

# ANALYSIS OF SHARIA ECONOMIC LAW AND GOVERNMENT POLICIES IN ENHANCING SHARIA INVESTMENT IN INDONESIA

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## ABSTRACT

*The research aims to analyze sharia economic law and government policies in increasing investments on sharia business in Indonesia by way of a normative judicial study collected through a literature review and documentary analysis. There are four policies over sharia investment to be discussed in this study, namely; policies on the developments of sharia banking, sharia stock market, IKNB (sharia non-banking industry) and a policy on UUS (sharia financial service unit) spin off over Financing Institution. The result of the study shall underlie the authors' ideas to suggest the government to reinforce regulations, in terms of sharia compliance, as a portfolio attribute within government policies oriented towards new paradigm shift in sharia economic law practices in Indonesia.*

*The research describes opportunities by which sharia economic law and government policies shall enhance sharia investments on business. Consequently, it demonstrates significant evidence in supporting collaborations and broadening aspects regarding sharia economic law despite the lack of essential legal rules and specified policies on sharia investment. Hence, sharia laws on investments need to be intensively evaluated and drafted for the near future. Furthermore, legal rules and government policies should be consistently and continuously enabled to boost the growth of either national or global sharia business to meet investors' expectation. This study is expected to provide contributions to respective stakeholders within the government currently in need of strategic moves to improve investment for the upgraded Indonesian economic.*

**Keywords:** Sharia Economic Law, Government Policies, Sharia Investments.

## INTRODUCTION

Islamic financial industry has gained the most valuable momentum in most Muslim countries and worldwide. Likewise, sharia investments are booming in Indonesia. In addition, sharia investments have increasingly attracted domestic and foreign investors since there are varied sharia investments offered such as sharia banking, insurance, stock market, mutual funds and other respective sharia financial institutions which determine their foremost priority on applying sharia principles by which transparency, openness and justice are ensured.

The first sharia bank so called Muamallah Bank (Bank Muamalat) established in 1992 and the first sharia mutual funds initiated by PT Danareksa Investment Management in 1992 was a stepping stone to cater the needs of investors' who previously acquired literacy of sharia investment. Due to the rapid growth of Islamic finance, particularly regarding stock market, therefore Jakarta Islamic Index was established in 2000. Seeking to boost reinforcement of sharia

investment, the Sharia National Board- Indonesian Ulema Council (DSN-MUI) issued the first fatwa (a ruling on a point of Islamic law given by a recognized authority) in 2001 regarding stock market; namely, Fatwa Number 20/DSN-MUI/IV/2001 on the Guidelines of Sharia Mutual Funds Operation. The development of Sharia Stock Market gained its initial popularity by way of the government policy as Laws Number 19 of 2008 regarding Sharia State Securities (SBSN) was legalized in 2008. The laws are the foundation of issuing Sharia State Securities or State Sukuk.

Moreover, the current staggering growth of sharia investments which draws investors' attention is determined by sharia stock market instruments comprising of sharia shares, corporate sukuk, sharia mutual funds, and state sukuk.

The net asset value (NAV) of sharia mutual funds was IDR 34.49 trillion or increased, compared to the previous year's which was IDR 28.31 trillion. Additionally, the outstanding value of corporate sukuk was worth IDR 21.3 trillion or increased, compared to the 2017's of IDR 15.74 trillion. The value of outstanding state sukuk was IDR 645.05 trillion, thus, it was the stock market instrument that gained the biggest outstanding value. Finally, the capitalization value of sharia share was worth IDR 3.667 trillion or lower than the previous year's which was IDR 3.705 trillion.

The growth of sharia stock market investors in quantity. The number of sharia stock market investors rose to 306,827 in 2018 while there were 226,530 sharia stock market investors in 2017. The number of sharia mutual funds investors increased to 94,097, in contrast to the previous number of 63,536 investors. There was a less significant rise on the number of investors holding corporate sukuk as there were previously 44,536 investors. Furthermore, there were 44.536 sharia trading online users (SOTS), whereas the preceding number was 23,207. The rise on sharia trading online users was considerably high as there were only 12,283 respective users in 2016.

According to the Financial Services Authority (OJK), the Indonesian Sharia Stock Index from 2015 to January 2020 has continued expanding and developed deriving from the investor number. In December 2019 the number of investors was recorded of 49 percent (YTD) compared to that of 2018 with 44,536 investors. Consequently, the investment ratio grew to 6, 1percent from as many as 21,192 total active investors or approximately 32 percent from the total investors of sharia shares (Directorate of Sharia Capital Market, 2020).

Therefore, Jakarta Islamic Index 70 was established in 2018, thereby the stock investment volume reached IDR 2,574,301,02 by January 2020. The sharia stock volume was initially 408 billion. The rise reached 451 billion in 2019. The Sharia Stock Exchange Index II 2019 was established by way of The Decision of OJK Board of Commissioners Number KPE-76/D.04/2019 on Sharia Stock Exchange Index effective from December 1, 2019 to May 31, 2020 (Directorate of Sharia Capital Market, 2020).

This research is originated from the staggering growth of sharia investments in Indonesia. The legal reviews on sharia economy and government policies over sharia investments play a role in ensuring the sustainable development of sharia finance. The tremendous growth of Islamic finance has contributed to more varieties and options over financial instruments for either Muslim or Non-Muslim investors. Yet, the absence of a true global Islamic finance on the basis of sharia economic law has led to less maximum and more likely segmented sustainable development on Islamic economy (Sarker, 2017). As such, sharia compliance and government policies bring about great significance towards sharia investments; thus, the presence of Islamic

finance is needed to promote products with sharia compliance. While each product shall meet sharia compliance, companies are obliged to comply with the existing laws. Additionally, rules in sharia principles function as reviving the healthy and less ambiguous system of Islamic finance (Hassan & Aliyu, 2017).

## METHODS

This research is a juridical normative focusing on implementing rules as well as norms of positive law. Furthermore, it focused on an analysis of sharia economic law implementation and the government policy in expanding sharia investment in Indonesia. The data used in the research was secondary data composed from (1) the main legal sources in forms of ordinances and *fatwa of DSN MUI*, and (2) the secondary legal sources which cover books and journals. The data was collected by way of literature reviews and documentary analysis.

Data analysis used a conceptual approach as the research starting point was to engage in an analysis on sharia economic law and the government policy in improving sharia investment upon the issuance of government regulation and *Fatwa of DSN MUI* which organized sharia investment practices in Indonesia bearing in mind that it was booming. It was adopted from a term used by Dworkin. This research was also called a doctrinal research which analysed law (Dworkin, 1977).

## ANALYSIS AND DISCUSSION

### Law of Sharia Economy on enhancing Sharia Investment

In the study of sharia economic law, sharia investment is underestimated but only limited to certain circumstances. It is based on the objective of developing wealth that aims to meet the needs of human life based on the rules of life (*nidham alhayat*). The suggestion to invest is contained in the Al Quran surah Al Baqarah verse 261, that;

*"The parable (income issued by) those who spend their wealth in the way of Allah is similar to a seed that grows seven ears, on each ear a hundred seeds. Allah multiplies (rewards) for whom He wills. And Allah is vast (His grace), All-knowing. "*

The basic principle in investment as contained in the book *Al Qawaid Al Fiqhiyyah*, "that profit is through taking the existing risks." In another rule in the book *Durar Al Ahkam Sharh Majallah Al Ahkam*, "*Whoever wants to benefit from being appropriate, he must bear the risk.*" What is clear is the limitation is the prohibition against *maysir*, usury, and *gharar*. Islamic economic law in terms of investment is contained in *Fatwa DSN-MUI No. 07/DSN/MUI/IV/2000*.

Meanwhile, an explanation of the various forms of investment that have been stipulated in the Sharia regulations is also contained in Law Number 25 of 2007 concerning Investment in Indonesia. The numerous issues used for upgrading perspectives on sharia economic law as the creation of positive law in Indonesia consists of four items such as (1) *Fiqh* as the source of knowledge for worships and *muamallah* as an anticipation towards the modernization issues; (2) *Fatwa* or personal or institutional legal perspectives towards a new problem requested by a member of society. and it's less binding, casuistic and highly dynamic compared to *fiqh*

perspectives; (3) courts with legal binding force towards those who are involved in legal matters with jurisprudence value.; (4) ordinance included within the compilation of sharia economic law (Rofiq, 2001).

The presence of sharia economic law exercised within a positive law by far has barely demonstrated a significant improvement despite the government policies to enable improvement as part of sharia financial activities in Indonesia. The legal position of sharia economic law within the Indonesian governance is divided into two; namely, the period of legal acceptance as persuasive and authoritative sources of law (sources of law with binding legal force and valid within the constitutional law). Several forms of sharia economic law exercised within a positive law, among others, Laws of Alms-giving management, Laws of Waqf Endowment, Laws of Banking, Laws on Sharia Capital Market (Sularno, 2006).

Based on the Resolutions of the People's Representative Council (Ketetapan MPR RI) Number IV/MPR-RI/1999 concerning GBHN (the Broad Guidelines of State Council), Chapter IV, Policy Directive, A. Law, section 2 established that Islamic law, customary law and western law were sources of forming the national laws in in Indonesia.

*“Governing the integrated and comprehensive national legal system by way of recognizing religious law and customary law as well as updating laws inherited by the colonists and discriminating national law including gender inequality and its inappropriateness with the reforms demanded through legislation (Tap MPR RI Indonesia, 1999)”*

The sharia economic law constitutionally lays the basis on Article 29 of the 1945 Constitution:

1. The State is established based on the belief in God.
2. The State ensures that each citizen owns freedom to have a faith in their own religion and thereby they can perform services according to their own religion and beliefs.

Hazairin interpreted Article 29 Section 1 of the 1945 Constitution as follows:

1. Any incidents contradicting with Islamic principles held by Muslims should never occur within the Republic of Indonesia.
2. The state of Republic of Indonesia shall exercise Islamic sharia on Muslims; merely applying such sharia requires state authorities.
3. In sharia implementation, state authorities are less required for it is applicable to all Muslims as expressions of their personal obedience towards Allah, performed by oneself according to their own religion (Hazairin, 1976).

Banking operated with sharia principles also has a constitutional basis as expressed in Article 33 of the 1945 State Constitution, as follows:

1. The economy is to be structured as a common endeavour based on familial principles.;
2. Production sectors that are vital to the state and that affect the livelihood of a considerable part of the population are to be controlled by the state;
3. The land and the waters as well as the natural riches therein are to be controlled by the state to be exploited to the greatest benefit of the citizens.
4. The organization of the national economy shall be based on democratic economy that upholds the principles of solidarity, efficiency along with fairness, sustainability, keeping the environment in perspective, self-sufficiency, and that is concerned as well with balanced progress and with the unity of the national economy.

National Legal Principles concerning sharia economic law are:

1. Principles of prioritizing social welfare; Principles of educating people;
2. Principles of enabling social welfare;
3. Principles of equal rights over job opportunity and decent living;
4. Principles of equal right to obtain education and training;
5. Principles of democratic economy;
6. Principles of enhancing social welfare;
7. Principles of protecting the poor and abandoned children (Usman, 2000).

The enactment of the 2008 Laws Number 21 concerning sharia investment marked that sharia banking has obtained formal judicial legitimacy as reinforcement to the application of sharia principle as an underlying principle which provides foundations for the operations of investing practices in Indonesia. Sharia principles manifested in institutions is a real form of objective conditions of Muslim society needs of sharia Islamic financial institutions. It is believed to be an alternative solution as an effort enabling optimum social economic potential. Sharia principles prohibited some activities in business or encourage avoidance Maghrib such as, maisyir, gharar, riba and bathil as illustrated in the explanation to the 2008 Article 2 Laws as follows:

1. Riba or any illegal added income (bathil), among others, an exchange of similar things, yet of less equal quality, quantity and delivery time (fadh), or in lending transactions which requires a client, the facility recipient, that he return funds he has borrowed exceeding the initial amount borrowed as the results of time span (nasi'ah);
2. Maisyir or transactions based on predetermined or uncertain condition in the future and speculations.
3. Gharar or uncertain transactions. That is transactions on unspecified, immaterial and in existing, or undeliverable objects on the day of transaction unless it has been differently arranged in sharia.
4. Haram or any transactions of which the objects are prohibited by sharia; or zhalim, namely, any transactions leading to injustice on other respective parties. In efforts to meet the goal of supporting the national development sharia banking strongly holds on to the comprehensive (kaffah) and consistent (istiqamah) sharia principles (Rivai & Arifin, 2010).

According to de jure and de facto recognition towards legal measures on sharia investments that sharia investment measures have at least been supported by the fatwa of DSN-MUI. There were six main points referred to sharia capital market investments namely:

1. Number.05/DSN-MUI/IV/2000 on Buying and Selling Stock
2. Number.20/DSN-MUI/IX/2000 on the Guidelines of Investing Activities for Sharia mutual Funds
3. Number 32/DSN-MUI/IX/2002 on Sharia Bonds;
4. Number 33/DSN-MUI/IX/2002 on Sharia Mudharabah Bonds;
5. Number.40/DSN-MUI/IX/2003 on Capital Market and the Directory of Sharia Principles in Capital Market;
6. Number.41/DSN-MUI/III/2004 on Sharia Ijarah Bonds.

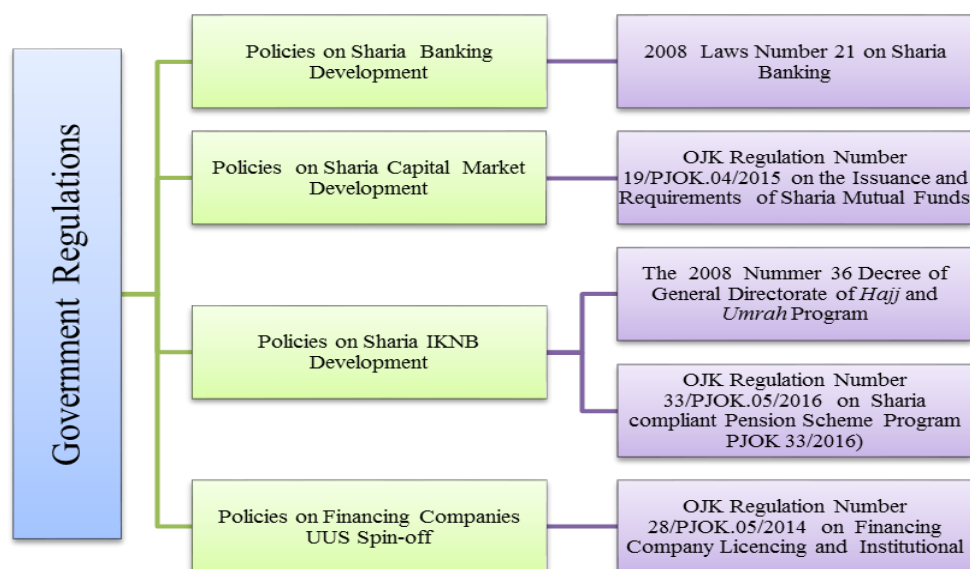
The aforementioned decisions or *Fatwa* organized sharia principles in capital market which included that a stock is seen to meet sharia principles upon receiving a written statement on sharia suitability from DSN-MUI (Rivai & Arifin, 2010).

For policy reinforcement in efforts to enhance sharia investment, the government issued OJK regulation Number 3/PJOK.04/2018 concerning Amendments on OJK Regulations and Number18/PJOK.04/2015 on Issuance and Requirements of Sukuk. The respective sukuk. The points to be issued were:

1. Flexibility of Stipulation related to Sustainable Public Offering (PUB), namely: the requirements proposed by the party capable of practicing Sukuk as emittent or public company within the shortest period of one year.; The value of emittent of each sukuk stock and stock are considered as debt in each period.
2. Additional clauses regarding disclosures of zakat assukuk rewards (where available) in order to meet the international standards issued by the Islamic Financial Service Board (IFSB)
3. Consummation on stipulation regarding assessment on the underlying asset of sukuk likely obtained based on the financial report and the assessment result produced by the assessors.
4. Obligations of giving recognition on sharia suitability over sukuk, in case of any changes on sharia aqd, the content of aqd, and/or assets used as sukuk basis.

## The Government Policy in Upgrading Sharia Investments

There were four-policy components referred to the development of sharia finance implemented by the government as reported in 2018. The four components were illustrated in the following Figure chart 1:



**Figure 1**  
**Four-policy Components on the Development of Sharia Finance 2018-2023**  
 Resources: Utomo et al. (2019)

### Policies on Developing Sharia Capital Market

The regulation consummation of Financial Services Authority (OJK) No. 19/PJOK.04/2015 was related to the issuance and requirements of Sharia Mutual Funds (RDS) such as Sharia Mutual Funds (RDS) on sukuk basis. RDS on sukuk basis is a contract for collective investment on the basis of sukuk, RDS in forms of collective investment contracts of Limited Equity Funds, RDS with overseas sharia stock, RDS target date fund as a new RDS, the management over any gains less recognized as NAB RDS, and exemption over collection period of asset under management for RDS products only offered to individual investors (retail).

By the end of 2018, revisions over regulations regarding the issuance and requirements of sharia mutual funds have come to the compilation of either written or verbal feedback during the

public hearing. The acceleration on perfecting RDS regulation is expected to encourage the continuous growth of sharia mutual funds in Indonesia.

### **Policies on Developing Sharia IKNB**

The Ministry of Religion through the 2018 Number 336 Decree of Directorate General on Performing Hajj and Umrah encouraged the use Sharia Travel Insurance. Hence, the Umrah pilgrims and their families are expected to feel convenient for they are supported by sharia insurance in case any accidents occur during the umrah trip.

The development of Employer's Pension Fund converted to Sharia Employer's Pension Fund in 2019 was supported by the OJK regulation Number 33/PJOK.05/2016 on performing the Pensiun Program compliant with Sharia Principles (PJOK/33/2016). Therefore, it was the government's real support to boost market share of sharia finance in the future.

### **Policy of Sharia Financing Spin-off**

According to Article 37 Section of (1) OJK Regulation Number 28/PJOK.05/2014 that Licensing and Financing Company Institutional incorporated with limited liability are entitled to separate UUS and transform it to Sharia Financing Company by establishing a limited liability company based on the following rules:

1. In the case that UUS asset is at least 50 percent of the total asset of the parent financing company based on the last monthly report conveyed to OJK;
2. It has been in operation for as long as five years since the enactment of this OJK regulation.

Furthermore, Section (2) of the respective article describes separation on UUS to be made as a financing company within as long as 12 months since the condition was fulfilled as stated in Section (1).

### **Policies on Developing Sharia Banking**

OJK encouraged a synergy on sharia banking through sharing platforms by drafting regulations for boosting industry efficiency over sharia banking. Sample regulations are on Sharia Banking Services (LSB) and consulting services (PBI No. 15/13/2013 concerning BUS); and Service Provision of IT to other financial institutions (PJOK No.38/PJOK.03/2016 on Risk Management of Information Technology). As stated in Laws 2008 No. 21 on Sharia Banking that UUS should be separated from BUS in the cases:

1. When the asset value has at least reached 50 percent of the parent bank's total asset value; or
2. When UU PBS has been effective at least for 15 years since its enactment in 2003.

BUK license will be cancelled automatically in case it fails to perform spin-off and it is entitled to settle UUS rights and obligations within 1 year effective from the date of cancellation. The reports on sharia finance issued in 2018 showed that sharia banking encountered a problem regarding the development of sharia investment namely, BUS (Commercial Sharia Banks) operations. They operate less efficiently with limited room to expansions. Consequently, sharia

banking needs to consolidate UUS Regional Development Bank (Bank Pembangunan Daerah), shared services in efforts to upgrade cost-effective, flexible and high quality services

The systems on sharia economic laws and government policies contributed to the growth of sharia investments by way of sharia financial management comprising of four essential components as discussed earlier. Through legal rules and policies, investors are interested in sharia economic framework on sharia investment governance. This analysis result was in line with the study conducted by Kondo revealing that effective and efficient framework of investment governance was a critical consideration to investors (Kondo, 2017). Regarding sharia economic framework in Indonesia thereby legal rules and policies are realized in numerous positive legal forms and fatwa of DSN MUI by way of anticipating practices of sharia economic law and government policies, thus, a comprehensive study towards roots of the problem occurring in the field as well as evaluation on the existing legal rules are required. Furthermore, suitability effectiveness is oriented to three main dimensions; namely, analytical and political dimensions exercised in two different ways: options on policy measures and capacity of policy operating institutions (Bali et al., 2019). Hence, based on a literature study and a normative analysis, the sharia economic law and the Indonesian government are definitely in need of such suitability. Otherwise, the increase on sharia investments without the presence of powerful legal consistency shall produce less impact on the Indonesian economy.

## CONCLUSION

The Government is expected to promptly design laws compliant with Islamic finance, particularly regarding sharia investments, review the existing laws and continuously make amendments to relevant laws to be assimilated with sharia principles, create an effective and powerful regulation structure, implement legal standards and rules accommodating global standards, manage and assist risk return spectrum on Islamic finance, centralize boards of committees, supervisors and sharia decisions (DSN-MUI), ensure tax neutrality and waiving transactions with sharia compliance, prepare a framework of audit on sharia compliance and audit program

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