

## ***SYARIAH STOCKS: A NORMATIVE ANALYSIS OF ISLAMIC LAW AND INVESTMENT PRACTICES IN INDONESIA***

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### **ABSTRACT**

Syariah stocks have recently gained attention in the Islamic community, which relies on Shariah principles to guide investment decisions. Islam emphasizes the importance of profitable investments that benefit all parties involved, while prohibiting investments that involve uncertainty or exploitation. This article provides an overview of the position of stock shares in Islamic law. Using a normative legal research method, this study analyzed the relevant Islamic texts, including the Quran, Hadith, and Fatwas issued by scholars. Syariah stocks are specifically designed to meet the requirements of Islamic law, which emphasizes transparency, fairness, and ethics in financial transactions. The National Sharia Council of the Indonesian Ulama Assembly (DSN MUI) issued a Fatwa No. 80/DSN-MUI/III of 2011, outlining the implementation of Islamic principles in equity securities trading. The Fatwa stipulates that the means of payment must be known in terms of amount and form, whether in the form of money or goods, and that there should be no payment in the form of debt. Additionally, the time and place of delivery must be clearly specified based on the agreement between parties. This type of contract involves multiple parties, including banking institutions, and must be conducted in accordance with Islamic principles. The Fatwa has contributed to clarifying the terms of stock trading under Islamic law, providing a framework for Syariah stocks to operate within the boundaries of Islamic law.

**Keywords:** Syariah Stock; Investment; Islamic Law; Indonesia.

### **INTRODUCTION**

Investment is an economic activity that allows individuals to benefit from their capital. It is a recommended activity that stems from social interactions, as investing in

assets increases their productivity and provides benefits to others.<sup>1</sup> By investing, individuals can generate better income for the community, highlighting the need for a system to facilitate this activity.<sup>2</sup>

The form of investment activity nowadays is not only limited to saving, deposits, buying land and buildings, or even gold, but also the Islamic types of investment such as Islamic stocks, Islamic bonds, Islamic mutual funds, and others.<sup>3</sup> There have been changes that have distinguished the buying and selling of shares. Previous ownership was once evidenced by a certificate that has been a group of electronic data known as scriptless trading.<sup>4</sup> These electronic data are stored in an account under the name of the owner, and shares obtained via scriptless trading will be stored in the Indonesian Central Stock Depository (Custodian Sentral Efek Indonesia /KSEI). The main advantages of this scriptless trading are faster and easier transactions without going through papers, forms, and complicated procedures.

Business in the stock market, involving buying and selling through an application that is downloaded and run on a smartphone and then earning profit. This certainly appeals to people who want to take part in stock investment. The fact that some famous personalities, such as Warren Buffet, who is one of the richest investors in the world, add to the appeal of stock investment. In practice, however, it is not easy to make enormous profits quickly. Good decision-making skills are vital, as well as broad economic knowledge and favorable psychological well-being of investors.<sup>5</sup> Failure to make good decisions will cause the investors to sustain considerable losses. Therefore, a good

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<sup>1</sup> Ulfy Safryani, Alfida Aziz, and Nunuk Triwahyuningtyas, "Analisis Literasi Keuangan, Perilaku Keuangan, Dan Pendapatan Terhadap Keputusan Investasi," *Jurnal Ilmiah Akuntansi Kesatuan* 8, no. 3 (December 14, 2020): 319–32, <https://doi.org/10.37641/jiakes.v8i3.384>.

<sup>2</sup> Abdul Manan, *Aspek Hukum Dalam Penyelenggaraan Investasi Di Pasar Modal* (Jakarta: Kencana Prenada Media Grup, 2009).

<sup>3</sup> Andrea Delle Foglie and Ida Claudia Panetta, "Islamic Stock Market versus Conventional: Are Islamic Investing a 'Safe Haven' for Investors? A Systematic Literature Review," *Pacific-Basin Finance Journal* 64 (2020): 1–29, <https://doi.org/https://doi.org/10.1016/j.pacfin.2020.101435>.

<sup>4</sup> Fathira Tri Waladi and S Susiana, "Perlindungan Hukum Bagi Kreditur Atas Saham Tanpa Warkat (Scripless) Sebagai Objek Jaminan Gadai," *Jurnal Geuthèë: Penelitian Multidisiplin* 5, no. 3 (December 3, 2022): 269–77, <https://doi.org/10.52626/jg.v5i3.189>.

<sup>5</sup> Tomoyud Sintosaro Waruwu and Suhendri Nasution, "Sistem Pendukung Keputusan Pemilihan Investasi Saham Berbasis Web Menggunakan Metode SMART," *E Journal Mahajana Informasi* 5, no. 1 (2020): 9, <https://doi.org/https://doi.org/10.51544/jurnalmi.v5i1.1191>.

number of people deem investment in the stock market as a gambling market due to its uncertain profits and losses.<sup>6</sup>

The Ulemas are still debating and have not found a unanimous agreement about whether investment in stocks is lawful or unlawful, even the shares that have been listed and traded in the Sharia stock index. On one side, Muslims want to make sure their economic activities are halal, so many of them avoid stocks. On the other hand, some shows that stocks (especially Sharia stock) are a 'safe-haven' for assets, such as the Islamic bonds (Sukuk) demonstrated safe haven properties during this pandemic crisis, while the spillovers between conventional and Islamic stock markets became stronger during the pandemic outbreak.<sup>7</sup>

The Indonesia Ulema Council (DSN-MUI) then applied certain criteria in the screening process to determine stocks that abide by the principles of Shari'a. This screening was carried out to find violations of Islamic principles such as gambling (maysir) and uncertainty (gharar).<sup>8</sup> Maysir is seen as an act of betting in which one party suddenly gains and the other party suffers a loss, as can be seen in a gambling game.<sup>9</sup> Islamic law actually recognizes the existence of risks and uncertainties that may occur as a result of a transaction. Therefore, Islamic law basically does not prohibit the existence of this element of uncertainty. However, if the risks and uncertainties are an attempt to provide benefits for one of the parties where the other party will suffer losses, then this is referred to as gharar.<sup>10</sup> Buying stocks is often considered speculative buying by nature, such as buying a gamble filled with uncertainty. Since the value fluctuates, investors who buy may profit and may lose when the shares are resold.

Stock is proof of ownership of a corporation that can be bought and sold in the stock market. This means that the stock price is dependent on supply and demand. The reality

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<sup>6</sup> Halim, A., Host State Controls Vs. Foreign Investment Protection: Indigenous People Rights On Rempang Island, Indonesia, *Kanun: Jurnal Ilmu Hukum*, Vol 26 (1) 2024.

<sup>7</sup> Larisa Yarovaya, Ahmed H. Elsayed, and Shawkat Hammoudeh, "Determinants of Spillovers between Islamic and Conventional Financial Markets: Exploring the Safe Haven Assets during the COVID-19 Pandemic," *Finance Research Letters* 43 (2021): 1–11, <https://doi.org/https://doi.org/10.1016/j.frl.2021.101979>.

<sup>8</sup> Haqiqi Rafsanjani, "Analisis Praktek Riba, Gharar, Dan Maisir Pada Asuransi Konvensional Dan Solusi Dari Asuransi Syariah," *Maqasid Jurnal Studi Hukum Islam* 11, no. 1 (2022): 1–16, <https://doi.org/http://dx.doi.org/10.30651/mqsd.v11i1.14485>.

<sup>9</sup> Rafsanjani.

<sup>10</sup> Hadist Shohih and Ro'fah Setyowati, "Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 12, no. 2 (April 20, 2021): 69–82, <https://doi.org/10.28932/di.v12i2.3323>.

in the stock secondary market is that some investors go about their activities in a manner that does not comply with the perspective of Islamic law. For instance, some investors purposely dump a number of their stocks and bonds, hoping for a drop in price due to being oversubscribed.

This eventually forces small investors to resell their shares at very low prices out of continued decline in share prices, causing them to sustain even further losses. As a result of the offers, the price of shares then continue to drop, alerting the big investors to buy those shares back at minimal prices in hopes of a price climb due to their counter purchases. In the end, it is the big investors who enjoy big profits while enormous losses are sustained by small investors. Islam emphasizes mutually profitable investment for all parties involved (win-win solution) and forbids people from participating in zero-sum games or win-loss situations. A zero-sum game is a condition or circumstance in which one person's gains are equivalent to the loss of another loss, so the net change between the profit and loss is zero. So it is important to identify whether stock market activities are in accordance with Sharia or not.

## **RESEARCH METHOD**

This research used normative legal research, performed by examining library materials. Primary materials came from several legal materials, including the Qur'an, hadith, and fatwa DSN MUI. Secondary material came from several research results, books, and hadists as cited in this article. By using these legal materials (and, if necessary, by using non-legal materials as supporting).

## **RESEARCH OUTCOME AND DISCUSSION**

### **1) Stocks Viewed From the Perspective of Cooperation (Syirkah)**

Stock is a capital instrument of a limited liability company. Therefore, to examine the validity of shares from the perspective of cooperation (syirkah) it is crucial to understand how a company is viewed from Syirkah perspective. Syirkah is a form of collaboration that entitles the parties in the partnership rights to an object with the intent

to run a business whose capital is provided by one or all of the parties involved.<sup>11</sup> In Islam, in order for the collaboration (*syirkah*) to be valid, all the pillars and requirements must be completely satisfied. Hanafi scholars state that there is only one *syirkah* pillar, which is called *ijab and qabul* (acceptance).<sup>12</sup> Meanwhile, other scholars from other schools of thoughts recognize three pillars to establishment of collaboration (*syirkah*), among whom are Hambali, Syafi'i and Maliki. These are *shighah* or *ijab and qabul* (acceptance), '*Aqidain*' or the parties involved and the object of *syirkah* (collaboration)<sup>13</sup>. Based on the descriptions given on a limited liability company, LLC has met the requirements stated in the *syirkah* pillar, in which the agreement (*shighah*) in the charter of establishment is expressly stated in a notarial act according to the agreements of founders and *aqidain* the share owners (founders of the company). In the meantime, the object of *syirkah* is shown in the aims of the established company, including among others, providing services, producing goods, mining and any other activities because it is impossible for an established company not to have a goal.

When it comes to profits generated by the company (dividends), the distribution is conducted in a manner that specifies in the details that the distribution of profits (dividends) is proportionate to the percentage of stock ownership. This is in accordance with the opinions of Malikiyyah and Syafi'iyah who require that in profit sharing, the percentage of a partner's capital invested is determined from the total *syirkah* capital, even though Hanafiyah does not require such a thing.<sup>14</sup>

Therefore, a limited liability company basically fulfills the pillars and conditions of *syirkah*, but each pillar that forms a contract in Islam requires conditions so that the pillars can function to form a contract. As for these conditions, which not all companies can fulfill, they cannot conflict with *syara'*. This must be closely monitored as not all companies that have been established abide by the conditions required including for

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<sup>11</sup> Afrida Husaini and Moch Khoiril Anwar, "Tinjauan Fiqh Muamalah Terhadap Syirkah Bagi Hasil Usaha AKI UD. Pribawa," *Jurnal Ekonomika Dan Bisnis Islam* 5, no. 2 (2022): 22, <https://doi.org/https://doi.org/10.26740/jekobi.v5n2.p21-29>.

<sup>12</sup> Ratu Humaemah, "Persyaratan Khusus Dalam Ragam Akad Syirkah Pada Literatur Fikih Mazhab," *Ulumuddin : Jurnal Ilmu-Ilmu Keislaman* 9, no. 1 (2019): 75, <https://doi.org/https://doi.org/10.47200/ulumuddin.v9i1.282>.

<sup>13</sup> Humaemah.

<sup>14</sup> Abdullah Bin Muhammad Ath-Thayyat, "Ensiklopedia Fiqih Muamalah Dalam Pandangan 4 Madzhab," in *Terjemah Miftahul Khairi* (Maktabah Al-Hanif, 2009), 417.

example producing contrary to Islamic law, such as producing products that are haram (forbidden) and so on.

Companies requiring a large amount of capital to further expand their businesses can make an offer of a portion of their shares to the public through an initial public offering (IPO). Companies that have gone public usually expect a wider scope of investors to acquire maximum capital. Investors who wish to own a company can buy the shares, thereby making them the owners of the company and have the right to attend the general meeting of shareholders (GMS).

Because the company has been established and running and has been in operation for some time, the law for the formation of the contract in buying shares must fulfill the pillars and terms of the agreement must also be valid to be enforceable, the pillars and conditions of which are the given below, / i.e. the parties involved in the contract (*al-aqidain*); and statement of the will of the parties (*shigatul-'aqd*).

Shari'a law attaches importance to mutual consent as a fundamental requirement for a sale and purchase contract. Consent can occur when sellers and buyers are in the same place, but it can also occur even though they are in two different places and connected by various media. However, the most essential factor is that the substance of the contract is understood by both parties involved in the transaction, which is interpreted as the willingness of both parties to carry out the transaction.<sup>15</sup> Therefore, the place does not prevent offer (*ijab*) and consent (*qabul*) from taking place. Because even in online transactions in which the parties do not physically meet, a meeting is still conducted virtually in an online assembly. The conditions when the seller and the buyer express mutual consent and a meeting place in which the consent and acceptance take place constitute a contract assembly. Based on this analysis, indeed, the two conditions from the second pillar have been fulfilled, in which both the consent and the contract assembly are met.

#### 1. The object of the contract (*mahallul-'aqd*)

After trading shares on the secondary market began using a scripless trading system, shares were no longer physically handed over. Instead, the seller and buyer of

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<sup>15</sup> Siti Dwi Pujiyanti and Anis Wahdi, "Transaksi Bisnis Online Dalam Perspektif Islam," *SERAMBI: Jurnal Ekonomi Manajemen Dan Bisnis Islam* 2, no. 2 (2020): 95, <https://doi.org/https://doi.org/10.36407/serambi.v2i2.173>.

shares receive a confirmation letter concerning the receipt or sale of shares. So, the shares are given via an electronic confirmation letter. Buying and selling shares can also be categorized into several types depending on quantity, price, and the share itself. Shares can also be transacted even though the confirmation of proof of ownership cannot be received on the same day. This is because buying and selling shares manually requires various transaction processes. The third pillar has, therefore, been fulfilled, although sometimes the shares cannot be delivered all at once because of the nature of the transaction process, and not because the goods or object of the shares do not exist.

## 2. The purpose of contract (*maudhu' al-'aqd*)

In stock trading, it is understood that the respective parties involved have a goal to accomplish that is the seller wants to release his shares and the buyer wants to gain rights to a share. Based on the description above, the sale and purchase of shares has fulfilled the terms and conditions of the sale agreement according to Islamic law. Nevertheless, simply meeting the pillars and conditions does not mean that the contract automatically becomes valid. For the contract to be valid, several conditions must be met, namely free from uncertainty (*gharar*), free from losses that accompany delivery, free from corrupt (*fasid*) provisions and free from usury (*riba*). Therefore, investors are urged to avoid circumstances that can render a contract void by not participating in things explained above. This is specifically revealed in the words of Allah shown below: *“The Muslims are in accordance with their conditions as long as they are in accordance with the truth”*. (HR. Al-Hakim)

## 2) Stocks as a Modern Investment in Islamic Law

There are several sectors known in investment, each of which has a different level of risk. In comparison, the banking sector tends to have relatively low risks, high liquidity, and short maturity periods.<sup>16</sup> This is different from the capital market sector, which is usually associated with a higher risk with a low level of liquidity. However, the high risk is also commensurate with greater profits than other investment sectors. As the adage investment principle goes "high risk, high return".

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<sup>16</sup> Safriyani, Aziz, and Triwahyuningtyas, "Analisis Literasi Keuangan, Perilaku Keuangan, Dan Pendapatan Terhadap Keputusan Investasi."

Stocks as investments are not a stand-alone fact but connected to the capital market as a trading platform and also to a public company (Limited Liability Company/PT) as the issuer. The stock market in Indonesia is divided into two categories of shares traded on the IDX, namely conventional (regular) shares and shari'a (Islamic) shares. In the Indonesian capital market, the principle of Islamic equity participation is manifested in the form of a stock index. The Indonesian Stock Exchange has made several indexes as a basis of reference for investors in their transactions. The most popular indices in Indonesia are JCI, LQ45, Kompas100, ISSI, and JII.<sup>17</sup> The LQ45 and Kompas 100 indexes are indexes of all stocks that fall into certain categories irrespective of whether the issuers are included in the Sharia category, whereas the ISSI and JII Indexes are reference indexes for investors who want to trade stocks that are shari'a compliant.<sup>18</sup>

Based on the edict issued by the Indonesian Ulemas Assembly No. 40/DSNMUI/X/2003 chapter III article 3, the criteria for issuers or public companies issuing sharia-compliant securities/shares are as follows:

1. The type of business, goods, services provided and the contract and management of the issuing company or public company that issues sharia securities must not contradict sharia principles.
2. The types of business activities contradictory to the principles of shari'a as referred to in Article 3 number 1 above among others are:
  - a. Gambling and gaming classified as gambles or prohibited trading;
  - b. Conventional financial institutions (usury by nature), including conventional banking and insurance;
  - c. Producers, distributors and traders of food and beverages that are forbidden (haram);
  - d. Producers, distributors, and/or providers of goods or services that are morally degrading and harmful;
  - e. Making investments in issuers (companies) which at the time of transaction the level (nisbah) of the company's debt to conventional financial institutions is more dominant than its capital;

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<sup>17</sup> Ali Geno Berutu, "Memahami Saham Syariah: Kajian Atas Aspek Legal Dalam Pandangan Hukum Islam Di Indonesia," *VERITAS* 6, No. 2 (September 1, 2020): 160–86, <https://doi.org/10.34005/veritas.v6i2.599>.

<sup>18</sup> Berutu.



3. Issuers or public companies intent on issuing shari'a securities must guarantee that their business activities comply with shari'a principles and have a shari'a compliance officer.
4. In the event that there is a violation from an issuer or public company that issues shari'a securities at any time, which does not meet the requirements mentioned above, the securities issued by themselves are no longer shari'a securities.

Stocks that are already on the Jakarta Islamic Index can enter and exit. Companies will leave JII if the company no longer complies with sharia principles and shares that were not previously included in JII can enter if they can meet the requirements. Stock has a high level of risk whose value fluctuates or goes up and down all the time. The determination of share prices occurs because there is supply and demand for the shares. The more demand from investors, the fewer investors wanting to release the shares, causing the stock price to increase, and vice versa. If more and more investors want to sell their shares while demand for them are few, the price of these shares will decrease. Good governance in the company reflected in the company's managerial ability, profitability and company growth as well as the company's dividend policy are several factors affecting the fluctuations of stock prices.<sup>19</sup> In addition to the company's performance factors, the fluctuations are also influenced by other domestic factors, including inflation, exchange rates, gross domestic product, and currency circulation.<sup>20</sup> Likewise, external factors can also affect fluctuations which can be seen in the prices of global commodity normally in the form of gold and oil prices, the federation banks' rates and the global index.<sup>21</sup>

There is a clear difference between investors and speculators when it comes to carrying out the activities of buying and selling shares in the capital market. The distinguishing factor lies in the main purpose of a customer spending money in the capital

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<sup>19</sup> Selvi Sembiring and Ita Trisnawati, "Faktor – Faktor Yang Mempengaruhi Nilai Perusahaan," *Jurnal Bisnis Dan Akuntansi* 21, no. 1 (2019): 173–84, <https://doi.org/https://doi.org/10.34208/jba.v21i1a-2.754>.

<sup>20</sup> syantia Olivia Nellawati and Yuyun Isbanah, "Analisis Pengaruh Faktor Internal Dan Faktor Eksternal Terhadap Pergerakan Indeks Harga Saham Gabungan (Ihsg) Di Bursa Efek Indonesia Periode 2012 – 2016," *Jurnal Ilmu Manajemen* 7, no. 1 (2019): 113–23, <https://jurnalmahasiswa.unesa.ac.id/index.php/jim/article/view/25167>.

<sup>21</sup> Nellawati and Isbanah.

market. Speculators spend or invest their funds to buy shares of Acne Corporation because they want to get capital gains, while investors have a specifically higher goal which takes a long time because they aim to get dividends.<sup>22</sup> Based on their activities, investors are called rational speculation while speculators are called blind speculation.<sup>23</sup>

Speculators often resort to activities in order for the stock prices to increase to get profits (capital gains) in a short time on the floor trading of the stock exchange. Some activities in which a broker tries to hike prices of securities are, firstly, netting, basically buying shares at the start of trading and immediately selling them on the same day at a lower purchase price than the selling price; and secondly short selling, profiting from selling shares that are predicted to decline in value and then buying on the same day to realize the capital gains. These two methods are prevalent in the stock exchange in order to make a profit (capital gain). More specifically, short selling is a method used in selling shares that are not owned at a high price with the hope of buying them back when the price drops.

Speculators tend to be more active in scrutinizing every change in share price points from point to point because they generally do not intend to hold their funds in the stocks for a long term. A speculator is basically a driven investor and quick to spot a chance to make profit. Meanwhile, an investor is more careful and patient, and prudent because the funds invested are usually sizeable enough to buy several types of stocks.

While the actions of these speculators do stimulate trading activity, it does have negative impacts such as widely fluctuating prices which often do not reflect the actual economic conditions, both micro (companies) and macro. They often resort to manipulative activities with the intent of gaining unfairness. Uncertainty in the stock market causes prices to move unpredictably and is difficult for analysts to make a reliable analysis. The actions of stock speculators are contrary to acceptable transactions in Islam.

Prohibited stock transactions are actions that are not in accordance with sharia principles. This action is regulated in the edict issued by Indonesian Ulemas Assembly MUI Fatwa No. 80/DSN-MUI/III of 2011 as follows:

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<sup>22</sup> Vonny Dwiyantri, *Panduan Praktis Bermain Saham* (Yogyakarta: Yogyakarta Atma Media Press, 2010).

<sup>23</sup> Nurul Huda and Mustafa Edwin Nasution, *Investasi Pada Pasar Modal Syariah* (Jakarta: kencana, 2007).

1. Transactions of Tadhli. Tadhli is seen as transactions that contain elements of fraud forbidden from Islam's perspective. This is prohibited because it contains unequal information between the parties, in that the information is vital to determine a transaction. Actions classified as under the category of fraud (tadhli) in transactions on the stock market are, firstly, front running, namely the actions of stock exchange members who advanced purchase of securities because there is non-public information regarding expected large transactions that will affect the share price. By doing this the culprit will get a profit or can reduce losses; and secondly misleading information, that is making false statements that obscure the judgement of other investors that can affect the share price.
2. Actions classified as under taghrir category. Taghrir is an act of taking risks without knowing the exact consequences that will be sustained.<sup>24</sup> In other words, taghrir means uncertainty. Basically, tadhli (fraud) and taghrir (uncertainty) are prohibited because they contain unequal information between the transacting parties. However, what differentiates it from tadhli is that only one party experiences incomplete information, whereas in taghrir it is experienced by both parties.<sup>25</sup> Actions that are included in the taghrir in the stock market are:
  - a. Wash sale, a share transaction that occurs between the parties but does not change the ownership or benefit status. The purpose of this transaction is to create a fake transaction that makes the price go up and down as in a normal transaction to create a false impression that the shares are actively traded on the capital market.
  - b. Pre-arranged trades, namely transactions that occur as a result of previously prepared buying and selling scenarios. The seller and buyer of the shares agree on a transaction time so the buyer gets the shares on

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<sup>24</sup> Trisnaning Setya Sutjipto and Eko Fajar Cahyono, "Tadhli Dan Taghrir Dalam Transaksi Pada E-Marketplace," *Jurnal Ekonomi Syariah Teori Dan Terapan* 7, no. 5 (July 3, 2020): 874–885, <https://doi.org/10.20473/vol7iss20205pp874-885>.

<sup>25</sup> Lukmanul Hakim, "Distorsi Pasar Dalam Pandangan Ekonomi Islam," *Ekomadania* 1 (2017): 1–15, <http://ejournal.kopertais4.or.id/madura/index.php/ekomadania/article/view/3050>.

the capital market. The goal is to establish the desired price or other interests.

3. Actions that fall under najsy category. Najsy is a transaction in which a person pretends to bid for the item being offered to raise the price so other people buy at that price.<sup>26</sup> Actions included in najsy in the stock market are:
  - a. Pump and dump, a scheme attempting to purchase a large number of shares enough to cause the price to reach its highest point. The speculators later sell the shares when the desired price is reached. This transaction is carried out to create an opportunity to earn big profits.
  - b. Hype and dump, similar to pump and dump, is a transaction accompanied by the spread of positive information related to the stock, which in fact is a hoax. After reaching the desired price, the speculator will sell his shares in large quantities, causing the share price to drop dramatically.
  - c. Creating fake demand/supply, basically creating fake buying and selling transactions at the best price to create the impression that the shares are actively being traded at high price so other investors are interested in buying or selling these shares.
4. Actions included in the category of hoarding of goods (Ikhtikar). Ikhtikar is basically the practice of hoarding goods, especially when there is a scarcity to resell them when prices are high.<sup>27</sup> In the practice of stock transactions in the capital market, there are several activities that are classified as hoarding, namely:
  - a. Pooling Interest, transaction activities during a certain period carried out by a group of members of the stock exchange as both sellers and buyers in order to give an impression of liquid securities. This aims to create an opportunity to sell or pool shares or use them as benchmarks.

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<sup>26</sup> Fitrah Maharaja, "Analisis Ekonomi Islam Terhadap Distorsi Ekonomi Dalam Transaksi Sekuritas Pada Pasar Sekunder," *Ekonomis: Journal of Economics and Business* 6, no. 1 (March 26, 2022): 260–63, <https://doi.org/10.33087/ekonomis.v6i1.478>.

<sup>27</sup> Muhammad Deni Putra, Frida Amelia, and Darnela Putri, "Dampak Ihtikar Terhadap Mekanisme Pasar Dalam Perspektif Islam," *Imara: Jurnal Riset Ekonomi Islam* 3, no. 2 (December 31, 2019): 183–91, <https://doi.org/10.31958/imara.v3i2.1661>.

- b. Cornering, share transactions in which the portion of public ownership is deliberately limited. A major shareholder then creates a supply by selling part of their holdings that causes the price to decline in the morning which induces public investors to short sell. When the price is low, the major shareholder returns to buy the shares which causes the price to increase again in the afternoon. This practice causes short sellers to suffer losses because they are forced to make purchases at higher prices.
5. Transactions containing elements of ghisysy (concealment of defect). Transactions that are included in ghisysy are the sale and purchase of tadlis by mentioning the superiority of the goods but does not explain its shortcomings to the buyer.<sup>28</sup> There are two forms of capital market activities included in the ghisysy category, arking at the close, deliberately selling or buying a security at the end of a trading day or some time before the closing of the capital market to create an appropriate closing price, whether it goes up, down or fixed compared to the previous price. For example, if a certain stock price declines just before the closing of a market, the person will make a large order at the time of closing to drive up the price; secondly alternate trade, a sale and purchase of a security in a reasonable volume but is carried out by the same party to give an impression of active stock.
6. Actions classified as fahisy ghabn (deception). In the capital market investment, insider trading practice is included in the Ghabn Fahisy classification. Insider trading is an illegal activity which utilizes internal information that has not been published. The person performing insider trading benefit illegally because they have information that is still confidential while other public investors do not
7. Actions in the category of Bai 'al-Ma'dum are buying and selling of objects that do not yet exist.<sup>29</sup> An example of bai 'al-ma'dum in the stock market is the practice of short selling. Short selling is done by selling shares that are not yet owned by the trader at a high price at the time of sale with the hope of

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<sup>28</sup> Berutu, "Memahami Saham Syariah: Kajian Atas Aspek Legal Dalam Pandangan Hukum Islam Di Indonesia."

<sup>29</sup> Uswah Hasanah, "Bay' Al-Salam Dan Bay' Al-Istisna' (Kajian Terhadap Produk Perekonomian Islam)," *Jurnal Agama Dan Pendidikan Islam* 10, no. 1 (2018): 162–73, <https://doi.org/https://doi.org/10.30596/intiqad.v10i1.1929>.

buying back when the price drops. The practice of short selling is usually done by borrowing a number of shares from a security company and then selling them when the price rises. When the price drops, the same stocks will be bought again and then returned to the original owner. The margin will be reaped that the trader benefits from. This practice is prohibited because the traded object in fact does not exist or is non-existent.

8. Actions considered to be under the usury category are prohibited such as trading margin. Margin trading is a stock purchase activity using loaned funds accompanied by interest at the time of refund.

Unfortunately this Fatwa MUI does not provide sanctions for those prohibited acts. The conflict that occurs will be resolved through deliberation and sharia arbitration. However, Muslims believe that the real punishment will be given in the afterlife. Therefore, Muslims avoid things that are prohibited in Islamic law.

Some contemporary scholars allow buying and selling securities from public companies and classify it as syirkah 'ammah (general). This provides the basis for an argument that stocks are one investment instrument allowed in Islam because stock is an investment instrument that is a representation/reference of the value of a company's assets or wealth as a guarantee of capital invested in the company by investors. Buying and selling shares can also be said as an effort to help the transfer of company ownership. A company sells its stock shares to obtain capital, and buyers exchange a certain amount of money to own the company's stocks and secure the value of its wealth in the future. By investing, the capital gained can be used in the real sector for the purpose of development and growth. With the development of the real sector, the economy will also grow better.

This value of mutual support is in accordance with the words of Allah SWT (QS: Al-Ma'idah: 2): “ *Cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression. And be mindful of Allah. Surely Allah is severe in punishment.* ”

According to Yusuf Qardhawi, shares, when viewed from a sharia perspective, are divided into three: First, shares in companies focusing on Islamic activities, such as Islamic banks and insurance.<sup>30</sup> If the object is a company's stock that operates in a field

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<sup>30</sup> Yusuf Al-Qaradhawi, *Fatwa-Fatwa Kontemporer* (Jakarta: Gema Insani, 2002). p. 539.

that is prohibited by Islamic law and violates sharia principles, then the pillars and conditions are not met. The sharia principles in question are free from elements of usury, gharar, maysir and do not contain anything dubious.<sup>31</sup> This means that stock dividends may not mix halal and haram profits. Second, shares of companies whose basic activities are forbidden. For example, liquor companies. According to the ijma' (agreement) of the scholars, it is not permissible to take part in shares and make transactions with similar companies.<sup>32</sup>

Third, shares of companies whose basic activities are halal. For example, companies producing shoes, snacks, electronics and so on. However, the haram element enters the company through transactions that take place based on interest, whether the company takes it or gives it.<sup>33</sup> Modern scholars have different opinions about the permissibility of transactions and taking part in shares of third-class companies. Some forbid it on the grounds that its shares are mixed with usury, because the Prophet Muhammad (PBUH) has denounced the usurer, the giver, the writer and the witness.<sup>34</sup>

For this reason they forbid third-party corporate transactions in any form. The opinion that agrees, in this case, is the fatwa that allows it with the condition that the results of usury or similar interest are usually recorded in the company's books.<sup>35</sup>

The fuqaha who allow buying and selling say that shares are in accordance with the conditions attached to them, so the shares owned by a person show proof of his ownership of a certain company in the form of assets, so that shares are a reflection of ownership of certain assets. This logic is used as the basis for thinking that shares can be bought and sold as goods. Contemporary scholars who suggest this include Abu Zahrah, Abdurrahman Hasan, and Khalaf.<sup>36</sup>

Regarding doubts concerning the rules of stock law in the perspective of Islamic law, this must be assessed under the guidance of rules of trade law (fiqh muamalah).

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<sup>31</sup> St Samsuduha and Andi Herawati, "Konsep Investasi Pasar Modal Dan Saham Syariah Di Indonesia," *Al-Tafaqquh: Journal of Islamic Law* 4, no. 1 (2023): 1-8, p. 8

<https://doi.org/http://dx.doi.org/10.33096/altafaqquh.v4i1.194>.

<sup>32</sup> Yusuf Al-Qaradhawi, *Fatwa-Fatwa Kontemporer*.

<sup>33</sup> Yusuf Al-Qaradhawi.

<sup>34</sup> Yusuf Al-Qaradhawi.

<sup>35</sup> Yusuf Al-Qaradhawi, *Fatwa-Fatwa Kontemporer 4* (Jakarta: Pustaka Al-Kautsar, 2009). p. 389.

<sup>36</sup> Yusuf Al-Qaradhawi, *Fiqhu Zakah* (Beirut: Muassasah Risalah, 1991). p. 527.

Based on the rules it is said that the main law of everything is permissible until there is an argument that forbids it.<sup>37</sup> If an expert in Sharia law (mujtahid) is asked about the law of an agreement or management, and he does not find the text in the Qur'an or Sunnah, and nor does he find a Shari'a argument which discusses the law, he decides with the allowance given in the agreement or management based on the rules of trade law (fiqh muamalah) stating that "Indeed, the origin in everything is permissible".<sup>38</sup> Therefore, as long as there is no argument stating otherwise, it is still allowed. Likewise, the same principle applies to stock investors to obtain profits. As long as it does not conflict with Islamic law, it is permissible. Hence, stock investors are prohibited to carry out transactions categorized as acts of prohibition in the stock market based on the edict issued by Indonesian Ulema Assembly, Fatwa DSN MUI No. 80/DSN-MUI/III 2011.

Speculators who manipulate prices to seek profits by making pseudo (fake) supply and demand for stocks or manipulating prices to drive up and down stock prices, are absolutely not justified in Islamic law due to its fraudulent nature. Stock issuers polishing their information for the company's benefit is also a form of fraud because it is detrimental to other investors and can damage the confidence of investors to other shares. The words of Allah SWT in (QS: Anisa ': 29): "*O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or yourselves. Surely Allah is ever Merciful to you*".

The above verse explains that Allah SWT forbids people to repossess each other's wealth by way of deception, which is certainly far from amicability, because it is seen as killing others and killing others is likened to killing themselves, because humanity is a unity. In the Qur'an Allah SWT has appealed to Muslims to embrace Islam as a whole (kaffah) and forbade following the ways of the cursed satan. As the words of Allah declare (QS: Al-Baqarah: 208): "*O You who have believed, enter into islam completely (and perfectly) and do not follow the footsteps of satan. Indeed, he is to you a clear enemy*".

Economy in Islam is built on the four philosophical foundations, unity (monotheism), balance (al'adlwa al-Ihsan), free will (ikhtiyar) and responsibility

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<sup>37</sup> Syafi'i Karim, *Fiqh Ushul Fiqih* (bandung: Pustaka Setia, 1997).

<sup>38</sup> Abdul Wahhab Khallaf, *Ilmu Ushul Fiqh* (Semarang: Dina Utama Semarang, 2000).



(fardh).<sup>39</sup> The first philosophical foundation in Islamic business is monotheism because humans are economic actors subject to Allah SWT's provisions in all their activities. Therefore, all economic policies must adhere to reasonableness and balance between the seller and the buyer, for example, they have equal position in the transaction. The next foundation is freedom, meaning that humans are free to carry out their economic activities as long as they do not conflict with the laws of Allah. This shows innovation and creativity is a necessity in economy. Responsibility means that humans are the mandate holders responsible for all the decisions they make. Humans are created as creatures who have the freedom to choose various alternatives before them but with this freedom comes responsibility to Allah SWT.

## CONCLUSION

Contemporary scholars permit the buying and selling of shares in public companies, categorizing them as *syirkah 'ammah*. From an Islamic law perspective, shares are considered permissible if the company's business, products, services, and management methods do not contravene Sharia principles and Islamic law. As such, stock investment is limited to shares in companies that engage in halal business activities, as deemed by Islamic law. Investing in such shares is permissible as long as the stock transaction (buying and selling) is conducted in a fair and transparent manner, without engaging in fraudulent activities that can harm other investors. Key requirements for a legitimate stock transaction include meeting the pillars and requirements of the transaction. One prohibited activity is speculation, which involves manipulating prices to gain profits through tactics such as fake offers or requests, fake transactions, or artificially inflating stock prices (*tadlis*). This type of behavior can lead to market instability and unfair advantages for some investors.

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<sup>39</sup> Rina Desiana and Noni Afrianty, "Landasan Etika Dalam Ekonomi Islam," *Al-Intaj : Jurnal Ekonomi Dan Perbankan Syariah* 3, no. 1 (2017): 119–35, <https://doi.org/http://dx.doi.org/10.29300/aij.v3i1.1166>.

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