

## Sharia Principles in Sharia Capital Market

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### Abstract

*Islamization of the economic sector in this country continues to roll. Since the faucet's opening, which was marked by the establishment of Bank Muamalat, this effort has continued to reach out to the bank and non-bank financial institutions. There are almost no financial institutions left unless they have been touched by the rules of muamalah fiqh. This includes the capital market sector. This paper is included in the literature study. The method used is qualitative by collecting data through information relevant to the topic or problem being studied. The information is obtained from books, research reports, scientific articles, decrees, and written sources, both printed and electronic. The approach taken is descriptive. This approach is used to obtain an overview of answers related to sharia principles in the Islamic capital market. The dynamics and developments above are certainly very encouraging. However, it does not make us complacent. Like other muamalah sectors, the capital market is a very dynamic world and also a bit complicated. Moreover, the law that covers the Islamic capital market is still the same as the conventional capital market law. Therefore, even though there is a formal Islamic capital market, there is still a need to mature concepts and regulations and supervision in the application. Therefore, it is urgent to continue to conduct studies on sharia principles in the capital market so that the dream of the presence of a sharia capital market that accommodates sharia values in a kaffah manner can be realized.*

### Keywords

sharia; principles; market



## I. Introduction

Islamization of the economic sector in this country continues. Since the faucet's opening, which was marked by the establishment of Bank Muamalat, this effort has continued to reach out to the bank and non-bank financial institutions. There are almost no financial institutions left unless they have been touched by the rules of muamalah fiqh. This includes the capital market sector. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic growth is still an important goal in a country's economy, especially for developing countries like Indonesia (Magdalena and Suhatman, 2020).

In Islam, muamalah activities include aspects that have very high flexibility. So, the opportunity to be converted to Islam is very large. Because what is needed is only a modification so that the haram elements can be avoided.

The Prophet himself, in one of his statements, said that you know better about your worldly affairs. No wonder the fuqaha also formulate a rule in muamalah Al Ashlu Fil Muamalah Al Ibahah (the original law in muamalah is permissible).

However, even so, caution is still needed in bermuamalah. So that muamalah activity whose original law is permissible is not infiltrated by forbidden things.

In Indonesia, the capital market is not new. Historically, the capital market system has existed since the colonial era. In 1912, the activities and the capital market system started to run in Jakarta. The objects traded at that time were securities and shares belonging to companies and the Dutch government. It was stopped because of the second world war. However, it returned to operation in 1950 and has a legal umbrella with the issuance of an emergency law on the stock exchange no. 13 of 1951.

Since the capital market is running in this country, of course, the aspect of compliance with sharia is not something that is considered, let alone prioritized. The system that applies in it is a mixture of halal and haram. It is natural that some parties are sceptical and even make wrong assumptions about the capital market. The capital market is considered not only a meeting place for investors but also for speculators who carry out gambling activities.

Along with strengthening the people's desire to be able to bermuamalah sharia in all aspects, the Islamization of financial institutions is inevitable. On March 14, 2003, the Ministry of Finance officially launched the Islamic capital market. The embryo and forerunner of the Islamic capital market have existed since 1997, marked by the operation of Islamic mutual funds. Then in 2000, the Jakarta Islamic Index was formed.

The dynamics and developments above are certainly very encouraging. However, it does not make us complacent. Like other muamalah sectors, the capital market is a very dynamic world and also a bit complicated. Moreover, the law that covers the Islamic capital market is still the same as the conventional capital market law.

Therefore, even though there is a formal Islamic capital market, there is still a need to mature concepts and regulations and supervision in the application. Therefore, it is urgent to continue to conduct studies on sharia principles in the capital market so that the dream of the presence of a sharia capital market that accommodates sharia values in a kaffah manner can be realized.

## **II. Research Method**

This paper is included in the literature study. The method used is qualitative by collecting data through information relevant to the topic or problem being studied. The information is obtained from books, research reports, scientific articles, decrees, and written sources, both printed and electronic. The approach taken is descriptive. This approach is used to obtain an overview of answers related to sharia principles in the Islamic capital market.

## **III. Result and Discussion**

Buying and selling are essential human needs. One of the most critical media is the market. A market is where various parties meet to facilitate goods and services. In the modern era, the market is no longer limited to physical where sellers and buyers meet physically. Currently, there is also an online market. There is no physical interaction between the seller and the buyer.

The capital market is the same. Its primary function is also to bring together sellers and buyers. The difference is that the objects traded are not goods and services but securities such as stocks and bonds. The seller is usually a party or company that needs

capital. At the same time, the buyer is an investor with excess capital. It was in the capital market that the two met.

Some entrepreneurs choose the capital market as a place to find additional capital because of the convenience aspect. An entrepreneur can get capital by selling some proof of ownership of his business in the form of shares. This method is straightforward compared to banking, which stipulates several conditions that must be met.

In terms of terminology, the *capital market* is the trading of long-term financial instruments (securities), both in the form of own capital (*stocks*) and debt (*bonds*), issued by the government (*public authorities*) or by private companies (*private sector*)

In the law, the capital market is defined as activities related to public offerings and securities trading, public companies related to securities issued, and institutions and professions related to securities.

From this understanding, it is explained that in the capital market, the main objects traded are stocks, bonds and mutual funds. This is what distinguishes it from the market in general.

The capital market has an essential role in the economic activities of a country, including as a facility for interaction between buyers and sellers to determine the price of securities being traded. Also, as an alternative to raising public funds outside of banking institutions. In addition, it also provides opportunities for investors to obtain expected returns, provides opportunities for investors to resell their securities, creates opportunities for the public to participate in economic development, and allows efficient allocation of funds and resources.

The following is a brief explanation of the securities traded in the capital market:

### 3.1 Shares

Talking about the capital market, there will be much contact with the term stock. In simple terms, shares are proof of ownership of a business. In terminology, shares are proof of ownership or share of the capital of a company, which can be traded, which also becomes a claim on the income and activities of the company.

So when a person buys shares in a company, he automatically owns the company. It is just that the percentage of ownership is closely related to the size of the shares owned.

As in other investment activities, investing in the stock market also offers benefits and risks of loss. Profits can be obtained from dividends or capital gains. The loss occurs due to many factors, especially if the company loses money or the value of its share's plummets due to the unstable social, economic and political conditions of a country.

### 3.2 Bonds

Bonds are simply debt securities. These bonds can be issued by companies as well as the state. When a person invests through bonds, he has long-term receivables from the bond issuer. When it matures, the investment funds will return intact.

A bond is another event a company or government goes through to get a loan. In bonds, the issuer is the borrower (the debtor), while the bondholder is the lender (the creditor). The profits from these bonds are called coupons.

Bond coupons are loan interest that must be paid by the debtor to the creditor. The issuance of these bonds is usually done to obtain long-term financing from outside the company. So, the system that applies in buying and selling bonds is debt and receivables accompanied by interest.

### 3.3 Mutual

Funds are known as *mutual funds*. The Capital Market Law No. 08 of 1995, article 1 paragraph 27 states that mutual funds are a forum to raise funds from the investor community to be further invested in securities portfolios by investment managers. What is meant by investment managers are parties whose business activities manage securities portfolios. For customers or managing collective investment portfolios for groups of customers.

Mutual funds are also one of the diversification strategies in investing and are an alternative investment for the investor community, tiny investors and investors who do not have much time and expertise to calculate the return and risk on their investment.

### 3.4 Sharia Capital Market Principles

The Islamic capital market is not a stand-alone capital market. It is part of the capital market itself. Therefore, the same traded securities include stocks, bonds and mutual funds. The difference is in the operational mechanism. The Islamic capital market in its operations is based on sharia principles. Another difference is the existence of a sharia supervisory board that ensures the implementation of sharia principles. Therefore, the securities traded are under sharia principles. That is where the terms sharia shares, sharia bonds and sharia mutual funds come from.

Therefore, in terms of the term, the sharia capital market is a capital market that applies sharia principles in economic transaction activities and is free from prohibited things such as usury, gambling, speculation and others. On that basis, the instruments that can be traded in the Islamic capital market are limited to those that meet Islamic principles.

From this definition, it can be understood that the Islamic capital market has several principles, namely:

#### a. The principle of Prohibition of Transactions on Haram Objects

Similar to buying and selling activities in general, in buying and selling shares, it is required that the company whose shares are purchased does not move in things that are forbidden. On that basis, it is not permissible to buy shares of liquor companies. So, buying and selling liquor is haram, even though the sale and purchase contract is valid. Thus, if there are securities that represent prohibited goods/services, then those securities are included in the prohibited category.

#### b. Principle of Prohibition of Conducting Activities Containing Riba

When buying shares, in essence, you are entering into a syirkah contract. The most important principle in a syrah contract is the opportunity for profit and the risk of loss. So, if there are companies that offer fixed profits, then this is contrary to this principle. Because substantially, this kind of practice is an interest-bearing debt.

This principle automatically cancels the sale and purchase of bonds because the essence is debt with interest. Although in the end, it was found that the format of Islamic bonds was substantially different from conventional bonds.

#### c. The Prohibition of Activities Containing Gharar and Maisir (Gambling)

This principle applies in general in every muamalah activity. It is just that in the world of capital markets, the existence of this principle is very urgent. Because some of the players in the capital market are speculators. So, what they are doing is not investing but betting on something fictitious with the possibility of big profits or losses.

#### **d. The Baiul Ma'dum Prohibition Principle**

Baiul ma'dum, namely selling goods that do not exist yet, is the most priority thing to watch out for when playing stocks. Because it is not uncommon to buy and sell shares that are not owned. If this practice occurs in a chain and then congestion occurs at a certain level, then this can cause turmoil. Because there is a very powerful circulation of money without any tangible assets accompanying it.

#### **e. The Prohibition Principle**

The most dangerous activity for capital market players, especially beginners, is the naughty activity or fake offers. This pattern is a mainstay strategy to increase the price of specific stocks. Namely by giving the impression that a particular stock is in demand by many people so that its share price rises. When the upward trend was detected, many people were interested in buying it. When there are so many who buy it, the increase reaches its peak and then falls free.

The principles above are the elaboration of the Financial Services Authority regulation in article 1 paragraph 2 (POJK 15/POJK.04/2015) that sharia principles in the capital market are Islamic legal principles in sharia activities in the capital market based on the DSN MUI fatwa as long as they are not against POJK. In paragraph 3, it is stated that sharia law is a contract, assets that underlie the contract, and assets related to securities do not conflict with sharia principles.

Meanwhile, Article 2 of POJK 15/POJK.04/2015 is as follows:

1. Activities and types of business that are contrary to Sharia Principles in the Capital Market include but are not limited to:
  - a. gambling and games classified as gambling;
  - b. usury financial services;
  - c. buying and selling risks that contain elements of uncertainty (*gharar*) and gambling (*Maisie*); and
  - d. produce, distribute, trade, or provide, among others:
    - 1) goods or services are prohibited in substance (*haram li-dating*);
    - 2) haram goods or services not because of the substance (*haram li-ghairihi*) stipulated by the National Sharia Council - Indonesian Ulema Council; or
    - 3) goods or services that damage morals and are harmful.
2. Transactions that are contrary to Sharia Principles in the Capital Market include but are not limited to:
  - a. trading or transactions with false offers and requests;
  - b. trade or transactions that are not accompanied by the delivery of goods and services;
  - c. trade in goods that are not yet owned;
  - d. purchase or sale of Securities using or utilizing inside information from Issuers or Public Companies;
  - e. margin transactions on Sharia Securities containing an element of interest (usury);
  - f. trading or transactions with the purpose of hoarding (*shikar*);
  - g. conducting trade or transactions that contain elements of bribery (*risywah*); and
  - h. other transactions that contain elements of speculation (*gharar*), fraud (*tables*), including concealing defects (*ghisysy*), and attempts to influence other parties that contain lies (*taghrir*).

In the operation and transaction system of the Islamic capital market, several things must be considered in maintaining the sharia of its business, namely the business activities of the issuer and the securities issued by the issuer. The trading mechanism carried out by investors must be under sharia principles.



### 3.5 Capital Market Instruments That Conflict with Sharia Principles

From the sharia principles above, we can take pictures and assess and distinguish halal and haram in the capital market. Some of the cases that are prohibited based on the above principles are:

Transactions containing prohibited elements include:

1. *Najsy*, i.e. making fake offers;
2. *Bai' al-medium*, which is to sell goods (sharia securities) that are not owned (*short selling*).
3. *Insider trading*, which is using inside information to gain profits on prohibited transactions
4. Generate misleading information
5. *Margin trading*, namely conducting transactions on sharia securities with interest-based loan facilities for the obligation to settle the purchase of sharia securities.
6. *Ikhtikar* (hoarding), which is to make purchases and collect sharia securities to cause changes in the prices of sharia securities, influences other parties.
7. special shares

In this special share, there is a section that is the object of criticism. One form of privilege is to provide fixed profits to shareholders. Of course, this practice is contrary to the principle of usury. Because when capital is guaranteed and profits are permanent, it has come out of the fundamental principle in syrah. As a result, not syirkah but the provision of receivables guaranteed to be returned with additional interest.

The instruments in the sharia capital market are sharia shares, Sukuk or sharia bonds and sharia mutual funds.

### 3.6 Sharia Capital Market Analysis

Every sharia label attached to a product requires proof. The proof can be realized on two sides, namely on the concept and application sides.

The understanding and fatwa that embodies the Islamic capital market are very encouraging because it seems that there are maximum efforts from various parties to realize a pure capital market according to sharia.

However, in some aspects, some parts are still being debated. There is still a debate on these various products, which is a severe challenge in developing the Islamic capital market in the future.

Another thing that is also a challenge for the Islamic capital market is the absence of a legal umbrella at the level of the law that covers the Islamic capital market, even though the existence of the law has a very significant effect on the development of the Islamic capital market.

Only with a robust legal basis in the form of a sharia capital market law, it is not only stable and sustainable but also provides a faster, cheaper, easier, and easier way to resolve disputes outside the courts and primarily provides justice for capital market players.

In addition to the regulatory aspects that still need strengthening, more detailed studies on Islamic capital market products also remain relevant and even urgent to be intensified. The reason is that certain parts of the products are still causing polemics and debates. The following is an analysis of the objects traded in the Islamic capital market:

### 3.7 Sharia Shares Sharia

Shares are a term that describes the freedom of a company from criminal elements both in terms of products and in its financial management. When a company is free from haram elements in these two aspects, there is no debate about its sharia status. The Indonesia Stock Exchange itself has classified any shares that are included in sharia shares by being categorized on the Sharia Securities List (DES).

Meanwhile, for companies engaged in the halal sector, their financial management is still mixed with muamalah usury. This is still a matter of debate at the individual level as well as fatwa institutions and institutions. The DSN fatwa provides a tolerance for companies operating in the halal sector. However, in financial management, there is an element of usury on the condition that the element of usury is calculated and then cleaned.

Let us consider the criteria for sharia shares. Based on OJK (2019, p.143-144), A share can be categorized as sharia shares if the shares are issued by:

1. Issuer/Public Company which clearly states in its articles of association that the business activities of the Issuer/Public Company The Issuer/Public Company does not conflict with Sharia Principles in the Capital Market but meet the following criteria:
  - a. Not conducting the following business activities:
    - 1) gambling and games classified as gambling
    - 2) trade that is prohibited according to sharia (example: trade that is not accompanied by the delivery of goods/services and trade with false offers/demands)
    - 3) usury financial services (example: interest-based banks and interest-based finance companies)
    - 4) buying and selling risks that contain elements of uncertainty or gambling (example: conventional insurance)
    - 5) produce, distribute, trade or provide, among others: goods or services prohibited by substances; goods or services that are unlawful not because of the substance determined by the DSN-MUI; or goods or services that damage morals and are harmful
    - 6) conduct transactions that contain elements of bribery.
  - b. Meet the following financial ratios:
    - 1) Total interest-based debt compared to total assets of not more than 45%; or
    - 2) Total interest income and non-halal income compared to total operating income (*revenue*) and other income is not more than 10 per cent.

In point B, related to the company's financial ratios, there is a tolerance for the existence of usury in its financial management. Meanwhile, other fatwa institutions do not allow it. As long as there is an element of usury in its financial management, it cannot be categorized as a sharia stock.

In the fatwa lajanah damage, it is stated, "Companies that save their money in banks with legal interest are haraam and investing in these companies is also haraam. Even when the company was formed, it was not to run usury transactions because the reference is the reality on the ground and not the background of the establishment.

So, in this matter, there are two opinions. Both of these opinions use two approaches. There is a view from the perspective of liquor. No matter how small the portion of liquor is, it is still haram.

However, those who use the najis approach to enter the water will say that companies whose origins are permissible but enter the element of usury can be cleaned of elements of usury. So as long as it is possible to remove the najis, the water will be pure even though it was previously mixed with najis. Such is the case of a business. If it is interfered with by

usury from something external and it is possible to eliminate it, the company will still be worthy of being assessed as a company whose shares are sharia.

### **3.8 Sukuk or Islamic bonds**

Although offering lucrative benefits, conventional bonds are not in doubt. Because, in essence, it is an interest-bearing debt. That is why several efforts have been made to find alternatives that are lawful and free from all prohibited elements. Finally found the term Sukuk.

Several adjustments are made so that the haram elements in bonds can be eliminated. First, adjustments were made to the benefits and profit sharing instead of interest. Second, some assets have economic value in the form of movable assets such as buildings or immovable assets such as buildings. Third, the issuance of tribes begins with a transaction for an asset, its use or service. Fourth, various transactions related to Sukuk are subject to various commercial laws in sharia.

Therefore, contemporary scholars as well as fatwa institutions, both national and international, decree it is permissible to issue, sell, buy and trade Sukuk.

However, in the details, there is a difference. Let us consider the DSN fatwa. In its fatwa, DSN states that Islamic bonds are long-term securities based on sharia principles issued by issuers to sharia bondholders that require issuers to pay income to sharia bondholders in the form of yields and repay bond funds for a long time.

Meanwhile, the fatwa of Majma' Islamic Fiqh states that it is not permissible to repay the Sukuk funds based on the nominal price stated on the Sukuk sheet. However, the repayment must be based on the market value or price as agreed at the time of maturity.

So, the difference lies in the DSN fatwa allowing the Sukuk issuer to bind an agreement to the buyer to buy back the Sukuk at maturity at a predetermined price.

This permission can be a loophole that makes transactions not real or limited to formalities such as buying and selling inah. The nature of what happens is not much different from conventional bonds.

### **3.9 Sharia Mutual Funds**

Stock investment is indeed very promising. However, behind it all, it saves several risks. If you are not careful and careful, you will not gain but, instead, lose.

The presence of sharia mutual funds is one solution. Those who want to invest in stocks but do not have enough control over the world of stocks can take advantage of mutual funds. The existence of mutual funds is as an intermediary institution that helps investors to place their investments.

There are several advantages to investing through mutual funds, including funds managed by a reliable and professional economic team. Then the cost is relatively cheap, the information is transparent, there is a profit share, and there is a difference between the purchase price and the selling price.

According to Fatwa No. 20/DSN-MUI/IV/2001, sharia mutual funds are mutual funds that operate according to the provisions and principles of Islamic sharia, both in the form of a contract between the investor as the owner (sahib al-maal/rabbi al-maal) and the investment manager as the owner. Representatives of sahib al-maal, as well as between investment managers as representatives of sahib al-maal and investment users.

Mutual funds in their operating system involve four parties, namely the public investors, investment managers, issuers and custodian banks. What is interesting to analyze is the position of the four parties' contracts and their consequences.



Between the community of investors and issuers as those who utilize capital are bound by a mudharabah contract. Meanwhile, investment managers and custodian banks provide services so that the contract that binds them is an ijarah contract or sell.

However, in practice, investors only get proof of equity participation and not ownership of the business unit managed by the issuer. If the contract is mudharabah, the investor community should also have a business unit managed by the issuer.

The relationship between investors and investment managers is ijarah or wakalah bil umrah. Consequently, the rewards should be in nominal terms, not percentages. If the wage is a percentage, it means that there is an element of horror in the context of renting.

Likewise, custodian banks. He provides services so that a contract is also an ijarah contract. Because the contract is ijarah, he is entitled to a reward in the form of a specified wage of a certain nominal.

#### IV. Conclusion

The capital market is a suitable need that needs capital as well as those who seek profit through investment. It is just that not everyone can enter as entering the market in general. The system that rolls in is pretty complicated. If you do not have an adequate understanding, entering the capital market is like entering a dark room.

The presence of the Islamic capital market is a light that more or less shows halal and haram in the world of capital markets. Several fatwa institutions are actively conducting studies related to many things about the capital market. Thankfully, the fatwa issued is not only limited to explaining the law. However, it also presents solutions as a way out of the parts that are haram.

The problem is that sometimes fatwa institutions have different opinions in determining Islamic capital market instruments, especially at the operational and technical levels. Sometimes there are fatwa institutions that forbid it, but at the same time, there are also those who justify it.

This situation certainly has the potential to create new confusion in the community. Moreover, of course, it will restrain the public's desire to invest in the Islamic capital market.

This condition certainly requires further in-depth study. It is ideal if different fatwa institutions - at least their representatives - can sit together to study more profoundly and comprehensively some of the issues that are still the object of Khalaf.

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