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Assessing Sharia Compliance of Indonesian Sovereign Sukuk via the Underlying Asset Principle

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Abstract

This study evaluates the Sharia compliance of Indonesia's sovereign sukuk (Surat Berharga Syariah Negara, SBSN) issued between 2008 and 2024 a programme whose cumulative gross issuance now exceeds IDR 2,000 trillion focusing on the underlying-asset principle that anchors Islamic capital-market instruments to tangible economic value. Using a qualitative normative-juridical method, it analyses primary legal sources Law No. 19 of 2008 on SBSN, DSN-MUI Fatwas No. 69–72 of 2008, and AAOIFI Sharia Standard No. 17 together with official issuance documentation. The analysis argues that although Indonesia has built a comprehensive regulatory and fatwa architecture, the predominant asset-based ijarah sale-and-lease-back structure transfers only usufruct rights (hak manfaat) rather than legal ownership, sustaining a gap between formal documentation and economic substance in asset tangibility, ownership transfer, and valuation adequacy. As its principal contribution, the study proposes and operationalises a Tripartite Compliance Framework (TCF) that assesses sovereign sukuk across legal-regulatory, economic-substantive, and theological-ethical dimensions, replacing binary compliant/non-compliant verdicts with a graded compliance profile. For Indonesia, the framework implies that DJPPR, DSN-MUI, and OJK should strengthen asset identification, institute ongoing Sharia audit, and expand project-based issuance to narrow the form substance gap.

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A. INTRODUCTION

The global Islamic finance industry has expanded rapidly over the past two decades. According to the Islamic Financial Services Board, total industry assets were estimated at approximately USD 3.25 trillion at the end of 2022 and grew to about USD 3.38 trillion in 2023, with the sukuk sub-segment remaining one of its most significant components (IFSB, 2023, 2024). Within this landscape, sovereign sukuk commonly referred to as Sukuk Negara in the Indonesian context have become a central instrument through which governments in Muslim-majority countries finance public expenditure while observing the prohibitions on riba (interest), gharar (excessive uncertainty), and maysir (gambling) that constitute the foundational axioms of Islamic commercial law (Lahsasna et al., 2018).

Indonesia, the world's largest Muslim-majority nation, enacted Law Number 19 of 2008 on Surat Berharga Syariah Negara (SBSN) to provide a legal foundation for sovereign sukuk issuance. Since its inception the SBSN programme has grown substantially: cumulative gross issuance since 2008 has reached well over IDR 2,000 trillion, financed through both tradable and non-tradable series across domestic and international markets (Direktorat Jenderal Pengelolaan Pembiayaan dan Risiko [DJPPR], 2024). This growth has not been free of controversy, however, particularly concerning the fundamental Sharia requirement that sukuk be supported by identifiable, tangible underlying assets (Alswaidan et al., 2020).

The underlying-asset principle is perhaps the most contested and analytically complex dimension of sukuk structuring. Classical Islamic jurisprudence (fiqh al-muʿāmalāt) requires that financial transactions be anchored to real economic activity and tangible assets, distinguishing Islamic instruments from conventional counterparts that may operate on a purely monetary basis (Afshar,

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2023; al-Zuḥaylī, 2004). Yet the practical implementation of this principle in sovereign issuance has revealed structural and conceptual tensions that merit rigorous investigation.

A well-known dichotomy separates asset-backed from asset-based sukuk. In asset-backed sukuk, investors hold genuine ownership claims over the underlying assets and enjoy recourse to them in the event of default. In asset-based sukuk the predominant model in sovereign issuance investors obtain only beneficial ownership, while the originator retains legal title (Hidayat, 2020). This distinction raises a foundational question: do asset-based sukuk truly satisfy the Sharia requirement of ownership transfer, or do they replicate conventional bond mechanics beneath an Islamic form (Syed Ali, 2019; Zulkhibri, 2019)? The concern is not merely academic. In February 2008 the AAOIFI Sharia Board, chaired by Muhammad Taqi Usmani, issued a Statement responding to his earlier finding that as many as 85 per cent of sukuk then in issuance did not fully conform to Sharia because guaranteed returns and face-value repurchase undertakings reproduced the economics of interest-bearing debt (Usmani, 2008; AAOIFI, 2008).

The literature on sovereign-sukuk compliance has grown considerably, yet important gaps remain. Existing Indonesian scholarship has tended to treat the subject either as a legal-regulatory question describing the SBSN statute and the fatwa framework (Musari, 2019; Nurhasanah & Kholid, 2021) or as a fiqh-doctrinal debate over the asset-backed/asset-based distinction (Hidayat, 2020), while comparative and financial-economic studies address performance and market development (Smaoui & Ghouma, 2020). Three lacunae follow. First, prior work rarely integrates the legal, economic-substantive, and theological-ethical dimensions within a single, explicit analytical instrument; each literature evaluates compliance against its own partial criterion. Second, although these studies acknowledge the asset-based character of SBSN, few interrogate the precise juridical mechanism the transfer of hak manfaat (usufruct) rather than legal title under the ijarah sale-and-lease-back structure by reference to the statute's own elucidation and the constitutional adjudication that upheld it. Third, no existing study offers a graded, operational tool for locating a given issuance on the spectrum between formal and substantive compliance; assessments remain largely binary. This matters especially for Indonesia, whose regulatory architecture is distinctive: the DSN-MUI functions as the authoritative national Sharia advisory body, and the SBSN Law creates a sui generis form of asset transfer that differs from the trust-based structures common in the Gulf Cooperation Council (GCC) states and Malaysia (Alfalih & Hadj, 2022).

This study addresses those gaps. Its principal contribution is a Tripartite Compliance Framework (TCF) an original, operational instrument, distinct from existing checklists such as the AAOIFI Sharia audit framework and the descriptive governance typologies of the prior literature that evaluates sovereign sukuk simultaneously across legal-regulatory, economic-substantive, and theological-ethical dimensions and reports the result as a graded profile rather than a binary verdict. The research is guided by three objectives: (1) to analyse the regulatory and jurisprudential framework governing underlying assets in Sukuk Negara; (2) to assess the extent to which current practice conforms to Sharia standards as articulated by DSN-MUI and AAOIFI; and (3) to propose and operationalise the TCF as an evaluative tool applicable across jurisdictions.

B. METHODS

Research design

This study employs a qualitative, normative-juridical method that combines doctrinal legal analysis with interpretive content analysis. The approach is suited to examining the intersection of legal norms, religious principles, and financial practice that characterises the sukuk-compliance domain (Creswell & Creswell, 2018). The normative-juridical component permits systematic analysis of legal texts, fatwas, and regulatory instruments; the interpretive component clarifies how those norms are applied and contested in issuance practice.

Data sources, period, and selection criteria

The study covers the period from the enactment of the SBSN Law in 2008 to 2024. Primary sources were selected according to explicit inclusion criteria: an instrument was included if it (a) constitutes binding law, fatwa, or regulation directly governing SBSN underlying assets, or (b) is official issuance documentation (issuance memoranda, prospectuses, and DJPPR auction announcements) for series outstanding during the study period. Sources were excluded if they addressed corporate rather than sovereign sukuk, predated the SBSN legal regime without continuing relevance, or lacked authoritative provenance. On this basis the core corpus comprises: Law No. 19 of 2008 and its elucidation; DSN-MUI Fatwas No. 69/2008 (SBSN), 70/2008 (issuance methods), 71/2008 (sale and lease back), 72/2008 (SBSN ijarah sale and lease back), 76/2010 (ijarah asset to be leased), and 95 (SBSN wakalah); the relevant Ministry of Finance regulations (PMK) on the use of state property as an issuance basis; AAOIFI Sharia Standard No. 17 on Investment Sukuk (AAOIFI, 2021); and OJK rules. Secondary sources include peer-reviewed articles, monographs, and reports of the IFSB and allied bodies.

Analytical framework and coding procedure

Analysis proceeded in three interconnected stages. First, doctrinal analysis reconstructed the legal and jurisprudential requirements for underlying assets from the primary sources. Second, a compliance evaluation assessed current SBSN practice against those requirements using the purpose-designed compliance matrix set out in Table 1. Third, a critical synthesis identified tensions, ambiguities, and avenues for enhancement, culminating in the proposed framework. The interpretive content analysis followed a structured coding procedure: legal and documentary texts were coded deductively against three a priori categories derived from the doctrinal stage asset tangibility/identifiability, ownership transfer, and valuation adequacy with sub-codes recorded for each provision; coded segments were then compared across sources to surface convergence and divergence between the formal rule and its documentary implementation. The staged approach draws on the tradition of legal hermeneutics while incorporating elements of maqāṣid al-sharīʿah analysis to situate specific requirements within the broader purposes of Islamic law (Kamali, 2019).

Table 1. Compliance matrix operationalising the three assessment dimensions.

Legal–Regulatory (LRC)	Legal identification of the asset; validity of the akad; completeness of documentation; DPR and DSN-MUI approval; conformity with UU 19/2008 and OJK rules.	UU 19/2008; DSN-MUI Fatwas 69–72/2008, 76/2010, 95; PMK on BMN as issuance basis; issuance memoranda.
Economic–Substantive (ESC)	Degree of real ownership transfer; tangibility and specificity of the asset; adequacy of asset valuation relative to issuance; presence of genuine risk-sharing versus fixed return; investor recourse on default.	Penjelasan Pasal 11(1) UU 19/2008; prospectus clauses on hak manfaat and purchase undertaking; AAOIFI SS No. 17; comparative literature (Godlewski et al., 2013; Dusuki, 2010).
Theological–Ethical (TEC)	Advancement of public welfare (maṣlaḥah); connection to real economic activity; avoidance of ḥiyal (form-over-substance devices); distributive and developmental impact; alignment with maqāṣid al-sharīʿah.	Maqāṣid literature (Kamali, 2019); AAOIFI Sharia Board Statement (2008); Usmani (2008); classical fiqh al-muʿāmalāt (al-Zuḥaylī, 2004).

Validity and trustworthiness

Analytical rigour was pursued through triangulation across multiple source types and analytical methods: legal texts were cross-referenced with scholarly interpretation, and regulatory provisions were read alongside implementation documents. To reduce interpretive bias, the compliance matrix and a sample of coded provisions were submitted for expert review to independent specialists in Islamic capital-market law and Sharia finance, who were selected for their subject expertise and reviewed the instrument anonymously; their feedback was recorded and incorporated through a documented revision log, and points of disagreement were resolved by returning to the primary texts. Because the study is normative-juridical rather than empirical, its conclusions describe the design and documentation of SBSN structures rather than the behaviour of market participants; this scope condition is stated explicitly and revisited in the limitations.

C. RESULT AND DISCUSSION

The regulatory framework for underlying assets in Sukuk Negara

Law Number 19 of 2008 establishes the legal category of the SBSN asset. Article 1, point 8 defines Aset SBSN (SBSN Assets) as "the object of SBSN financing and/or State Property that has economic value, in the form of land and/or buildings or other than land and/or buildings, which for the purpose of SBSN issuance is used as the basis of issuance." The mechanism for using such assets is set out separately in Articles 10 to 12: under Article 11(1), the Minister of Finance may sell or lease only the Hak Manfaat (right of usufruct) over State Property. The elucidation of Article 11(1) is explicit that this transfer is sui generis and differs from ordinary alienation under the State Treasury Law in three respects: the sale and/or lease covers only the usufruct of the property; there is no transfer of legal title (legal ownership); and there is no physical transfer of the property. Read together, the statute therefore contemplates an asset-based, not asset-backed, structure at the level of primary law. (An earlier version of this study cited Article 1, point 3; the defining provision is Article 1, point 8, while point 3 concerns the akad. The correction is material to a legal argument and is noted here for transparency.)

The DSN-MUI fatwas add jurisprudential detail. Fatwa No. 69/DSN-MUI/VI/2008 provides the general basis for SBSN, but the structures actually used are governed by its derivatives: Fatwa No. 71/2008 on sale and lease back and Fatwa No. 72/2008 on SBSN ijarah sale and lease back together with Fatwa No. 76/2010 on ijarah asset to be leased and Fatwa No. 95 on SBSN wakalah for later series. In practice, the Surat Perbendaharaan Negara Syariah (SPN-S) series are issued on the ijarah sale-and-lease-back basis under Fatwa No. 72/2008, while Project-Based Sukuk (PBS) series use the ijarah asset-to-be-leased basis under Fatwa No. 76/2010 (DJPPR, 2024). The general fatwa requires that underlying assets be clearly identified and specifically described, lawfully owned or controlled, possessed of economic value, and free of dispute or encumbrance; it does not, however, prescribe the required ratio of asset value to issuance value, nor a specific valuation methodology both of which are decisive compliance determinants (Nurhasanah & Kholid, 2021). Analysis that omits the derivative fatwas cannot fully capture the fiqh of the ijarah structure examined below.

Compliance assessment: the underlying-asset spectrum

Tangibility and identifiability.

The evidence points to a compliance challenge in asset tangibility and identifiability. Early SBSN issuances used specific, identifiable State Property principally government buildings and land parcels but the scaling of the programme has drawn in less tangible categories, including government services and project assets that may not yet be physically realised at issuance. This evolution raises the question whether notional or constructive identification satisfies the Sharia requirement of specificity, or whether it approaches a form of gharar that may impair the underlying contract (Afshar, 2023).

Ownership transfer and beneficial interest.

This is the analytical core of the study, and the primary sources support a measured but firm conclusion. The predominant SBSN structure is a sale-and-lease-back (ijarah) arrangement in which State Property is notionally sold to a special-purpose entity Perusahaan Penerbit SBSN Indonesia and leased back to the government. Yet the transfer is juridically confined to usufruct: as the elucidation of Article 11(1) states in terms, there is no transfer of legal title and no physical transfer of the asset, and the government retains possession, operational control, and effective economic ownership throughout the sukuk's tenor. The characterisation of the special-purpose entity's ownership as a legal fiction should therefore be understood not as rhetoric but as a description grounded in the statute itself and consistent with the wider literature on form over substance in asset-based sukuk (Hidayat, 2020; Dusuki, 2010). Two qualifications are essential for balance. First, this structure has been judicially validated: in Decision No. 143/PUU-VII/2009 the Constitutional Court held that using the usufruct of State Property as an SBSN asset transfers no legal title, effects no physical alienation, and does not injure the State, and is therefore constitutional (Mahkamah Konstitusi, 2010). Second, the structure is defended within Islamic finance on the ground that an ijarah lease legitimately separates ownership of an asset from its usufruct, so that transferring the usufruct can suffice for a valid lease-based sukuk; the AAOIFI Sharia Board's 2008 Statement, while discouraging face-value repurchase undertakings in partnership (mudaraba/musharaka) sukuk, did not invalidate ijarah structures on this basis (AAOIFI, 2008). The compliance question, then, is not whether SBSN is lawful plainly it is but where on the spectrum between formal and substantive asset-backing it sits.

Asset valuation and adequacy.

The adequacy of underlying-asset value relative to issuance volume is a further consideration. While the government maintains that the total value of available State Property exceeds outstanding SBSN obligations, the formal linkage between specific asset values and specific series is often attenuated, and neither the statute nor the general fatwa fixes a coverage ratio. This raises the possibility of asset re-use employing the same underlying assets to support successive issuances which some scholars would regard as inconsistent with the principle of exclusive asset dedication (Alswaidan et al., 2020). It must be stressed, however, that the present normative study does not establish, from issuance documentation, that any particular asset has in fact backed multiple concurrent series. Accordingly this point is advanced not as a finding but as a hypothesis requiring empirical verification against primary prospectus data a task for the future research proposed below. Framing it otherwise would overstate the evidence and risk mischaracterising sovereign practice.

The proposed Tripartite Compliance Framework

The preceding analysis motivates a framework that can register degrees of compliance. The Tripartite Compliance Framework (TCF) integrates three analytical dimensions Legal-Regulatory Compliance (LRC), Economic-Substantive Compliance (ESC), and Theological-Ethical Compliance (TEC) each assessed against the criteria in Table 1 and rated on a four-point ordinal scale (0 = non-compliant, 1 = weak, 2 = substantial, 3 = full). Crucially, the dimensions are reported as a profile (LRC, ESC, TEC) rather than collapsed into a single aggregate, because a high formal score can coexist with a low substantive one, and averaging would conceal precisely the tension this study identifies. Figure 1 depicts the framework.

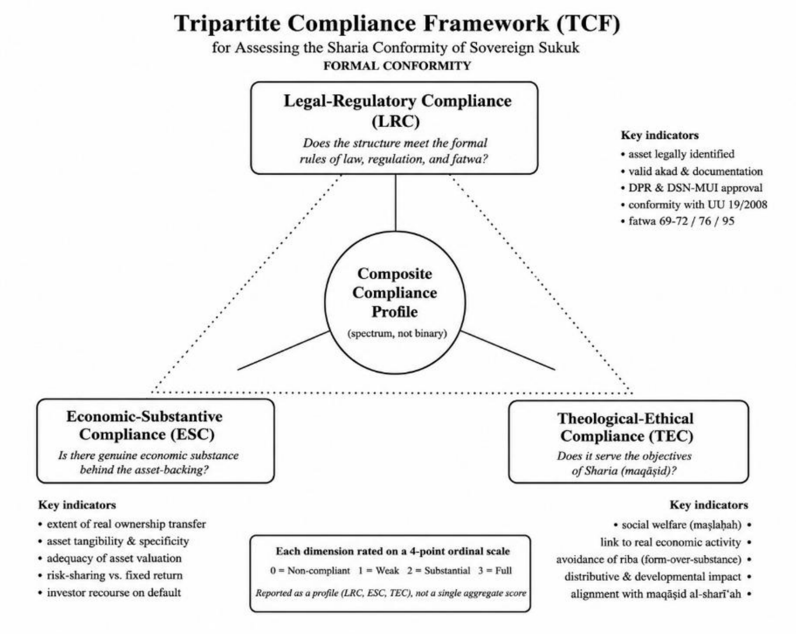

Figure 1. The Tripartite Compliance Framework (TCF) for assessing the Sharia conformity of sovereign sukuk. Each dimension is rated on a four-point ordinal scale and reported as a profile rather than a single aggregate score

The first dimension, Legal-Regulatory Compliance (LRC), assesses conformity with applicable legislation, regulation, and fatwa whether the structure satisfies the formal requirements for asset identification, documentation, valid akad, and the requisite DPR and DSN-MUI approvals. On the criteria in Table 1, Indonesian SBSN score at the upper end of this dimension (a rating of 3): issuance rests on an explicit statutory basis, a dedicated fatwa series, and mandatory legislative approval, and each auctioned series names its governing fatwa and its State-Property or project basis (Musari, 2019; DJPPR, 2024). LRC is thus an evidenced rating against defined criteria, not an unmeasured assertion.

The second dimension, Economic-Substantive Compliance (ESC), evaluates whether the structure achieves genuine economic substance in its asset-backing the extent of real ownership transfer, the specificity and adequacy of valuation, and whether the income stream reflects a real lease of a real asset with real risk-sharing rather than a debt with a guaranteed return. It is here that SBSN scores lowest (a rating of 1–2): because only usufruct transfers and the government both leases and repurchases at par, investor exposure is, in substance, to sovereign credit rather than to the assets, and the gap between formal structure and economic substance remains considerable (Godlewski et al., 2013; Zulkhibri, 2019).

The third dimension, Theological-Ethical Compliance (TEC), assesses alignment with the objectives of Sharia (maqāṣid al-sharīʿah): the promotion of welfare (maṣlaḥah), the facilitation of genuine economic activity, the avoidance of ḥiyal (devices that satisfy form while defeating purpose), and developmental impact. Kamali (2019) argues that maqāṣid-based analysis corrects purely formalistic assessment; on this dimension project-based SBSN, which finance identifiable infrastructure, score more strongly than general-financing series, because proceeds are tied to real assets and public benefit.

The TCF's added value lies in this disaggregation. Unlike a binary AAOIFI-style audit checklist, which returns a pass/fail against formal criteria, and unlike the descriptive governance typologies of Hassan and Lewis (2007) and the comparative sukuk-governance literature (Abdullah & Ismail, 2023), the TCF holds the three logics apart and makes their divergence visible and gradable. It thereby operationalises, rather than merely restates, the form–substance debate: an instrument that is fully LRC-compliant yet only weakly ESC-compliant is located precisely, and the locus of any remedial effort is identified.

Structural tensions and pathways forward

The findings illuminate a structural tension between fiscal flexibility and strict Sharia compliance. Sovereign issuers require instruments that can be issued efficiently, in large volumes, and at predictable cost; these imperatives sit uneasily with the asset-specificity, genuine ownership transfer, and risk-sharing that rigorous compliance demands. The tension is not unique to Indonesia. Abdullah and Ismail (2023) identify similar dynamics in Malaysia and the GCC, suggesting a systemic feature of the sovereign-sukuk market rather than a national anomaly.

Comparative experience sharpens the point. In Malaysia, the Shariah Advisory Council of Bank Negara Malaysia has historically accommodated asset-based and beneficial-ownership structures under a centralised ruling authority, prioritising market development while managing doctrinal debate an approach that resembles Indonesia's reliance on DSN-MUI but operates within a deeper capital market (Alfalih & Hadj, 2022). The classic default cases in the literature illustrate what is at stake when substance is tested. The East Cameron Gas sukuk, one of the rare genuinely asset-backed sovereign-adjacent structures, became a reference point precisely because its originator's insolvency put the true-sale question whether investors could reach the underlying assets directly before a court; asset-based Gulf structures such as the Dubai-linked issuances of 2009 exposed the opposite problem, that beneficial ownership without legal title leaves investors dependent on the obligor's balance sheet (Saeed & Salah, 2014). Most significantly for current practice, AAOIFI's proposed Sharia Standard No. 62 (in exposure since 2023) would push the global market away from asset-based and toward asset-backed structures requiring genuine legal transfer of the underlying assets an initiative that, if adopted, would bear directly on the ESC gap identified here and would compel sovereign issuers, Indonesia included, to reconsider the sale-and-lease-back model (AAOIFI, 2023).

Several pathways for enhancing compliance within the constraints of sovereign issuance follow. First, more granular asset-identification protocols potentially supported by digital asset registries and distributed-ledger technology could strengthen the tangibility and traceability of underlying assets without unduly constraining issuance volumes (Alfalih & Hadj, 2022). Second, enhanced Sharia-audit mechanisms, including periodic independent review of asset adequacy and utilisation, could provide assurance of ongoing not merely initial compliance across the sukuk's tenor. Third, the progressive expansion of project-based sukuk, in which proceeds finance specific infrastructure that itself constitutes the underlying asset, offers a model that aligns fiscal objectives with Sharia requirements more naturally than general-financing series (IFSB, 2023).

D. Conclusion

This study has examined the Sharia compliance of Indonesia's Sukuk Negara through the lens of the underlying-asset principle, and it advances a clear thesis: Indonesia's SBSN are fully compliant as a matter of positive law and fatwa, but only partially compliant in economic substance, because the ijarah sale-and-lease-back structure transfers usufruct rather than ownership and leaves investors exposed to sovereign credit rather than to the assets. That conclusion is grounded not in assertion but in the statute's own elucidation of Article 11(1), the derivative DSN-MUI fatwas, and the Constitutional Court's validation of the structure.

The study's original contribution is the Tripartite Compliance Framework, which operationalises this insight. By rating legal-regulatory, economic-substantive, and theological-ethical compliance separately on an ordinal scale and reporting a profile rather than a single verdict, the TCF moves beyond the binary assessment that has dominated the literature and locates a given issuance precisely on the spectrum between formal and substantive compliance. This is a tool, not merely a taxonomy, and it is portable across jurisdictions.

The policy implications are specific and can be assigned to actors. The Directorate General of Budget Financing and Risk Management (DJPPR) should tighten asset-identification and valuation protocols publishing, for each series, the specific assets pledged and a transparent coverage ratio and continue to expand project-based issuance so that proceeds attach to identifiable infrastructure. The National Sharia Board (DSN-MUI) should move from initial certification toward continuous supervision, issuing guidance on the minimum asset-to-issuance ratio and on permissible asset re-use that the current fatwas leave open. The Financial Services Authority (OJK) should embed periodic, independent Sharia audit of asset adequacy into the disclosure regime and prepare the domestic market for the asset-backed direction signalled by AAOIFI's proposed Standard No. 62.

The study's limitations define its research agenda. Being normative-juridical, it evaluates the design and documentation of SBSN, not the conduct or perceptions of market actors, and it does not establish empirically that specific assets have backed multiple series. Future research should therefore (1) test the asset-re-use hypothesis directly against a dataset of series-level prospectuses and pledged-asset registers; (2) survey DSN-MUI members and market practitioners to capture how compliance decisions are actually made; (3) apply the TCF comparatively to Malaysian, GCC, and other sovereign sukuk to test and calibrate its ordinal scale; and (4) examine how distributed-ledger asset registries might close the ESC gap in practice. Pursuing these lines would convert the framework proposed here into a validated, empirically grounded instrument for both scholarship and policy.

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