

RENEWAL ANALYSIS OF ISLAMIC STOCK CRITERIA IN INDONESIA

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Abstract: Muslim is the majority population in Indonesia. This has become a background to provide investment instruments to meet Islamic principles. This study analyzes the renewal of Islamic stock criteria established through Bapepam LK (The Financial Services Authority/OJK) regulations. This is normative juridical research, with the object of Bapepam LK Regulations regarding Islamic stock criteria. In Indonesia, the Islamic stock criteria were first established in 2007. Bapepam LK then made an update on the Islamic stock criteria in 2009, and the last update was in 2012. Updates in 2009 were carried out on qualitative criteria, while the quantitative criteria remained. This renewal made the criteria for Islamic stocks more stringent. While the renewal in 2012 was carried out on quantitative criteria, the qualitative criteria remained steady. This renewal had eased the criteria for Islamic stock. The results of the study showed that the issuance and renewal for the Islamic stock criteria was carried out by Bapepam LK based on the fatwa and approval letter of National Sharia Council (DSN) of Indonesian Ulema Council (MUI). The stipulation of the criteria for Islamic stocks is the outcome of DSN MUI's ijtihad.

Keywords: Islamic stock; screening Islamic stock; Ijtihad.

Abstrak: Negara Indonesia memiliki jumlah penduduknya muslim yang besar. Hal ini menjadi pendorong untuk menyediakan instrumen investasi berupa saham yang memenuhi kriteria syariat Islam. Penelitian ini menganalisa pembaharuan kriteria saham syariah yang ditetapkan melalui Peraturan Bapepam LK (Sekarang OJK). Penelitian ini bersifat *yuridis normatif*, dengan objek Peraturan Bapepam LK tentang kriteria saham syariah. Di Indonesia, kriteria saham syariah ditetapkan pertama kali pada tahun 2007. Kemudian Bapepam LK melakukan pembaharuan dalam kriteria saham syariah pada tahun 2009. Dan terakhir pembaharuan dilakukan pada tahun 2012. Pembaharuan pada tahun 2009 dilakukan pada kriteria kualitatif, adapun kriteria kuantitatif tetap. Pembaharuan ini menyebabkan kriteria saham syariah semakin ketat. Sedangkan pembaharuan pada tahun 2012 dilakukan pada kriteria kuantitatif, adapun kriteria kualitatif tetap. Pembaharuan ini menyebabkan kriteria saham syariah mengalami pelonggaran. Hasil kajian menunjukkan bahwa penerbitan dan pembaharuan demi pembaharuan kriteria saham syariah dilakukan Bapepam LK bersumber pada fatwa dan surat persetujuan Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI). Penentuan dalam kriteria saham syariah merupakan hasil ijtihad DSN MUI.

Kata kunci: saham Syariah; kriteria saham Syariah; Ijtihad.

Introduction

Investment is one of the activities related to contemporary economics. The definition of investment is a commitment to a number of funds or other resources made at this time, with the aim of obtaining a number of benefits in the future.¹ Another definition is given by, where investment is delaying consumption current to be included in assets earning for a certain period of time.²

The state of Indonesia is a country whose majority of people are religious or convert to Islam. According to census the 2010 as many as 87.18% of the 237,641,326 Indonesians were Muslims.³ This has become one of the drivers of investment with Islamic principles. Islamic investment is defined as the sacrifice of resources at the present time to obtain definite results, with the hope of obtaining greater returns in the future, both directly and indirectly while remaining based on sharia principles as a whole (*kaffah*).⁴ Investment in Islamic principles is one way to make assets productive and become a form to prevent the accumulation of assets (*ikhtikâr*) aimed at damaging a market.⁵ So that in Islamic principles, investment is one of activities *muammalah* that are allowed and highly recommended. Islam is basically a pro-investment and does not allow the resources of a person including wealth to be stored and not productive (*idle assets*)⁶. If the assets are not productive they will gradually erode the wealth because they have to pay their zakat. However, that does not mean the free use of the wealth without any applicable regulations, but rather must pay attention to the signs not to violate the Islamic principles.⁷

A wide selection of investment instruments in the financial sector is currently massively promoted by the authorities. We are familiar with stock, bond or sukuk and mutual fund. From the various instruments above, offering both Islamic and non-Islamic-based. Stocks are the instrument most popular among the public at the moment. The study of Islamic stocks both related to legal issues and selling buying (transaction) has been the subject of academic experts, fiqh scholars and practitioners economics since the 1970.⁸

In the Islamic economic system, the state has the authority to intervene in the economic activities of society. This intervention does not merely adapt Islamic law that has been stated in the text of the proposition, but also fills the legal vacuum that occurs in Islamic law.⁹ In order to provide an answer to the emptiness in law Islamic, the Financial Services Authority (OJK) cooperates with the National Sharia Council - Indonesian Ulema Council (DSN-MUI) to determine the criteria as a process screening sharia. So now there can be found Islamic stock listed on the Indonesia Stock Exchange (IDX). Based on predetermined criteria, not all stock listed on (IDX) pass screening into Islamic stock.

Screening process aims to identify stocks that violates the Islamic principles, such as usury, gambling (*maysîr*) and uncertainty (*gharâr*).¹⁰ Some opinions addressing the screening process of issuers, including expressed by Alhabshi, said that stock must be in accordance with Islamic principles or regardless of speculation is a must. However, according to him, in the current situation it is not possible to be completely banned and free from speculators in the process screening.¹¹ A similar opinion was expressed by Khatkhatay and Nisar said that fully pure Islamic stock are very rare to be applied¹². Even Donia

¹ Eduardus Tandelilin, *Portofolio Dan Investasi*, Pertama. (Yogyakarta: Kanisius, 2010).

² Jogiyanto Hartono, *Teori Portofolio Dan Analisis Investasi*, Kesebelas. (BPFE Yogyakarta, 2017).

³ BPS, *Sensus Penduduk Tahun 2010* (Jakarta: BPS, May 15, 2010).

⁴ Ryandoro and M.Nafik Hadi, *Bursa Efek Dan Investasi Syariah* (Jakarta: Serambi, 2009).

⁵ Shafira Syaunqiyah and Muhammad Nafik, "Perbandingan Kinerja Reksadana Syariah Dan Reksadana Non Syariah Di Indonesia Berdasarkan Return, Resiko Dan Koefisien Variasi," *Jurnal Ekonomi Syariah Teori dan Terapan* 5 No 2, February 2, 2018, pp. 123–134.

⁶ Refky Fielnanda, "Konsep Screening Saham Syariah Di Indonesia," *Al Falah: Journal of Islamic Economics* 2 No.2, 2017.

⁷ Zamir Iqbal and Abbad Mirakhor, *An Introduction to Islamic Finance Theory and Practise* (Singapore: Jhon Willey & Son (Asia) Pte.Ltd, 2011).

⁸ Fielnanda, "Konsep Screening Saham Syariah Di Indonesia."

⁹ Ija Suntana, *Politik Ekonomi Islam* (Bandung: CV Pustaka setia, 2010).

¹⁰ S Elfakhani and Hasan, "Performance of Islamic Mutual Funds" (presented at the The 12 Th Annual Conference; Economic Research Forum, Kairo, 2005).

¹¹ S.Y Alhabsyi, "Stock Screening Process," *Islamic Finance Bulletin* (June 2008).

¹² M.H Khatkhatay and S Nisar, "Investment in Stocks: A Critical Review of Dow Jones Shariah Screening Norms," 2007.

and Marzban emphatically say that it is almost impossible to find it.¹³ The fact that there is instrument a Islamic-based is growing, but it is not yet proportional to the existing potential market, where the majority of population Indonesia is Muslim. There is still public doubt whether the instrument Islamic-based stock has truly met Islamic criteria. The public still has doubts about Islamic principles used by Islamic Financial Institutions, both institutions bank financial and banks.¹⁴ Likewise, the perception that performance often investment instruments deemed Islamic-based lower than investment non-Islamic instruments.¹⁵ These two things are likely to be factors that inhibit the growth of Islamic-based instruments in Indonesia so that they are not yet proportional to the existing market potential. Judging from the Islamic financial inclusion index in Indonesia it reached 11.1%, however the literacy index is only 8.1%.¹⁶ The low literacy index compared to the inclusion index means that the public uses Islamic financial services but is not matched by knowledge of Islamic financial products and services. This is certainly not good, because it indicates that people only follow trends without knowing clearly Islamic financial products, both in terms of return and risk. Referring to the historical facts in Indonesia that this Islamic capital market product has been existed in 1997 before the existence of the Fatwa DSN MUI and legislation. This shows there is indeed a need in terms of determining the criteria for Islamic stock. By increasing the understanding of the Muslim religion, it will have an effect on the interaction of *muammalah*, including in the selection of stock in its investment. The community Muslim will choose Islamic stock in its portfolio. The existence of this

enormous need is the driving force for *ijtihad* in determining the criteria for Islamic stocks. The existence of stocks Islamic will help Muslim investors to avoid the usury branches that are widely spread in products financial.

Method

The method used in this study is a qualitative research and conducted including normative juridical, by reviewing the laws and regulations applied to a particular legal problem or Statute Approach. The research model uses the legal content analysis technique.

This approach is carried out to examine the laws and regulations governing the Islamic stock Criteria in Regulations Bapepam LK IIK.1 Regarding Criteria and Issuance of Islamic Securities List. The object identified in this study is Bapepam LK II.K.1 Regulation concerning Criteria and Issuance of Islamic Securities List which is elaborated in the Decree of the Chairman of the Capital Market and Institution Financial Supervisory Agency Number: KEP-314 / BL / 2007, then the Decree of the Chair person of Agency the Market Supervisory Capital and Institutions Financial Number: KEP-180 / BL / 2009 and most recently Decree of the Chairperson of the Capital Market and Financial Institution Supervisory Agency Number: KEP-208 / BL / 2012. It also examines the fatwa arguments and DSN MUI Letters which are used as sources of regulations Bapepam LK II.K.1 above, namely the DSN Fatwa MUI No: 20 / DSN-MUI / IV / 2001 Concerning Investment Implementation Guidelines for Sharia Mutual Funds, the DSN MUI Fatwa Number: 40 / DSN-MUI / X / 2003 Concerning Markets Capital and General Guidelines on the application of Islamic Principles in the Capital Market and DSN MUI Letters Number: B-370 / DSN-MUI / X / 2011 subject: Explanation of DSN-MUI for Total Use Assets as a Substitute for Total Equity in Criteria for financial Ratios of Islamic stocks.

Result and Discussion

A stock is conceptually a proof of equity participation in the company and with the evidence of participation such the share holders are entitled to get a share of the profits of the

¹³ M Donia and S Marzban, "Identifying Shariah-Compliant Equities a Challenging Task," *Global Islamic Finance* (2008).

¹⁴ Septiani Emilia, Budi Santoso, and Mulyadi, "Analisis Persepsi Masyarakat Umum Terhadap Produk Investasi Syariah Dan Keputusan Untuk Berinvestasi," *Jurnal Distribusi-Jurnal Manajemen dan Bisnis* 6 No.1 (March 2018).

¹⁵ Ida Syafrida, Indianik Aminah, and Bambang Waluyo, "Perbandingan Kinerja Instrumen Investasi berbasis syariah dengan konvensional pada Pasar Modal di Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 6, no. 2 (March 13, 2015), pp. 195–206.

¹⁶ OJK, *Strategi Nasional Literasi Keuangan Indonesia (Revisi 2017)* (OJK, December 27, 2017).

business company's activity. The concept of equity participation with the right to share of the profits of these operations is a concept that does not conflict with Islamic principles. The Islamic principle recognizes this concept as a activity *musharaka* or *syirkah*.

This concept is not contrary to Islamic principles. In Indonesia, this was confirmed by the DSN MUI Fatwa Number.40 / NO: 40 / DSN-MUI / X / 2003 concerning the Capital Market and General Guidelines for the Application of Islamic Principles in the Market Capital. The understanding of Islamic Stock is;

“Proof of ownership of a company that meets the criteria listed in article 3, and does not include shares that have special rights.”

Screening Islamic Stock

In order to meet the needs of Muslims in investing in stock, the Financial Services Authority (OJK) cooperates with the National Sharia Council Indonesian Ulema (DSN MUI) to determine the criteria for Islamic stock in Indonesia. In particular there is no proposition, neither the Quran nor the Hadith that gives criteria about this. Based on this reason, *ijtihad* is required from the local ulama or each country to explore it.

Criteria for issuance of Islamic stock in Indonesia is based on Regulation II.K.1 about the criteria and Issuance of Islamic Securities. The first time published was contained in the attachment to the Decree of the Chairman of Bapepam LK Number: KEP-314 / BL / 2007 dated August 31, 2007. It then was renewed as contained in the Attachment to Regulation Bapepam II.K.1 in the Decree of the Chairman of Bapepam LK Number KEP-180 / BL / 2009. Furthermore, with various considerations that existed in 2012, on April 24, Bapepam LK renewed its renewal, namely through the Attachment to Bapepam LK II.K.1 Regulation in the Decree of the Chairman of Bapepam LK Number KEP -208 / BL / 2012 concerning Criteria and Issuance List of Islamic Securities. The Islamic stock criteria consist of two, the first criterion is qualitative about the business activities company and the second is quantitative, namely the financial aspects of the

company consisting of aspects of capital, debt and corporate income.¹⁷

Both of these criteria are sourced from the DSN MUI fatwa and the DSN MUI letter approval. Qualitative criteria derived from DSN MUI fatwa Number.20 / DSN-MUI / IV / 2001 in CHAPTER IV Selection and Implementation of Investment, Article 8 Types of Business Issuer, read:

1. Investment can only be made on securities issued by parties (Issuers) the types of business activities are not in conflict with Islamic principle.
2. Types of business activities that conflict with Islamic principle, among others are:
 - a. Gambling and gaming businesses that are classified as gambling or trade are prohibited
 - b. Business of conventional financial institutions (usury-based), including conventional banking and insurance;
 - c. Businesses that produce, distribute, and trade illicit food and drinks;
 - d. Businesses that produce, distribute and/or provide goods or services that are morally damaging and harmful.

As in the MUI DSN fatwa No.40 / DSN-MUI / X / 2003 in CHAPTER III Issuers that issue Islamic Securities, Article 3 Criteria of Issuers or Public Companies, which reads:

1. Type of business, products and services provided and the contract as well as how the management of listed companies or public companies that issue Islamic Securities must not contradict with the Islamic principles.
2. Types of business activities that are contrary to Islamic principles as referred to in Article 3 number 1 above, include:
 - a. Gambling and games that are classified as gambling or trading are prohibited
 - b. Conventional financial institutions (usury-based), including conventional banking and insurance;
 - c. Manufacturers, distributors and traders of illicit food and beverages; and

¹⁷ Syafiq Hanafi, “Perbandingan Kriteria Syariah Pada Indeks Saham Syariah Indonesia, Malaysia Dan Dow Jones,” *Jurnal Asy-Syir-ah* 45, 2011, p. 1419.

- d. Producers, distributors, and / or providers of goods or services that are morally damaging and harmful;

Relating to the issuer's capital ratio, sourced Fatwa No 20 / DSN-MUI / IV / 2001 concerning Investment Implementation Guidelines for Islamic Mutual Funds. In Chapter IV Regarding the Selection and Implementation of Investment, Article 10 Concerning the Issuer's Condition that is not appropriate. In this article it is stated that an issuer is not feasible to be invested by Islamic mutual funds:

1. If the structure of debt to capital is very dependent on the financing of debt, which in essence is a financing that contains elements of usury.
2. If an issuer has a debt to equity ratio of more than 82% (45% debt, 55% capital)
3. If the management of a company is known to have acted in violation of Islamic business principles.

Likewise in Fatwa No.40 / DSN-MUI / X / 2003 Concerning Capital Markets and general guidelines for the application of sharia principles CHAPTER III Article (3) Criteria for Issuers or Public Companies point 2 Types of activities business that conflict with Principles Islamic as referred to in article 3 number 1 above, including but not limited to the letter:

"Invest in issuers who at the time of the transaction (ratio) level of the company's debt to the conventional financial institutions are more dominant than their capital."

In Islamic law, the provisions of the debt ratio interest-based are absolutely not specified, even it can be said that is there no opinion (*ijtihad*) of the previous ulama that regulates these provisions. However, that does not mean *ijtihad* in determining these figures in general is independent of the opinion of Ulema.¹⁸ Likewise with the *ijtihad* DSN MUI in the fatwa above which determines the-based debt interest towards capital refers to the statment of Imam al-Ghazali which states that in a business or venture capital must not be smaller than debt.¹⁹

This was quoted by the Chairman of the MUI KH. Ma'ruf Amin who said that capital must be greater than interest-based debt. This opinion was then translated into the MUI DSN Fatwa into a maximum of 45% interest-based debt and 55% capital, or 82% interest-based debt ratio compared to total capital. With a composition of 45%: 55% means that capital is still greater than interest-based debt, so that it still fulfills the statment of Imam Al-Ghazali above.

The quantitative criteria relating to non-halal income are sourced from the results of discussions between DSN MUI and Bapepam LK that refer to the Aspects *Materiality* and *Aggregation* in the Appendix of the Decision of the Chairman of the Market Supervisory Capital Agency Number KEP-06 / PM / 2000 dated 13 March, 2000 in the Appendix to Regulation Number VIII.G.7: Guidelines for Presentation of Statements Financial.²⁰

How large is the income is material meaning it affects the total revenue. That is contained in the number 2 letter g point 1:

"Material" is a term used to express something that is considered reasonable to be known by users of financial statements and Bapepam. Unless specified specifically, the material sense is 5% of the total assets for the asset accounts, 5% of the total liabilities for the liability accounts, 5% of the total equity for the equity accounts, 10% of the income for the account profit and loss account, and 10% of profit before tax for the effect of an event or transaction such as changes in accounting estimates. "

In the Bapepam and LK Decree an income is considered material or valuable if it is equal to or more than 10%, so if it is below 10 % is considered to have no influence or no value on overall income. This is considered in terms of interest income and not other lawful matters. If interest income and non-halal income is not other more than 10% of total income, then it is considered to have no effect on overall income so that it can still be tolerated. This is also based on the rule of *fiqh*: "*Majority law is the same aslaw overall.*"

According to the majority of scholars, the

¹⁸ Ahmad Baharudin, "Utang Dan Pendapatan Perusahaan Dalam Kriteria Dan Penerbitan Efek Syariah Perspektif Hukum Bisnis Syariah" (UIN Sunan Kalijaga, 2015).

¹⁹ Kani Hidayat, "Kriteria Saham Syariah," January 27, 2016.

²⁰ Andry Wicaksono, "Kriteria Saham Syariah," January 2016, Jakarta.

standard, if halal funds are mixed with illicit funds, then the chosen funds are more dominant, because majority law is like the law overall²¹. This is in line with the concept conveyed by M. Gunawan Yasni, DSN-MUI member that the concept used in determining ratios financialis: “*tafriq baina al-halal wa al-haram*”, namely the concept of separation between halal assets and assets haram. This separation is carried into out order find out what percentage of total halal assets compared to total illicit assets.²²

This is due to one of them being the fact that the issuers cannot be totally free from conventional banking services. It cannot be denied that practices conventional banking still dominate the world economic system, including in Indonesia. The banking interest-based system has taken root and entrenched it at all levels of society, both the lower, economic circles middle and upper.²³ Business partners of publicly-listed companies or public companies also many use banking services conventional. So if company have an account at a conventional bank and place the funds for purposes the operational and liquidity issuer will get interest on deposits. The fact remains that, at present it is very difficult to avoid banking practices conventional in the economic system, both in terms of funding and operating companies by having accounts. Islamic jurists have agreed that *interest* is equated with usury, and usury is forbidden to be practiced in Islam.²⁴ Then this condition can be said as a condition beyond the ability of humans to carry out perfectly the Islamic law that has been charged.

In this case, the rules of *fiqh* “*mâ lâ yadrûku kullu lâ yatrûku kulluhu*.” The provisions of Islamic law that cannot be achieved perfectly within the scope of the Islamic capital market, does not mean that it is not necessary to establish an Islamic capital market since Islamic principles

and provisions cannot be implemented in a total manner. All commands mandatory that can be enforced must be carried out to the maximum. Meanwhile, the ban can not be left to be regulated and restricted tolerance.²⁵

Renewal Analysis

Furthermore, the two DSN MUI Fatwa above were used as sources by the Services Authority Financial (OJK) (formerly Bapepam LK) to determine the criteria for Islamic stock in Indonesia. Qualitative criteria in Rule II.K.1 concerning Criteria and Issuance of List of Islamic Securities in Kep-314 / BL / 2007 are not conducting business activities as referred to in Regulation IX.A.13 contained in Kep-130 / BL / 2006 in General Provisions point (a) Business activities that are contrary to Islamic Principles among others: 57

- 1) gambling and games classified as gambling or trade are prohibited;
- 2) providing financial services that apply the interest concept, buying and selling risks containing *gharar* and or *maysir*;
- 3) produce, distribute, trade and or provide:
 - a. goods and or services that are unclean because of their substance (*haram li-dzatihi*);
 - b. illicit goods and or services not because of the substance (*haram li-ghairihi*) stipulated by DSN-MUI; and / or
 - c. goods and or services that are morally damaging and damaging in nature; and / or
- 4) investing in companies that at the time of the transaction (ratio) level of the company's debt to the interest financial institutions are more dominant than their capital, unless the investment is expressed by DSN-MUI.

Renewal of Rule II.K.1 concerning Issuance and List of Islamic Securities in Kep-180 / BL / 2009 followed by revision of Rule IX.A.13 concerning Issuance of Islamic Securities. Qualitative criteria are also under going renewal, namely: not conducting business activities as referred to in Regulation IX.A.13. In Regulation IX.A.13 kep 181 / BL / 2009 provisions General point (b) business

²¹ Oni Sahroni, “Pemasukan Dana Non Halal Di Lembaga Keuangan Syariah (LKS) Dalam Perspektif Syariah” (presented at the Menangani cabaran merintis inovasi dalam kewenangan Islam, Johor Baru, 2014).

²² Ahmad Baharudin, “Utang Dan Pendapatan...”, (UIN Sunan Kalijaga, 2015).

²³ Ahmad Baharudin, “Utang Dan Pendapatan...”, (UIN Sunan Kalijaga, 2015).

²⁴ Ahmad Baharudin, “Utang Dan Pendapatan...”, (UIN Sunan Kalijaga, 2015).

²⁵ Ahmad Baharudin, “Utang Dan Pendapatan...”, (UIN Sunan Kalijaga, 2015).

activities contrary to Islamic principles, including:

- 1) gambling and games classified as gambling;
- 2) trade that is prohibited according to Islamic principles, includes:
 - a. trade that is not accompanied by the delivery of goods / services;
 - b. trading with fake offers / requests;
- 3) Usury financial services, including:
 - a. interest-based banks; and
 - b. interest-based finance companies;
- 4) buying and selling risks that contain elements of uncertainty (*gharar*) and / or gambling (*maisir*), including conventional insurance;
- 5) produce, distribute, trade and / or provide, inter alia:
 - a. goods or services that are illicit (*illicit li-dzatihi*);
 - b. goods or services are not forbidden because of the substance (*haram li-ghairihi*) stipulated by DSN-MUI; and / or
 - c. goods or services that are morally damaging and harmful.
- 6) conducting transactions containing elements of bribery (*risywah*);

Rule Renewal II.K.1 Regarding the Criteria and Issuance of Islamic Securities List in 2009 from the previous year in 2007, only added the qualitative criteria above but did not change the criteria quantitative. The quantitative criteria are fixed, namely: meeting ratios financials follows:

- (1) total interest-based debt compared to total equity of not more than 82% (eighty-two percent);
- (2) total interest income and other non-halal income compared to total income business (revenue) and other income not more than 10% (ten percent);

The renewal of the Islamic stock criteria in 2009 made the sharia stock criteria more stringent. This is related to the addition of business activity criteria that are contrary to Islamic principles, namely:

“Conducting transactions containing elements of bribery (*risywah*)”.

The addition of this qualitative criterion has caused several issuers to be excluded from Islamic stock because it has been proven in court to conduct transactions bribery. Interest compared

to total equity of no more than 82% has caused controversy. On the one hand it is very good to limit the shares that become stocks Islamic do not have-based debt large interest that is prohibited in Islamic law. But on the other hand there are many issuers who were previously incorporated whose in the Jakarta Islamic Index (JII), stock must be exited and not included in the category of Islamic stocks. Though stocks that are eliminated constitutes tocks *blue chips* ²⁶. This makes the number of Islamic stock limited, so that it becomes problem separately for the equity mutual fund industry, especially Islamic equity mutual fund with a minimum of 80% investment in Islamic stock. Research shows that there is a decrease in the performance of PNM Islamic Equity Funds after regulation No.II.K.1 of 2007 compared to before the regulation.²⁷

Lastly, the renewal of Regulation II.K.1 concerning Criteria and Issuance of Islamic Securities List in 2012, through Kep-208 / BL / 2012. In this update the qualitative criteria did not change. However, the quantitative criteria have experienced changes contained in section (b), which are: meeting ratios financials follows:

- (1) total interest-based debt compared to total assets of not more than 45% (forty-five percent); or
- (2) total interest income and other non-halal income compared to total business income (revenue) and other income not more than 10% (ten percent);

The change in quantitative criteria in terms of total-based debt ratio interest, which previously compared to total equity of no more than 82% was replaced by total assets of no more than 45%. As for total interest income and other non-halal income, there was no constant change compared operating to total income and other income not more than 10%.

Bapepam and LK's reference or basis changes the-based debt ratio criteria interest compared to total equity (capital) of no more than 82% to

²⁶ Suparjo, “Dampak Regulasi No.II.K.1 Tahun 2007 terhadap Kinerja Investasi Reksa Dana PNM Ekuitas Syariah Di PT Permodalan Nasional Madani” (UIN Sunan Kalijaga, 2008).

²⁷ Suparjo, “Dampak Regulasi No.II.K.1..., (UIN Sunan Kalijaga, 2008).

ratio interest-based debt compared to total assets of no more than 45% DSN MUI letter Number: B-370 / DSN -MUI / X / 201, Subject : Explanation of MUI DSN on the use of Total Assets as a substitute for Total Equity in the Islamic Stock Financial Ratio Criteria, which reads:

1. DSN-MUI Fatwa No.20 / DSN-MUI / IV /2001 concerning Investment Implementation Guidelines for Islamic Mutual Funds, article 10 mentions the word “capital” which is then interpreted together with DSN-MUI and Bapepam LK as equity. This interpretation can be reviewed or reinterpreted by referring to the afore mentioned fatwa and fatwa No.40 / DSN-MUI / X / 2003 concerning the Capital Market and General Guidelines for Application of Islamic Principles in the Capital Market
2. The use of total interest and non-revenue Other halal compared to the total operating income and other income not more than 10% is an agreement in the initial discussion of the establishment of the Islamic Securities List (DES) between DSN-MUI and Bapepam LK which obtained endorsement or approval in the form of a letter from DSN-MUI.

Based on the above matters, DSN-MUI issued the following explanation:

1. Reinterpretation of the concept of capital related to the ratio of usury debt to capital which has been interpreted with a total equity of a maximum of 82% or 45: 55 can be adjusted to the ratio of usury debt to assets a maximum of 45% or 45: 100. DSN-MUI still uses the maximum limit of usury debt as in the DSN-MUI fatwa No.20 / DSN-MUI / IV / 2001 which is 45%
2. Total interest income and other non-halal income compared to other total income of no more than 10% will still be used together with the ratio of usury debt to total assets as referred to in number 1.

The DSN MUI argument in reinterpreting the change in criteria from the ratio of interest-based debt to total capital up to 82% to the ratio of interest-based debt to total assets of maximum 45% is the same equation. If the composition of capital compared to interest-based debt is 45%; 55%, then the criteria for the ratio of interest-based debt to

capital is 45/55 is equal to 82% and if the criteria for the ratio of interest-based debt to assets is 45/100 is equal to 45%²⁸. Changes to this criterion cause a respite in the screening of quantitative criteria for Islamic stocks in Indonesia²⁹. With this renewal where the comparison factor is total assets, then issuers that have negative capital (negative equity) still have the opportunity to enter Islamic stocks, because even though the capital is negative, the assets must be positive.³⁰

This easing can be seen in the of Islamic Securities List (DES) after the issuance of the Decree of the Chairman of Bapepam and LK No.208 / BL / 2012 as stipulated in the Decree of the Chairman of Bapepam and LK Kep-282 / BL / 2012 consisting of 269 Issuers listed on the Indonesia Stock Exchange (IDX). Whereas the latest Islamic Securities List that refers to the Decision of the Chairman of Bapepam and LK No.180 / BL / 2009 is the Decree of the Chairman of Bapepam LK No-619 / BL / 2011 only consisting of 235 Issuers listed on the Indonesia Stock Exchange (IDX). This can be seen by the addition of 34 issuers to the Islamic Securities List (DES) as many as 34 Issuers. The 34 issuers entering into Islamic stocks include top company such as PT Adhi Karya (Persero),Tbk, PT XL Axiata, Tbk, PT Indosat, Tbk, PT Jasa Marga (Persero), Tbk, and PT Pembangunan Perumahan (Persero), Tbk. This certainly makes the number of Islamic stock more and is expected to support the development of the Islamic Capital Market in the future. The importance of this screening process was raised by the researchers. Seif El-din I Taj, although not directly arguing that it is important to do the screening and said the forbidden of stock, but based on his research proves that in fact there are still elements of *gharâr* and lack of knowledge in Islamic stock transactions, this shows that the importance of screening. Therefore, according to him there must be regulations and rules that can minimize these elements.³¹

²⁸ Hidayat, “Kriteria Saham Syariah.”

²⁹ Yoyok Prasetyo, “Rasio Keuangan Sebagai Kriteria Saham Syariah,” *Jurnal EKUBIS* 1, No.2 (February 2017):, p. 8.

³⁰ Yoyok Prasetyo, “Analisis Terhadap Kriteria Rasio Keuangan Saham Syariah Dalam Peraturan Bapepam LK II.K.1” (Pasca Sarjana Universitas Islam Sunan Gunung Djati, 2016).

³¹ Seif El-Din I Taj El-D, “Towards an Islamic Model of Stock

Basically, the concept of the stock market is in accordance with the Islamic principles, it's just that not all business carried out by issuers is fully in accordance with Islamic principles. Therefore, it is important to conduct screening of issuers who violate the rules of Islamic law.³² Likewise Gholamreza said that every capital market country has a very important role to drive the economy. Therefore, the capital market especially stocks must be monitored properly, where screening methodology is one of the important elements carried out on the issuer.³³

DSN MUI DSN fatwa is used as a source of Bapepam and LK II.K.1 Regulations and Issuance of Islamic Securities List is one form of ulama ijihad results at this time. The ijihad method used in determining the criteria for Islamic stock is *maslahah mursalah*³⁴. This method is a way to find a law of something that does not have provisions both in the Qur'an and in the books of hadith, based on consideration of the benefit of society or the public interest.³⁵

Maslahah mursalah is a benefit that has no basis for argument, but also has no cancellation. If there is an event where there is no Islamic principles provision and there is no *illat* out of the Islamic principles that determines the legal clarity of the event, then something that is in accordance with Islamic law, namely a provision based on maintenance of adherence or to declare a benefit, then the event is named *maslahah mursalah*³⁶. In addition to those that are based on the Islamic law in general, *maslahah* must also pay attention to the customs and relationships between one human being and another. The field is the main choice for achieving benefit. Thus, the aspect of worship is not included in the field.³⁷

Ibrahim Hosen made *maslahah mursalah* as legal arguments, according to which there are many new problems which are not mentioned by the Quran or Sunnah and other arguments, the law can be determined, in the context of re-actualizing Islamic law. Ibrahim considers that this approach needs to be promoted in legal cases encountered because the people's benefit is not the same and there are many variations and variations, always developing and changing according to the progress of the times³⁸. In dealing with *maslahah*, Ibrahim is more moderate. He is not rigid like the Hanafiyah and Shafi'i scholars who consider *maslahah* not as a legal proposition, but he is not also a liberal Ath-Thufi who still prioritizes the benefit if it is contrary to the texts.³⁹

However, there is another opinion, namely Taqiyuddin al-Nabhani revealed that stock transactions are considered null and void, because there are only one-sided transactions from investors who include their capital by buying stock in the capital market without any negotiations or negotiations with the company.⁴⁰ This was confirmed by Yusuf al-Sabatin who said that in the matter of stock transactions it was not appropriate to use *maslahah mursalah*. Moreover, according to him that *maslahah mursalah* is a source of frail law, because its blasphemy is not based on the proof of qat'i⁴¹

Conclusion

Based on the discussion above, it could be concluded that the screening process of Islamic stock was based on the criteria set out in Bapepam LK II.K.1 Regulation concerning Criteria and Issuance of Islamic Securities. It was firstly published in 2007 consisting of qualitative and quantitative criteria. Then there was a renewal of the Islamic stock criteria in 2009, where the qualitative criteria were added up so that the screening process was tighter. The latest update

Market," J.KAU: Islamic Econ 14 (2002).

³² Zamir Iqbal, *An Introduction to Islamic Finance: Theory and Practise* (Singapore: Jhon Willey & Son (Asia) Pte.Ltd, 2007).

³³ Gholamreza Zandi, "Stock Market Screening: An Analogical Study on Conventional and Shariah-Compliant Stock Market," *Asian Sosial Science* 10.No 22 (2014).

³⁴ Prasetyo, "Analisis Terhadap Kriteria Rasio Keuangan Saham Syariah Dalam Peraturan Bapepam LK II.K.1."

³⁵ Muhammad Daud Ali, *Hukum Islam* (Jakarta: Raja Grafindo, 2015).

³⁶ Rahmat Syafe'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2010).

³⁷ Rahmat Syafe'i, *Ilmu ...*, (Bandung: Pustaka Setia, 2010).

³⁸ Juhaya S Praja, *Teori Hukum Dan Aplikasinya* (Bandung: Pustaka Setia, 2015).

³⁹ Juhaya S Praja, *Teori Hukum...*, Bandung: Pustaka Setia, 2015).

⁴⁰ Taqiudin al-Nabhani, *Al Nizam Al-Iqtishadi Fi al-Islam* (Beirut: Dar el Ummah, 2004).

⁴¹ Yusuf al-sabatin, *Al Buyu' al-Qadimah Wa Al_Mu'asirah Wa Al_Burshat Al_mahalliyah Wa al-Duwalliyyah* (Beirut: Dar el-Bayariq, 2002).

was in 2012, where the renewal took place on its quantitative criteria, which resulted in looseness in the screening process. The issuance and renewal was carried out by Bapepam LK sourced from the fatwa and approval letter of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI). The fatwa stipulated by DSN MUI is the result of *ijtihad* in order to determine the criteria for Islamic stock in Indonesia.

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