Volume 4 Nomor 1 (2025) Pages 1-8
International Journal of Bunga Bangsa Cirebon (IJOBBA)
Email Journal : ijobba.bbc@gmail.com
Web Journal : http://journal.bungabangsacirebon.ac.id/index.php/ijobba

Analysis of Sharia Investment Law and Capital Markets on Sharia Securities in Indonesia

Hamdan Firmansyah[1]✉

Institut KH. Ahmad Sanusi Sukabumi[1]

Email :
[1]hamdan.firmansyah@inkhas.ac.id

Received: 2025-05-18; Accepted: 2025-07-09; Published: 2025-07-11

ABSTRACT

Sharia Economic Law regulates sharia securities, which are an integral part of investment practices, and the capital market in Indonesia consists of investment instruments issued and traded in accordance with Islamic sharia principles. The sharia capital market itself is part of the Islamic financial system, aiming to provide a halal investment platform. Its practice in Indonesia relates to capital market activities, which represent a potential economic driver and play a crucial role in national economic growth. The capital market is viewed as an effective means of accelerating a country's development. This is possible because the capital market is a vehicle for mobilizing long-term funds from the public for channeling into productive sectors. Investment in the capital market is permitted by sharia, as stated in the Quran, Surah Al-Baqarah: 275. However, certain measures must be observed to ensure that securities investments in the capital market remain compliant with sharia. Fatwa No. 80 of the National Sharia Council (DSN MUI) explicitly outlines the criteria for securities transactions in the capital market to be compliant with sharia. The sharia capital market is a capital market that establishes the principles of Islamic teachings in economic transaction activities and is free from things that are prohibited such as usury, gharar (excessive uncertainty), and maisir (speculation).

Keywords: *Sharia Investment Law, Capital Markets, Sharia Securities, Indonesia*

INTRODUCTION

Developing a country requires significant investment funds. Its implementation is directed towards relying on internal capabilities, while utilizing other sources for support. External sources cannot be relied upon forever for development. Therefore, a serious effort is needed to direct investment funds from internal sources, namely public savings, government savings, and foreign exchange earnings.The development of the capital market in Indonesia has experienced rapid growth, especially after the government implemented various regulations in the financial and banking sectors, including the capital market. Capital market players have realized that securities trading can provide significant returns for them and simultaneously contribute significantly to the development of our country's economy.

Capital market activity, which represents one of the national economic potentials, plays a crucial role in growing the national economy. Private sector support is a national strength, driving national economic activity. However, in Indonesia, the capital market is still dominated by foreign investors. Ideally, there should be a balance between foreign and local investors in the capital market.

To address this funding shortage, many developing countries engage in foreign loans. Although it is recognized that public savings in developing countries are still low compared to developed countries, what is more important in this era of development is to strive for effective mobilization of public savings in productive sectors.

The capital market is seen as an effective means of accelerating a country's development. This is possible because the capital market is a vehicle for mobilizing long-term public funds for channeling into productive sectors. If public funds are directed effectively through financial institutions and the capital market, the need for development funds from abroad will gradually decrease.

Thus, the capital market generally serves as a meeting place for buyers and sellers to conduct transactions in order to obtain capital. Sellers in the capital market are companies in need of capital (issuers), who seek to sell securities on the market. Buyers (investors) are those seeking to purchase capital in companies they deem profitable. The Islamic capital market, in simple terms, can be defined as a capital market that adheres to sharia principles in economic transactions and is free from prohibited activities such as usury, gambling, speculation, and so on.

METHODOLOGY

This research is a library research. The researcher used a library research method with a descriptive qualitative approach, a type of research based on the analysis of books and literature on the thoughts of experts in the study of Islamic economic law. In collecting data, the researcher compiled various literature relevant to the topic discussed to provide a comprehensive perspective/mindset regarding Islamic economic practices in Islamic securities transactions in Indonesia. The collected data was then analyzed using content analysis as an analytical tool to identify various perspectives that can support and complement each other.

RESULT AND DISCUSSION

A. Definition of Sharia Securities

Sharia securities are securities that do not conflict with Sharia principles in the capital market. Essentially, these securities can take the form of Sharia stocks, Sharia mutual funds, and sukuk, as well as several other derivative securities. Capital Market Law Number 8 of 1995 defines securities as securities, including debt instruments, commercial paper, shares, bonds, debt certificates, and investment units.

Furthermore, an explanation of Sharia securities can be found in POJK 15/POJK.4/2015 concerning the application of Sharia principles in the capital market. This POJK defines Sharia securities as securities as defined in the law on capital markets and its implementing regulations, where: the contract, management method, and business activities; the assets underlying the contract, management method, business activities; and/or assets related to the securities and their issuer do not conflict with Sharia Principles in the Capital Market.

Securities are categorized as follows:

1. Equity Securities are securities based on equity participation. All holders or investors in equity securities are treated as shareholders because by purchasing equity securities, investors increase the company's capital and thus become part owners of the company. The most well-known securities in this group are shares (stocks). These securities can be Sharia-compliant securities as long as they meet Sharia criteria, namely: the type of business is Sharia-compliant and/or the financial ratios (sources of funds and income) meet Sharia criteria.

2. Fixed-Income Securities are debt-based securities. Holders or investors in these securities are treated as lenders because the transaction between the issuing institution and the purchaser is a debt. These securities have a term and provide interest at a fixed rate periodically. These securities cannot be Sharia-compliant securities because debt transactions involving money are prohibited by Sharia, and lending money is part of tabarru (mutual assistance) transactions.

3. Structured Products are securities derived from the structure of other securities. These securities are derived from other financial assets. These securities are usually created by other financial institutions, not by the issuer of the financial asset. The purpose of creating these securities is not only to protect investment value (hedge transactions) but also to provide investment options for investors in the capital market. These securities can be Sharia-compliant

securities as long as they meet Sharia criteria. One type of Sharia-compliant securities in this category is Sharia Exchange Traded Funds (ETFs).

4. Asset-Backed Securities are securities created from securitized assets. Therefore, these securities always have an underlying asset that serves as the basis for the securitized asset. These securities are usually treated as fixed-income securities because they share several relatively similar characteristics, such as maturity dates, regular yields, and return calculations. These securities can be Sharia-compliant securities as long as they meet Sharia criteria. One type of Sharia-compliant securities in this category is Sukuk.

5. Derivatives Products are securities created from other securities, often referred to as derivative securities. These securities can only be created if there is an underlying security, not necessarily an asset. Derivative securities have several characteristics similar to those of structured products, for example, the need for an underlying security and the purpose of hedging and speculating. Several types of derivative securities can be Sharia-compliant securities, as long as the underlying meets Sharia criteria.

B. Types of Sharia Securities

The objects of buying and selling or trading in the capital market and the Sharia Capital Market are securities or securities. In the Sharia Capital Market, tradable securities must be Sharia securities, namely securities issued by issuers whose company management and issuance methods comply with Sharia principles.

There are five types of Sharia securities that can be traded in the Sharia Capital Market, namely:

1. Sharia Shares. These are evidence of ownership of a company that meets the criteria based on a fatwa from the National Sharia Council (DSN)-MUI, and do not include shares with special rights.
2. Sharia Bonds. These are long-term securities based on Sharia principles issued by issuers to Sharia bondholders. They require the issuer to pay income to the Sharia bondholders in the form of profit/margin/fees and to repay the bond proceeds upon maturity.
3. Participation Units in Collective Investment Contracts (KIK) of Sharia Mutual Funds. A measure that indicates each party's share of interest in the investment portfolio of a Sharia Mutual Fund (KIK).
4. Sharia Asset-Backed Securities (KIK EBA). Securities issued by a Sharia EBA collective investment contract, whose portfolio consists of financial assets in the form of receivables arising from commercial paper, receivables arising in the future, the sale and purchase of physical asset ownership by financial institutions, government-guaranteed investment securities, funds for increasing investment/cash flow, and equivalent financial assets, all in

accordance with Sharia principles.

5. Sharia Commercial Paper. A letter of acknowledgement of financing for a specific period in accordance with Sharia principles.

C. Principles in Sharia Securities

A security in the capital market is considered a sharia security if its characteristics comply with sharia principles. According to the IOSCO (2004) guidelines, two main sharia principles must be met by a sharia security: the product or type of business being halal and being free from riba (usury). These guidelines are adopted by all countries and financial institutions worldwide when determining sharia securities.

The criteria for a halal product or type of business consist of three main categories: li dzatihi (haram due to its substance), li ghairihi (haram not due to its substance), and harm outweighing benefits. These criteria are nearly the same across all countries that conduct sharia stock selection, so there are relatively few significant differences regarding the criteria for sharia-compliant products.

In practice, the riba-free criteria have been adjusted to include indicators of minimum requirements that must be met by sharia securities. This condition is the consensus of Islamic scholars who recognize that no economic activity is currently riba-free, so they conduct ijtihad to establish the minimum criteria that must be met. Ijtihad is conducted by each country and Islamic financial institution, resulting in differences in the standard values for these minimum criteria. Nevertheless, Islamic scholars agree that the riba-free criterion must be included in two company variables: the company's funding sources and revenue sources.

The riba criterion in company funding sources aims to filter the percentage of riba-based funding sources relative to other variables, such as assets, capital, and market capitalization. This criterion allows for the determination of the amount of riba-based financing sources used by the company in its operations. The riba criterion in revenue sources aims to select the composition of riba-based income relative to the company's total revenue. In Indonesia, the criteria for riba-based debt to assets is a maximum of 45%, while the composition of riba-based income to total revenue is a maximum of 10%.

D. Contracts in Sharia Securities

A contract (a bond, decision, or affirmation) or agreement, agreement, or transaction can be defined as a commitment framed by Sharia values. In Islamic jurisprudence (Fiqh), a contract generally means something that constitutes a person's determination to carry out, whether arising from one party or from two parties. Specifically, a contract refers to the relationship between the ijab (statement of acceptance of ownership) and qabul (statement of acceptance of ownership) within a sharia-compliant framework and affecting something.

There are three pillars of a contract: the parties to the contract, the object of the contract, and the shighat (statement of acceptance of ownership) of the parties (ijab and qabul). The parties to the contract must be individuals capable of performing the contract on their own behalf (ahliyah) and possess the sharia-compliant authority granted to them to fulfill the contract as representatives of the other. The object of the contract must be present at the time of the contract, must be something that is implied, must be capable of being transferred at the time of the contract, and must be something that is clearly stated between the two parties.

The contracts used are as follows:

1. Ijarah is an agreement (akad) between the lessor/service provider (mu'jir) and the lessee/service user (musta'jir) to transfer the right to use (benefit) of an Ijarah object, which can be in the form of goods and/or services, for a specified period of time, in exchange for payment of rent and/or wages (ujrah), without transferring ownership of the Ijarah object itself.
2. Istishna is an agreement (akad) between the ordering/buyer (mustashni') and the manufacturer/seller (shani') to create the Istishna object purchased by the ordering/buyer (mustashni') according to criteria, requirements, and specifications agreed upon by both parties.
3. Kafalah is an agreement (akad) between a guarantor (kafiil) and a guaranteed party (makfuul 'anhu/ashiil/debtor) to guarantee the guaranteed party's obligations to another party (makfuullahu/creditor).
4. Mudharabah (qiradh) is a cooperation agreement (akad) between a capital owner (shahib al-mal) and a business manager (mudharib) in which the capital owner (shahib al-mal) provides capital and the business manager (mudharib) manages the capital in a business.
5. Musyarakah is a cooperation agreement (akad) between two or more parties (syarik) by contributing capital in the form of money or other assets to conduct a business.
6. Wakalah is an agreement (akad) between a grantor (muwakkil) and a proxy (wakil) in which the proxy (muwakkil) authorizes the proxy (wakil) to perform certain actions or deeds.

Sharia contracts also essentially adhere to the principle of freedom of contract, meaning that the parties are free to enter into any form of agreement, as long as it does not violate Islamic law, laws and regulations, public order, and morality. What distinguishes them, therefore, is Islamic law, which prohibits agreements containing elements of maghrib (Islamic law), maisir (speculation or gambling), gharar (deception), riba (interest), batil (crime), as well as those containing risywah (bribery) and prohibited objects.

E. Analysis of Sharia-Compliant Securities Transactions

All securities transactions, whether Sharia-compliant or not, in the capital market are purchase and sale transactions. Therefore, investments in the capital market use the bai' contract. Fundamentally, investments in the capital market are permitted by Sharia, as stated in the Quran, Surah Al-Baqarah, verse 275. However, there are measures that must be observed to ensure that securities investments in the capital market remain Sharia-compliant. Fatwa No. 80 of the National Sharia Council (DSN MUI) clearly outlines the criteria for securities transactions in the capital market to be Sharia-compliant.

Securities transactions in the capital market that are Sharia-compliant are those that do not create pseudo-transactions, are based on cash transactions, and are not debt-based transactions. Details can be found in Fatwa No. 80 of the DSN MUI.

Securities transactions in the capital market are divided into two parts. First, securities transactions in the primary market, and second, securities transactions in the secondary market. Securities transactions in the primary market occur between investors as securities buyers and companies as securities issuers or sellers. It's called the primary market because it's the first transaction of securities to be listed on a stock exchange. Transactions in the primary market don't occur on a stock exchange because the securities being traded aren't yet listed.

Securities transactions in the secondary market are transactions between buying and selling investors and don't involve the company or issuer. Transactions in the secondary market can be conducted through the stock exchange (exchange-based transactions) or outside the stock exchange (over-the-counter transactions).

CONCLUSION

Securities can be referred to as capital market products or securities. Essentially, all securities can be considered sharia-compliant as long as they meet sharia criteria. The principle of sharia-compliant securities is that they exclude usury, questionable transactions (gharar), and shares of companies operating in prohibited sectors. Sharia capital markets must be free from unethical and immoral transactions, such as market manipulation, insider trading, selling shares not yet owned, and buying them later (short selling). The contracts used in sharia-compliant securities include ijarah, istishna, kafalah, mudharabah, musyarakah, and wakalah. These contracts must not violate Islamic law, laws, public order, or morality.

Investment in the capital market is permitted by sharia in accordance with the Al-Quran, Surah Al-Baqarah: 275. However, there are actions that must be observed to ensure that securities investments in the capital market remain in accordance with sharia. Fatwa No. 80 of the DSN MUI clearly explains the criteria for securities transactions in the capital market to be in accordance with sharia. Investment in the capital market is permitted by sharia in accordance with the Al-Quran, Surah Al-Baqarah: 275. However, there are actions that must be observed to ensure that securities investments in the capital market remain in accordance with sharia. Fatwa No. 80 of the DSN MUI clearly explains the criteria for securities transactions in the capital market to be in accordance with sharia.

REFERENCE

Manan, Abdul (2009) Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syariah Indonesia. Jakarta: Kencana Prenada Media Group

Karim, Adiwarman (2003) Bank Islam Analisis Fiqh dan Keuangan. Jakarta: IIIT Indonesia

Rodoni, Ahmad dan Hamid, Abdul (2008) Lembaga Keuangan Syariah. Jakarta: Zikrul Hakim

Soemitra, Andri (2012) Bank dan Lembaga Keuangan Syariah. Jakata: Kencana

Sutedi, Adrian (2011) Pasar Modal Syariah. Jakarta: Penerbit Sinar Grafika

Ascarya (2007) Akad dan Produk Bank Syariah. Jakarta: PT Raja Grafindo Persada

Darmadji, Tjiptono dan M. Fakhruddin, Hendy (2012) Pasar Modal di Indonesia Jakarta: Salemba Empat

Koetin, E.A. (1993) Analisis Pasar Modal. Jakarta: Pustaka Sinar

Umam, Khairil (2013) Pasar Modal Syariah & Praktik Pasar Modal Syariah. Bandung: Pustaka Setia

Mardani (2015) Aspek Hukum Lembaga Keuangan Syariah. Jakarta: Kencana Prenada Media Group

Antonio, Muhammad Syafi'i (2001) Bank Syariah. Jakarta: Gema Insani

Sumanto (1989) Bungan Rampai Permasalahan Penanaman Modal dan Pasar Modal. Bandung: Bina Cipta

Husnan, Suad (1996) Manajemen Keuangan (Teori dan Penerapan). Yogyakarta: BPFE

Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah.