

Reconstruction of Sharia Stock Law in Indonesia: A Normative Analysis of *Musharakah Fiqh* on the Jakarta Islamic Index

Abstract

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Background. The development of the Islamic capital market in Indonesia has positioned Islamic stocks as a primary investment instrument, normatively constructed based on the *musharakah* contract. However, the practice of Islamic stocks, represented by the Jakarta Islamic Index (JII), still raises issues regarding their compliance with the substantive principles of *fiqh* (Islamic jurisprudence) of *musharakah*, particularly regarding partnership, risk sharing, and fairness.

Aim. This study aims to critically analyze the suitability of sharia shares in JII with the principles of *fiqh* *musharakah* and to formulate a conceptual reconstruction of sharia shares from the perspective of sharia economic law.

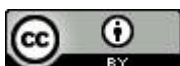
Methods. This study uses a normative legal approach with a library research method. The analysis was conducted through a juridical-normative approach to *muamalah* (Islamic jurisprudence) and a juridical-normative approach by examining fatwas from Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI), Islamic capital market regulations, the Islamic Securities List, and academic literature related to Islamic stocks and *musharakah*. The data were analyzed qualitatively and descriptively using a critical analysis pattern to compare the principles of *musharakah* jurisprudence and Islamic stock practices in the Indonesian capital market.

Results. Sharia-compliant stocks in the JII have met formal sharia compliance through regulatory screening mechanisms, but do not fully reflect the substantive principles of *fiqh* of *musharakah*. Partnership relations, real risk sharing, and the principle of fairness are still diminished due to the dominant capital gain orientation and the transactional nature of share ownership. This study offers a theoretical contribution in the form of a reconstruction of sharia-compliant stocks as partnership-based equity that emphasizes substantive sharia compliance, risk sharing, and a *maqasid al-syariah* orientation.

Keywords: *Fiqh* *musharakah*, Jakarta Islamic Index, Sharia compliance, Sharia shares

INTRODUCTION

The development of the Islamic capital market in Indonesia has shown significant growth in line with the growing awareness of the Moeslim community regarding the importance of investments aligned with Sharia principles. Sharia stocks have become a key instrument in the Islamic capital market, seen as bridging modern investment needs with the values of Islamic jurisprudence (*fiqh muamalah*). Normatively, share ownership, from an Islamic legal perspective, is often constructed as a form of *musharakah* contract, a capital cooperation that requires a fair distribution of profits and risks among



the parties. The principles of risk sharing, profit-loss sharing, and equality of partners are the main foundations of this contract.¹

In both classical and contemporary Islamic jurisprudence (*fiqh*) literature, *musharakah* is understood as a participatory contract that places the parties on equal footing, both in terms of capital contribution, business management, and risk sharing. Usanti and Shomad emphasize that the essence of *musharakah* lies in the shared ownership of funds, work, responsibility, and the proportional sharing of profits and losses. This principle was later adopted in the development of modern Islamic financial instruments, including Islamic shares, which are conceptually positioned as representing ownership of halal assets and business activities. However, various recent studies indicate that the application of *musharakah* contracts in modern business practices, particularly in joint-stock companies, does not always align with the substantive principles of *musharakah fiqh*. Basrowi and Utami, in their study of the *al-musahamah* mechanism in public companies, concluded that the practice of share ownership tends to obscure the meaning of partnership that is at the heart of *musharakah*. Shareholders generally act only as passive investors with no real involvement in business management or operational risk sharing, thus transforming the partnership relationship into a purely financial one.² This finding is in line with the study by Belabes and Kermiche, who assessed that modern stock companies often only fulfill formal sharia compliance, while the substance of *musharakah* values has not been fully realized.³

In Indonesia, studies on *musharakah* have focused more on the Islamic banking and financing sectors. Faisal's research shows that the implementation of *musharakah* contracts in Islamic banking is often limited by considerations of legal certainty and risk mitigation, resulting in suboptimal implementation of the risk-sharing principle.⁴ Rojikin and Muhit's study on *musharakah mutanaqishah* also revealed that the practice of this contract often experiences distortion from the objectives of maqashid al-syariah, especially when the orientation of profit is more dominant than the values of justice and welfare.⁵ This phenomenon indicates a tendency toward formalizing sharia contracts without a corresponding substantive internalization of Islamic jurisprudence values.

Meanwhile, research on sharia stocks and the Islamic capital market in Indonesia generally places sharia compliance within a regulatory framework, namely through compliance with the DES criteria and sharia indices such as the JII. Muflikha and Sya'roni's study, for example, asserts that sharia stocks are considered sharia-compliant as long as they meet certain business sector screening criteria and financial ratios established by sharia authorities.⁶ A similar approach is also seen in international studies that emphasize the importance of sharia screening of issuers' business activities and financial structures.⁷ This formal compliance approach, while important within the framework of capital market governance, leaves fundamental issues regarding the alignment of the contracts underlying Islamic shares with the principles of *fiqh* of *musharakah*. Several recent studies in the field of sharia compliance emphasize that sharia compliance cannot be measured solely from administrative and procedural perspectives but must also reflect the substantive values of Islamic law, such as fairness, transparency,

¹ Tuti Rastuti Usanti dan Abd. Shomad, *Transaksi Bank Syariah* (Jakarta: Kencana, 2022), 112–115; Adiwarman A. Karim, *Fiqh EkoNomi Keuangan Islam* (Jakarta: Darul Haq, 2004), 287–290.

² B. Basrowi dan P. Utami, "Al-Musahamah Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share," *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 141–147.

³ M. Belabes dan L. Kermiche, "The Islamic Joint Stock Company: A Fundamental Study of a Modern Investment Model," *Jurisprudence Journal* (2020): 88–92.

⁴ F. Faisal, "Sharia Banking Rights and Obligations in Implementing Musyarakah Agreements Based on Indonesian Law," *International Journal of Reglement & Society* 1, No. 2 (2020): 80–84.

⁵ I. Rojikin, "Musyarakah Mutanaqishah Contract Concept: Review of Product Refinancing and Take Over," *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal al-Syakhshiyah* 8, No. 2 (2022): 130–134; M. Muhit, "The Urgency of Understanding Maqashid Al-Syariah in the Musyarakah Mutanaqishah Contract," *Journal of International Islamic Business Studies* 4, No. 1 (2023): 7–10.

⁶ I. N. Muflikha dan S. Sya'roni, "The Investment of Sharia Shares in Indonesia Stock Exchange Representative in Sharia Law EcoNomic Perspective," *Journal of Islam and Sharia* 5, No. 2 (2023): 105–108.

⁷ S. Mohamad, M. Muhammad, dan F. Habib, "Criteria for Determining the Sharī'ah Compliance of Shares: A Fiqhī Analysis," *International Journal of Islamic Finance* 7, No. 1 (2015): 50–54; T. I. Tanin, A. U. F. Ahmad, dan A. Muneeza, "Shariah-Compliant Equities and Shariah Screening," *International Journal of Emerging Markets* (2023): 6–9.

and proportionality.⁸ In this context, Islamic stocks have the potential to experience what is known as symbolic compliance, meaning regulatory compliance but weak substantive *fiqh*. Based on this mapping, it can be concluded that the state of the art in research shows two main tendencies. First, the study of *fiqh musharakah* is developing rapidly in the context of Islamic banking and financing, but is relatively limited when applied to stock instruments in the capital market. Second, Islamic stock studies focus more on regulatory compliance and sharia screening, while *fiqh* analysis of the nature of contracts and partnership relationships between shareholders has yet to receive adequate attention.

Based on this situation, the research gap in this study lies in the absence of a comprehensive study that substantively examines the suitability of Islamic stocks, particularly those incorporated in the JII, with the principles of *fiqh musharakah*. Most previous research has not integrated *fiqh musharakah* analysis with Islamic capital market practices in Indonesia, resulting in a partial and fragmented relationship between *fiqh* theory and capital market reality. This study offers a novelty in the form of a critical analysis of Islamic stocks in the JII by using the *fiqh of musharakah* as the primary evaluative framework. Unlike previous studies that focused on administrative compliance, this study assesses Islamic stocks from the perspective of the substance of the contract, partnership relations, risk sharing, and equity among shareholders. With this approach, this study not only seeks to identify gaps between theory and practice but also offers a normative reconstruction to strengthen the foundation of Islamic stock *fiqh* in Indonesia. Based on this description, the main issue examined in this study is the extent to which Islamic stocks incorporated in the JII have complied with the principles of *fiqh of musharakah*, and how normative reconstruction is needed so that Islamic stock practices in the Indonesian capital market better reflect the values of partnership, equity, and risk sharing as desired by Islamic economic law.

METHOD

This study uses a normative legal approach with a library research approach, aiming to examine the conformity of Islamic stocks with the principles of *fiqh musharakah* in Islamic capital market practices in Indonesia. The normative approach was chosen because the research focuses on analyzing the concepts, norms, and principles of Islamic law that serve as the basis for assessing the JII's practices as a representative of Islamic stocks.⁹ The approaches used include the *fiqh muamalah* approach and the juridical-normative approach. The *fiqh muamalah* approach is used to examine the concept of *musharakah*, the principles of risk sharing, justice, and equality of the parties as developed in classical and contemporary *fiqh* literature.¹⁰ Meanwhile, the juridical-normative approach is used to analyze the regulations of the sharia capital market in Indonesia, particularly the fatwas of DSN-MUI, DES, and the provisions underlying the JII.¹¹ The legal materials used consist of primary legal materials in the form of DSN-MUI fatwas and sharia capital market regulations, secondary legal materials in the form of scientific journals and books related to *fiqh musharakah* and sharia shares, and tertiary legal materials in the form of dictionaries and encyclopedias of Islamic law. The data analysis technique is carried out qualitatively-descriptively with a critical analysis pattern, namely comparing the principles of *fiqh musharakah* with the characteristics of sharia shares in JII to identify normative conformities and inconsistencies, and formulate conceptual reconstructions that are more in line with sharia economic law.¹²

⁸ M. Anggraini, A. Novia, dan A. Wira, "Bibliometric Analysis and Systematic Literature Review of Sharia Compliance Research," *Jurnal Studi Islam* 19, No. 1 (2024): 40–43.

⁹ SoerjoNo Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2015), 13–15.

¹⁰ Taqiyuddin an-Nabhani, *Al-Syirkah fi al-Islam* (Beirut: Dar al-Ummah, 2002), 37–39; Tuti Rastuti Usanti dan Abd. Shomad, *Transaksi Bank Syariah* (Jakarta: Kencana, 2022), 112–115.

¹¹ Dewan Syariah Nasional–Majelis Ulama Indonesia, *Fatwa DSN-MUI Nomor 40/DSN-MUI/IX/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal; Otoritas Jasa Keuangan, Daftar Efek Syariah*.

¹² B. Basrowi dan P. Utami, "Al-Musahamah Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share," *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 145–147.

RESULT

This study found that, normatively, sharia-compliant stocks listed on the JII meet formal sharia compliance criteria as established by DSN-MUI and Otoritas Jasa Keuangan (OJK). This compliance is reflected in the screening process for business sectors and issuers' financial ratios, which eliminates *riba* (usury), *maisir* (gambling), *gharar* (unclear), and explicitly prohibited activities. Within a regulatory framework, this mechanism provides legal certainty and serves as a primary foundation for the development of the sharia capital market in Indonesia.¹³

However, the main findings of this study indicate that Sharia compliance remains administrative and procedural in nature, not fully reflecting the substantive principles of *musharakah*. In *muamalah* jurisprudence, *musharakah* requires an equal partnership between the parties, both in terms of capital contribution, involvement in business management, and risk and profit sharing.¹⁴ In the practice of Islamic shares at the JII, this relationship has been reduced in meaning, as shareholders generally act as passive investors, lacking direct involvement in company management and not bearing proportional business risks. This study also found a shift in the character of *musharakah*, toward a more dominant capital-gain-based investment pattern rather than profit-loss sharing. Fluctuations in stock prices in the secondary market cause shareholder profits to be determined more by market mechanisms than by actual business performance. This situation indicates that the principle of risk sharing in *musharakah* is not distributed equitably, as business risks are largely borne by the company, while shareholders can exit ownership without bearing the direct consequences of operational losses. This finding aligns with the study by Basrowi and Utami, who asserted that the *al-musahamah* mechanism in modern stock companies tends to obscure the essence of partnership in *musharakah* jurisprudence.¹⁵

Furthermore, this study found that the use of sharia financial ratios in DES, while important as a risk mitigation instrument, still poses conceptual problems in Islamic jurisprudence. Tolerance of forbidden elements within certain limits indicates a compromise between the ideals of Islamic jurisprudence and the practical needs of the capital market. From the perspective of Islamic jurisprudence (*fiqh musharakah*), such a compromise has the potential to undermine the principle of the sanctity of the contract (*shihhah al-'aqd*) if not balanced with strengthening the values of justice and transparency.¹⁶ Other findings indicate that the lack of long-term ties between shareholders and the company contradicts the nature of *musharakah* as a business cooperation contract. In JII practice, shares are treated as liquid instruments that can be bought and sold at any time, making the partnership relationship temporary and transactional. This situation reinforces the criticism that sharia-compliant shares are closer to financial investment instruments than to business partnership contracts as required by Islamic jurisprudence.¹⁷

Based on these findings, this study confirms that sharia-compliant stocks in the JII do not fully align with the substantive principles of *fiqh* of *musharakah*. Existing sharia compliance remains at the formal-regulatory level and does not fully reflect the values of justice, equality, and risk sharing that constitute the spirit of *musharakah*. Therefore, a normative reconstruction is needed that emphasizes not only administrative sharia compliance but also strengthens the partnership and risk-sharing dimensions to ensure that sharia-compliant stock practices align more closely with the objectives of sharia economic law.

¹³ Dewan Syariah Nasional–Majelis Ulama Indonesia, Fatwa DSN-MUI Nomor 40/DSN-MUI/IX/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal; Otoritas Jasa Keuangan, Daftar Efek Syariah.

¹⁴ Tuti Rastuti Usanti dan Abd. Shomad, *Transaksi Bank Syariah* (Jakarta: Kencana, 2022), 112–115.

¹⁵ B. Basrowi dan P. Utami, "Al-Musahamah Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share," *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 143–147.

¹⁶ S. Mohamad, M. Muhammad, dan F. Habib, "Criteria for Determining the Shaṛī'ah Compliance of Shares: A Fiqhī Analysis," *International Journal of Islamic Finance* (2015): 56–58.

¹⁷ M. Belabes dan L. Kermiche, "The Islamic Joint Stock Company: A Fundamental Study of a Modern Investment Model," *Jurisprudence Journal* (2020): 89–91.

Table 1. Research findings and analytical description

Aspects studied	Main findings	Analytical description (<i>Fiqh musharakah</i>)
Sharia compliance of JII Shares.	Sharia shares in JII have met formal sharia compliance criteria based on DSN-MUI fatwas and OJK regulations.	The compliance demonstrated is administrative in nature, through business sector screening mechanisms and financial ratios. However, this compliance does not fully represent substantive <i>fiqh</i> compliance, as it emphasizes procedural aspects over <i>musharakah</i> values such as partnership and fairness.
Characteristics of the <i>musharakah</i> contract.	The <i>musharakah</i> contract is used as the normative basis for sharia share ownership.	Conceptually, shares are positioned as a form of capital participation (<i>musharakah</i>), however in JII practice, the partnership relationship is not fully realized because shareholders are passive and not directly involved in business management.
The principle of risk sharing.	The principle of risk sharing does not operate proportionally between shareholders and the company.	In <i>musharakah</i> jurisprudence, risks and profits must be shared. Findings indicate that operational risks are primarily borne by the company, while shareholders can exit ownership without directly bearing the business risks.
Investment profit pattern.	Shareholder profits predominantly come from secondary market capital gains.	The dominance of capital gains has led to a speculative orientation in Islamic stocks, shifting away from the profit-loss sharing principle that underlies <i>musharakah</i> . This has led to a shift from partnership contracts to financial investment instruments.
Shareholder involvement.	Shareholders do not have long-term ties to the company.	In <i>musharakah</i> jurisprudence, the relationship between partners is continuous throughout the contract. The high liquidity of JII shares makes the partnership relationship temporary and transactional, thus weakening the value of the business's shared value.
Sharia financial ratio.	Tolerance towards non-halal elements within certain limits still applies.	The use of Islamic financial ratios represents a compromise between the ideals of Islamic jurisprudence and the practical needs of the capital market. From a <i>fiqh</i> perspective, this compromise is acceptable in emergency situations, but it has the potential to undermine the principle of the sanctity of contracts if not strictly enforced.
The principle of justice and equality.	The principle of justice has not been realized substantively.	Equality between the parties in <i>musharakah</i> requires a balance of rights and obligations. Findings indicate an imbalance in the position of the company and its shareholders, resulting in the value of justice remaining normative, not operational.
Sharia stock model.	JII sharia shares reflect more symbolic sharia compliance.	Sharia compliance is more evident in formal symbols and regulations than in the internalization of the values of <i>fiqh</i> of <i>musharakah</i> . This reinforces the need for conceptual reconstruction so that Islamic shares are not only legally compliant but also aligned with the objectives of Islamic economic law.

Based on the findings table above, it can be confirmed that Islamic shares in the JII have normatively met formal sharia compliance standards, but have not fully reflected the substantive principles of *musharakah fiqh*. This finding demonstrates a gap between the normative construction of *musharakah* contracts and the practice of Islamic shares in the capital market, particularly in the aspects of partnership, risk sharing, and fairness. Therefore, the findings of this study provide an important basis for the need for a normative reconstruction of Islamic shares so that they do not become trapped in

symbolic compliance, but are able to realize the values of justice and welfare as desired by Islamic economic law.

DISCUSSION

The findings of this study confirm that the JII has played a crucial role as a regulatory instrument in ensuring Sharia-compliant stocks in the Indonesian capital market. Through its business sector and financial ratio screening mechanism, the JII serves as an initial filter to weed out issuers that clearly violate Sharia principles. Within the context of modern capital market governance, this mechanism provides legal certainty and confidence to Moeslim investors that stock investment activities do not directly involve *riba* (usury), *maisir* (gambling), *gharar* (unclear), and *haram* (forbidden) business sectors.¹⁸ However, as demonstrated by the findings of this study, this compliance is still predominantly formal-administrative and does not fully reflect the substantive principles of *musharakah*.

In *muamalah* jurisprudence, *musharakah* is not simply a capital contribution, but rather a partnership contract that requires the parties to share risks and enjoy the business's profits proportionally. Usanti and Shomad emphasize that the essence of *musharakah* lies in the equality of the partners, both in terms of capital contribution, profit sharing, and loss coverage.¹⁹ When this principle is used as a benchmark, the practice of Islamic shares in the JII demonstrates a shift in meaning. Shareholders generally act as passive investors with no direct involvement in business management, transforming the partnership relationship into a transactional financial one.

The dominance of secondary market mechanisms in generating share profits reinforces the finding that the profit-loss sharing principle in *musharakah* is not operating optimally. Shareholder profits are determined more by stock price fluctuations (capital gains) than by the company's actual business performance. This situation creates an imbalance in risk distribution, as the company's operational risk is not always directly proportional to the investor's profits. Basrowi and Utami refer to this phenomenon as the reduction of the *musharakah* contract to *al-musahamah*, a capital participation that loses its substantive partnership character.²⁰ In this context, Islamic stocks tend to resemble more of a financial investment instrument than a business cooperation contract as required by Islamic jurisprudence.

This finding aligns with the study by Belabes and Kermiche, which highlights the conceptual problems of modern Islamic stock companies. Stock companies are acceptable under Islamic law as long as they adhere to the principles of fairness and risk sharing. However, in modern practice, these principles are often undermined by corporate structures that separate ownership and management.²¹ This separation means that shareholders are no longer positioned as business partners, but rather as holders of financial claims on the company's profits. In the context of the JII, this situation is further reinforced by the high liquidity of shares, which allows for rapid entry and exit of ownership without long-term commitments.

Another important aspect to discuss is the use of sharia financial ratios in the DES as a basis for assessing compliance. Tolerance for non-halal elements within certain limits demonstrates a pragmatic approach to the development of the sharia capital market. This approach can be understood as an effort to maintain the sustainability of the sharia capital market within a national economic system still dominated by conventional practices. However, from the perspective of *fiqh musharakah*, this kind of tolerance has the potential to create normative problems if not accompanied by strengthening the values of fairness and transparency. Mohamad et al. emphasized that sharia compliance of shares should not

¹⁸ Dewan Syariah Nasional–Majelis Ulama Indonesia, Fatwa DSN-MUI Nomor 40/DSN-MUI/IX/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal.

¹⁹ Tuti Rastuti Usanti dan Abd. Shomad, *Transaksi Bank Syariah* (Jakarta: Kencana, 2022), 112–115.

²⁰ B. Basrowi dan P. Utami, "Al-Musahamah Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share," *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 143–147.

²¹ M. Belabes dan L. Kermiche, "The Islamic Joint Stock Company: A Fundamental Study of a Modern Investment Model," *Jurisprudence Journal* (2020): 88–92.

only be measured by financial ratios, but also by the nature of the contractual relationship and the distribution of risk between parties.²²

This discussion also revealed a tendency toward symbolic sharia compliance in Islamic stock practices in Indonesia. Sharia compliance is more evident in symbols, labels, and regulatory procedures than in the internalization of Islamic jurisprudence (*fiqh*) values. A similar phenomenon was found in studies of sharia compliance in the Islamic banking and finance sector, which showed that formalization of contracts often displaces the substantive values of justice and welfare.²³ In the context of Islamic stocks, this symbolization of compliance has the potential to undermine the legitimacy of Islamic jurisprudence if not accompanied by a critical evaluation of current practices.

However, the findings of this study should not be interpreted as a rejection of Islamic stocks or the JII as a whole. Rather, should be understood as a basis for normative reconstruction. From a Sharia economic law perspective, reconstruction is necessary to ensure that modern instruments such as stocks can continue to develop without losing the spirit of Islamic jurisprudence. Hassan emphasized that Islamic law has the flexibility to respond to modern economic practices as long as its fundamental values are maintained.²⁴ Therefore, the issue of the compatibility of Islamic shares with the *fiqh* of *musharakah* is not final, but rather open to improvement by strengthening the principles of risk sharing, fairness, and substantive partnership.

In the Indonesian context, this reconstruction could be directed at strengthening the role of shareholders as business partners, not merely passive investors. Furthermore, the development of Islamic share instruments based on long-term ownership and linking them to real business performance could be an alternative to align stock practices with the principles of *musharakah*. The findings of this study also emphasize the importance of a paradigm shift from administrative Sharia compliance to substantive compliance oriented towards maqasid al-sharia.

Thus, this discussion demonstrates that the compatibility of Islamic shares in the JII with the principles of *fiqh* of *musharakah* remains partial. Formal compliance has been achieved, but substantive compliance still requires strengthening. These findings enrich the body of Islamic economic law studies by positioning Islamic shares as an object of critical *fiqh* evaluation, while also opening up space for the development of fairer, more participatory, and more welfare-oriented Islamic capital market instruments.

Theoretical contribution

Studies on Islamic stocks from an Islamic legal perspective have developed along two main streams. The first stream positions Islamic stocks as a modern investment instrument deemed legitimate as long as it meets Sharia screening criteria for business sectors and financial ratios. The second stream examines Islamic stocks as a form of capital participation normatively associated with *musharakah* or *syirkah* contracts. Although these two streams provide an important foundation for the development of Islamic capital markets, they tend to operate in parallel without adequate theoretical integration between the principles of *fiqh* of *musharakah* and the practice of Islamic stocks in the capital market. This study makes a theoretical contribution by bridging this gap through a conceptual reconstruction of Islamic stocks based on substantive *fiqh*.

The first theoretical contribution of this study lies in clarifying the conceptual relationship between Islamic stocks and *musharakah* contracts. In much of the literature, Islamic stocks are often simplistically positioned as a form of *musharakah* due to the elements of capital participation and profit sharing. However, the *fiqh* of *musharakah* does not only emphasize the aspect of capital participation, but also equal partnership relations, proportional risk sharing, and the involvement of the parties in

²² S. Mohamad, M. Muhammad, dan F. Habib, "Criteria for Determining the Shari'ah Compliance of Shares: A Fiqhī Analysis," *International Journal of Islamic Finance* (2015): 55–58.

²³ M. Angraini, A. Novia, dan A. Wira, "Bibliometric Analysis and Systematic Literature Review of Sharia Compliance Research," *Jurnal Studi Islam* (2024): 41–44.

²⁴ A. Hassan, "The Compatibility of the Shari'ah in Solving Modern Complex Commercial Practice," dalam *Islam: Past, Present and Future* (2004), 67–69.

business responsibilities.²⁵ This research confirms that equating sharia stocks with *musharakah* is only theoretically valid if these characteristics are met substantively, not merely formally. Thus, this research enriches the discourse on Islamic jurisprudence (*fiqh muamalah*) by positioning sharia stocks as *musharakah* that have undergone structural transformation due to the modern corporate system.

The second contribution is the development of the concept of substantive sharia compliance in the context of sharia stocks. To date, sharia compliance in the capital market has been largely understood within the framework of administrative compliance with the fatwas of the National Sharia Council (DSN-MUI) and OJK regulations, such as the DES and JII. This approach is important for legal certainty, but insufficient for assessing the conformity of sharia stocks with the values of Islamic jurisprudence (*fiqh muamalah*). This research proposes expanding the concept of sharia compliance from merely procedural compliance to substantive compliance, namely compliance that assesses partnership relations, risk distribution, and fairness as the core of the *musharakah* contract.²⁶ This concept enriches Islamic economic law theory by providing a more in-depth evaluative framework for modern financial instruments.

The third contribution of this research is a reinterpretation of the principle of risk sharing in Islamic stocks. In *musharakah* jurisprudence, risk and profit are inseparable. However, the practice of Islamic stocks in the capital market demonstrates the dominance of capital gain mechanisms, leading to a separation between business risk and investor profit. This research develops a theoretical argument that risk sharing in Islamic stocks should not be understood simply as the potential loss of share value but rather should be linked to shareholders' commitment to the actual performance of the business. Thus, this research contributes by expanding the meaning of risk sharing from merely financial risk to business risk, as required by *musharakah* jurisprudence.²⁷

The fourth contribution lies in a theoretical critique of the phenomenon of symbolic sharia compliance in Islamic stocks. This research shows that the "sharia" label on stocks incorporated in the JII has the potential to create the illusion of compliance if not accompanied by the internalization of *musharakah* values. In contemporary Islamic legal theory, this phenomenon demonstrates the tension between legal formalization and the substance of sharia values.²⁸ By addressing this issue, this research contributes to the development of a more critical theory of Islamic economic law regarding contract formalization practices, while simultaneously encouraging the ongoing evaluation of Islamic financial instruments.

The fifth contribution is the theoretical reconstruction of Islamic shares as an economic partnership (equity-based partnership), not simply a financial investment instrument. This research proposes a theoretical framework that positions Islamic shares on the spectrum between capital ownership and business partnerships. Within this framework, Islamic shares are ideally designed to encourage shareholder involvement in business performance, both through long-term ownership mechanisms, transparency of business information, and restrictions on speculative practices. This concept expands *musharakah* theory by adapting it to the realities of modern capital markets without losing its fundamental values.²⁹ Conceptually, the theoretical contribution of this research can be summarized in a substantive *fiqh musharakah*-based sharia stock reconstruction model as shown in the following figure 1.

The chart illustrates a paradigm shift from procedural Sharia compliance to substantive compliance. In this model, Sharia stocks are no longer understood merely as objects of Sharia screening, but as economic partnerships that must adhere to the principles of fairness, risk sharing, and linkage to

²⁵ Tuti Rastuti Usanti dan Abd. Shomad, *Transaksi Bank Syariah* (Jakarta: Kencana, 2022), 112–115.

²⁶ M. Anggraini, A. Novia, dan A. Wira, "Bibliometric Analysis and Systematic Literature Review of Sharia Compliance Research," *Jurnal Studi Islam* (2024): 39–42.

²⁷ B. Basrowi dan P. Utami, "Al-Musahamah Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share," *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 145–147

²⁸ M. Belabes dan L. Kermiche, "The Islamic Joint Stock Company: A Fundamental Study of a Modern Investment Model," *Jurisprudence Journal* (2020): 90–93.

²⁹ S. Mohamad, M. Muhammad, dan F. Habib, "Criteria for Determining the Sharī'ah Compliance of Shares: A Fiqhī Analysis," *International Journal of Islamic Finance* (2015): 56–59

real business activities. This model provides a theoretical contribution by offering an analytical framework that can be used to evaluate and develop Sharia stock instruments in various jurisdictions.



Figure 1. Conceptual chart of theoretical contribution of sharia stocks based on *musharakah fiqh*

This research's theoretical contribution also has cross-disciplinary implications. From a legal perspective, this research enriches Sharia economic legal theory by integrating *fiqh muamalah* and capital market law. From an Islamic economic perspective, this research provides a theoretical basis for the development of capital market instruments that are more oriented towards the real sector. Meanwhile, from the perspective of contemporary Islamic studies, this research demonstrates the flexibility of *fiqh* in responding to modern economic practices without losing its normative value.³⁰

The primary theoretical contribution of this research is to offer a new conceptual framework for understanding and evaluating Islamic stocks. This framework positions *fiqh musharakah* not merely as normative legitimacy, but as an analytical instrument for assessing fairness, partnership, and risk sharing in Islamic stock practices. This contribution is expected to enrich the body of Islamic economic law scholarship and serve as a reference for the development of an Islamic capital market that is more oriented towards the maqasid al-sharia.

CONCLUSION

This study concludes that Islamic stocks listed on the JII have normatively met formal sharia compliance standards as stipulated in the DSN-MUI fatwa and Indonesian capital market regulations. Business sector screening mechanisms and financial ratios provide legal and administrative legitimacy to the sharia status of stocks and serve as an initial instrument of protection for Moeslim investors in the capital market. However, this compliance remains procedural and does not fully represent the substantive principles of *fiqh* of *musharakah*.

From a *fiqh muamalah* perspective, this study's findings demonstrate a gap between the normative construction of *musharakah* and the practice of Islamic stocks in the capital market. The partnership relationship, which is at the heart of *musharakah*, has been diminished in meaning due to the dominance of capital gain-based investment patterns, low shareholder involvement in business management, and disproportionate risk distribution between companies and investors. This situation causes Islamic stocks to function more as financial ownership instruments than as business partnership contracts, as required by *fiqh* of *musharakah*.

This research also confirms that an approach to Sharia compliance that overemphasizes administrative aspects has the potential to create symbolic Sharia compliance, meaning compliance that is strong in regulatory terms but weak in substance. In the context of Sharia economic law, this phenomenon requires criticism because it has the potential to shift the values of justice, equality, and

³⁰ A. Hassan, "The Compatibility of the Shari'ah in Solving Modern Complex Commercial Practice," dalam *Islam: Past, Present and Future* (2004), 65–69.

risk sharing that constitute the spirit of the *musharakah* contract. Therefore, strengthening substantive Sharia compliance is an urgent need for the development of the Sharia capital market in Indonesia.

As a theoretical implication, this research contributes by offering a conceptual reconstruction of Sharia stocks based on substantive *Musharakah fiqh*. This reconstruction positions Sharia stocks as a form of partnership-based equity, not simply a financial investment instrument, emphasizing the principles of partnership fairness, real risk sharing, linkage to business performance, and an orientation toward maqasid al-Shariah. This framework enriches contemporary discourse on *muamalah fiqh* and provides a critical analytical tool for evaluating Sharia capital market instruments.

Practically, the findings of this study indicate the need to develop Islamic capital market policies that focus not only on formal screening but also encourage the internalization of *musharakah* values within the structure and practices of Islamic stocks. Thus, the Islamic capital market in Indonesia will not only be legally valid but also fair, participatory, and oriented toward the welfare of the people. Further research is recommended to examine the implementation of this substantive *musharakah* model empirically, both through cross-country comparative studies and more in-depth analysis of Islamic capital market policies.

REFERENCES

- Anggraini, M., A. Novia, dan A. Wira. "Bibliometric Analysis and Systematic Literature Review of Sharia Compliance Research." *Jurnal Studi Islam* 19, No. 1 (2024): 35–52.
- Basrowi, B., dan P. Utami. "*Al-musahamah* Akad Mechanism in Joint-Stock Company: A Contemporary Study of Share." *Iqtishaduna: Jurnal Ilmiah EkoNomi Syariah* 12, No. 2 (2021): 137–150.
- Belabes, M., dan L. Kermiche. "The Islamic Joint Stock Company: A Fundamental Study of a Modern Investment Model." *Jurisprudence Journal* (2020): 85–102.
- Bustam, Nur Hasanah. "Pasar Modal Syariah: Sebuah Alternatif Investasi Islam." *Jurnal Hukum Islam* 11, No. 1 (2013): 65–78.
- Darmadji, TjiptoNo, dan Hendy M. Fakhruddin. *Pasar Modal di Indonesia: Pendekatan Tanya Jawab*. Jakarta: Salemba Empat, 2008.
- Dewan Syariah Nasional–Majelis Ulama Indonesia. *Fatwa Nomor 40/DSN-MUI/IX/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal*. Jakarta: DSN-MUI, 2003.
- Faisal, F. "Sharia Banking Rights and Obligations in Implementing *Musharakah* Agreements Based on Indonesian Law." *International Journal of Reglement & Society* 1, No. 2 (2020): 75–88.
- Hassan, A. "The Compatibility of the Shari'ah in Solving Modern Complex Commercial Practice." *Dalam Islam: Past, Present and Future*, 61–75. Kuala Lumpur, 2004.
- Huda, Nurul, dan Mohammad Heykal. *Lembaga Keuangan Islam: Tinjauan Teoretis dan Praktis*. Jakarta: Kencana Prenada Media Group, 2010.
- Karim, Adiwarmen A. *Fiqh EkoNomi Keuangan Islam*. Jakarta: Darul Haq, 2004.
- Manan, Abdul. *Hukum EkoNomi Syariah dalam Perspektif Kewenangan Peradilan Agama*. Jakarta: Kencana Prenada Media Group, 2012.
- Mohamad, S., M. Muhammad, dan F. Habib. "Criteria for Determining the Shari'ah Compliance of Shares: A *Fiqhī* Analysis." *International Journal of Islamic Finance* 7, No. 1 (2015): 45–63.
- Moriguchi, T., M. A. Khattak, M. Farhan, dan M. Firdaus. "Contemporary Practices of *Musharakah* in Financial Transactions." *International Journal of Islamic EcoNomics* 8, No. 2 (2016): 89–105.
- Muflikha, I. N., dan S. Sya'roni. "The Investment of Sharia Shares in Indonesia Stock Exchange Representative in Sharia Law EcoNomic Perspective." *Journal of Islam and Sharia* 5, No. 2 (2023): 101–118.
- Muhit, M. "The Urgency of Understanding Maqashid Al-Syariah in the *Musharakah Mutanaqishah* Contract." *Journal of International Islamic Business Studies* 4, No. 1 (2023): 1–15.

- Nabhani, Taqiyuddin an-. *Al-Syirkah fi al-Islam*. Beirut: Dar al-Ummah, 2002.
- Otoritas Jasa Keuangan. *Daftar Efek Syariah*. Jakarta: OJK, berbagai edisi.
- Qardhawi, Yusuf. *Fatwa-Fatwa Kontemporer*. Jilid 3. Jakarta: Gema Insani Press, 2002.
- Rojikin, I. “*Musharakah Mutanaqishah Contract Concept: Review of Product Refinancing and Take Over.*” *Jurnal Mediasas: Media Ilmu Syari’ah dan Ahwal al-Syakhshiyah* 8, No. 2 (2022): 123–140.
- Sarif, Suhaili bin. *A Comparative Study of Islamic Unit Trust and Conventional Unit Trust in Malaysia*. Kuala Lumpur: University of Malaya, 2001.
- Satiri, A., B. A. Saebani, dan A. Fathonih. “Dynamics of Fatwa DSN-MUI on Financing Products at Shari’ah Financial Institutions (2010–2021).” *Pena Justisia* 24, No. 1 (2025): 55–72.
- Shanmugam, B., dan Z. R. Zahari. *A Primer on Islamic Finance*. Charlottesville, VA: CFA Institute, 2009.
- Soekanto, SoerjoNo, dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Press, 2015.
- Tanin, T. I., A. U. F. Ahmad, dan A. Muneeza. “Shariah-Compliant Equities and Shariah Screening: Need for Convergence of Ethical Screening of Stocks.” *International Journal of Emerging Markets* (2023): 1–18.
- Usanti, Tuti Rastuti, dan Abd. Shomad. *Hukum Perbankan*. Jakarta: Kencana, 2017.
- Usanti, Tuti Rastuti, dan Abd. Shomad. *Transaksi Bank Syariah*. Jakarta: Kencana, 2022.
- Utama, S. M., dan R. A. P. Ganda. “Analysis of Sharia Conformity Aspects in Stock Investment Based on Securities Crowdfunding.” *Al-Muamalat: Jurnal EkoNomi Syariah* 7, No. 2 (2022): 99–113.
- Yahaya, D. R. M. H. “Challenges on Shariah Supervision Globally and Preference Shares Based on Shariah Compliance.” *ResearchGate Working Paper* (2021).
- Yuliana, Indah. *Investasi Produk Keuangan Syariah*. Malang: UIN-Maliki Press, 2010.
- Zulkarnain, M., M. Akbar, N. S. Sari, dan F. Ramadhani. *Pengantar EkoNomi Islam*. Jakarta: Prenadamedia Group, 2025.