

Assessing the Legal Certainty of the Sharia Capital Market in Indonesia: Between Normative Concepts and Practical Reality

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ABSTRAK

Pasar modal syariah merupakan bagian dari sistem keuangan Islam yang berfungsi sebagai sarana investasi sesuai dengan prinsip-prinsip syariah. Artikel ini membahas konsep dasar pasar modal syariah, regulasi yang mengaturnya di Indonesia, serta implementasinya dalam praktik ekonomi. Locus penelitian ini adalah pasar modal syariah di Indonesia, khususnya pada aspek regulasi, instrumen investasi, dan praktik implementasi prinsip syariah. Kajian ini menyoroti regulasi utama, seperti Undang-Undang Pasar Modal, Peraturan Otoritas Jasa Keuangan (OJK), serta fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI) yang menjadi pedoman dalam operasional pasar modal syariah. Selain itu, penelitian ini juga menganalisis instrumen investasi yang tersedia di pasar modal syariah, termasuk saham syariah, sukuk, dan reksa dana syariah. Dengan menggunakan metode penelitian normatif melalui studi kepustakaan, artikel ini menemukan bahwa perkembangan pasar modal syariah di Indonesia mengalami pertumbuhan yang signifikan, didukung oleh regulasi yang semakin kuat dan peningkatan kesadaran investor terhadap investasi berbasis syariah. Meskipun demikian, masih terdapat tantangan dalam implementasi pasar modal syariah, seperti literasi keuangan syariah yang terbatas dan kurangnya instrumen inovatif. Oleh karena itu, penguatan regulasi dan edukasi masyarakat menjadi faktor penting dalam mengoptimalkan peran pasar modal syariah dalam perekonomian nasional.

ABSTRACT

The Islamic capital market is part of the Islamic financial system that serves as an investment platform in accordance with Sharia principles. This article discusses the fundamental concepts of the Islamic capital market, the regulations governing it in Indonesia, and its implementation in economic practices. The locus of this research is the Islamic capital market in Indonesia, particularly in the regulatory framework, investment instruments, and implementation of Sharia principles. The study highlights key regulations, such as the Capital Market Law, regulations issued by the Financial Services Authority (OJK), and fatwas from the National Sharia Board of the Indonesian Ulema Council (DSN-MUI), which serve as guidelines for the operation of the Islamic capital market. Additionally, this research analyzes available investment instruments in the Islamic capital market, including Sharia stocks, sukuk, and Sharia mutual funds. Using a normative research method through literature studies, this article finds that the development of the Islamic capital market in Indonesia has

experienced significant growth, supported by increasingly robust regulations and rising investor awareness of Sharia-based investments. However, challenges remain in the implementation of the Islamic capital market, such as limited financial literacy in Sharia finance and a lack of innovative instruments. Therefore, strengthening regulations and educating the public are crucial factors in optimizing the role of the Islamic capital market in the *national economy*.

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1. INTRODUCTION

The Islamic capital market is part of the Islamic financial system, serving as an investment and financing vehicle based on Sharia principles. The existence of the Islamic capital market provides an alternative for Muslims seeking to invest in accordance with Islamic values, which uphold justice and transparency, while avoiding elements of usury (*riba*), *gharar* (*gharar*), and *maysir* (*gambling*). In the modern economic context, the Islamic capital market is viewed not only as an investment instrument but also as part of national economic development oriented toward ethics and sustainability. In Indonesia, the development of the Islamic capital market is under the supervision of the Financial Services Authority (OJK), the Indonesia Stock Exchange (IDX), and the National Sharia Council-Indonesian Ulema Council (DSN-MUI), which provides Sharia legitimacy for Sharia-compliant investment products and mechanisms.

Instruments traded in the Islamic capital market include Sharia stocks, *sukuk* (Islamic bonds), Sharia mutual funds, and various other Sharia securities that comply with Islamic law. The growth of the Islamic capital market in Indonesia is showing a positive trend, in line with increasing public awareness of halal investment and the development of the national Islamic financial industry. Financial Services Authority (OJK) data shows that the number of sharia investors, the capitalization of the sharia stock market, and *sukuk* issuance have continued to increase in recent years. This situation demonstrates that the sharia capital market has significant prospects for supporting national financial inclusion and expanding public access to sharia-compliant investment instruments. From an Islamic perspective, investment is a recommended form of *muamalah* activity because it can create economic productivity and social benefits. Islam prohibits the hoarding of wealth (*iktinaz*) and encourages the productive management of wealth for the common good. As explained by Dian Puspitasari (Puspitasari et al., 2023) Sharia investment is a crucial part of developing the Muslim economy because it focuses not only on financial gain but also on moral values and distributive justice. Therefore, the existence of a Sharia capital market is highly relevant for Indonesia, the majority of whom are Muslim.

Despite this, the development of the Islamic capital market in Indonesia still faces various challenges, particularly regarding legal certainty and the implementation of sharia principles in investment transactions. Regulations regarding the Islamic capital market continue to evolve through various fatwas issued by the National Sharia Council (DSN-MUI), Financial Services Authority (OJK) regulations, and Indonesia Stock Exchange policies. However, in practice, discrepancies remain between normative sharia principles and their implementation. One frequently

debated example is the structure of sukuk in Indonesia, which largely uses an asset-based scheme, rather than an asset-backed one, as recommended by international standards such as AAOIFI Sharia Standard No. 62. The asset-based structure is considered not to fully reflect true asset ownership, thus giving rise to debate regarding the validity of the contracts and their sharia compliance. These issues demonstrate that despite the availability of Islamic capital market regulations, legal certainty regarding the implementation of sharia principles is not yet fully guaranteed. Several DSN-MUI fatwas have also not been fully incorporated into legally binding regulations. This situation creates legal ambiguity for market players, particularly regarding investor protection, the legitimacy of investment instruments, and the conformity of Islamic capital market practices with Islamic legal principles. On the other hand, technological developments and innovations in Islamic financial products also present new challenges that require harmonization between Islamic law and national positive law.

Extensive research has been conducted on Islamic capital markets. Initial research generally focused on the basic concepts of Islamic capital markets, the principles of Islamic investment, and the role of the National Sharia Council (DSN-MUI) in developing Islamic capital market regulations in Indonesia. Subsequent research has expanded to examine regulatory effectiveness, the development of Islamic investment instruments, and analyze the growth of Islamic investors. Several recent studies have also begun to address the issue of harmonization between Islamic fatwas and national law, including the problematic structure of sukuk and legal protection for Islamic investors. However, most previous research has focused on normative aspects or the development of the Islamic capital market industry in general, resulting in limited research specifically addressing the issue of legal certainty between normative Islamic principles and the implementation of Islamic capital market practices in Indonesia. Furthermore, previous research tends to discuss regulations in a fragmented manner without linking them to international standards such as the AAOIFI and the realities of investment practices on the ground. Thus, there is a research gap in the lack of optimal studies integrating Islamic legal perspectives, national positive law, and the implementation of Islamic capital market practices in a single, comprehensive analysis.

Based on this gap, this study aims to analyze the concept of Islamic capital market regulations in Indonesia, examine the implementation of these regulations in Islamic investment and transaction practices, and examine the challenges to legal certainty arising from the discrepancy between normative principles and implementation practices in the field. This research is expected to contribute academically to the development of Islamic economic law studies, particularly regarding the harmonization of Islamic principles and the national legal system in Islamic capital markets. This research's contribution lies in its effort to connect normative analysis of Islamic capital market regulations with the implementation practices of Islamic investment instruments in Indonesia, particularly sukuk instruments. This research also provides a new perspective by comparing the implementation of national regulations with currently developing international Islamic standards. Thus, this research is expected to provide recommendations for strengthening the legal certainty of Islamic capital markets in Indonesia. The research questions are formulated as follows: (1) what is the concept of Islamic capital market regulations applicable in Indonesia; (2) how are Islamic capital market regulations implemented in investment and transaction practices in Indonesia; and (3) what are the challenges to legal certainty in Islamic capital markets in Indonesia when faced with the discrepancy between normative principles and implementation practices in the field. This article is structured in several sections. The first section is an introduction, covering the background, literature review, research gaps, research objectives, and contributions. The second section discusses the research methods used. The third section outlines the results and discusses the regulation and implementation of Islamic capital markets in Indonesia. The final section is a conclusion, containing the research conclusions and recommendations.

2. LITERATURE REVIEW

2.1 *The Concept and Legal Basis of the Sharia Capital Market in Indonesia*

The Islamic capital market in Indonesia is part of the Islamic financial system, which is developing as an investment alternative based on Islamic principles. Throughout its development, the Islamic capital market is based on the principles of fairness, transparency, and the prohibition of *riba* (usury), *gharar* (gharar), and *maysir* (gambling). Regulation of the Islamic capital market in Indonesia is governed by various legal instruments, such as Law Number 8 of 1995 concerning Capital Markets, fatwas from the National Sharia Council (DSN-MUI), and regulations from the Financial Services Authority (OJK) and the Indonesian Stock Exchange (BEI). According to Batubara et al., the existence of these regulations demonstrates that the state has provided a normative foundation for the development of the Islamic capital market as a halal investment instrument in Indonesia (Batubara et al., 2025). However, these normative regulations have not fully addressed various practical issues in the field. Challenges arise from synchronizing Sharia principles with national capital market regulations, particularly in areas of supervision, Sharia compliance, and investor protection. Therefore, legal certainty is crucial for maintaining public trust in the Sharia capital market system.

2.2 *Legal Certainty and Problems of Sharia Capital Market Practices*

Legal certainty in the Islamic capital market is not only related to the existence of regulations but also to dispute resolution mechanisms. Hudiata explained that there is still a legal vacuum regarding the resolution of Islamic capital market disputes, both through litigation and non-litigation. This situation creates unclear authority for dispute resolution institutions and has the potential to reduce legal protection for Islamic investors (Hudiata, 2017). Furthermore, Maula emphasized that harmonization between positive law and sharia principles remains a major challenge in achieving legal certainty for sharia transactions in the Indonesian capital market. Existing regulations are deemed inadequate to fully accommodate the increasingly complex dynamics of sharia investment instruments (Maula, 2025).

From this study, it can be understood that legal certainty in the sharia capital market requires strengthening regulations, synchronizing DSN-MUI fatwas with state regulations, and optimizing supervision by the OJK and other related institutions.

2.3 *Harmonization of Sharia Principles and State Regulations in the Sharia Capital Market*

From the perspective of Islamic economic law, the Islamic capital market is not only viewed as an economic instrument but also as a means of realizing the *maqashid sharia*, namely the welfare of the people. Ningsih et al. explain that the integration of *maqashid sharia* into Islamic capital market regulations is crucial so that market orientation focuses not only on economic profit but also on ethical values, justice, and social sustainability (Ningsih et al., 2025). In Indonesia, the basis of Islamic capital market regulation is closely related to the fatwa issued by the National Sharia Council - Indonesian Ulema Council (DSN-MUI) (Nikmah & Hung, 2024). These fatwas, such as DSN-MUI Fatwa No. 154, serve as formal and binding interpretations of sharia principles in business and finance (Lahuri et al., 2026).

Harmonization between sharia principles and state regulations is a fundamental aspect in the development of the sharia capital market in Indonesia. The sharia capital market serves not only as an economic and investment instrument but also as a means of implementing Islamic values in modern financial activities. Therefore, state regulations must align with sharia principles to create legal certainty and protect sharia investors.

In practice, this harmonization is realized through synergy between regulations issued by the Financial Services Authority (OJK), the Indonesia Stock Exchange (IDX), and fatwas issued by the National Sharia Council-Indonesian Ulema Council (DSN-MUI). DSN-

MUI fatwas play a crucial role as sharia guidelines in determining the halal status of capital market products and transactions. One important fatwa is DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 concerning Capital Markets and General Guidelines for the Implementation of Sharia Principles in the Capital Market Sector, which serves as the operational foundation for the sharia capital market in Indonesia (P. M. Keuangan et al., 2012). However, this harmonization still faces various challenges. Among them are the inconsistent implementation of sharia principles in capital market practices and the persistence of differing interpretations between Islamic jurisprudence (fikih) provisions and positive regulations. Furthermore, low public literacy regarding sharia investment is also a barrier to optimizing the sharia capital market in Indonesia. Therefore, strengthening regulations, increasing sharia oversight, and providing public education are necessary to ensure a more effective harmonization of Islamic law and state law (Putra et al., 2025).

3. RESEARCH METHOD

This study uses a normative legal research method with a normative juridical approach that focuses on the study of norms, regulations, and legal principles governing the Islamic capital market in Indonesia. The normative legal research method is research conducted by reviewing library materials or secondary data related to laws and legal doctrines. This study aims to analyze the legal certainty of the Islamic capital market between normative concepts in regulations and the reality of their implementation practices in Indonesia. The research objects include Islamic capital market regulations, fatwas from the National Sharia Council-Indonesian Ulema Council (DSN-MUI), and the implementation of Islamic principles in capital market investment practices. The research was conducted through library research with descriptive-analytical research characteristics, namely systematically describing and analyzing legal regulations and practices of the Islamic capital market in Indonesia (Heris Suhendar, 2015).

The research data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 8 of 1995 concerning Capital Markets, OJK Regulation Number 15/POJK.04/2015 concerning the Application of Sharia Principles in Capital Markets, and DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 concerning Capital Markets and General Guidelines for the Application of Sharia Principles in the Capital Markets Sector. Secondary legal materials include scientific journals, books, and previous research results relevant to the sharia capital market. While tertiary legal materials are obtained from legal dictionaries, encyclopedias, and other scientific sources that support the research. Because this research is normative in nature, it does not use the population and sampling techniques as in empirical research. Data collection techniques are carried out through documentation studies and literature studies by exploring various regulations, DSN-MUI fatwas, national journals, and scientific articles related to the legal certainty of the sharia capital market (Putra et al., 2025). Data was obtained through national journal databases, the official website of the Financial Services Authority (OJK), and other academic sources that can be scientifically accounted for.

Data analysis was conducted qualitatively using descriptive and interpretive approaches. Researchers analyzed the relationship between state regulations and sharia principles in the sharia capital market, then compared normative provisions with the reality of implementation in the field. Statutory and conceptual approaches were used to understand the harmonization of Islamic law and Indonesian positive law in regulating the sharia capital market (Ningsih et al., 2025). This study does not employ statistical procedures because the focus lies on legal analysis and regulatory interpretation. The study focuses more on the synchronization of legal norms, legal certainty, and the implementation of sharia principles in capital market activities. Difficulties encountered in this research include differences in interpretation between the principles of muamalah fiqh and positive regulations, as well as the limitations of previous research that specifically addressed the

harmonization of state law and Islamic law in the sharia capital market. Furthermore, the dynamic development of sharia investment instruments also poses a challenge in obtaining up-to-date and relevant data. The advantage of this research method compared to other studies lies in its integrative approach between normative law and sharia principles. This research not only examines formal legal aspects but also analyzes the implementation of maqasid sharia values in sharia capital market practices. Therefore, this research is expected to provide a more comprehensive analysis of the legal certainty of the sharia capital market in Indonesia.

4. RESULT AND DISCUSSION

4.1 *History of the Development of the Sharia Capital Market*

The Islamic capital market in Indonesia has begun to develop in line with increasing public awareness of the importance of a financial system aligned with Islamic principles. The history of the Islamic Capital Market in Indonesia began with the issuance of Islamic Mutual Funds by PT. Danareksa Investment Management on July 3, 1997 (J. L. Keuangan & Islam, 2023). The stock market in Indonesia has a long history, having been operating since 1912 when Indonesia was still under Dutch colonial rule (Setiawan, 2017). At that time, the stocks and bonds traded were from plantation companies owned by the Dutch government. In 1942, the Indonesian stock market ceased operations due to the German occupation of the Netherlands during World War II. The Sharia capital market was officially opened on March 14, 2003, by Minister of Finance Boediono, accompanied by Herwidayatmo, Chairman of the Capital Market Supervisory Agency (Bapepam), a representative from the Indonesian Ulema Council (MUI), a representative from the National Sharia Council (DSN), directors of SROs (SROs), directors of securities companies, and administrators of professional organizations and associations in the Indonesian capital market (Faozan et al., 2013). The Indonesia Stock Exchange (then still known as the Jakarta Stock Exchange) began introducing the concept of sharia-based investment with the issuance of the first sharia-compliant mutual fund by PT Danareksa Investment Management. This product marked the beginning of the development of the sharia capital market in Indonesia. It is tasked with ensuring that sharia principles are properly implemented in the economic sector (Subaidi, 2017). On April 18, 2001, the National Sharia Council issued Fatwa DSN-MUI No. 20/DSN-MUI/IV/2001 concerning Sharia Investment Guidelines in the Capital Market. This fatwa became the main guideline in managing sharia investment in the capital market. Furthermore, sharia investment instruments in the capital market continued to increase with the presence of PT. Indosat Tbk's Sharia Bonds in early September 2002. This instrument was the first Sharia Bond and the contract used was the mudharabah contract (Khalisah, 2014). DSN-MUI It establishes the basic principles of sharia investment and prohibits transactions involving usury, gharar, and maysir. According to the fatwa, it outlines the criteria for sharia stocks, particularly in quantitative terms, namely financial ratios (Ramadhan Suhendar, 2020).

The presence of sharia products in the Indonesian capital market was marked by the launch of Danareksa Syariah on July 3, 1997, by PT. Danareksa Investment Management. (Fauzan Dosen STIKOM Tunas Bangsa Pematangsiantar & Suhendro Dosen AMIK Tunas Bangsa Pematangsiantar, 2018). Activity in the Islamic capital market has only recently been introduced. Prior to its introduction, Islamic mutual funds emerged in 1997, followed by the launch of the Jakarta Islamic Index (JII) in 2000, which listed 30 Sharia-compliant stocks. The JII's purpose was to guide investors seeking to invest their funds in accordance with Sharia principles.

4.2 *Definition of Sharia Capital Market*

Sharia encompasses all activities that do not conflict with Islamic principles, such as eating pork, engaging in usury, gambling, conventional insurance, and producing and

selling alcohol. The development of Sharia-compliant financial assets has experienced significant growth (Khalisah, 2014). This trend began in 2010, when the government, under President Susilo Bambang Yudhoyono, began to pay greater attention to the Islamic capital market. This was marked by the issuance of various regulations and fatwas supporting the development of Sharia-compliant investment instruments. To date, there are 26 fatwas governing the Islamic capital market in Indonesia. As public awareness of Islamic-based investment principles grows, the Indonesia Stock Exchange (IDX), along with the Financial Services Authority (OJK), continues to encourage the growth of Islamic instruments and increase financial inclusion in this sector. To date, the market capitalization of Islamic stocks has reached IDR 6,825 trillion, or approximately 55.3 percent of Indonesia's total capital market capitalization. This development is inseparable from increased regulatory support and innovation in Islamic products in the capital market, such as Islamic mutual funds, corporate sukuk, and other Sharia-compliant instruments. The government is also actively issuing government sukuk to finance infrastructure projects and provide a wider range of investment options for the public. The Islamic capital market is part of the Islamic financial industry, where companies involved do not engage in prohibited activities such as gambling (maysir), uncertainty (gharar), interest (riba), and injustice. Therefore, it can be concluded that the Islamic capital market is an economic activity involving the buying and selling of securities that are considered sharia-compliant investments, namely stocks, bonds, and mutual funds. The Islamic capital market was developed to accommodate the needs of Muslims in Indonesia who wish to invest in capital market products that comply with basic sharia principles (Hadi Peristiwo, 2016). Where it does not engage in prohibited activities such as gambling (maysir), uncertainty (gharar), interest systems (riba), and injustice. In the Islamic capital market, if a company wishes to obtain financing through the issuance of securities, the company in question must first meet the criteria for Islamic securities, so it can be understood that activities in the capital market refer to applicable Islamic law. The meaning of Islamic securities according to the DSN-MUI fatwa Number: 65/DSN-MUI/III/2008 concerning Islamic Preemptive Rights (HMETD) (Fauzan Dosen STIKOM Tunas Bangsa Pematangsiantar & Suhendro Dosen AMIK Tunas Bangsa Pematangsiantar, 2018).

a. Legal Basis of the Sharia Capital Market

1) Al Quran (Q.S Al Baqarah: 275)

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلَ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

Those who consume (transact in) usury cannot stand except as one who staggers due to a devil's possession. This is because they say that buying and selling is like usury. But Allah has permitted buying and selling and forbidden usury. Whoever receives a reminder from his Lord (regarding usury), then he desists until what he had acquired becomes his own, and his affair is with Allah. Whoever repeats (usury transactions), those are the inmates of the Fire, wherein they will abide forever.

2) Hadist

"رَسُولُ اللَّهِ ﷺ قَالَ: "لَعَنَ اللَّهُ آكِلَ الرِّبَا وَمُوكَلَّهُ وَكَاتِبَهُ وَشَاهِدَيْهِ"

Rasulullah ﷺ said: "Allah curses the eater of usury, the giver of usury, the recorder of it, and the two witnesses." (HR. Muslim No. 1598)

عَنْ رَسُولِ اللَّهِ ﷺ عَنْ بَيْعِ الْعَرَبِ

Rasulullah ﷺ prohibits buying and selling that contains gharar (uncertainty). (HR. Muslim No. 1513)

عَنْ ابْنِ عُمَرَ قَالَ: ذَكَرَ رَجُلٌ لِلنَّبِيِّ ﷺ أَنَّهُ يُجَدِّعُ فِي الْبَيْعِ، فَقَالَ: إِذَا بَايَعْتَ فَمَا لَا خِلَافَةَ

From Ibn Umar radhiyallahu 'anhuma, he said: There was a man who mentioned to the Prophet ﷺ that he was often cheated in buying and selling, so the Prophet ﷺ said: 'If you make a transaction, say: There is no fraud'. (HR. Bukhari No. 2117, Muslim No. 1533)

- a. Fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) DSN-MUI Fatwa No. 20/DSN-MUI/IV/2001 concerning Guidelines for Implementing Investments for Sharia Mutual Funds.
- b. DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 concerning Capital Markets and General Guidelines for the Implementation of Sharia Principles in the Capital Markets Sector Fatwa DSN-MUI No. 80/DSN-MUI/III/2011 on the Implementation of Sharia Principles in the Equity Securities Trading Mechanism in the Regular Market of the Stock Exchange.
- c. Financial Services Authority (OJK) Regulations POJK No. 15/POJK.04/2015 concerning the Implementation of Sharia Principles in the Capital Market Peraturan Bursa Efek Indonesia (BEI).
- d. Decision of the IDX Board of Directors No. Kep-00096/BEI/08-2019 concerning the Sharia Stock Index.

b. The Concept of Sharia Capital Market

The Islamic capital market is part of the Islamic financial system that serves as a meeting place between investors and issuers (companies issuing securities) in accordance with Sharia principles. This concept aims to provide halal investment instruments, free from elements of usury (riba), gharar (uncertainty), and maysir (speculation).

Principles of the Islamic Capital Market

The Islamic capital market is a capital market operated according to Sharia principles, where every securities transaction in the capital market is conducted in accordance with Islamic sharia. Meanwhile, the Islamic money market is a market where the trading of securities issued in connection with short-term placement or borrowing of funds and efficient liquidity management can generate profits and comply with Sharia. Below, we will explain the DSN fatwa relating to transaction mechanisms in the Islamic capital market. This fatwa is contained in Chapter V on Securities Transactions and Article 5 concerning Prohibited Transactions, as follows (DSN-MUI, 2006: 276-277) (Faozan et al., 2013).

In the Islamic capital market, transaction principles serve not only as technical investment rules but also as guidelines to ensure economic activity adheres to Islamic sharia values. One key principle is the prohibition of transactions involving haram (prohibited) objects. A transaction is prohibited if the underlying object or business activity contradicts Islamic sharia, such as the sale of alcoholic beverages, gambling, pork, and various other prohibited activities. Therefore, securities or investment instruments representing companies engaged in haram business activities cannot be categorized as sharia securities.

The author believes that this principle is the primary identity of the Islamic capital market, as investment is not solely oriented toward economic profit but also considers halal (permissible) and public welfare (maslahah). Therefore, the existence of

a sharia stock screening mechanism through the Sharia Securities List (DES) is crucial to maintaining sharia compliance with investment instruments in Indonesia. This principle aligns with the word of Allah SWT in Surah Al-Baqarah, verse 168

إِنَّهُ لَكُمْ عَدُوٌّ مُّبِينٌ يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ ۖ

"O people! Eat from what is lawful and good on earth."

Furthermore, Islamic capital markets also prohibit activities involving usury. The prohibition of usury is the primary basis for determining Islamic investment instruments, as usury is seen as an economic practice that engenders injustice. Allah SWT states this in Surah Al-Baqarah, verse 275.:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَتَغَيَّرُونَ إِلَّا كَمَا يَقُولُ الَّذِي يَمْشِي عَلَى السَّيْطَانِ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلَ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ

"Allah has permitted buying and selling and prohibited usury."

In Islamic capital market practice, this principle is realized through the issuer selection process, the acquisition of interest-based debt ratios, and the monitoring of transaction activities to ensure compliance with Sharia principles. However, this study found that some Islamic investment instruments still closely resemble the conventional financial system, particularly in the practice of asset-based sukuk, which does not fully reflect actual asset ownership. This situation indicates a lack of challenges in harmonizing Sharia principles with the needs of the modern financial industry.

Another important principle is the prohibition of transactions involving gharar and maysir. Gharar is defined as uncertainty in transactions, while maysir relates to speculation or gambling. The Prophet Muhammad (peace be upon him) said:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْعَرَرِ

"The Prophet forbade buying and selling that contains gharar." (HR. Muslim).

In modern capital market practices, elements of gharar and maysir are often associated with speculative activities such as short selling and short-term stock transactions oriented solely towards quick profits. This study found that although Islamic capital market regulations prohibit speculative practices, some investors still tend to make short-term investments oriented towards capital gains. The author believes that this situation indicates that the challenges of the Islamic capital market lie not only in regulations but also in investors' low sharia literacy and moral awareness.

Like usury, Islamic jurisprudence scholars agree that all transactions containing elements of gharar and maysir are prohibited. Gharar means doubt, deception, or actions intended to harm another party. A contract contains an element of deception because there is no certainty regarding the existence or absence of the object of the contract, the amount, or the delivery of the object. Gharar is closely associated with elements of gambling (Parno, 2013).

c. Sharia Capital Market Instruments

In a market transaction, goods or services are typically traded. Likewise, in the capital market, the goods traded are called capital market instruments. These instruments are securities that can be resold by their owners, whether they are ownership or debt instruments (Faozan et al., 2013). Sharia capital market instruments differ from conventional capital market instruments. A number of Sharia-compliant instruments have been introduced to the public. Sharia-compliant stocks are those issued by companies operating in Sharia-compliant businesses. Capital market

instruments traded on conventional capital markets include securities such as stocks, bonds, and derivatives such as options, warrants, and mutual funds. Meanwhile, instruments traded on the Sharia capital market include stocks, Sharia-compliant bonds, and Sharia-compliant mutual funds.

a) Sukuk

Sukuk is a new term introduced as a replacement for Islamic bonds. Sukuk is the plural form of the Arabic word "sakk," meaning certificate or proof of ownership (Ali, 2016). Meanwhile, Bapepam and LK Regulation Number IX.A.13 defines Sukuk as follows:

"Sharia securities in the form of certificates or proof of ownership of equal value and representing an unspecified (inseparable or undivided share) portion of:

- a. Certain tangible assets (ayyan maujudat);
- b. The beneficial value of certain tangible assets (manafiul ayyan), whether existing or future;
- c. Existing or future services (al khadamat);
- d. Certain project assets (maujudat masyru' muayyan); and/or
- e. Predetermined investment activities (nasyath ististmarin khashah)."

b) Sharia mutual funds

Mutual funds are an investment alternative for investors, particularly small investors and those who lack the time and expertise to calculate the risks of their investments. Mutual funds are designed to pool funds from individuals with capital and the desire to invest, but with limited time and knowledge. Mutual funds are also expected to increase the role of local investors in investing in the capital market (Faozan et al., 2013).

c) Sharia Stocks

Sharia-compliant stocks are another Islamic capital market instrument that outperforms conventional stocks. This is evidenced by the continued increase in their development statistics from 2013 to 2019. In the first period of 2013, the Sharia Securities List was 302, and in the second period, the number increased to 328. In 2019, the first period recorded 408 and the second period reached 445 (Al-Tsaman et al., n.d.).

d) Sharia Capital Market Agreement

In the context of the Indonesian Islamic capital market, various sharia contracts are applied as a legal basis to ensure that investment products remain in line with Islamic muamalah principles. Based on the normative provisions of the DSN-MUI fatwas, there are several main contracts used in the issuance of sharia securities, particularly sukuk. The ijarah (rental) contract is the most dominant, due to its simple structure and providing a fixed return to investors. A concrete example of the application of this contract is the Retail State Sukuk (SR) and Savings Sukuk (ST) products issued by the Indonesian government periodically since 2008. Furthermore, the wakalah (representative) contract is also widely used in the issuance of Project-Based Sukuk (PBS), such as PBS001 to PBS033, which are managed by the state to finance sharia-compliant infrastructure projects. Meanwhile, mudharabah (profit-sharing) and musyarakah (partnership) contracts are more frequently found in sharia corporate sukuk, for example in sukuk issuances by PT Wijaya Karya (Persero) Tbk and PT Indosat Tbk, although their use has been relatively declining due to the perceived higher risk of uncertainty in returns. Murabahah (margin-based sale and purchase) contracts, as well as kafalah and ju'alah, are still complementary and have not yet become the primary structure of capital market instruments, despite having received a normative basis from the

DSN-MUI fatwa. The discrepancy between the idealism of contracts in regulations and the effectiveness of their use in the field is an important indicator in assessing the extent to which legal certainty in the sharia capital market can truly be realized consistently and applicable in Indonesia.

d. Legal Certainty in the Sharia Capital Market in Indonesia

Legal certainty is the primary foundation for building investor confidence in the Islamic capital market. In Indonesia, although various regulations have been established such as Law No. 8 of 1995 concerning the Capital Market, several Sharia-compliant OJK regulations, and fatwas issued by the National Sharia Council (DSN-MUI) gaps remain in implementation that do not fully guarantee the ideal fulfillment of sharia principles. One widely discussed issue is the use of an asset-based sukuk structure in the issuance of sharia-compliant securities. Under national law, this structure is legal and accepted, but from the perspective of international sharia standards, as formulated by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), it is considered to not fully reflect the principle of real ownership of the underlying assets. This lack of clarity can create negative perceptions among investors committed to the purity of sharia principles, as such structures are perceived as only promising fixed returns without involving balanced business risks.

This issue emphasizes the importance of a specific law (*lex specialis*) that explicitly regulates the Islamic capital market as a separate legal entity. Currently, the Islamic capital market is still governed by general capital market regulations, so many normative issues unique to Sharia must be interpreted within a conventional framework. This has the potential to create legal ambiguity and inconsistent practices, particularly regarding contract structure, protection of Islamic investors, and compliance with the principles of Maqashid Sharia. Without clear and specific legal certainty, the integrity and competitiveness of the Indonesian Islamic capital market will struggle to grow optimally. To illustrate the current situation, the author includes an article from the Financial Times <https://www.ft.com/content/7c170437-4ae3-423c-ab2a-5a12e0304f64> titled "\$1tn sukuk market at risk of unintended disruption." The report states that changes to AAOIFI Standard No. 62 will require the implementation of an asset-backed sukuk structure, with investors owning real assets, not just the benefits. However, for many countries, including Indonesia, this is difficult to implement due to legal constraints related to asset ownership, and the current dominant asset-based sukuk structure. These changes could even cause sukuk to change character to become more equity-like, thereby losing their status as fixed income and reducing their attractiveness to institutional investors.

\$1tn sukuk market at risk of unintended disruption

New standard threatens a vital funding source for sovereigns and corporates across the Middle East, Asia and beyond

KURT DAVIS



The Standard 62 changes propose a shift to 'asset-backed' sukuk, requiring full legal ownership to be transferred to investors © Getty Images

Kurt Davis

Published MAY 29 2025

Figure 1. Global Sukuk Market Disruption Risk (\$1 Trillion Exposure)

e. Legal Certainty in the Sharia Capital Market in Indonesia

This issue highlights the inconsistency between international sharia norms and local regulations in Indonesia. While asset-based sukuk structures are legitimate under national regulations, they do not, morally and substantively, reflect the spirit of sharia, which emphasizes real ownership and risk sharing. This lack of clarity can negatively impact investor perceptions, which favor genuine sharia instruments, not intermediate products. The lack of a specific legal framework (*lex specialis*) for the sharia capital market adds to the complexity. Without specific legislation, sharia regulations remain intertwined with general capital market regulations. Furthermore, the Sharia Supervisory Board (DPS) remains a necessary institutional framework, both in terms of technical capabilities and supervisory independence. As a result, the implementation of the *maqasid sharia* principles in capital market instruments, such as fairness, transparency, and investor protection, has not been optimal. Therefore, strengthening legal certainty in this sector is not merely a matter of regulation, but also involves integrating sharia norms and positive law. Harmonizing regulations, developing specific laws, and strengthening sharia institutions are crucial steps to ensure Indonesia's sharia capital market not only develops quantitatively but also ensures its legality, fairness, and investor confidence going forward.

Research shows that Indonesia already has a fairly comprehensive regulatory framework for governing the sharia capital market. These regulations include Law Number 8 of 1995 concerning Capital Markets, various Financial Services Authority (OJK) regulations, fatwas from the National Sharia Council-Indonesian Ulema Council

(DSN-MUI), and technical provisions issued by the Indonesia Stock Exchange (IDX). These regulations demonstrate that the state has granted legal legitimacy to sharia-based investment activities as part of the national financial system. Normatively, the sharia capital market in Indonesia is built on the principles of Islamic law, emphasizing justice, transparency, public welfare, and the prohibition of *riba* (usury), *gharar* (gharar), and *maysir* (gambling). These principles align with the words of Allah SWT in Surah An-Nisa, verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe! Do not devour one another's wealth unjustly, except in trade conducted by mutual consent."

This verse indicates that economic activities, including investments, must be conducted fairly, transparently, and without harm to either party. In the context of Islamic capital markets, this principle forms the basis for the development of investment instruments that are *halal* and in accordance with Islamic law.

Furthermore, Islamic law recognizes the principles of Islamic jurisprudence.:

الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

These principles provide space for the development of various modern investment instruments as long as they do not conflict with Sharia principles. Therefore, the existence of Sharia stocks, *sukuk*, and Sharia mutual funds is seen as a form of contemporary *muamalah* innovation permitted in Islam as long as they comply with Sharia requirements.

Research has found that Sharia capital market regulation in Indonesia has developed significantly following the establishment of the National Sharia Council-Indonesian Ulema Council (DSN-MUI), which issues fatwas (religious edicts) regarding Sharia economic and financial activities. One important regulation is DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 concerning Capital Markets and General Guidelines for the Implementation of Sharia Principles in the Capital Market Sector, which serves as the operational basis for all Sharia capital market activities in Indonesia. This fatwa regulates the general principles of Sharia investment, the types of permissible transactions, and prohibits speculative and manipulative practices in securities trading.

In addition to the DSN-MUI fatwa, the Financial Services Authority (OJK) has also issued various regulations to strengthen the legal certainty of the Sharia capital market. One example is OJK Regulation No. 15/POJK.04/2015 concerning the Implementation of Sharia Principles in the Capital Market, which governs the mechanism for implementing Sharia principles for issuers, public companies, and Sharia investment products. This regulation demonstrates the harmonization of Islamic legal principles and national positive law within the Indonesian capital market system.

This study found that the existence of this regulation has had a positive impact on the growth of the Sharia capital market in Indonesia. This is evident in the increasing number of Sharia investors, the capitalization of Sharia stocks, and the issuance of sovereign and corporate *sukuk* (Islamic bonds) in recent years. These findings are consistent with previous research that stated that clear regulations and government support significantly influence the development of the national Sharia capital market industry. However, the study also found that legal certainty in the Sharia capital market is not yet fully optimal. One key issue is that not all DSN-MUI fatwas have been explicitly adopted into legally binding state regulations. As a result, in capital market practice, there are still differences in interpretation among regulators, capital market

practitioners, and Islamic jurists regarding the implementation of Sharia principles in certain investment instruments.

This issue is evident in the practice of sukuk issuance in Indonesia, which largely still uses an asset-based scheme, rather than an asset-backed one, as recommended by the international standards of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). The asset-based structure is considered not to fully reflect the actual transfer of asset ownership (true ownership), thus giving rise to debate regarding the validity of the contract and its sharia compliance. From a muamalah fiqh perspective, clarity of ownership is a crucial element in economic transactions to avoid gharar (gharar) and legal uncertainty.

The Prophet Muhammad (peace be upon him) said:

لَا تَبِعْ مَا لَيْسَ عِنْدَكَ

"Don't sell something you don't have." This hadith was narrated by Abu Dawud in Sunan Abu Dawud.

a. **Supervisory Agency**

1. **OJK**

The Financial Services Authority (OJK) oversees the Islamic capital market through its Sharia Capital Market Directorate. The OJK also plays a role in the development of the Islamic financial system. According to Law No. 21 of 2011, the Financial Services Authority (OJK) is a supervisory agency overseeing financial services such as banking, capital markets, mutual funds, the financing industry, pension funds, and insurance. The OJK is an independent institution free from interference by third parties, with the obligation and authority to regulate, monitor, audit, and investigate financial transactions of banks and non-banks in Indonesia (Pamungkas & Zulfikar, 2021).

2. **BEI**

The Indonesia Stock Exchange (IDX) oversees the Islamic capital market through various efforts, such as outreach, collaboration, and transaction monitoring. The IDX is responsible for managing Islamic securities trading on the exchange, publishing Islamic stock indices, such as the ISSI and JII, and ensuring that Islamic stock trading mechanisms comply with Islamic principles.

3. **Dewan Syariah Nasional (DSN)**

The National Sharia Council (DSN) oversees the Islamic capital market by establishing Islamic accounting standards, conducting audits, and monitoring financial reports. The DSN also issues fatwas on the application of Sharia principles in the capital market. Although fatwas are non-binding, in practice, DSN-MUI fatwas serve as a reference in developing the Indonesian Islamic capital market. To date, there are 17 DSN-MUI fatwas related to the Islamic capital market. The five DSN-MUI fatwas that serve as the basis for the development of the Islamic capital market are:

- a. DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 concerning Capital Markets and General Guidelines for the Application of Sharia Principles in the Capital Market Sector.
- b. DSN-MUI Fatwa No. 80/DSN-MUI/III/2011 concerning the Application of Sharia Principles in the Equity Securities Trading Mechanism in the Regular Market of the Stock Exchange.
- c. DSN-MUI Fatwa No. 124/DSN-MUI/XI/2018 concerning the Application of Sharia Principles in the Implementation of Securities Depository and

Transaction Settlement Services and Integrated Investment Infrastructure Management.

- d. DSN-MUI Fatwa No. 138/DSN-MUI/V/2020 concerning the Application of Sharia Principles in the Clearing Mechanism and Guarantee of Exchange Transaction Settlement for Equity Securities on the Stock Exchange.
- e. DSN-MUI Fatwa No. 135/DSN-MUI/V/2020 concerning Shares.

4. DPS

The Indonesian Ulema Council (MUI) is an institution with authority in the religious sphere related to the interests of Muslims in Indonesia. Therefore, the MUI established a National Sharia Council (DSN) in 1999. The DSN has the authority to ensure that all service products and business activities of Islamic financial institutions such as banks, insurance, mutual funds, capital markets, and so on are in accordance with Islamic sharia principles. To carry out its authority and function and as an extension of the DSN in implementing fatwas decided by the DSN, a sharia supervisory body called the Sharia Supervisory Board (DPS) was established. The DPS consists of Islamic legal experts (fuqaha) as well as economic experts and practitioners in the banking and non-banking financial sectors (Fitrianingsih, 2023). The Sharia Supervisory Board (DPS) is an independent body placed by the National Sharia Council (DSN) in a sharia financial institution and ensures that the company's products and operations comply with the DSN-MUI fatwa.

Sharia capital market governance is an arena where abstract sharia principles meet the operational realities of the market. The effectiveness of harmonization depends heavily on how these governance mechanisms are designed, implemented, and accounted for. Two key elements of this governance are the sharia screening process and the functioning of the Sharia Supervisory Board (SSB). An evaluation of these dynamics reveals challenges in maintaining consistency, relevance, and accountability across the market spectrum. The sharia screening mechanism is an evaluation process to ensure that companies listed on the stock exchange and financial instruments offered to investors meet sharia criteria. In Indonesia, this process is regulated by the National Sharia Board (DSN-MUI), which establishes sharia stock standards based on strict scoring. The dynamics within this screening process are significant. A concrete example is the revision of the sharia screening policy by the Malaysian SC in 2013, which resulted in approximately 20% of companies previously considered sharia-compliant losing their status. This decision had a direct impact on investor portfolios and market value, demonstrating the sensitivity and influence of changes in governance policies. While aimed at improving market integrity, such changes can also create volatility and confusion among investors if not implemented with adequate communication and transparency. This highlights the importance of striking a balance between Sharia ideals and market realities. Another vital element is the function of the Sharia Supervisory Board (SSB) which must exist in every Islamic financial institution (Grais & Pellegrini, 2006).

The SSB is tasked with ensuring that the institution's products and operations are aligned with Sharia principles. In many cases, the SSB is comprised of scholars appointed by the institution; however, the effectiveness of these SSBs can vary depending on the competence of their members, their independence from managerial pressures, and their ability to understand the complexities of modern financial products. Repeated incidents of Sharia

violations can increase operational costs, raise the risk profile, and expose the institution to dangerous situations (Muhammad et al., 2024). This indicates a gap between the SSB's mandate and operational practices on the ground, which calls for more stringent audit and monitoring mechanisms. Accountability is a central theme in governance evaluation. Without a clear mechanism to assess compliance and enforce consequences for violations, harmonization efforts will be difficult to sustain. In Indonesia, governance legitimacy relies heavily on the validity of fatwas issued by the National Sharia Council (DSN-MUI). In Malaysia, accountability is more closely linked to adherence to regulations issued by the SC. This comparison of models raises fundamental questions: who is accountable and on what basis? Are the Sharia standards used text-based (based on the text of the fatwa) or purpose-based (based on the objectives of Maqasid Al-Shariah)? The purpose-based approach, which the Malaysian SC is developing through its Maqasid Al-Shariah guidelines, offers flexibility to adopt new innovations as long as Sharia objectives (such as social and economic justice) are achieved.

However, this approach also requires a deep understanding and high level of expertise from both SSBs and regulators to implement it consistently. A study shows that the strategies used by Islamic fintech platforms in Indonesia to ensure Sharia compliance rely heavily on the role and active participation of SSBs, reaffirming the centrality of these figures in governance (Faizi et al., 2025). Thus, the effectiveness of implementation lies not only in the existence of rules, but also in the capabilities and independence of the bodies responsible for enforcing them.

5. CONCLUSION

The Islamic capital market in Indonesia is a vital component of the Islamic financial system, developing as a halal investment alternative based on Islamic principles, such as fairness, transparency, and the prohibition of usury (riba), gharar (gharar), and maysir (gambling). The Islamic capital market serves not only as an economic and investment instrument but also as a means of implementing the values of maqashid sharia in modern financial activities. The development of the Islamic capital market in Indonesia shows a positive trend, with an increasing number of Islamic investors, capitalization of Islamic stocks, and the issuance of Islamic sukuk (Islamic bonds) and mutual funds. This demonstrates a growing public awareness of the importance of investing in accordance with Islamic principles. Normatively, Indonesia has a fairly comprehensive regulatory framework for governing the Islamic capital market, including the Capital Market Law, Financial Services Authority (OJK) regulations, Indonesia Stock Exchange regulations, and fatwas issued by the National Sharia Council (DSN-MUI), which serve as the basis for implementing Islamic principles in investment activities. These regulations provide legal legitimacy for Islamic capital market practices and demonstrate the harmonization of Islamic law and national positive law. Furthermore, the existence of supervisory institutions such as the Financial Services Authority (OJK), the Indonesian Stock Exchange (BEI), the National Sharia Supervisory Board (DSN-MUI), and the Sharia Supervisory Board (DPS) play a crucial role in maintaining sharia compliance and the stability of the sharia capital market in Indonesia. However, this study found that legal certainty in the sharia capital market in Indonesia is not yet fully optimal. There is still a mismatch between normative sharia principles and practical implementation, particularly in the structure of asset-based sukuk, which does not fully reflect the principle of true asset ownership as stipulated by the AAOIFI international standard. Furthermore, the absence of a specific law (*lex specialis*) regarding the sharia capital market means that several sharia issues are still interpreted through conventional capital

market regulations, leading to legal ambiguity and differences in interpretation among regulators, practitioners, and Islamic jurists. This study also shows that the challenges of the sharia capital market lie not only in the regulatory aspect, but also in the effectiveness of governance, the independence of the Sharia Supervisory Board, the consistency of the sharia stock screening mechanism, and the low level of public literacy regarding sharia investment.

Therefore, it is necessary to strengthen the harmonization between Sharia principles and state regulations through the creation of more specific regulations, strengthening Sharia supervisory institutions, improving the quality of supervision, and educating the public about Sharia investment. Therefore, the development of the Sharia capital market in Indonesia must not only focus on quantitative industry growth but also ensure legal certainty, Sharia compliance, investor protection, and the implementation of values of justice and welfare in accordance with Islamic economic law.

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