobst, 'Back to Basics What bis Securitization' Finance and Development September 2008 <https://www.imf.org/external/pubs/ft/fandd/2008/09/pdf/basics.pdf> accessed 27 November 2023.

[6] 'Introduction to Sukuk' *Clifford Chance* (Client Briefing, September 2006) <https://financialmarketstoolkit.cliffordchance.com/content/dam/cliffordchance/briefings/2013/04/introduction-to-sukuk.pdf> accessed 17 September 2023.

of the value of the Sukuk, the closing of the subscription, and the employment of funds received for the purpose the Sukuk is issued."[7]

Thus, the notion of sovereign *Sukuk* implies a valid sale/transfer of the legal title of the assets, which is securitised to the investors.

This definition is similar to the Nigerian Securities and Exchange Commission (SEC) definition. It refers to *Sukuk* as "investment certificates" or "notes of equal value" that evidence ownership and undivided interest in tangible assets, occasionally usufructs, or even services, provided that the projects or special investment activities employ Shari'ah principles and concepts and are authorised by the SEC.[8] However, these works still need to address the topic of sovereign asset securitisation for *Sukuk*. From the definitions supplied in the preceding literature, the notion that only some assets can be securitised from a legal standpoint has yet to be noticed. This oversight is because, under common and Islamic laws, Sovereign assets are public assets. Therefore, the transferability of their ownership to individuals and non-citizens of the sovereign is highly restricted.

Sovereign *Sukuk* has therefore been considered to be certificates of equal value in assets issued by a sovereign government to demonstrate the claim of ownership of the financial rights and responsibilities associated with the bearer of the certificate by the investor whose name it bears.[9] Rather than being nominal holders of the securities, investors will be obliged to become legal owners (with all of the rights and liabilities that come with actual ownership) of the assets underlying the *Sukuk* transaction. It is one of many types of *Sukuk*, including corporate, quasi-sovereign *Sukuk*, green *Sukuk*, and *Waqf Sukuk*.[10] Therefore, the use of equity and asset-based finance has increased. As a result, sovereign *Sukuk* is a type of Islamic capital market product that has acquired widespread acceptability worldwide. The receptive nature of the product invariably translates to the reality that the global capital markets, notably sovereign *Sukuk*, are heavily reliant on and form a vital part of the Islamic capital markets.

It is essential to note that the issuance of *Sukuk* in Nigeria that began with a sub-sovereign *Sukuk* i.e. the sukuk issued by a state within the federalism state of Nigeria, is unusual compared to the practice in other jurisdictions where we had the sovereign taking the lead in issuances. Nevertheless, the first issuance and subsequent issuances by the Federal Government of Nigeria were widely received and accepted, as evidenced by oversubscription. Thus, a study asserts that sovereign *Sukuk* is typically oversubscribed,[11] perhaps because the supply of sovereign *Sukuk* is considerably lower than the demand.

III. THE BENEFITS AND RISKS OF SECURITISING SOVEREIGN ASSETS FOR SUKUK

Securitising sovereign assets for *Sukuk* issuance offers an innovative way for governments to raise funds while adhering to Islamic financial principles. However, the decision to pursue this

[7] AAOIFI, 'Shariah Standard No (17): Investment Sukuk' in *Shariah Standards for Islamic Financial Institutions* (Bahrain: AAOIFI 1432H-2010) 307.
[8] Rule 569 Nigerian SEC Rules 2013 on Sukuk Issuance.
[9] Ahmad Rufai, 'Sukuk Al-Istithmar (an 'Arabic Term of Investment Sukuk) Meaning and Types' in International Islamic Financial Market, *Sukuk Report: A Comprehensive Study of the Global Sukuk Market* (3rd edn, Bahrain: International Islamic Financial Market 2013) 8.
[10] ibid.
[11] Salman Syed Ali, *Islamic Capital Market Products: Developments and Challenges* (Jeddah: Islamic Research and Training Institute, Islamic Development Bank, 1425H/2005) 9.

strategy involves careful consideration of the benefits and risks. Proper asset valuation, transparent governance, regulatory framework development, and risk mitigation strategies are essential to maximise the benefits while mitigating potential drawbacks. This will not only ensure that the funds are utilised properly but also effectively.

Several studies have analysed *Sukuk* and established some of its lofty advantages, one of which is bringing *the Sukuk* market into the limelight. [12]It is also stated to give reference pricing for both private sector and corporate *Sukuk* issuances throughout time. Another benefit, from a sovereign standpoint, is that the government can diversify fiscal funding sources via a new investor class. Furthermore, sovereign *Sukuk* aids in reserve building and covers the government's external funding needs.[13]

A significant author on Islamic finance investigated the market for the use of *Sukuk*, particularly as a tool for liquidity control. The study looked at historical data to see if payment flows are steadier in the case of sovereign *Sukuk*, where the returns are based on GDP growth rather than interest.[14] Another critical study on the need for sovereign *Sukuk* to help Africa overcome its infrastructure gap was conducted by Abdou Diaw[15]. The study looked at the possible benefits and obstacles of introducing Islamic financing in the West African Economic Monetary Union (WAEMU), focusing mainly on *Sukuk*. According to the study, creating a thriving *Sukuk* market would allow these countries to meet a great demand for infrastructure projects, assist nascent Islamic banks with liquidity management, and provide fascinating diversification options. The paper went on to say that to get these benefits, necessary reforms in the legal, regulatory, and tax systems must be implemented to accommodate the various Islamic finance mechanisms.[16] The exploratory study claims that a *Sukuk* market can effectively bridge the infrastructure gap.[17]

Majeed Oladele Oladunjoye[18] also finds that *Sukuk* has been utilised to fund a variety of initiatives around the world over the years. The article discusses the potential of Islamic finance in using sovereign *Sukuk* as a vehicle for infrastructural development and capital raising in Nigeria by analysing the *Sukuk* issued by the Osun State government of Nigeria. The study concluded that the issuance of the first sovereign *Sukuk* by Osun State *Sukuk* Company plc, being the SPV, demonstrates Islamic finance's enormous potential in Nigeria as a tool for infrastructural development. The above-identified potential of *Sukuk* reaffirms the position taken in the *Islamic Finance News* of 30 April 2014[19] that governments intending to issue an Islamic financial debt instrument such as sovereign *Sukuk* should not only view it as a marketing tool but should also be seen to make economic sense.[20]

---

[12] Aishat Zubair, 'Sustainability of Sovereign Sukuk Under the Nigerian Legal and Regulatory Framework' (2023) Ph.D Thesis submitted to University of Ilorin, Nigeria.

[13] 'Investor Appetite Is Pushing Sukuk into the Mainstream' *Ratings Direct, Standard & Poor's Rating Services* (New York: 11 March 2013) 19.

[14] Wilson Rodney, 'Innovation in the structuring of Islamic Sukuk' (2008) 3 (24) Humanomics Issue 170.

[15] Abdou Diaw, 'The development of Sukuk market in West African Economic and Monetary Union (WAEMU): Potential benefits and challenges' *Islamic Corporation for the Development of the Private Sector Bulletin* (4Q 2012).

[16] ibid 6.

[17] ibid 10.

[18] Majeed Oladele Oladunjoye, 'Sukuk as a Tool for Infrastructural Development in Nigeria' (2014) 2 (1) Journal of Islamic Banking and Finance 339.

[19] Bishr Shiblaq, 'Luxembourg: Sovereign Sukuk Setbacks' <https://www.nomi-lux.com/publication/luxembourg-sovereign-sukuk-setbacks-2/> accessed 23 March 2023.

[20] ibid 3.

Vivien Foster and Cecilia Briceño-Garmendia[21] investigated new sources of funding that could assist African nations in meeting their developmental needs. The issuance of sovereign *Sukuk* was one of the options they identified. One of the most notable socio-economic impacts of *Sukuk* issuance in Nigeria is its role in facilitating infrastructure development. The funds raised through *Sukuk* can be directed towards critical infrastructure projects such as roads, bridges, airports, and utilities. By addressing infrastructure gaps, *Sukuk* contributes to improved connectivity, reduced transportation costs, and enhanced trade facilitation. These developments, in turn, stimulate economic activities, attract foreign investment, and create job opportunities, thus fostering economic growth and development.

According to Brian Kettel, *Sukuk* is also crucial for infrastructure development.[22] He maintained that over the last decade, *Sukuk* has played a significant role in the infrastructure industry, with issuance proceeds going to both low-profile projects and high-profile ones. Moreover, the flexibility of *the Sukuk*, combined with the fact that it can be structured in various ways, has enticed corporations and sovereigns to consider the *Sukuk* as a potential alternative financing tool. As a result, a considerable amount of the *Sukuk* monies raised has been devoted to development projects worldwide in the infrastructure sector.[23]

Eaglestone Securities believes that Africa adopts Islamic *Sukuk* to fund big infrastructure projects in an article titled "Inside Africa."[24] The report adds that the sovereign *Sukuk* market could grow further because Africa is home to around 400 million Muslims, roughly a quarter of the world's total. Other African countries that have yet to join the trend are creating the legal framework to be able to issue *Sukuk*.[25] Rebecca Simmonds investigates the possibilities for Islamic infrastructure financing similarly. According to her, Tunisia, Egypt, Nigeria, and Libya are increasingly looking to Islamic finance as an alternative source of infrastructure investment.[26]

As a result, sovereign *Sukuk* has much promise for funding infrastructure development, especially in developing nations. Despite evaluating and accepting the significant benefits that the sovereign *Sukuk* issuance will provide, particularly in supporting and funding many infrastructure projects, the legal and regulatory framework difficulty still needs to be solved.

IV. THE SOCIO-ECONOMIC IMPACTS OF SUKUK ON NIGERIA'S ECONOMY

Sukuk has gained prominence in Nigeria as a viable alternative for raising capital while adhering to Islamic financial principles. Beyond their financial implications, *Sukuk* also exerts significant socio-economic impacts on Nigeria's economy. These impacts extend to various

[21] Vivien Foster and Cecilia Briceño-Garmendia, 'Meeting Africa's infrastructure needs' <https://www.infrastructureafrica.org/system/files/Africa_s%20Infrastructure%20A%20Time%20for%20Transformation%20CHAPTER%201%20SPENDING%20NEEDS.pdf> accessed on 11 June 2023.
[22] Brian Kettel, 'Sukuk market: Risks and challenges. Where does the industry go next?' *Islamic Corporation for the Development of the Private Sector Bulletin* (4Q 2012) 26.
[23] ibid 27.
[24] 'Inside Africa' *Eaglestone Securities* (29 September 2017) 13 <https://www.eaglestone.eu/xms/files/Inside_Africa_Mobile_financial_services_in_Africa_Eaglestone_Advisory_290917.pdf> accessed 16 July 2023.
[25] ibid 13.
[26] S. Rebecca, 'Building on Industry: Islamic Project and Infrastructure Financing' *Islamic Finance News - IFN Sector Analysis Infrastructure and Project Finance* (Red Money Publisher 02 April 2014).

sectors, contributing to economic growth, infrastructure development, financial inclusion, and international financial integration.[27]

Where there is a deficiency in the proper use of natural resources that Nigeria has been blessed with and a lack of good policy in place, the negative effect of that is having huge debts. According to the Nigeria Debt Management Office, as of 30 September 2021, Nigeria's total public debt portfolio (which comprises various Federal government obligations, including *Sukuk*) amounts to US$92,626.41 Million.[28] In addition, Chike believes that nearly 83% of the budget is being used to service these obligations.[29] Similarly, the International Monetary Fund (IMF) projects that Nigeria's debt servicing could reach 92.6% of its revenue in 2022.[30] *Sukuk* issuance requires governments to adhere to rigorous financial practices and governance standards. This emphasis on transparency and accountability in managing *Sukuk* proceeds promotes fiscal discipline within the government. Effective utilisation of *Sukuk* funds for designated projects enhances public trust and confidence in government financial management, potentially leading to more responsible fiscal policies across the board.

Therefore, the securitisation of sovereign assets for *Sukuk* is in line with the Islamic principle of Shari'ah, which greatly abhors and discourages debt.[31] The evils of debt are not peculiar to individuals alone but extend to a society that lives in debt. To avoid debts, Islam encourages trade and production as well as avoidance of waste. To avoid wastage, Muslims are enjoined to keep away from the following: Negligence of Agriculture, Killing of Animals for fun, and cutting of economic trees.[32] The issuance of *Sukuk* allows a broader segment of the population to participate in the financial markets. Retail investors, including individuals and small-scale investors, can invest in *Sukuk*, which provides them with access to previously unavailable or unfamiliar investment opportunities. This increased financial inclusion aligns with broader economic development goals and empowers individuals to participate in the growth of the economy.

However, there can be no market for traditional bonds because interest is prohibited under the Shari'ah. The concept of sovereign *Sukuk* is derived from various Islamic law principles, one of which is the prohibition of taking and giving interest (*Riba)*.[33] This is why a study has established that *Sukuk* is issued on the principles of Shari'ah because investors can have returns on their investments from owning the underlying assets which are put, to productive use and generate income from there.[34] Furthermore, using LIBOR (London Interbank Offered Rate) to benchmark the rate of returns for Islamic finance products generally and Sovereign *Sukuk* in this instance is a big challenge to the industry because even in the conventional parlance, the use of LIBOR is said to be gradually phasing out.[35] Therefore, while we patiently wait for a

[27] Zubair (n 12).
[28] See: <https://www.dmo.gov.ng/debt-profile/total-public-debt> accessed 27 February 2024.
[29] Chike Olisah, 'Nigerian government spends the equivalent of 83% of revenue to service debt in 2020' <https://nairametrics.com/2021/01/17/nigeria-records-83-in-debt-service-to-revenue-ratio-in-2020/> accessed 15 June 2021.
[30] International Monetary Fund (IMF), 'Nigeria 2021 Article IV Consultation' IMF Country Report No. 22/33 February 2022.
[31] Yusuf Al-Qaradawi, *Daawru'l Qiyam wa-l-Akhlaq fi-l-Iqtisadi-l-Islami* (in Arabic) [*The role of virtues and ethics in the Islamic economy*] (Cairo: Wahbah Publications 1995) 45.
[32] ibid.
[33] See Qur'an, Surat Ar-Rum (The Romans) 30:39; Qur'an, Surat An-Nisa (The Women) 4:160-161; Qur'an, Surat Al-Imran (Family of Imran) 3:130; and Qur'an, Surat al-Baqarah (The Cow) 2:275-282.
[34] Rufai (n 9) 19.
[35] 'Transition from LIBOR to risk-free rates' *Bank of England* <www.bankofengland.co.uk> accessed 16 April 2023.

better alternative, it is hoped that the Secured Overnight Financing Rate (SOFR) will not be subject to manipulation by the market operators. *Sukuk* issuance diversifies the government's funding sources beyond traditional avenues such as taxation and conventional debt issuance. This diversification can enhance the government's resilience to economic fluctuations, reducing its reliance on a single source of revenue. As a result, the government gains more flexibility in managing its budgetary requirements, especially during periods of economic uncertainty.

Cizakca observes that *Sukuk* positively impacts four of the objectives of Shari'ah [i.e. *Mal* (wealth); *Din* (Religion); *Nafs* (life); *Nasl* (lineage)] while examining the legal status of *Sukuk* in the light of *Maqasid al-Shari'ah* (i.e. objectives of the Shari'ah). However, it is observed that the impact of *Sukuk* is not felt on the last component, *Aql* (Intellect), but it does not have any negative impact.[36] *Sukuk* issuance thus contributes to the development of Nigeria's Islamic finance industry. As the *Sukuk* market expands, it creates opportunities for financial institutions, legal professionals, and market intermediaries specialising in Islamic finance. This growth stimulates the local economy and promotes expertise in Islamic financial products and services. The infrastructure projects financed by *Sukuk* can directly impact the quality of life for citizens. Improved transportation, utilities, and public services can enhance access to education, healthcare, and employment opportunities, leading to better living conditions and an overall increase in social welfare. As Nigeria continues to navigate its economic trajectory, harnessing the potential of *Sukuk* can contribute to a more resilient, inclusive, and prosperous economy. However, careful planning, transparent governance, and effective utilisation of *Sukuk* proceeds are essential to maximise these positive socio-economic impacts.

V. STRUCTURE OF SUKUK

Governments and market participants must possess a level of expertise in Islamic finance to structure and manage *Sukuk* effectively, which may require capacity building and skill development. *Sukuk* structures must adhere to Shari'ah-compliant principles while also meeting legal and regulatory requirements. The complexity of these structures can lead to higher transaction costs and potential legal challenges.[37] It has been shown in several studies that debt-based *Sukuk* is likely to default compared to equity-based *Sukuk*. This likelihood is because it is believed that the creditworthiness of the issuer has led to some *Sukuk* defaults in the past.[38]

As rightly posited by Zolfaghari and others, the ownership title of the *Sukuk* asset transferred to the *Sukuk* holders in an asset-based *Sukuk* is only the beneficial interest and not the legal interest.[39] This is due to the requirement that investors, rather than only being nominal holders

[36] Murat Cizakca, 'Can there be Innovation in Islamic Finance? Case Study: Esham' (Paper Presented at the 11th IFSB Summit, Knowledge Sharing Partner Session: New Markets and Frontiers for Islamic Finance: Innovation and the Regulatory Perimeter (Mauritius 2014) 7.

[37] Michael Bennett and Zamir Iqbal 'The Role of Sukuk in Meeting Global Development Challenges' in Sohail Jaffer (ed), Global Growth, *Opportunities and Challenges in the Sukuk Market* (Euromoney Book n.d.) <70296302X.pdf (gbv.de)> accessed 16 April 2023.

[38] Hafizi Ab Majid, Shahida Shahimi and Mohd Hafizuddin Syah Bangaan Abdullah, 'Sukuk Defaults and Its Implication: A Case Study of Malaysian Capital Market' 8th International Conference on Islamic Economics and Finance Center for Islamic Economics and Finance, Qatar Faculty of Islamic Studies, Qatar Foundation 9.

[39] Pegah Zolfaghari, 'An Introduction to Islamic Securities (sukuk)' (Working Paper, Uppsal Faculty of Law 2017) 2; Abu Umar Faruq Ahmad, Aishath Muneezah, Mohammed Omar Faruq, and Rashedul Hassan. 'Post Default sukuk Restructuring: An Appraisal of Shariah Issues' in 19 International Finance Review, M. K. Hassan, and M. Rashid (eds), *Management of Islamic Finance Principle, Practice, and Performance* (Emerald Publishing 2018) 113.

of the securities, become legal owners of the assets supporting the *Sukuk* transaction, with all of the rights and liabilities that come along with true ownership. Securitisation involves transferring ownership of assets to investors. The implication of the above is that the investors became the legal owners of such assets for the duration of the *Sukuk* arrangement and can dispose of them in any way they see fit. In the event of an issuer default, the investors should be able to sell the 'assets,' in this case, sovereign assets, to redeem their interests under this arrangement.[40] Furthermore, if investors no longer choose to keep the sovereign assets until maturity, they should be free to sell their portion of the collective ownership in the secondary market. So, can individuals, in this case, investors, possess sovereign assets? Do they own these things, i.e., is there a valid sale agreement? The existing legal and regulatory framework needs to answer these and many other concerns. Otherwise, it would jeopardise the interests and legal standing of investors.[41] These significant hurdles may discourage Nigeria from capitalising on the enormous potential of sovereign *Sukuk*.

As far back as 1997, Monzer Kahf had proposed using *Ijarah Sukuk* in structuring *Sukuk*.[42] The asset-based *Sukuk* is said to be the most commonly issued *Sukuk* globally.[43] According to Sunil Bhandari, this becomes more appealing to sovereigns, because the investors have only limited recourse to the originator, the asset itself. [44]Thus, this study reveals that several factors could be responsible for this, one of which is the popularity of the *Ijarah* structure in some other climes, such as the Gulf countries and Malaysia. Also, another factor could be because the ownership of the underlying asset still resides with the sovereign, and only the beneficial interest is transferred to the *Sukuk*/investors. Thus, the true intention is not to pass the ownership of a sovereign asset to investors (the legality of attempting to do this is an ongoing discussion) but to only give the beneficial interest to the investors to hold for a certain period until the maturity of the *Sukuk* and when all the issuer must have met all obligations.[45] Importantly, however, among all the factors responsible for using one structure in all the issues is the low risk attributed to the *Ijarah* structure, particularly amongst investors.[46] It is believed that because a sovereign is involved, not having the entire legal ownership/interest transferred to the *Sukuk* holder is not an issue since the faith of a sovereign will back the *Sukuk* in case of default. The *Sukuk* holders are sure to have recourse to the sovereign, who is the issuer.

Thus, it was concluded in a study that for the adequate protection of investors in the event of a default, the use of an Asset-based *Sukuk* structure for sovereign *Sukuk* might not be appropriate.[47] This is because, in the case of default, there might be a need for restructuring in the case of an Asset-based *Sukuk* which is a debt-like situation. Hence, there is the need for the protection of Investors through the enforcement of regulations and laws.

---

[40] Zubair (n 12).

[41] Andreas Jobst, Peter Kunzel, Paul S. Mills and Amadou Sy, 'Islamic Bond Issuance: What Sovereign Debt Managers Need to Know' (2008) 1 (4) International Journal of Islamic and Middle Eastern Finance and Management 330.

[42] Monzer Kahf, 'The use of Assets Ijarah Based for Bridging the Budget Gap' (1997) Islamic Economic Studies 7.

[43] Salim Al-Ali, *Raising Capital on Sukuk Markets: Structural, Legal and Regulatory Issues* (New York: Palgrave Macmillan 2019) 31.

[44] Sunil Bhandari, 'Islamic Finance-Theory and Practical Use of Sukuk Bonds' (2013) ACCA.

[45] Hafsat Iyabo Sa'adu and Aishat Abdul-Qadir Zubair, 'The Implication of the Concept of Legal and Beneficial Ownership in Sukuk Structures under the Nigerian Tax Regime' (2022) 18 (1) Manchester Journal of Transnational Islamic Law & Practice 220-234.

[46] ibid 224.

[47] Bhandari (n 44) 17.

Alaro further posits that, at best, what the *Sukuk* holders can claim against the obligor in the case of Asset-based *Sukuk* is as 'secured creditors', not as 'owners' in case of default on the part of the issuer.[48] According to Michael Michelin, this is the extent to which the contract between the *Sukuk*-holder and the issuer can be enforced (Contract enforceability).[49]

It is imperative to note that Sheikh Muhammad Taqi Usmani, President of AAOIFI's Shari'ah Council, in 2007, revealed that 85% of *Sukuk* were not Shari'ah compliant.[50] This is because, according to his study of the prevailing issuance at that time, the mechanisms employed by the issuers meant to distinguish *Sukuk* from bonds Indirectly made them similar. According to him, there needs to be more certainty regarding ownership representation. In the true sense, it must be clarified that the *Sukuk* investors own the *Sukuk assets*. Abu Umar Faruq et al. equally posited that most *Sukuk* also have some elements that make them similar to conventional bonds, such as the capital guarantee by the originator, the promise to repurchase *Sukuk* at face value upon redemption, and providing internal and external credit enhancements[51]Thus, an expert in Islamic finance concludes in a study that for adequate protection of Investors in the event of a default, the use of an Asset-based *Sukuk* structure for sovereign *Sukuk* might not be appropriate.[52]

As a study rightly clarifies, an essential critical obstacle in the global *Sukuk* industry relates to uncertainties surrounding the framework for post-default restructuring and the consequent significant uncertainties and delays. It is posited that "one complicating factor to growth in the *Sukuk* space is the lack of legal clarity around default mechanisms."[53] Several cases demonstrated this, such as *The Investment Dar Company KSCC and Blom Developments Bank SAL*;[54] *Dubai Islamic Bank PJSC v PSI Energy Holding Company BSC*;[55] as well as the popular *Dana Gas PJSC and Dana Gas Sukuk Ltd & Ors*.[56] However, none of these issues have been tested in the Nigerian court. Thus, a well-structured governing law clause will ensure that justice is met in the transaction.[57]

A study equally noted that a closely related issue of the structure being used is the question of sovereign ratings before the issuance of *Sukuk*.[58] Because the recourse is to the originator and not the asset, Zolfaghari noted that investors need to pay more attention to the creditworthiness of the issuer rather than the asset risk which ordinarily should be the concern of *Sukuk* holders.[59] Hafizi noted that in addition, a strong and vibrant corporate and Shari'ah governance also

---

[48] AbdulMajeed AbdulRazaq Alaro, 'Islamic Financial services the interplay of Religion. Law and Corporate Social Responsibility' (Paper presented at The One Hundred and Ninety-Sixth (196th) Inaugural Lecture Thursday, 22 April 2021, The Library and Publications Committee, University of Ilorin, Ilorin, Nigeria).

[49] Michael J. T. McMillen, 'Contractual Enforceability Issues: Sukuk and Capital Market Development' (2017) 7 (2) Chicago Journal of International Law 435.

[50] Muhammad Taqi Usmani, 'Sukuk and their Contemporary Applications' <http://alqalam.org.uk/wp-content/uploads/2017/07/Mufti-Taqi-sukuk-paper.pdf > accessed 10 September 2023.

[51] Ahmad et al (n 39) 115.

[52] ibid 117.

[53] Umar Aimhanosi Oseni, 'Dispute Management in Islamic Financial Institutions: A Case Study of Near Sukuk Defaults' (2014) 13 (3) Journal of International Trade Law and Policy 201.

[54] [2009] EWHC 3545 (Ch).

[55] [2011] EWCA Civ 761.

[56] [2017] EWHC 2928 (Comm).

[57] Umar Aimhanosi Oseni and M Kabir Hassan, 'Regulating the governing law clauses in Sukuk transactions' (2015) 16 (3) Journal of Banking Regulation, Palgrave Macmillan 233.

[58] Cecilia Téllez Valle and José Luis Martín Marín Cecilia, 'Sovereign Credit Ratings and their Determinates by the Rating Agencies' (2005) 4 Investment Management and Financial Innovators 161, 162.

[59] Zolfaghari (n 39) 9.

further leads to a higher credit rating of the issuer, which further enhances the investors' confidence.[60]

However, the rating methodology applied may include both qualitative and quantitative. Even a bit complex, the eventual aim and ultimate factors considered are largely more political than methodological.[61] There are international rating agencies and local or Nigerian rating agencies. Some notable international agencies are Moody, Standard and Poors, Malaysian Rating Corporation MARC, the Islamic International Rating Agency of Bahrain IIRA, and Fitch. For the Nigerian rating agency, we have Augusto & Co. These agencies use different definitions, criteria, and rating scales to determine and analyse the possibility that a sovereign will default.[62] What scores the rating according to Cecilia et al., in the eyes of these rating agencies is its ability to honour its obligation. Other factors may include the political environment of the issuer, economic condition, and claim or jurisdiction[63]

These are just a few of the variables that are taken into consideration by the rating agencies for the scores they rate the particular sovereign issuer. Thus, the Fitch rating agency alludes that 'the rating of sovereigns depends more on the art of political economy than on the science of econometrics.'[64] In all of these, it is essential before rating a sovereign that the Shari'ah criteria are considered. Thus, it is evident that the absence of Shari'ah variables to check whether or not a sovereign is Shari'ah compliant before rating the *Sukuk* shows the need for Shari'ah-*compliant* ratings for *Sukuk* in Nigeria. To put it differently, the Shari'ah nature of the sovereign, as well as other contributory factors are not examined for its rating by the rating agencies. One of the Shari'ah factors that need to be specially considered in the rating of *Sukuk* is the dependency of *Sukuk* on the underlying assets for income generation as well as that of the underlying assets.[65]

VI. THE LEGAL AND REGULATORY LANDSCAPE OF SOVEREIGN SUKUK IN NIGERIA: CHALLENGES AND SHARI'AH ISSUES

The fundamental guidelines governing the issuance of sovereign *Sukuk* in Nigeria are the Investments and Securities Act 2007[66], the SEC Rules 2013[67], and the Osun State Government state law enabling the issuing of *Sukuk*.[68] All public corporations [including SPVs (Special Purpose Vehicles)], state governments, municipal governments, and government agencies, as well as multilateral agencies, are authorised to issue, offer, or make an invitation of *Sukuk* upon receiving the Commission's approval under Rule 572 of the SEC Rules. The Investment and Securities Act (ISA) 2007 is the major legislation backing the issuance of *Sukuk* in Nigeria, while the Securities and Exchange Commission (SEC) Rules 2013 complement it.[69] This is the

[60] Majid (n 38) 21.
[61] Valle and Cecilia (n 58) 162.
[62] Slim Mseddi and Nader Nairfar, 'Rating Methodology and Evaluating the Issuer of Sukuk' (2013) 8 (4) International Journal of Management, Science and Engineering 5.
[63] Valle and Cecilia (n 58) 165.
[64] Fitch Rating Agency, 'Sovereign Rating Methodology' <www.fitchratings.com> accessed 04 September 2023.
[65] Essia Ries Ahmed, Md. Aminul Islam, and Tariq Tawfeeq Yousif Alabdullah, 'Islamic Sukuk: Pricing Mechanism and Rating' (2014) 4 (11) Journal of Asian Scientific Research 645.
[66] ISA (2007) The Investment and Securities Act, Cap 29, Laws of the Federation of Nigeria (2004)
[67] Securities and Exchange Commission (Capital Market Operations Anti-Money Laundering and Combating the Financing of Terrorism) Regulations, 2013.
[68] The Osun State Bonds, Notes and Other Securities Law 2012.
[69] Adam Muhammad Abubakar and Ibrahim Muhammad Baba, 'Sukuk and Nation Building: A Theoretical Analysis of Sukuk Financing in Nigeria' (2020) 5 (1) Journal Ekonomi dan Bismis Islam 77.

guiding principle for the issuance of sovereign *Sukuk* in Nigeria. The compatibility of the Nigerian legal framework with the conditions for sovereign *Sukuk* issuance for the deployment of Shari'ah-compliant products is critical in this context.

Legal hurdles are the most frequently highlighted challenge in various pieces of literature regarding the issuing of sovereign *Sukuk*. According to one study, issuing sovereign *Sukuk* in non-Islamic countries like Nigeria requires adherence to Shari'ah, but there is an additional challenge when doing so within legal and regulatory frameworks that are incompatible with Islamic financial practices.[70] Thus, one of the most significant constraints to the growth of the African *Sukuk* market is the inability to overcome legal and regulatory hurdles.[71]

The role played by a sustainable legal framework and a regulatory framework for a country's sovereign *Sukuk* cannot be overstated. The Islamic International Rating Agency (IIRA) recently initiated the establishment of *Sukuk* centres around the world. It stated that "IIRA will focus on jurisdictions where the regulatory environment is conducive to the growth of capital markets and economic infrastructure is sufficient to facilitate rapid progress."[72]

Thus, the sustenance of sovereign *Sukuk* in Nigeria will depend mainly on the capacity and appropriateness of the legal and regulatory framework.[73] Oseni also posits that law and regulation become vital in the context of sovereign *Sukuk* issuances when we consider the fact that the sovereign plays an active role in ensuring that *Sukuk* achieves its aim with minimal or no hardship caused to any of the parties involved in the *Sukuk* transactions.[74] The study noted that a critical stumbling block in the global *Sukuk* industry relates to legal uncertainties surrounding the framework for post-default restructuring and the significant implications of such delays to creditors. The work, therefore, posited that "one complicating factor to growth in the *Sukuk* space is the lack of legal clarity around default mechanisms."[75]

Salman Syed Ali noted some specific Shari'ah issues in *Sukuk* structuring, including buy-back arrangement, which involves both its explicit and implicit form, a unilateral promise from the originator.[76] Also, the express and well-known intention is to create a state of independence between the originator and the *Sukuk* holders through the SPV (Special Purpose Vehicle, a limited liability device for the investors providing the funds), as well as to serve as a commitment device for the originator showing that indeed the funds will be directed to the appropriate quarters. It is also said that the existence of an SPV in the *Sukuk* structure helps to create bankruptcy remoteness for the Issuer/Obligor in case of default. However, it has been argued in several works of literature that the real or implicit intention of creating an SPV is to generate a buy-back arrangement to flourish and be possible.[77] Thus, Oseni identified the legal

[70] COMEC, *The Role of Sukuk in Islamic Capital Markets* (COMEC Coordination Office, Turkey 2018) 50.
[71] Vivien and Briceño-Garmendia (n 21).
[72] IIRA, 'Developing Regional Sukuk Hubs' in IIRA's Role in Growth and Integration of Capital Markets 8.
[73] Kutut Ariadi Kusuma and Anderson Caputo Silva, *Sukuk Markets, A Proposed Approach for Development* Policy Research Working Paper World Bank Group Finance and Market Global Practice Group December 2014.
[74] Oseni (n 53) 198.
[75] ibid 207.
[76] Salman Syed Ali, 'Introduction to Ijarah Sukuk: Current Structure and Future Prospects' <mbri.ac.ir/userfiles/file/Islamic Banking/بانک مقالات/sukuk/introduction to ijarah sukuk current structures and future prospects.PDF> accessed 17 September 2023.
[77] ibid 10.

implication of SPV as one of the legal issues often underplayed by researchers perhaps, because of the need for more legal expertise on the part of the said researchers.[78]

One other important Shari'ah issue that goes to the core of the very foundation of *Sukuk* globally is the ownership of the underlying asset. Ownership is regarded as *milk* or *milkiyyah* under the Shari'ah. It has been given several meanings, such as the one provided by Hamad Rasool: "A legal connection (*ittisal shari*) between a person and an asset, such that he is free to transact with it and exclude others from dealing with it (the asset)".[79] These exclusive rights (*milk tamm*) enjoyed by a property owner under Islamic law are thus the meaning of the concept of ownership. *Sukuk* certificates thus signify absolute ownership (*milk tamm*) of the underlying assets.

It is said that in order not to be caught up in the web of this Shari'ah issue, the legal advisers, as well as issuers, have devised a means using the Trust law to ensure that the legal ownership is transferred to a trustee who handles it and holds it on behalf of the *Sukuk* holders. Thus, circumventing the law and stating that it is only a beneficial interest that is transferred to the *Sukuk* holders further produces a legal implication that defaults the essential requirement of Shari'ah for *Sukuk.*[80]

VII. CONCLUSION

The idea that only some assets can be securitised legally is yet to be articulated in this literature analysis. This oversight occurs because sovereign assets are considered public assets under both common law and Islamic law. The transfer of their ownership to investors who are not citizens of the sovereign is therefore severely constrained. In addition to their financial effects, *Sukuk* has a big socioeconomic impact on Nigeria's economy. These effects cut across many industries, fostering economic expansion, infrastructure improvement, financial inclusion, diversification, and global financial integration. Undoubtedly, the securitisation of sovereign assets for the issuing of *Sukuk* presents a novel approach for governments to raise money while upholding Islamic financial standards. To decide whether to use this strategy, one must carefully weigh the risks and benefits. Undoubtedly, sovereign *Sukuk* can propel Nigeria's infrastructural development. To progress toward a better issuance of *Sukuk* in Nigeria, it is necessary to solve the legal and regulatory issues that are now affecting the market and the Islamic finance industry as a whole. Furthermore, due to divergences, *Sukuk* structures must comply with legal and regulatory standards as well as adhere to Shari'ah-compliant principles. As issuers consider the costs and benefits of *Sukuk* issuance in a broader policy context, further efforts will be required to overcome several economic, legal, and regulatory problems.

This research paper has explored the intriguing and innovative concept of the securitisation of sovereign assets for *Sukuk* in Nigeria. One of the key findings of this research is that securitising sovereign assets for *Sukuk* can be a potent tool for addressing the financing needs of the Nigerian government, particularly for infrastructure and development projects. The paper also finds that the Sovereign *Sukuk*, issued using the asset-based structure, has some Shari'ah issues, which makes it similar to a bond and is not in line with the spirit of Shari'ah and, therefore, not suitable for government/sovereign issuances. Some of these

[78] Umar Aimhanosi Oseni, 'The Legal and Beneficial Ownership Conundrum in Sovereign Sukuk Structuring' (2015) (Special Issue) Al-Shajarah Journal of the International Institute of Islamic Thought and Civilization (ISTAC) 111.
[79] Hamad Rasool, 'Sukuk Islamic Bonds' <http://www.LearnIslamicFinance.com> accessed 08 March 2023.
[80] Sa'adu and Zubair (n 45) 220.

issues include the lack of transfer of ownership of the underlying *Sukuk* assets to the *Sukuk* holders; the use of LIBOR in benchmarking the rental payment due from the obligor to the *Sukuk* holders; the implication of the SPV; as well as the unconditional obligation stemming from the various clauses of the transaction agreements entered into by parties.

By leveraging the value of sovereign assets, Nigeria can tap into a new source of funding that aligns with Islamic finance principles while diversifying its financing options. However, this innovative approach is not without its challenges. The legal and regulatory framework in Nigeria must be adapted and enhanced to accommodate such transactions effectively. Transparency, risk assessment, and investor protection mechanisms are critical elements that must be incorporated into the regulatory framework. Furthermore, the success of sovereign asset-backed *Sukuk* issuance in Nigeria hinges on effective communication and collaboration between various stakeholders, including government authorities, financial institutions, investors, and Shari'ah scholars. Building trust and confidence in the market will be paramount to attracting domestic and international investors. In light of these findings, it is evident that the securitisation of sovereign assets for *Sukuk* issuance holds significant promise for Nigeria.