

## Optimalisation of the Role of Basyarnas MUI in Dispute Resolution Sharia Capital Market

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### Abstract

In practice, investment activities within the Sharia Capital Market inevitably give rise to disputes. The National Sharia Arbitration Board of the Indonesian Ulema Council (BASYARNAS MUI) serves as a non-litigation arbitration institution authorized to resolve disputes in the field of sharia economics. This study aims to: (1) examine the legal foundations of the Sharia Capital Market; and (2) analyze the optimization of BASYARNAS MUI's role in resolving disputes arising in the Sharia Capital Market. The method used in this research is library research. The findings indicate that: (1) Sharia Capital Market activities have not yet been specifically regulated through statutory law. Instead, their legal foundation is primarily based on fatwas issued by the Indonesian Ulema Council. Through the National Sharia Council (DSN MUI), the MUI has promulgated various fatwas governing the implementation of Sharia Capital Market practices in Indonesia. In addition to DSN MUI fatwas, Sharia Capital Market operations also refer to Financial Services Authority (OJK) Regulation Number 15/POJK.04/2015 concerning the Application of Sharia Principles in the Capital Market. (2) The optimization of BASYARNAS MUI's role in resolving Sharia Capital Market disputes can be achieved through several measures, including: (a) enhancing the competence and expertise of sharia arbitrators, particularly in adjudicating disputes related to the Sharia Capital Market; and (b) intensifying the socialization of BASYARNAS MUI's authority among Sharia Capital Market stakeholders, encouraging them to designate BASYARNAS MUI as the chosen dispute resolution forum through explicit choice-of-law clauses in Sharia Capital Market investment contracts.

**Keywords:** *Sharia Capital Market, BASYARNAS, Dispute Resolution*

### INTRODUCTION

Investment serves as a strategic tool for asset development, particularly for Indonesians who prioritize sharia-compliant economic practices. One prominent form of such investment is the Islamic Capital Market, which contributes significantly to national economic growth through sharia-based mechanisms and is expected to play an expanding role in Indonesia's development (Prasanti et al., 2023). It also supports the creation of an inclusive and sustainable Islamic financial system by providing a fair and transparent alternative to conventional finance, while advancing financial inclusion and socio-economic empowerment. Sharia financing practices implemented by Bank Syariah Indonesia (BSI) demonstrate not only commercial objectives but also spiritual and social commitments (Batubara et al., 2025).

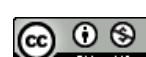
Conceptually, the Sharia Capital Market encompasses capital market activities conducted in accordance with Sharia principles, including public offerings, securities trading, and matters related to public companies and their securities (Apriyanti et al., 2025). In Indonesia, the issuance of sharia securities is regulated under OJK Regulation Number 15/POJK.04/2015, which recognizes sharia contracts such as ijarah, istishna', kafalah, mudharabah, musyarakah, and wakalah. Despite its growth, the Islamic Capital Market faces persistent challenges, including limited public awareness, the absence of specific statutory regulation, and inadequate product dissemination, which have restricted investor participation (Paramita et al., 2022).

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In the course of investment activities within the Islamic Capital Market, disputes among the parties involved are unavoidable due to differences in contract interpretation, compliance issues, and varying business interests. Consequently, the availability of effective dispute-resolution mechanisms is essential to ensure legal certainty, uphold fairness, and maintain adherence to Islamic legal principles in resolving disputes arising from sharia-based capital market transactions (Hidayaturohmah et al., 2023).

In this context, the National Sharia Arbitration Board of the Indonesian Ulema Council (BASYARNAS MUI) serves as a non-litigation arbitration institution specifically mandated to handle disputes in sharia economics. BASYARNAS MUI provides an alternative dispute resolution forum that prioritizes sharia compliance, confidentiality, efficiency, and the principle of amicable settlement, while delivering final and binding decisions. Its role is particularly significant in ensuring that dispute resolution processes not only resolve legal conflicts but also reflect the ethical, moral, and doctrinal values embedded in Islamic economic law.

Indonesian Muslims are highly anticipating the establishment of BASYARNAS MUI, particularly investors engaged in the Islamic Capital Market. Dispute resolution through arbitration, which emphasizes amicable settlement without resorting to prolonged litigation, is considered more appropriate for resolving Sharia-compliant capital market disputes. This approach aligns with investors' intentions to engage in investment activities guided by Sharia values and principles. Based on the foregoing, this study aims to:

1. Analyze the regulatory framework of the Sharia Capital Market within Indonesia's legal system; and
2. Examine strategies for optimizing the role of BASYARNAS MUI in resolving disputes arising in the Sharia Capital Market.

## **LITERATURE REVIEW**

### **Sharia Capital Market**

The Sharia Capital Market may be understood as a segment of the capital market that operates in accordance with sharia principles, excluding practices prohibited under Islamic law, such as usury (riba), gambling (maysir), and excessive speculation (gharar) (Nursyamsiah, 2017).

### **Fatwa of the National Sharia Council**

Fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) function as normative guidelines and legal references for the government in implementing sharia-compliant economic activities. These fatwas possess binding force insofar as they are adopted and incorporated into statutory regulations. Substantively, DSN-MUI fatwas are grounded in primary Islamic legal sources, namely the Qur'an, the Sunnah of the Prophet Muhammad, ijma' (scholarly consensus), and qiyas (analogical reasoning).

### **BASYARNAS MUI**

The National Sharia Arbitration Board of the Indonesian Ulema Council (BASYARNAS-MUI) is an arbitration institution mandated to resolve disputes in the field of sharia economics through non-litigation mechanisms. The existence of BASYARNAS-MUI is highly welcomed by Indonesian Muslims, not only because of the growing awareness and aspiration to implement Islamic law comprehensively, but also because of the practical needs arising from the development of economic and financial activities among Muslim communities and the broader expansion of the sharia economic system.

## Optimization

Optimization is a systematic process aimed at identifying and implementing the most effective practices to achieve optimal outcomes by efficiently and fully utilizing available resources.

## RESEARCH METHOD

This research employs a normative juridical approach to identify and analyze the nature, values, doctrines, and legal meanings contained in data, facts, or documents related to the issues under examination. Normative legal research is a systematic, scientific method aimed at discovering legal truths through normative reasoning ([Ibrahim, 2006](#)).

Within normative legal research, the primary focus is on the examination of library-based materials or secondary data in the form of legal sources. These legal materials serve as the fundamental references and analytical foundations for the study. In this research, legal materials are classified into three categories: primary, secondary, and tertiary. Primary legal materials are authoritative sources that possess binding legal force ([Marzuki, 2008](#)), including statutory regulations, official legislative records, doctrinal writings that inform legislative formation, and judicial decisions.

Furthermore, this study employs two analytical approaches: the statutory and the conceptual. The statutory approach is utilized to examine and critically assess existing laws and regulations, particularly those that remain deficient in incorporating sharia principles within the Islamic Capital Market framework and in providing adequate legal mechanisms for dispute resolution. Meanwhile, the conceptual approach is employed to analyze legal concepts and doctrines relevant to Sharia-based capital market practices and dispute settlement.

## FINDINGS AND DISCUSSION

### Regulation of the Sharia Capital Market

The implementation of Sharia principles in the Sharia Capital Market is fundamentally derived from the Qur'an, the primary source of Islamic law, and the Hadith of the Prophet Muhammad (peace be upon him). From these foundational sources, Islamic scholars developed interpretative legal reasoning known as fiqh. One of the principal domains within fiqh is fiqh muamalah, which governs legal relationships among individuals in economic and commercial activities. Accordingly, Sharia Capital Market operations are developed in accordance with the principles of fiqh muamalah. A fundamental maxim in fiqh muamalah establishes that all forms of economic transactions are permissible unless there is clear evidence prohibiting them. This principle constitutes the foundational norm guiding Sharia Capital Market activities in Indonesia.

The obligation of believers to adhere to divine law is affirmed in Surah Al-Baqarah verse 285, "The Prophet (Muhammad) believed in what was revealed to him (the Quran) from his Lord, so do those who believe. All believe in Allah, His angels, His books and His Messengers. (They said): "does not discriminate against any of His Messengers." Moreover, they said, "We hear, and we obey. Forgive us our Lord, and to You is our return."

At the level of positive law, Law Number 8 of 1995 concerning Capital Markets has not explicitly regulated the Sharia Capital Market. Consequently, the primary legal reference governing Sharia Capital Market activities in Indonesia is derived from fatwas issued by the Indonesian Ulema Council (MUI). Through its National Sharia Council (DSN-MUI), the MUI has promulgated a series of fatwas that form the normative framework for the implementation of Sharia Capital Market practices, namely Fatwa of the National Syari'ah Council Number: 80/DSN-MUI/III/2011 concerning Application of Sharia Principles in Equity-Type Securities Trading Mechanisms in the Stock Exchange Regular Market.

Prior to the establishment of the Financial Services Authority (Otoritas Jasa Keuangan/OJK) in 2011, the implementation of sharia principles in the capital market also referred to regulations issued by the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK), namely :

- a. Bapepam-LK Regulation Number IX.A.13 (Kep-181/BL/2009) concerning Sharia Securities Issuance;
- b. Bapepam-LK Regulation Number IX.A.14 (Kep-131/BL/2006) concerning Contracts Used in the Issuance of Sharia Securities in the Capital Market.

After the establishment of the OJK, sharia capital market regulation was strengthened through OJK Regulation Number 15/POJK.04/2015 on the Application of Sharia Principles in the Capital Market. This regulation implements DSN-MUI fatwas by providing operational guidelines for sharia compliance. It prohibits activities contrary to sharia principles, including gambling, interest-based financial services, transactions involving gharar and maisir, as well as the production and trading of goods or services that are unlawful, either inherently or due to external factors, or that are morally harmful. The regulation also forbids practices such as fictitious trading, transactions without delivery, trading in unowned assets, insider trading, interest-based margin trading, hoarding (ihtikar), bribery (risywah), and transactions involving fraud (tadlis), deception, manipulation (taghrir), or speculation. In addition, it regulates the obligations, reporting requirements, and administrative sanctions applicable to Sharia capital market participants.

About Sharia securities, DSN-MUI Fatwa Number 135/DSN-MUI/V/2020 outlines the criteria and types of Sharia-compliant securities that may be issued in the Indonesian Capital Market. These include sharia shares, sharia bonds (sukuk), sharia mutual funds, sharia asset-backed securities in the form of collective investment contracts (KIK EBA), and other securities that comply with sharia principles. Transactions involving sharia shares in both the primary and secondary markets are conducted using specific contractual arrangements, namely: (1) the syirkah musahamah contract, where sharia shares offered to the public originate from authorized shares; and (2) sale and purchase ('bai') contracts, where sharia shares are offered based on shares previously owned by shareholders.

Based on Rida Astuty's research, it can be seen that there are still Muslim investors who have not applied sharia principles in investing in the capital market; they even engage in short selling, a transaction clearly prohibited in the DSN-MUI Fatwa. ([Astuty, 2010](#))

Disputes in the Sharia Capital Market commonly arise from contractual ambiguities, lack of transparency, regulatory non-compliance, and issuer defaults, including sukuk defaults. Such disputes may involve unclear contractual terms, insufficient understanding of Sharia regulations, and the inclusion of prohibited elements.

Therefore, dispute resolution mechanisms in the Sharia Capital Market must be conducted in accordance with Sharia principles, namely through: (a) deliberation and consensus (musyawarah mufakat); and (b) formal dispute resolution institutions, including the National Sharia Arbitration Board (BASYARNAS) or the Religious Courts, should amicable settlement fail to be achieved. (DSN-MUI Fatwa Number 135/DSN-MUI/V/2020 concerning Shares, Part Six)

Although there are several dispute resolution mechanisms available, such as mediation, arbitration, and courts, their implementation and effectiveness in the context of the Islamic capital market need to be further evaluated ([Hidayaturohmah et al., 2023](#)).

## **Optimization Of Basyarnas-Mui In Resolving Sharia Capital Market**

### *Position of BASYARNAS-MUI in Resolving Sharia Capital Market Disputes*

The establishment of the National Sharia Arbitration Board (BASYARNAS) was prompted by the rapid growth of the sharia economic system, including Islamic banking and financial institutions

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in Indonesia, which increased the need for sharia-compliant dispute resolution. Its formation is closely connected to the development of Muslim socio-economic life and the earlier establishment of institutions such as Bank Muamalat Indonesia (BMI), Sharia Rural Banks (BPRS), and Takaful, which formed the foundation of sharia-based economic activities.

BASYARNAS-MUI is vested with two principal jurisdictions.

- a. It is authorized to adjudicate and resolve muamalah or civil disputes arising in sectors such as trade, finance, law, industry, and services that are conducted based on sharia principles. Decisions rendered by BASYARNAS are final and legally binding on the parties.
- b. BASYARNAS has the authority to issue Binding Legal Opinions (pendapat hukum mengikat) at the request of parties in the absence of a dispute, particularly in relation to muamalah or civil matters governed by contractual agreements. Such Binding Legal Opinions are final and not subject to appeal or other legal remedies. Requests for Binding Legal Opinions must be jointly submitted by the parties to the Chairperson of BASYARNAS in a written application signed by all requesting parties.

In practice, dispute resolution in the Islamic Capital Market in Indonesia is conducted not only by BASYARNAS-MUI but also by other arbitration institutions, such as the Indonesian National Arbitration Board (BANI) and the Indonesian Capital Market Arbitration Board (BAPMI). To ensure sharia compliance, these institutions require arbitrators, adjudicators, or mediators with expertise in capital market law and sharia capital market practices.

The legal position of BASYARNAS in resolving sharia economic disputes is grounded in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. Although the law does not explicitly refer to BASYARNAS, its status as an arbitration institution places it within the scope of the statute, as reflected in several provisions, including Articles 1 paragraph (3), 3, 5 paragraph (1), 7, 9, and 11.

Despite this legal foundation, BASYARNAS MUI has not yet played a significant role in resolving sharia economic disputes, as evidenced by the limited number of cases handled. This condition is influenced by low awareness among Sharia Capital Market participants, perceptions of limited arbitrator expertise in economic and capital market law, and relatively high dispute resolution costs. Accordingly, structured efforts are needed to optimize the institutional and functional role of BASYARNAS MUI as a final and binding forum for sharia economic dispute resolution.

#### *BASYARNAS-MUI Optimal Forms in Resolving Disputes Sharia Capital Market*

Sharia Capital Market transactions in Indonesia have experienced significant growth in recent years, increasing the potential for disputes between investors and capital market participants. This condition underscores the urgent need for dispute resolution mechanisms that are expeditious, efficient, and effective.

The imperative to resolve disputes through peaceful means is firmly emphasized in Islamic teachings, as reflected in several Qur'anic provisions, including Surah Al-Hujurat verse 9 and Surah An-Nisa verses 35 and 114. These verses underline the importance of reconciliation and amicable settlement as fundamental principles in resolving conflicts among believers.

Within this framework, the arbitration system governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution is adopted mutatis mutandis in the sharia dispute resolution mechanism administered by BASYARNAS. Although the fundamental principles of arbitration as prescribed by the statute are upheld, BASYARNAS incorporates particular adjustments to ensure that the entire dispute resolution process is conducted in full conformity with Sharia principles.

Sharia Capital Market transactions in Indonesia have experienced substantial growth in recent years, thereby increasing the likelihood of disputes arising between investors and capital market actors. This development necessitates prompt, efficient, and effective dispute-resolution mechanisms. Islamic teachings strongly emphasize the resolution of disputes through peaceful means, as reflected in the Qur'an, particularly in Surah Al-Hujurat verse 9 and Surah An-Nisa verses 35 and 114. In this regard, the arbitration framework regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is adopted mutatis mutandis within the sharia dispute resolution system administered by BASYARNAS, with specific adaptations to ensure compliance with Sharia principles.

The limited use of BASYARNAS in resolving Sharia Capital Market disputes is influenced by several factors, including the absence of specific regulatory provisions governing Islamic capital market arbitration, the low level of public awareness regarding sharia-based arbitration mechanisms, and the lack of arbitration clauses in standard Sharia Capital Market investment contracts.

Accordingly, efforts to optimize the role of BASYARNAS-MUI in resolving Sharia Capital Market disputes are essential and may be pursued through several measures: (1) strengthening the regulatory framework governing sharia arbitration in the capital market; (2) enhancing the dissemination and recognition of BASYARNAS's authority through its explicit inclusion in contractual clauses within deeds and investment agreements; and (3) improving the competence and professionalism of sharia arbitrators through targeted education and training programs.

By enhancing the expertise and skills of Sharia arbitrators, it is expected that arbitration decisions will demonstrate professionalism, uphold a sense of justice, and gain acceptance from the disputing parties, thereby minimizing the likelihood that BASYARNAS awards will be challenged or annulled before the Religious Courts. Additionally, optimization efforts should include broader public outreach and awareness initiatives regarding the role and authority of BASYARNAS. Stakeholders in the Sharia Capital Market are encouraged to designate BASYARNAS-MUI as the chosen forum for dispute resolution, with such choice explicitly stipulated in Sharia Capital Market investment agreements.

## **CONCLUSIONS**

### **Sharia Capital Market Regulation**

At present, Sharia Capital Market activities in Indonesia are not explicitly governed by statutory law. The primary legal foundation for implementing the Sharia Capital Market is the fatwas issued by the Indonesian Ulema Council (MUI). Through its National Sharia Council (DSN-MUI), the MUI has issued several fatwas that regulate and guide Sharia Capital Market practices in Indonesia. In addition to relying on DSN-MUI fatwas, the operation of the Sharia Capital Market also refers to Financial Services Authority (OJK) Regulation Number 15/POJK.04/2015 concerning the Application of Sharia Principles in the Capital Market.

### **Optimization of the Role of BASYARNAS in Resolving Sharia Capital Market Disputes**

Efforts to optimize BASYARNAS's role in resolving disputes arising from Sharia Capital Market activities may be undertaken through several strategic measures. First, it is necessary to enhance the competence and professional capacity of Sharia arbitrators who adjudicate Sharia Capital Market disputes. Arbitrators are required to possess a thorough understanding of sharia economic principles as applied within the Indonesian legal framework. Second, greater dissemination and socialization of the role and authority of BASYARNAS is essential. Parties to Sharia Capital Market transactions should be encouraged to designate BASYARNAS-MUI as the chosen forum for dispute resolution, with such designation explicitly stipulated in Sharia Capital

Market investment agreements.

## FURTHER RESEARCH

Further research will identify the challenges and obstacles faced by BASYARNAS in resolving Sharia Capital Market disputes, namely the existence of dualism of norms and limitations of Basyarnas' authority.

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