

Investment of Sharia Shares in Indonesia Stock Exchange Representative in Sharia Law Economic Perspective

Itsna Nur Muflikha¹, Sya'roni², Abdualhmeed Alqahoom³

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¹Magister Hukum Ekonomi Syariah Universitas Muhammadiyah Surakarta, Indonesia

²Magister Manajemen, Universitas Paramadina, Indonesia

³Department of Fiqh and Ushul Fiqh, Islamic University of Minnesota, United States

¹itsna.muflikha76@gmail.com, ²syaroni@students.paramadina.ac.id, ³alqohami2015@gmail.com

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Abstract: *Investment and the sale and purchase of shares are still considered speculative activity and is prohibited by religion because it is the same as gambling for ordinary people. To straighten this out, this study aims to analyze how Islamic stock investment in the Indonesia Stock Exchange from the perspective of Islamic economic law. The research method used is normative juridical with a qualitative approach. This research draws research sources from interviews with several investors and Sharia economic law experts, then documents of laws and regulations, and literature studies related to research. The results show that investing and buying and selling of shares is halal and justified in the teachings of Islam, both Al-Qur'an, the Prophet's Hadith, Kaidah Fiqh, Ijma 'ulama, and the opinions of scholars. Then, from the perspective of Sharia economic law, buying and selling or investing in shares for investment purposes is permitted, because buying and selling with underlying stocks is halal, even recommended because it fulfils investment and asset development of one of the maqasid sharia (Hifdzul maal). In addition, stock transactions from the perspective of Sharia economic law are assessed from the use of the contract. It is known that the contract used is Bai 'Al-Musawamah and the transaction refers to musyarakah or syirkah.*

Keywords: *Indonesia stock exchange, sharia economic law, investment, stocks, sale.*

INTRODUCTION

Along with the development of Islamic banking, and sharia insurance, sharia capital markets also accompany the development of the Sharia-based economy. Likewise, investment is the main activity in the capital market. There is an investment concept that is different from conventional and Sharia investments. The concept of sharia investment is based on the principles of morality and justice which make it the basis of values, besides that the concept of sharia investment is to avoid the names Maisyir, Gharar and Riba. Investment in conventional concepts is closer to gambling because return and risk always move in the same direction. Risk and return always move in the same direction.

On July 3, 2000, Jakarta Islamic Index (JII) was officially launched as the first Sharia-based stock index on the Indonesia Stock Exchange. Then, the Indonesia Stock Exchange will determine and select shares following Sharia principles. The selection results are only 30 issuers that will be listed on the Jakarta Islamic Index (JII) as Sharia stocks. The stock valuation is still following Sharia principles or is not carried out every six months, and the list of Sharia stocks in JII will be updated every May and November.

Shares are units of value or bookkeeping in various financial instruments that refer to the ownership of a company. Shares are proof of ownership of a company that already has a public go status where ownership is determined by nominal and percentage [1]. Stock transactions in the Islamic capital market by most

ordinary people are considered speculative activities so they are prohibited by Islam and not following Sharia because they lead to gambling. Many ordinary people do not know that the word stock itself has the basis of muamalah jurisprudence, namely "musahamah", which comes from Arabic and means simply "partnership". If there is a question from ordinary people, "Is stock Sharia?" So the answer is wise as long as the core business or main activities of the company do not conflict with Sharia principles and the number of financial ratios meets the criteria for the list of sharia shares issued by the Capital Market Supervisory Agency Financial Statements (BAPEPAM-LK) with the knowledge of the National Sharia Board of the Indonesian Ulama Council (DSN MUI). As an investor, there are main things that must be avoided in buying and selling stocks, namely: short sales activities, Gharar and gambling. Moreover, the shares sold are categorized as Islamic shares, so they must avoid the element of gharar which is more to gambling [2].

The basic question that may arise from novice investors is, "Is it illegal to sell something that is not already owned?" if the answer is a priori yes, then half of the modern business activity is illegal. "From the Sharia side, selling something that is not already owned is haram and indeed modern businesses carry out many of these illicit activities so that transactions in real goods and services are worth much less than virtual speculation transactions." In the demand and supply of sharia shares on the Indonesia Stock Exchange (IDX), an agreement is used that is the basis of the transaction, namely *Al Bay' Al Musawama*. The agreement is one of the buying and selling contracts where a fair market price is determined. In addition, through the contract, price determination through a continuous bargaining mechanism [3]. Thus, the stock transaction has made efforts to eliminate short-sale and increase information disclosure about companies whose shares are traded. But still, many investors consider stock transactions in the capital market or stock exchange to contain gharar and gambling. Therefore, this study will analyze how stock investment practices from the perspective of Sharia economic law to provide explanations to potential stock investors about halal stock investment [4].

RESEARCH METHODS

The research method applied to research is normative juridical with a qualitative approach. The object of research used is the Indonesia Stock Exchange West Java Representative Office. The data presented in this article is sourced from interviews with several investors and companies that are members of JII, then literature studies in the form of legal documents, journals, records, and books related to this research.

Researchers conduct data analysis by first collecting data from the sources mentioned above. Then, the data is classified as needed and then compiled according to the topic or problem raised, namely about stock investment in terms of the point of view of Islamic economic law. Finally, the overall data of research and discussion results are presented with a descriptive pattern of analysis. [5].

RESULTS AND DISCUSSION

Sharia Stock Investment Review

The word investment is an adoption of English which is an investment. According to {Formatting Citation} investing itself means planting. Then in Arabic, investment is known as *istismar* meaning fruitful wealth and the amount increases [6]. Some investment experts mention several understandings, including Tandelilin which says that investment is an activity where spending several current funds or other resources with the expectation of future profits [7]. Then, in Islamic law, investment comes from wealth or assets rather than savings which in investment generally has a defined limit as the remainder of income after deducting various consumption expenditures [8]. Whereas in Islamic law, investment is indeed recommended and becomes a priority rather than just being a residual plan after the remaining income. Investment discussion is related to the management of financial assets, especially marketable securities, in this case, stocks. Investment activities can be carried out on a number of assets as below:

1. Real assets (land, gold, machinery, or buildings).

2. Financial assets (deposits, stocks, bonds, options, warrants, or futures).
3. Financial assets are claims in the form of securities on several assets of the issuer of these securities. The form can be in the form of a letter of participation in company ownership or it can also be in the form of debt securities.

Investment activities that have the most high level of risk and lead to speculative actions are investment activities in the form of financial assets. One investment in the form of financial assets is a stock investment.

Sharia Stocks

Shares are evidence of participation or ownership in a company that provides variable investment returns depending on the investor's ability to manage it [9]. Sharia stocks are stocks that have characteristics following Islamic Sharia or better known as sharia-compliant. In the concept, shares are proof of capital participation in a company and investors or owners of capital are entitled to benefits. This concept does not contradict the principles of sharia, in muamalah, this concept is known as musharakah or shirkah activities [10].

Sharia Economic Law

According to the understanding of the community, "Sharia Economic Law" means "Islamic Economic Law" whose source is obtained from the Islamic economic system that develops in society. Where the Islamic economic system in society is the implementation of muamalah jurisprudence in the economic field in general. Even so, for the implementation of the Islamic economy or Sharia economics to be orderly, a law is needed that regulates it to create legal order and no Sharia economic disputes occur, even if there is a dispute there is a guide for resolution through the law that has been formed. So here it is clear, the Islamic economic system or Islamic economic system requires Sharia Economic Law to be a guide for economic interaction in civil Muslim society [11].

Sharia economic law products can refer to the recognition of the Fatwa of the National Sharia Council of the Indonesian Ulema Council as Sharia economic material law [12] Then in the form of Indonesian positive law, the validity of Sharia economic law is stated in Supreme Court Regulation (Perma) Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES). With the existence of KHES, it becomes a real legal product in which there are legal thoughts from scholars of the jurisprudence madhhab and several qanuns from various countries. In the end, KHES is a legal book that reflects the insight of Indonesia as one of the unification of Sharia economic law that applies in other Muslim countries [12]. The compilation of Sharia Economic Law (KHES) sequentially consists of four books, namely; "(1) The Subject of law and amwal consists of 3 chapters (articles 1-19); (2) The Akad consists of 29 chapters (articles 20-673); (3) Zakat and Grants are divided into 4 chapters (articles 674-734);(4) Sharia Accounting consists of 4 chapters (articles 735-796) [13].

Based on Habibullah's research [11]. Referring to the division, it can be seen that the most discussion regulated in KHES is about contracts or agreements regarding Sharia economic engagement law. KHES as a whole consists of 796 articles, and books on contracts take up as much as 80 per cent of the discussion of 653 articles. Therefore, it should be noted that the scope of the Islamic economy includes "ba'i, contracts of sale and purchase, shirkah, mudharabah, murabahah, muzara'ah and musaqah, khiyar, ististna", ijarah, kafalah, hawalah, Rahn, wadi'ah, ghashab and itlaf, wakalah, shulhu, waiver, ta'min, mudharabah sharia bonds, capital market, sharia mutual funds, sharia bank Indonesia certification, multi-service financing, qard, sharia current account financing, Sharia pension funds, zakat and grants, and sharia accounting". However, if we look at Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts, the scope of Sharia Economics includes: "Islamic banks, Islamic microeconomic financial institutions, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term letters, sharia securities sharia financing, sharia pawnshops, pension funds of sharia financial institutions, and sharia businesses" [13].

Buying and Selling Shares in the Source of Islamic Law

The Quran and Hadith are the main sources of law for Muslims. The Qur'an and Hadith not only discussed religion but also human problems with humans regarding economics. When a problem cannot be found directly in the Qur'an and Hadith, then we refer to the opinions of the companions of the Prophet and ijma' ulama.

One simple example is stock investing. Researchers will exemplify in the following story, a man named A already has a livestock business but at one time had a lack of capital problems. Then, A has a partner named B and invites him to work together to fund his business. After the business runs smoothly, profits or losses are obtained from the business results, which at the beginning has been agreed on the distribution.

The story is an example that illustrates the world of stock investing. In stock transactions, there are companies known as issuers that go public or are listed on the IDX that require funding capital to run their business. The company first conducts an IPO so that the general public can participate in purchasing its shares. Then officially the company's shares after the IPO are listed as shares that are freely sold on the IDX. Then, the company will conduct a General Meeting of Shareholders to decide whether to distribute dividends or not. If the company decides not to provide annual dividends, the company uses the retained earnings for the company's funding needs.

The share sale and purchase transactions run continuously in the secondary market, namely the Indonesia Stock Exchange. Especially for Sharia stocks, listed companies are displayed on the Jakarta Islamic Index (JII) and the Indonesian Sharia Stock Index (ISSI). Companies that have met the criteria as Sharia shares will be released and purchased by the public. There are two types of shares available, namely common stock and preferred stock.

As already mentioned that in carrying out any activity including muamalah or buying and selling, the main reference must be following Islamic sharia which is found in the Quran and Hadith. Not only that, if necessary, there are sources of reinforcement such as the rules of jurisprudence, the opinions of scholars, and ijma' ulama. The following are the postulates that can be the basis for buying and selling shares in the Islamic capital market.

In the Qur'an, it is stated " Allah legalizes the sale and prohibition of usury" (QS. al- Baqarah [2]: 275)

"O you who believe, do not eat one another's wealth on a false path, except with a business path that takes place with love among you." (QS. An-Nisa [4]: 29)

"O believer! Fulfil those covenants" (QS. Al-Ma'idah [5]:1)

The verses of the Quran above are verses that affirm halal buying and selling. Where all transactions related to buying and selling if carried out based on sharia then the law is halal. This includes buying and selling shares, where someone makes funding or investing in someone's business, either products or services. The explanation is based on mafhum mukhalafah or reverse understanding. This is one of the legal istinbath theories in Islamic law, where the prohibition of eating and selling dogs then makes everything related to dogs haram, including providing funds for the management of dog farms.

In al-Hadith it is stated: "... it is not lawful to profit something that is not borne by the risk, and it is not lawful (to do) to sell something that is not in you- (HR. Al Khomsah from Amr bin Shuaib from his father from his grandfather)"

"You can't sell something until you have it. Baihaqi of Hukaim ibn Hizam)" "The Prophet (peace and blessings of Allah be upon him) forbade the sale and purchase of those containing gharar- (HR. Muslim, Tirmidhi, Nasa'i, Abu Daud, and Ibn Majah of Abu Hurayrah)"

The rule of Fiqh is stated: *all forms of muamalah can be done unless there is a proposition that forbids it.*

Ijma' Ulama stated: Namely the decision of the 7th Congress of Majma' Islamic Jurisprudence in 1992 in Jeddah "May sell or pledge shares while still observing the regulations applicable to the company."

Opinion of Scholars: Opinion of Ibn Qudamah in Al-Mughni juz 5/173 [Beirut: Dar al Fikr, no year]:

"If one of the two unionized persons buys a portion of his union partner, then the law is permissible because he buys property from the other party."

Dr Wahbah al-Zuhaili's opinion in Al-Fiqh Al-Islami wa Adillatuhu juz 3/1841: "Dealing with (conducting transactions on) his legal shares is permissible because the shareholder is a partner in the company following the shares he owns." "Mutual shares and sharia in the business or company and buying and selling shares if the company is known and does not contain significant uncertainty and uncertainty, the law is permissible.

This is because shares are part of the capital that can provide benefits to their owners as a result of business trading and manufacturing. It is lawful, without a doubt."

Are All Stocks Halal? Based on the first discussion related to the halal sale and purchase of shares, it is clearly stated that the transaction of buying and selling shares is halal. However, further study is needed about what stocks are halal traded by the company in other words what kind of company business activities can be said to be halal, then what kind of stock transactions? therefore it can be described as follows:

Company Business Activities

Every share traded in the Islamic capital market has passed and meets the criteria of sharia shares. However, there are still many who do not know what kind of business criteria cause a stock to be said to be a Sharia stock. Whereas basically, the Quran and Hadith have clearly outlined the types of business or trade that are halal and haram. So it is not much different from the criteria for Sharia stocks because the basis of the criteria comes from the Quran and hadith.

Please note that the category of sharia shares is divided into active shares where the company states directly and in writing about sharia regarding business activities carried out in the company's articles of association, this provision refers to POJK Number 17/POJK.04/2015 [14]. The second category, namely passive shares where the company does not declare its business activities in the company's articles of association so that the authorized institution needs to review the sharia business carried out, this regulation refers to Bapepam LK regulations. II. K. 1.

Passive shares or passive issuers since the establishment of the company do not mention that the issuer is Sharia, but because the business activities carried out and financial ratios have conformity with Sharia principles, a Sharia stock is categorized as an issuer with Sharia shares. Bapepam's decision states that the criteria for Sharia stocks can be said to be Sharia stocks in terms of two aspects, namely qualitative and quantitative. As mentioned, business activities following Sharia principles become qualitative aspects and financial ratio suitability becomes quantitative aspects.

The qualitative criteria for an issuer with sharia shares are not carrying out business activities as referred to in "Regulation IX.A.13 Kep. 181/BL/2009" of business activities that are contrary to sharia principles are as follows; "(1) gambling and games classified as gambling; (2) trade prohibited under sharia includes trade that is not accompanied by the delivery of goods/services and trade with false supply/demand; (3) usury financial services, including interest-based banks and interest-based finance companies; (4) buying and selling that contains elements of uncertainty (gharar) and/or gambling (maysir), including conventional insurance; (5) producing, distributing, trading and/or providing, among others, haram lidzatihi services, haram services not due to their substances (haram li-ghairihi) stipulated by DSN MUI and/or services that damage morals and are mudharat; and (6) conduct transactions containing elements of bribery (risywah)" [15].

Then, the category of Islamic stocks from its quantitative criteria is assessed from the ratio of debt and income. Where the provisions are regulated in the same regulations; "(1) total interest-based debt compared to total equity is not more than 82 per cent; and (2) total interest income and other non-halal income compared to total operating income and other income is not more than 10 per cent." Furthermore, there was an improvement in quantitative criteria through "Kep-208 / BL / 2012" where there was a change in point (1) the ratio of debt previously compared to equity was replaced by comparison with total assets. So it reads; "(1) total interest-based debt compared to total assets is not more than 45 per cent, and (2) total interest income and other non-halal income compared to total operating income and other income is not more than 10 per cent" Both qualitative and quantitative criteria determine whether a company passes passive sharia stock screening or not so that when it passes the screening its shares can be declared as issuers with sharia shares and can be included in the Sharia Securities List (DES). Thus, the shares can be traded on the Indonesia Stock Exchange through JII and ISSI. The Clearing and Guarantee Institution (LKP) and the Depository and Settlement Institution (LPP) cooperate with the Indonesia Stock Exchange to carry out stock exchange operations and provide systems and facilities for stock trading. Then, LKP and LPP also issued exchange regulations and systems to supervise stock trading such as anticipating, and detecting activities that are not following Sharia principles[16][17].

Types of Stock Transactions

When transacting shares on the Indonesia Stock Exchange (IDX), currently there are many types of transactions and systems available that have not been proven to be halal or whether these types of transactions are following Sharia principles or not. The availability of the Sharia Securities List (DES) provides new motivation for securities companies to make trading system updates that make it easier. One that has been present is Sharia Online Trading Online (SOTS) which is an online trading system whose implementation is based on the rules of Sharia principles, namely seen from the aspect of shares traded only those that are included in DES and from the trading mechanism does not contain Margin Trading (usury), short selling and other rules prohibited in Islam (Musthofa, 2020). Shariah Online Trading System (SOTS) has software in it that can be used in buying and selling shares, updating stock development information, knowing stock price development factors, information related to listed companies and financial features of market participants. This sot was made by adopting the Sharia principles of fatwa DSN-MUI No. 80 [18][19][20].

Three types of mechanisms or stock transactions are prohibited or forbidden in Islam because they are not following Sharia principles, namely:

1. Bai' al-Hamisy (Margin Trading)

This is a type of trading with a margin system. This margin trading contains an element of usury where securities take interest from transaction funds used by investors. Because investors lend funds to securities companies by setting an interest percentage at the beginning and repaying within a certain period. In other words, in this transaction investors make loan facilities from interest-based securities companies (usury) to purchase securities [21].

2. Bai' al-Maksyuf (Short Selling) Explained in DSN's Fatwa

MUI Number 80 of 2011 that Bai' al-Maksyuf is "Sale and purchase in cash of goods (securities) that do not belong to the seller and the seller is not permitted by the owner to sell, or buy and sell in cash the goods (securities) even though the seller does not have the securities he sells". This transaction, of course, contains elements of gharar (uncertainty) [22].

While in general, short selling is an activity where selling company shares without owning them first. The situation is that brokers who own shares or it could be brokers borrow shares from other investors for the shares to be resold to new investors. This short selling leads to najasyi (fraud) transactions and is also included in margin stock transactions, where you must first have a margin account to buy and sell shares [23][24].

Stock Investment on the Indonesia Stock Exchange in the Perspective of Sharia Economic Law

Based on the point of view of muamalah fiqh, investment contracts in Islam are included in the contract or contract of trust. Where between investors and recipients of funds are business partners whom both help each other. Then, in this relationship the distribution of profits or losses is based on the capital of both or in the muamalah contract known as musharakah, meaning there is no guarantee between one party and the other. The decision of Majma Fikih Al-Islami states, "Any investment that makes the entrepreneur (mudharib) provide a certain amount of profit to investors, then it is haram. Because the nature of the investment has turned into a lending element with the promise of usury profits" [25][26].

There are rules of jurisprudence in investment that are the basis for investing. In the book Al-Qawaid Al-Fiqhiyyah, it is written: "That profit is through bearing existing risks". Another rule: "Whoever wants to benefit from something, must bear the risk (Durar Al-Ahkam Sharh Majallah Al-Ahkam)". It can be known that in Islam it is obligatory for both parties transacting in investments to be responsible for profits and losses following the agreement at the beginning. However, there is an exception to the void of the obligation, where there is a cancellation of the contract by one party causing loss to the other party [27][28].

Investors who will invest in shares will do so in the secondary market, namely the Indonesia Stock Exchange (IDX) in the Islamic capital market. It is said that the Islamic capital market is because all its activities are following Sharia principles, which are free from usury, gambling, speculation, and so on. Sharia principles in the capital market are also clearly regulated in POJK Number 15 / POJK.04 / 2015 concerning the Application of Sharia Principles, in Chapter I General Provisions Article 1 Number 2, namely: "Sharia principles in the Capital Market are Islamic legal principles in sharia activities in the capital market based on the Fatwa of the National Sharia Council - Indonesian Ulema Council, as long as the fatwa is not contrary to this Financial Services Authority Regulation and/or other Financial Services Authority Regulations based on the fatwa of the National Sharia Council- Indonesian Ulema Council" [29][30].

The use of Sharia principles in the capital market is because basically, the general principles applied to the Indonesia Stock Exchange (IDX) capital market are in line with Sharia principles. Here we need to emphasize the halal aspect; halal from the object, halal how to obtain it and halal how to use it (Pontjowinoto, 2003). [1] On April 18, 2001, it became an important history for the Indonesian Sharia capital market because, for the first time, DSN MUI issued a fatwa directly related to the capital market, namely 'Fatwa Number 20/DSN- MUI/IV/2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds'. Through the fatwa, DSN MUI discusses the criteria for sharia stocks, especially on quantitative aspects such as financial ratios. The National Sharia Council of the Indonesian Ulema Council (DSN MUI) states in "Fatwa Number 20/DSN- MUI/IV/2001 in article 10" that the criteria for issuer shares in improper condition are [31].

CONCLUSION

Referring to the research that has been done, it can be concluded that from the explanation of the above postulates it is clear that investment and buying and selling shares are halal and justified in Islamic teachings, both the Qur'an, the Prophet's Hadith, Fiqh Rules, Ijma' ulama, and the opinions of scholars. Then, from the perspective of Sharia economic law, buying and selling or investing in shares for investment purposes is allowed, because buying and selling with halal underlying shares is even recommended because it meets the investment and asset development of one of the sharia maqasids (Hifdzul maal). While buying and selling for speculation (playing stocks) is not allowed. In addition, stock transactions from the perspective of Sharia economic law are assessed from the use of contracts, it is known that the contract used is Bai' Al-Musawamah and transactions refer to musharakah or shirkah.

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