

# International Organization of Securities Commissions Role on Transactions in Indonesia Sharia Capital Market

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The variety of investment activities currently provides variation to the community in determining the form of their economic investment plans in a certain period. However, it should be noted also the legal provisions that apply, so that investment activities are not carried out carelessly or violating the prevailing norms in the community or are feared to be detrimental to some parties concerned. Indonesia in its financial system, especially in the Capital Market, adheres to two systems, namely conventional and sharia. The capital market facilitates long-term funding for business people and entrepreneurs by attracting deposits from many investors. This market provides long-term capital for entrepreneurs through a series of short-term contracts (securities) with investors who can enter out according to their own will. In the late 1990s Islamic financial markets have realized that the development of capital markets is important for survival and for future growth. In this context, the organization that exists in Indonesia are listed on the Indonesia Stock Exchange, whereas if it is pursued internationally there is the International Organization Of Securities Commissions (IOSCO). The legal issue that is the main study to be discussed in this paper is the Role of IOSCO on Sharia Capital Market transactions in Indonesia, which is presented by normative research methods, namely research carried out by conducting applicable legislation studies and their application to sharia capital market transactions. The results of this paper are in the form of an overview of IOSCO which explains its general position, and the role of IOSCO in the Islamic Capital Market in Indonesia. The conclusion of this paper is that the role of IOSCO in the Sharia Capital Market in Indonesia is not much different from its authority as an International Capital

Market organization, namely exchanging information based on each experience to encourage the development of the domestic market; bringing together efforts to create effective supervision standards for international securities transactions and to provide assistance together to ensure market integrity through the application of strict standards and effective enforcement of violations.

**Key words:** *Transactions, IOSCO, Sharia Capital Market.*

## **Preliminary Introduction**

Islam regulates all aspects of life of all mankind without an error gap. Economic aspects, which are of course very important in the order of life of society, are also regulated in Islamic Shari'a. The Islamic economy in three decades has experienced considerable progress, both in academic studies in universities and in operational practice. The purpose of economic activities governed by the principles of Islamic finance, the rate of return on equity is determined by the efficiency of capital processing and time, and has a positive impact on economic growth (Hossein et al., 2010). In the form of teaching, Islamic economics has been developed in several universities both in Muslim countries, as well as in western countries, such as the USA, England, Australia, and others; (Tira, 2016) both in terms of general academic studies and explicit studies for example in the scope of investment activities.

The development of this also has an impact on experts in the field of investment having different views on the theoretical concepts of investment. Fitzgerald defines investment as "activities related to efforts to withdraw resources (funds) that are used to hold capital goods at the present time, and with these capital goods a new product stream will be produced in the future" (Abdul, 2009); planting money or capital in a company or project for the purpose of making a profit. According to Hendry Faisal Noor, investment is sacrificing current consumption opportunities, to obtain future benefits (Hendry, 2009). As for the sharia perspective, investment can be interpreted as the placement of a number of funds / capital in an investment instrument for the purpose of gaining profits and *maslahah* using sharia principles.

From various kinds of statements related to the investment, it can be concluded that investment is an activity of placing funds / capital in an investment instrument in the hope of obtaining profits in the future. In general, investment can be categorized in two parts, namely, investment in real assets (real assets) and investments in the form of securities (financial assets). The form of real asset investment is opening a business, investing capital directly in a business, investing in commodities, land, gold and property. While investment in financial

assets can be divided into two parts, namely investment in the money market / banking institutions in the form of demand deposits, savings and deposits, as well as investments in the capital market in the form of stocks, bonds, sukuk, and mutual funds. All of these products are determined by contracts in accordance with sharia principles. According to Ibn Abidin, a contract is an agreement established with consent and qabul based on syara provisions which have an impact on the object (Mardani, 2015).

The role of the Capital Market is the market for various financial instruments or long-term securities that can be traded, either in the form of debt or equity. The capital market is an effective means of obtaining funds and is used as investment financing through a mechanism for collecting funds from the community and channelling these funds to productive sectors. By buying shares, investors expect to receive dividends every year and capital gains when the shares are resold. But by investing, investors are also expected to risk losses that are directly proportional to the profits obtained (<http://repository.wima.ac.id/2385/2/Bab%201.pdf>). The main capital market existence is caused by investors, making investor protection an important factor in the regulation of the capital market and financial industry (Hamzah, 2018).

Indonesia in its financial system, especially in the Capital Market, adheres to two systems, namely the conventional system and the sharia system. The capital market facilitates long-term funding for business people and entrepreneurs by attracting deposits from many investors. This market provides long-term capital for entrepreneurs through a series of short-term contracts (securities) with investors who can enter and out according to their own will. In the late 1990s Islamic financial markets have realized that the development of capital markets is important for their survival and for future growth (Zamir and Abbas, 2015).

In its implementation, organizations participate in assisting the government so that securities transaction activities in the capital market run in accordance with applicable regulations. The organization itself, for example in Indonesia, has the Indonesia Stock Exchange, whereas, if it is pursued internationally, there is the International Organization of Securities Commissions (IOSCO).

In terms of function and performance, the organizations generally have the same objectives, but if further detailed it will be seen explicitly what are the main objectives and functions of these organizations. Based on the description of the background, the author on this occasion was interested in studying the role of the International Organization Of Securities Commissions (IOSCO) On Transactions on the Indonesia Sharia Capital Market.

### ***Legal Issues***

The legal issues which discuss in this paper are:

- a. What is the role of the International Organization of Securities Commissions (IOSCO) on the Indonesian Sharia Capital Market?

### ***Research Method***

In writing this paper, the author uses a method that supports technical discussions that are arranged systematically and structured in their presentation. The type of research that will be used in this study is a type of normative research, namely research conducted by conducting a review of legislation that applies to a particular legal problem.

This paper conducted a study of primary legal materials and secondary legal materials, insofar as they contained legal methods in this study, so that this study could produce the truth about IOSCO's role in the Indonesian Islamic Capital Market.

The type of research that will be conducted is descriptive, namely research that describes data systematically, factually, and accurately regarding juridical facts which is then clarified from the overall data to be obtained from the research.

### **Result and Discussion**

#### ***IOSCO General Review***

IOSCO was formed in April 1983 as a transition from the Capital Market supervisory association on the American continent. The Secretariat General of an international organization, which initially consisted of 11 countries from North and South America, is based in Madrid, Spain.

IOSCO is the main forum for interaction and cooperation between the World Capital Market supervisors and now consists of more than 170 institutions consisting of government agencies, SROs, and other institutions related to the securities market. These are categorized into three groups: Ordinary Members, Associate Members, and Affiliates Member. (<https://www.ojk.go.id/id/kanal/pasar-modal/berita-dan-kegiatan/info-terkini/Pages/IOSCO-GEm-c-2016-nusa-dua-bali-info-rundown-dan-acara.aspx>)

IOSCO consists of a number of capital market regulator bodies in more than 100 countries. According to the opening section of the IOSCO budget: Capital market authorities decided to work together to ensure better market regulation, both at the domestic and international level, to maintain a fair, efficient and healthy market:

1. Exchange information based on each experience to encourage the development of the domestic market

2. Bringing together efforts to standardize and effectively monitor international securities transactions
3. Provide assistance together to ensure market integrity through the application of strict standards and effective enforcement of violations.

IOSCO has worked extensively in international disclosures and accounting standards facilitating the ability of companies to obtain capital efficiently through the global market of securities. The main objective is to facilitate the process that can be used by world-class stock issuers to obtain capital in the most effective and efficient manner in all capital markets that are demanded by investors.

To facilitate its performance, IOSCO opens a work environment in the ASEAN realm, IOSCO Asia Pacific Hub, located in Kuala Lumpur, Malaysia is the first IOSCO Regional Hub established to provide capacity building activities for securities regulators, particularly in the Asia Pacific region. Guided by the Malaysian Securities Commission, the Hub develops and delivers seminars, workshops and other capacity development activities to securities regulators in more than 29 jurisdictions (<https://www.iosco.org.my/>).

### ***IOSCO Role to Indonesia Sharia Capital Market***

In the context of routine collaboration activities and the realization of active joint activities, IOSCO holds a conference held annually which aims to discuss important issues and challenges that will be faced by IOSCO members as policy makers and regulators in their respective countries. The challenge in question is change, be it technological changes, regulations, and community needs for financial authorities. This is the reason why this conference needs to be held as a forum to discuss various urgent issues and significant challenges that will be faced by global capital markets. Indonesia hosted this conference in January 2016, and it has continued to other countries (<https://www.ojk.go.id/id/kanal/pasar-modal>).

Briefly related to the Islamic capital market in Indonesia, the Islamic capital market was officially opened on March 14, 2003 by Minister of Finance Boediono who was accompanied by the chairman of Bapepam Herwidayatmo, representatives of MUI, DSN representatives from SRO directors, directors of securities companies, administrators of actors and professional associations in the Indonesian capital market. Actually, according to the plan, the Islamic capital market was inaugurated in early November 2002. However, at that time Bapepem and the National Sharia Council did not feel ready. This is related to a number of obstacles that have not been completed discussed (Akhmad, n.d).

In general, investors who will enter the Islamic capital market will pay attention to the aspects of security and legal certainty, especially the Indonesian people who often still experience confusion over the concept of sharia which is considered almost exactly as conventional, so that the interests of investors must be protected and well regulated by capital markets investment objectives. The two aspects above are also accommodated in the International Organization of Securities Commission (IOSCO) report on the obligations of capital market authorities, namely:

“the three fundamental objectives of securities regulation are: (1) *the protection of investors;* (2) *ensuring that securities markets are fair, efficient and transparent;* (3) *and the reduction of systemic risk (Hilda, 2014).*

IOSCO in its position as an International Capital Market organization issues regulatory provisions that are followed by participating countries, including the Principle for Financial Market Infrastructure (PFMI) as a recommendation for improving the performance of the Indonesian Securities Supervision Commission (KPEI). In addition there are also Objectives and Principles of Securities Regulations which regulate, among others *Principles Regulation, Principles for Auditors, Credit Rating Agencies, and other information providers.*

The fatwa in the implementation of sharia economic transactions is one of the important instruments in the realization of the guarantee of the object being transacted. According to Atho 'Mudzhar, fatwas usually tend to be dynamic because they are a response to new developments that are being faced by people requesting fatwas (Rafiq, 2015). General provisions regarding objects traded in the Capital Market are based on sharia principles, according to regulations adopted by Indonesia based on DSN MUI Fatwa provisions No.40 of 2003 Article 3 letter b, as follows:

- 1) Gambling businesses and games classified as gambling or trading are prohibited.
- 2) Conventional financial institutions (ribawi), including conventional banking and insurance (risk buying and selling).
- 3) Businesses that produce, distribute and trade unlawful food and beverages.
- 4) Businesses that produce, distribute, and provide goods or services that are morally damaging and harmful.
- 5) Invest in an issuer or public company that at the time of the company's debt level transaction to the ribawi financial institution
- 6) More dominant than the capital.

The path of legal protection that can be taken by capital market investors, if they experience losses, is basically through litigation or settlement through courts and non-litigation channels. In this case, an investor can complain about the system disruption and the loss he experienced to YLKI.

YLKI is a non-governmental organization engaged in consumer protection. Complaints received by YLKI by stock investors are one of YLKI's duties and are the rights of the investor as a consumer of financial service institutions.

However, if viewed from the legal aspects of the national sharia capital market, in the Agreement stipulated in the securities issuance agreement, efforts to settle the law are carried out through non-litigation in this case through the National Sharia Arbitration Board, which previously was through mediation for example at the provisions of Article 12 point 2 of the Fatwa of the National Syari'ah Council Number: 20 / DSN-MUI / IV / 2001 concerning Guidelines for the Implementation of Investment in Sharia Mutual Funds.

The prospects for the National Capital Market to IOSCO are briefly arranged as follows:

- 1) Improvement and / or preparation of regulations in order to meet international standards.
- 2) Compliance with IOSCO Principles standards.
- 3) Compliance with the principles of good corporate governance by the Organization for Economic Co-operation and Development (OECD).
- 4) Compliance with the provisions recommended by the International Securities Services Association (ISSA) ([https://www.bappenas.go.id/files/6313/5027/3393/bab-23---matriks\\_\\_20090129022735\\_\\_65](https://www.bappenas.go.id/files/6313/5027/3393/bab-23---matriks__20090129022735__65)).

The role is related to the function of the National Sharia Capital Market itself which the author quotes, according to MM. Metwally is as follows (Nasyah, 2014):

- 1) Allows for the community to participate in business activities by obtaining a share of the profits and risks.
- 2) Allows shareholders to sell their shares to get liquidity.
- 3) Enabling companies to increase capital from outside to build and develop their production lines.
- 4) Separating business operations from short-term fluctuations in stock prices which are a common feature of conventional capital markets.
- 5) Enabling investment in the economy is determined by the performance of business activities as reflected in stock prices.

## Conclusions

The International Organization of Securities Commissions (IOSCO) consists of a number of capital market regulator bodies in more than 100 countries. According to the opening section of the IOSCO budget, the capital market authorities decided to work together to ensure better market regulation, both at the domestic and international level, to maintain a fair, efficient and healthy market. Its role in the Sharia Capital Market in Indonesia is not much different

from its main duties and functions as an International Capital Market organization, namely:

- 1) Exchange information based on each experience to encourage the development of the domestic market,
- 2) Bringing together efforts to standardize; and
- 3) Effectively monitor international securities transactions and provide assistance together to ensure market integrity through the application of strict standards and effective enforcement of violations.

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*building activities for securities regulators, particularly in the Asia Pacific region. Hosted by the Securities Commission Malaysia, the Hub develops and delivers seminars, workshops and other capacity building activities to securities regulators in over 29 jurisdictions)*

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