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The Position of Stocks as a Place for Speculation in the Ulama's Perspective

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ABSTRACT

Share transactions in the sharia capital market must comply with sharia principles. The aim of this research is to analyze the position of stocks that are used as an arena for speculation in the views of scholars, both classical scholars and contemporary scholars. This research is library research with a descriptive analysis method using a normative juridical approach. The research data analysis was carried out through three mechanisms, namely data reduction, data presentation and drawing conclusions. The results of the research show that Based on the discussion above, it shows that in the view of the ulama it has been explained that speculative activities, Riba, Gharar and Maysir (gambling) have been prohibited by Islamic law which was issued as a regulation. One of them is setting a minimum holding period for shares. With these restrictions, shares cannot be traded at any time, so there is little incentive to profit from price changes alone. However, finding the right retention period can be difficult. These restrictions can limit speculation, but also reduce the liquidity of capital market investments. Therefore, it is very possible that a rational investor needs quick liquidity but cannot sell shares because the required minimum holding period has not been met.

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INTRODUCTION

The stock market is very important for a country's economic growth because it provides an opportunity for companies to raise capital and increase trading activities. Shares are the main means for companies to attract investors and capital owners into their business. Once a company is listed on the stock exchange, the chances of raising more cash will greatly increase. The stock market provides investment opportunities for the general public to buy or sell securities for profit. As a result, the stock market provides a place to invest with confidence

in company performance, as well as the opportunity to sell shares and liquidate real estate. The country's modern economic development depends on the important role played by stock investments **(Syibly, 2017).**

Stock trading is included in muamalah activities, in muamalah activities, known as Falah, the process influences the quality and legitimacy of transactions, which in turn influences the achievement of the ultimate goal of the activity. Falah symbolizes balanced success, including financial and spiritual prosperity, which benefits both the individual and society at large. When trading shares on the market, it is important to stay away from deviant and prohibited aspects such as *Tadlis*, *Gharar*, *Maysir*, *ikhtikar* and *bay najasy* **(Gusniarti, 2015).**

Trading on the stock market and other financial markets naturally involves speculation and uncertainty *(gharar)*, which is contrary to the rules of Islamic Sharia **(Firdaus, 2019)**. This is in line with the Hadith said by the Prophet Muhammad S.A.W. to the Muslims from Abu Hurairah. Buying and selling hashah and all other transactions that involve doubt are prohibited because they contain elements of gharar (HR. Muslim).

It is important for market players (investors) to have a thorough understanding of investment risks and share price fluctuations in the capital market in order to be able to invest in sharia shares **(Maulidizen, 2016)**. To avoid speculative and trading behavior with unknown variables and the potential dangers of gharar (such as gambling) speculation, it is very important for the maysir to have this knowledge **(Putri, 2022)**. Determining what constitutes acceptable practice for shares in finance, the due diligence procedures that apply to shares, examples of speculation that violate the guiding principles of sharia shares, and how to trade shares in accordance with sharia.

Departing from this problem, the author will discuss the position of shares as a place for speculation according to the views of scholars. The aim of this research is to analyze the position of shares which are used as an arena for speculation according to the views of ulama. Apart from that, this research can be used as consideration for investors in stock transactions that pay attention to sharia principles and the benefit of all parties to the transaction.

RESEARCH METHOD

The method used in this research is a descriptive literature method, with a normative juridical approach. Research data was taken from books, scriptures and journals **(Sugiyono, 2018)** which relates to the discussion of the position of shares as an arena for speculation from the Ulama's perspective. This research includes qualitative research with data analysis techniques carried out through three mechanisms **(Suryana, 2010)** namely first, data reduction or selecting or focusing the data. Second, data presentation or explaining or pouring out the data that has been successfully selected into a narrative form that is easy to read, analyze and interpret. Third, conclusions or drawing a common thread that is the result of this research.

RESULT AND DISCUSSION

Stock Transaction Concept

Shares indicate ownership in a business, especially one that is publicly traded. In the hope of making a profit or receiving a return on their investment, investors buy shares or put money in shares. Dividends and capital gains are the two main types of returns that investors can anticipate **(Indahwati, 2020)**. Shares are bought and sold in the secondary market on the stock exchange and through a public offering period on the main market. The dynamics of demand and supply, as well as the companies issuing shares (issuers) are the main factors that

influence the value of shares in the secondary market. Shares are traded among investors in this market. Keep in mind that there is a difference between share prices in these two markets, and often share prices in the secondary market are greater than share prices in the primary market. Therefore, trading shares in the secondary market involves more risks and speculative elements, including part of gambling which is prohibited in Islam **(Choirunnisak, 2019)**.

Compared to other investment options, shares are one of the financial sectors that generate high yield profits in a relatively short time. Shares are very liquid because they are available on various exchanges. However, investing in stocks also carries significant risks. Significant profits can be made, but losses can also occur if the investor's analysis is wrong. Stock prices can fluctuate greatly depending on whether the stock market is trending up or down **(Gunawan & Wirawati, 2013)**. An investor's personal analysis and profile are important factors in determining whether a company's shares are suitable for investment.

Trading shares without using technical analysis is the same as playing the lottery or My Seal with big risks. Gambling and speculative activities are usually associated with *maysir*, or gambling. Gambling is seen as an unclear transaction, because the parties involved do not state certain terms, such as the amount to be received or contributed, when signing the contract. Rather, this amount depends on unforeseen circumstances. If someone wins, the exact amount of one's winnings will be announced, and if someone loses, the exact amount of one's losses will be announced **(Ulum, 2020)**.

Shares give shareholders access to a portion of a company's earnings and serve as proof of ownership. Sharia recognizes this concept of profit sharing as a musyarakah or syirkah activity, and this is consistent with its principles **(Maulidizen, 2024)**. Therefore, the idea of Islamic shares is consistent with Sharia rules. The distinction between Sharia-compliant shares and shares in conventional companies cannot be made for all shares that have been issued by public companies.

Although there are some similarities between speculation and investing, the real difference between the two lies in the motivation behind them. Investors buy shares with the aim of investing directly in a long-term business, while speculators buy shares with the aim of making short-term profits by reselling them. Business requires talent and strategic preparation, but speculation is like gambling. Speculative activities involve exploiting uncertainty to gain short-term profits, often resulting in unearned income without making a useful or constructive contribution to society **(Maulidizen, 2019)**. Speculators can make economically, socially, or morally unfair decisions that have a negative impact on society. Financial crises involve speculation, and steps are taken to anticipate and mitigate their impact. This is a way to get even more profits **(Firdaus, 2019)**.

Shares issued by companies operating in Indonesia in accordance with Sharia law can be categorized as Sharia shares if they meet certain requirements. Sharia shares are specifically prohibited from engaging in the following activities: gambling (speculation), transactions that do not involve the delivery of goods or services, and carrying out transactions with false offers and demands. exposure to banks on interest rates. interest rate based financial institutions. Producing, distributing, trading, and/or offering haram (prohibited) goods or services; Being involved in transactions that contain elements of bribery; is an activity of Gharar and Maisir (National Sharia Council Fatwa No. IX: 40/DSN-MUI/X/2003). Certain financial transactions in Islamic capital markets are contrary to Sharia law. Tadlis is one of them, namely hiding facts (Ardiansyah et al., 2017). Taghrir, a scheme to deceive people with false promises. Ikhtikar, making a purchase with the intention of reselling it for a profit. Gishsh, hiding

defects in merchandise by merchants. The contract between eloquent Gahbun and two unequal commodities **(Maulidizen et al., 2022)**.

Scholars differ regarding whether speculative activities fall into the category of *maysir* (gambling). According to Ibn Taimiyah, the tadlis referred to is *Gharar* (ignorance) *maysir* (gambling), and speculation is prohibited in Islam because it encourages enmity and enmity and involves the illegal consumption of wealth which is a form of oppression. Both the Koran and the Hadith of the Prophet (SAW) explicitly prohibit gambling, so it is important to determine whether stock market speculation is comparable to gambling. The act of making informed predictions regarding asset prices based on historical and current data and knowledge is known as speculation. Ibn Taymiyah argued that sales involving gharar involving the consumption of other people's property amounted to gambling, which was categorically prohibited. Therefore, to qualify as gambling, the transaction must involve the wrongful appropriation of another person's property. Gambling differs from speculative risk taking in transactions involving resources, expertise, and labor. In trading, buyers conduct business with the goal of making money through honest business practices rather than illegally stealing other people's property **(Ardiansyah et al., 2017).**

Buying and Selling Shares from the View of Islamic Law

Shares are traded regularly on the secondary market, especially on the Indonesia Stock Exchange (BEI). This applies to trading in sharia shares, namely shares of companies listed on the Indonesian Sharia Stock Index (ISSI) and the Jakarta Islamic Index (JII). Companies that meet the requirements for selling Sharia-compliant shares can be sold. There are two types of shares available in this market, namely ordinary shares and preferred shares.

In all types of transactions, including purchases and sales, it is important to follow the rules of Islamic Sharia as stipulated in the Koran and Hadith. Other supporting sources such as Ijma' Ulama, Opinions of Ulama, and the Book of Fiqh can also be found. The following include **(Hartati, 2021)**:

1. Q.S Al-Baqarah: 275.

   ...وَأَحَلَّ ٱللَّهُ ٱلْبَيْعَ وَحَرَّمَ ٱلرِّبَوٰا۟...

   "...Allah has permitted buying and selling and prohibited usury…" (Q.S Al-Baqarah: 275) According to the Tafsir Fath al-Qodir, the meaning of this verse is that Allah has permitted buying and selling and forbade one of its forms, namely buying and selling which contains usury. **(Al-Syaukani, 2010)**.
2. Hadis:

   ...ولاَرِب ما لَم يضمن، ولاَ بيع ما لَيس عِندك (رواه الخمسة عن عمرو بن شعيب عن أبيه عن جده، وصححه الترمذي وابن خزيمة والحاكم)

   "… it is not halal to profit from something that does not bear the risk, and it is not yours (HR. Al-Khomsah from Amr bin Syuaib from his father from his grandfather, validated by Al-Tirmidhi, Ibn Huzaemah and Hakim) (DSN-MUI, 2003).
3. Ulama have different opinions about the legality of trading shares and taking ownership of company partners' shares.
   First, Ibnu Qudamah argues in Al Mughni (5/173) that "Purchasing partner shares is permissible because this includes purchasing other people's property" **(Al-Maqdisi, 1997)**.

Second, Al-Fiqh al-Islami wa Adillatuhu, March 3 1841, by Wahbah Al-Zuhaili also emphasized that businesses and partnerships with shares are acceptable. This is because shareholders automatically become owners of the company based on the number of shares they own. As long as the business is well established and there are no material uncertainties or ambiguities, the sale and trading of shares is considered legal. Shares are considered part of capital, allowing their owners to profit from production and commercial activities without having to worry about their legality **(Al-Zuhaili, 2017)**. These reasons strongly support the idea that buying and selling shares in the Sharia capital market is legal (halal) as long as all elements of the transaction comply with Sharia law.

The Position of Stocks as a Place for Speculation in the View of Ulama

Speculation is the main problem in trading in the Islamic capital market. Speculators do not consider the fundamental value of the underlying asset or security. Whether trading gold, cash, or shares, speculators are more concerned with frequent and quick profits than the long-term financial gain of being honest investors. Speculation and arbitrage are closely related. Speculators who seek risk-free profits without investing are called arbitrage traders. They look for opportunities where the same asset is offered to the market on different terms.

However, it may be difficult to take advantage of such opportunities as price differences are quickly eliminated from the system. Speculation is usually viewed negatively among academics and Islamic scholars because of its association with gambling and high risk taking. Speculative profits are often made at the expense of other investors, increasing volatility and disrupting the stock market's regular cycles. Muslim scholars emphasize that speculation has more negative than positive consequences, such as increased market liquidity. Committing an abusive or prohibited act, regardless of the circumstances, is considered wrong **(Putri, 2022)**. As below is the Ulama's view of stock trading speculation: First, according to Sheikh Yusuf Al-Qardhawi: in stock trading there is often speculation and price manipulation which is not in accordance with Islamic law **(Al-Qardhawi, 2006)**. Second, according to Sheikh Muhammad Taqi Usmani: stock trading often contains speculation and usury, especially in conventional companies that are currently operating. Third, according to Sheikh Salman Al-Awdah: in stock trading there is often speculation and gambling in these transactions.

Even the most reputable analysts have difficulty predicting stock prices due to the speculative side and speculators that exist in the busy stock market. In the secondary market on the trading floor, it is important to differentiate between stock trading and gambling. Secondary market speculation is based on real facts and data, such as information about companies selling shares and fundamental and technical analysis, in contrast to gambling which is based on speculation without factual data.

An investor's ability to make wise decisions when selling a position is another difference between gambling and speculation in the secondary market. Stock trading allows investors to make strategic decisions about where to sell, whereas gambling lacks clear information and loses value when the bet loses. Even if a company files for bankruptcy, the company does not lose the entire value of its shares because it can still make a profit from the sale of its assets **(Erniawati, 2017)**.

The components of price manipulation can be divided into the following two: First, Netting. By buying shares at the beginning of the trading day and selling them immediately, you can generate income without investing. Second, Short selling. Short selling can generate profits by selling shares at a certain price and buying them again when the price falls. Third,

Netting and short selling, which are secondary market techniques that attempt to manipulate stock prices, are classified as ihtikar and are strictly prohibited under Sharia law. This prohibition seems prudent, as such actions can have an adverse impact on market stability and harm traders. The rise of speculative activity in the secondary market also contributes to uncertainty and volatility in share prices, because share prices can fluctuate at any time. As a result, both investors and entrepreneurs suffer from these tactics.

Islam firmly condemns speculative elements that can harm society in various transactions. These speculative aspects are called *jahala* (uncertainty) in the context of Islamic law. Jahara is clearly defined as a component of a commodity that is not defined in terms of quality, quantity and price. Islam prohibits transactions involving *Jahalah*. This is because it can damage economic entities and cause disputes between them. For example, trading period, trading price, trading instrument, etc. maybe it's not clear.

Speculative activities, *Riba, Gharar* and *Maysir* (gambling) must be prohibited by Sharia law which is issued as a regulation. One of them is setting a minimum holding period for shares. Metwally, an expert in Islamic economics and economic modeling, said to hold shares for at least one week. He also recommends basing the selling price on the company's market value. **Khan (2017)** also emphasized the importance of ensuring that concrete proof of ownership of the shares being transferred is exchanged during the trading process to minimize stock market speculation. With these restrictions, shares cannot be traded at any time, so there is little incentive to profit from price changes alone. However, finding the right retention period can be difficult. These restrictions can limit speculation, but also reduce the liquidity of capital market investments. Therefore, it is very possible that a rational investor needs quick liquidity but cannot sell shares because the required minimum holding period has not been met.

CONCLUSION

Based on the discussion above, it shows that in the view of the ulama it has been explained that speculative activities, *Riba, Gharar* and *Maysir* (gambling) are prohibited by Islamic law which is issued as a regulation. One of them is setting a minimum holding period for shares. With these restrictions, shares cannot be traded at any time, so there is little incentive to profit from price changes alone. However, finding the right retention period can be difficult. These restrictions can limit speculation, but also reduce the liquidity of capital market investments. Therefore, it is very possible that a rational investor needs quick liquidity but cannot sell shares because the required minimum holding period has not been met.

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