

DISSECTING OJK REQUIREMENTS FOR COMPANIES THAT GO PUBLIC THAT ISSUE SHARIA SHARES

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ABSTRACT

The large number of Muslim population in Indonesia, which is around 207 people, is very opportune for companies that will go public by selling sharia shares in the Capital Market. Because Muslims are always in all their activities in addition to wanting to obtain worldly profits, they often also consider the aspect of the hereafter as a goal in their business activities so that companies seeking funding through the go-public mechanism can consider issuing sharia shares instead of conventional shares. In fact, many companies are classified as sharia stocks by the OJK, even though it is known that the company does not have a sharia name or in carrying out activities does not have a sharia platform so that what underlies the OJK decides to declare it as sharia stocks. This study uses a type of normative juridical research whose elaboration is descriptive with a legislative approach with secondary data and primary and secondary legal materials in the form of laws and regulations and fatwas of the Ulama Council as well as the opinions of experts in books. The results of this study show that it does not have to be a company labeled sharia to issue sharia shares, but conventional companies that are not labeled as Islamic at all can still issue sharia shares or their shares can be classified as sharia shares as long as they meet the requirements of the OJK contained in POJK Number 35/2017 which regulates two main aspects, namely the aspect of business activities must not violate Islamic law such as having activities liquor business, gambling, prostitution, violating the environment and so on which are destructive in nature and financial aspects, namely not having usury debts above 45% and not having usury opinions of 10% so that even though they are not sharia companies, their shares can still be classified as sharia shares.

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INTRODUCTIONS

Based on data from IDX Bell *Monthly Newslater*, Edition 21, July 2024 reported that the number of Capital Market Investors in Indonesia has exceeded 13 million investors. However, on the other hand, the President Director of PT Mandiri Sekuritas Oki Ramadhana revealed that as of November 2023, the number of sharia stock investors is only 136 thousand, equivalent to 2.6% of the total stock market investors of 5 million people. Even though the

majority of Indonesia's population embraces Islam. Currently, there are more than 207 million Muslims in Indonesia, so based on the fact of the large Muslim population of Indonesia, the Director of Development of the Indonesia Stock Exchange, Jeffry Hendrik, is optimistic that it can increase the number of investors in sharia stocks from currently only around 136 thousand to 1 million investors. The optimism of the Indonesia Stock Exchange in increasing the number of investors in sharia stocks can be an opportunity for companies that want to try to find funding through the issuance of sharia shares with a mechanism to go public in the Capital Market. (Nur & Fatwa, 2022)

Tito Sulistio in his remarks on the IPO composite book (Go Public) said that the Capital Market provides a solution for companies to obtain funding through the offering of part of the company's shares to the public or commonly called *an initial public offering* (IPO) or *go public*. This process also makes the company transform from a closed company to a public company that will be managed better, more professionally and transparently. (SN & Rahayu, 2022)

Data PT. The Indonesia Stock Exchange stated that the number of companies selling their shares in the Capital Market in 2024 will reach 903 issuers, even the Indonesia Stock Exchange (IDX) is optimistic that the number of listed companies or issuers in the Indonesian capital market will reach 1,000 issuers. This fact shows clear evidence of the benefits felt by companies that sell their shares in the Capital Market. (Prastiti, 2022)

If referring to the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-20/D.04/2024, dated May 24, 2024 concerning the Sharia Securities List, it can be known that quite well-known companies go public that have absolutely no Islamic nuances, both in terms of marketing and business, but their shares are categorized as sharia stocks by the OJK. The well-known companies are, PT Telekomunikasi Indonesia (Persero) Tbk, PT PP (Persero) Tbk, PT Siloam International Hospitals Tbk, PT Kalbe Farma Tbk, PT Matahari Department Store Tbk and PT Perusahaan Perkebunan London Sumatra Indonesia Tbk. The question is how the Financial Services Authority's reference states that the shares of conventional companies can be classified as sharia stocks that will be discussed in this study.

METHODS

In this study, the author chooses to use a type of normative legal research, namely legal research that lays down law as a norm that is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The elaboration of this research is descriptive, namely conducting literature research using secondary data, namely the 2024 (Benuf & Azhar, 2020) *Sharia Securities List*. The author uses a legislative approach, which is an approach used to review and analyze all laws and regulations related to the legal issues being handled, which in this study is All Laws and Regulations in the field of Capital Markets. (Hermuningsih, 2012)

Because the research carried out is a literature study, the data collection technique uses the study or study of books, books, or other related references. The collection of literature data (how to get references) is obtained in two ways, namely: Manual literature studies, in the form of research sourced from printed books or relevant printed documents (scientific papers): and Digital literature studies, research or literature studies that are sourced from digital references or obtained online, can be in the form of e-books, websites, online journals, online papers, or other scientific papers that are online or obtained from access digital technology.

RESULT AND DISCUSSION

1. Definition of a Public Going Company

Talking about a company *going public*, it must first be discussed what is meant by the meaning of the company itself. A company is a series of actions that are carried out on an ongoing basis to generate income through the trade of goods, the delivery of services, or the creation of trade agreements. While the meaning of *go public* is a term in English which if interpreted means a word meaning, Go is Go, while *Public* is General, (general public, general public,

crowd, or public) so that a company *that goes public* is defined as a company that conducts public offering activities to sell its ownership to the wider public. (Widjaya & Risnamantis D, 2009)

A Go Public *company* is a situation where a company is not only owned by a few people, but is publicly owned whose owner always changes depending on who buys the company's ownership in the regular market, namely the Indonesia Stock Exchange which is a market that trades the ownership of a company in the form of shares or other derivatives. (Triuspitorini, 2021)

To become a company *that goes public* whose shares are listed and traded on the stock exchange, the company must be in the form of a limited liability company, not an individual company that is not a legal entity. Because referring to Article 1 number 22 of Law Number 8 of 1995 concerning the Capital Market has defined a company as a limited liability company. (Jasmine & Nurcahya, 2022)

The rare initial to go *public* is that companies need to obtain approval from the Exchange by submitting a listing application to the Exchange by attaching the necessary documents. As long as the documents and information submitted are sufficient and complete, the Exchange only needs 10 days for the Exchange to give approval. If eligible, the Exchange will provide a listing principle approval letter known as the Securities Listing Preliminary Contract Agreement. (Ersyafdi & Fauziyyah, 2021)

After obtaining a preliminary agreement from the Stock Exchange, the company is then referred to as the prospective issuer must submit a registration statement to the OJK to conduct a public offering. If the registration statement of the prospective issuer has been declared effective by the OJK, the prospective issuer can carry out the public offering process. In general, the entire public offering process from an effective statement letter to a company listed on the Exchange only takes 8-12 working days, depending on how long the public offering period is determined by the prospective issuer and underwriter. After the public offering period ends, the company officially becomes a public company whose shares are listed and traded on the stock exchange. (Nurhidayah et al., 2022)

There are many advantages and consequences for companies that want to make an *initial public offering* (IPO) or commonly called going public. Some of them are as follows:

a. Access to Funding in the Stock Market

This reason is the most important consideration for companies to *go public* and become a public company. The capital obtained can be used to increase working capital in order to finance the company's growth, to pay debts, to make investments, or to make acquisitions.

Go Public will also increase the value of the company's equity so that the company has an optimal capital structure. After becoming a public company, the company can take advantage of the Capital Market to obtain further funding, including limited public offerings whose offerings are limited only to investors who already own the company's shares. It will also be easier for companies to attract strategic investors to invest in company shares. (Ala'uddin, 2020)

b. Additional Trust for Loan Access

By becoming a public company whose shares are traded on the Stock Exchange, the banking community will be able to get to know and trust the company better. At any time, banks can find out the company's financial condition through various information disclosures announced by the company through the Exchange. With such conditions, not only will the lending process be relatively easier than lending to unknown companies, but the interest rate charged will also be lower considering that the *credit risk* of public companies is relatively smaller than the credit risk of closed companies.

In addition, by becoming a public company whose shares are traded on the Stock Exchange, it will make it easier for companies to access debt securities, both short-term and long-term. In general, investors who buy debt securities will prefer if the company that issues the debt securities is known and has a good image in the financial world. Such

conditions will certainly not only help make it easier to issue debt securities, but also allow companies to issue debt securities with more competitive interest rates. (Arifianti & Hidayati , 2023)

c. Fostering Professionalism

By becoming a public company, companies are required by many parties to always be able to improve performance, service quality, reporting systems, and implement good governance practices. Thus, a condition will be created that always spurs the company and all its employees to be professional and always try to provide the best results, which will ultimately increase the company's competitiveness. (Nabila et al., 2021)

d. Improving the Company's Image

With the listing of a company's shares on the Indonesia Stock Exchange, information and news about the company will often be covered by the media, data providers and analysts in securities companies. The free publication will improve the company's image and increase exposure to the company's products. This will create new opportunities in the company's business.

e. Liquidity & Possibility of Divestment for Profitable Founding Shareholders

If the founding shareholders need funds for other business purposes, the divestment can be carried out through the Indonesia Stock Exchange with an optimal value. Stock trading that is active on the Indonesia Stock Exchange will create a price that can be a reference for shareholders in making transactions. (Faizi & Adiputro , 2023)

f. Growing Company Employee Loyalty

If the company's shares can be traded on the Exchange, employees will be happy to get incentives in the form of shares. By involving employees more in the company's growth process, it is expected to create a sense of belonging, which can ultimately improve professionalism and employee performance.

In addition, the stock ownership program by employees through the granting of shares or stock options by the company, is also a strategy to be able to retain key employees, without incurring cash costs. Employees can sell incentive shares obtained from the company through the Indonesia Stock Exchange. (Stuttgart & São Paulo, Sã , 2017)

g. Increasing Company Value

By becoming a public company whose shares are traded on the Indonesia Stock Exchange, the public can obtain data on the company's value movements at any time. Any improvement in operational performance and financial performance will generally have an impact on the stock price on the Exchange, which will ultimately increase the overall value of the company.

h. Ability to Maintain Survival

One of the problems that triggers the collapse of a family-run business is the division in the family. By becoming a public company, each party in the family can own the company's shares in their own portion and can sell or buy through the Indonesia Stock Exchange at any time. The founding shareholders can also entrust the management of the company to competent professionals and can easily supervise the company through financial statements or disclosure of company information required by the authorities. (Rusmawan et al., 2022)

In the event of financial difficulties and failure to pay debts to creditors that then require debt restructuring, debt to equity swaps can be an alternative solution for both parties. Creditors who acquire shares from debt conversion, can sell the shares through a stock trading mechanism on the Indonesia Stock Exchange. This is difficult to do if the debtor is a closed company.

The consequences for companies when deciding to go public are:

a. Sharing Ownership

With the entry of public investors, the founding shareholders no longer own the company with 100% ownership and must share the vote in the general meeting of shareholders. Nevertheless, the founding shareholders do not need to worry about losing control of the company. A founding shareholder may retain his or her status as a controlling shareholder, as long as his or her shareholding is more than 50% of all fully paid-up shares, or have the ability to determine the management or discretion of the Public Company. (Harahap et al., 2021)

b. Obligations to Comply with Applicable Capital Market Regulations

The Financial Services Authority (OJK) and the Indonesia Stock Exchange have rules that apply to companies whose shares are listed on the Stock Exchange. These rules include transparency or information disclosure to ensure that all shareholders can obtain the information needed to make their investment decisions. Another provision that needs to be fulfilled is the need for the formation of corporate organs, each of which has a function to be able to carry out good corporate governance. This is intended to help the company to develop in a good, competitive, professional, and sustainable way. (Lewa et al., 2024)

2. Definition of Sharia Companies and Conventional Companies

According to Article 1 number 13 of the Financial Services Authority (OJK) Regulation Number 35/POJK.04/2017 has defined the definition of a sharia company, namely a public company whose articles of association state that activities and types of business as well as the way of managing their business are based on sharia principles in the Capital Market. When referring to the definition of a sharia public company, it can be interpreted as a sharia company that at the time of its establishment for the first time has included in its articles of association that the purpose and objectives as well as business activities declare themselves to be subject to sharia principles. (Sukmaningati & Ulya, 2021)

If a sharia company is defined in its articles of association as having declared itself subject to sharia principles, then a conventional company is defined as a company that does not expressly declare itself to be subject or has been in accordance with sharia principles so that its business activities and management are not based on sharia principles.

The meaning of sharia principles itself has been explained in Article 1 number 2 of the Financial Services Authority Regulation Number 15/POJK.04/2015 concerning the Application of Sharia Principles in the Capital Market, namely as a principle of Islamic law that regulates the prohibition of halal and haram of a company's activities so that if a company declares itself to be a sharia company in its articles of association, the company has declared itself as a company that has complied with the principles of halal and haram of Islamic law, while conventional companies do not declare themselves subject to Islamic law because they do not declare themselves in their articles of association so that the public does not know whether the company is subject to Islamic law or is not subject to Islamic law. (Nasution, 2022)

When a company goes *public* by selling its ownership in the form of shares to the wider community, the public will assess whether the company's intention and business activities are based on Islamic law or not so that then the authorized authority that regulates the Capital Market has given a decision on whether or not the shares are sold to the public through an OJK decision announced every six months.

3. Definition of Sharia Stocks

Referring to the form of a company that requires that it must be in the form of a legal entity of a limited liability company, then at the time of its establishment it must be based on laws and regulations in the field of limited liability companies, namely Law Number 40 of 2007 concerning Limited Liability Companies.

Law Number 40 of 2007 concerning Limited Liability Companies has defined the definition of a limited liability company as a legal entity that is a capital partnership, established based on an agreement, carrying out business activities with authorized capital that is entirely divided into shares.

Based on the definition of the limited liability company law, a situation has been obtained regarding the form of business that is given the status as a legal entity with the characteristics of an agreement, the existence of authorized capital where the authorized capital must be declared as shares. (Hidayati, 2022)

If the founders consist of 2 (two) people, then the two people must combine their capital and then who has the most capital, then the greater the ownership of the company. The amount of capital deposited by the founder must be stated in the stock presentation. For example, one of the capitals is one billion while the other is five hundred million, so in total, there is a capital of one and a half billion rupiah. If one share is calculated as much as one million rupiah,

then the total shares are one thousand five hundred shares and of course those who have a capital of one billion will have as many as a thousand shares while others get shares as many as five hundred shares.

Theoretically, the definition of a stock is a security that can be bought or sold by an individual or institution in the market where the securities are traded. Shares are equity instruments, which are signs of participation or ownership of a person or business entity and a company or limited liability company. So stocks are securities as proof of participation or ownership of individuals or institutions in a company. With the participation of the capital, the party has a claim to the company's income, a claim to the company's assets, and has the right to attend the General Meeting of Shareholders. (Rini et al., 2020)

Based on the definition of shares as mentioned above, the definition of shares has several meanings, namely as securities that can be traded and as proof of ownership of a company. Halmana can be interpreted as securities that can be traded to anyone, both individuals and business entities so that whoever owns the shares also owns a company where the shares are registered. (Cahyani & Fajar, 2020)

Then what about the definition of sharia stocks? Sharia stocks are stocks that meet the provisions and criteria based on sharia principles. Shares are a type of security that is securities that can be traded and the owner is a person who co-owns a company where the shares are registered so that sharia shares can be referred to as sharia securities as referred to in Law Number 8 of 1995 concerning the Capital Market and its implementing regulations which:

- a. Contracts, management methods, business activities;
- b. Assets that are the basis of contracts, how to manage business activities; and/or liver
- c. Assets related to the Securities in question and their issuers do not conflict with Sharia Principles in the Capital Market. (Safany et al., 2021)

Sharia shares can be interpreted as shares issued by a company that is declared an issuer that in its management has met sharia principles. The management is seen from two aspects, namely the aspect of business activities and the financial aspect of the company that has met sharia principles so that the shares it issues can also be declared as sharia shares.

4. Requirements for Companies to Issue Sharia Shares even though they are not Sharia Companies

Based on the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-20/D.04/2024 concerning the List of Sharia Securities which is set on May 24, 2024, it has announced companies whose shares can be categorized as sharia shares, even though the name of the company is not known at all as a company that concentrates on sharia business, but how can the Financial Services Authority classify its shares into sharia shares. (Fauziah & Ibrahim, 2022)

The names of companies whose shares are classified as sharia stocks can be seen in appendix I of the decision of the Board of Commissioners of the Financial Services Authority Number KEP-20/D.04/2024 concerning the List of Sharia Securities which has announced as many as 646 (six hundred and forty-six) companies whose shares are declared as sharia shares classified as energy businesses, raw materials, industry, primary consumer goods, primary non-consumer goods, health, finance, property and real estate, technology, infrastructure, transportation and logistics, public companies, non-listed companies. (Asykarulloh et al., 2023)

Of the 646 (six hundred and forty-six) companies whose shares are declared as sharia shares, there are only 6 (six) sharia companies that expressly declare as sharia companies whose names are marked with the word sharia, namely: (1).PT. Bank Aladin Syariah Tbk; (2). PT. Bank Syariah Indonesia Tbk; (3). PT. Bank BTPN Syariah Tbk; (4). PT. Sharia Life Insurance Jasa Mitra Abadi Tbk; (5). PT. Bank Panin Dubai Syariah Tbk and; (6) PT. Bank Muamalat Indonesia Tbk, the remaining 640 (six hundred and forty) companies do not declare themselves as Islamic companies. Then what is the basis for the Financial Services Authority to declare that the company shares as sharia shares?

That as a sample of companies that do not declare themselves as sharia companies that are quite popular with the ears of the Indonesian people, namely PT Telekomunikasi Indonesia (Persero) Tbk, PT PP (Persero) Tbk, PT

Siloam International Hospitals Tbk, PT Kalbe Farma Tbk, PT Matahari Department Store Tbk and PT Perusahaan Perkebunan London Sumatra Indonesia Tbk, but their shares are included in the Sharia Securities List as per the Decree of the OJK Board of Commissioners in 2024 so that it becomes very attractive to be discussed in this research. (Safany et al., 2021)

If referring to the dictum considering the OJK's decision on the classification of sharia shares, it can be known that the references are: (1). Law Number 8 of 1995 concerning the Capital Market; (2). Law Number 21 of 2011 concerning OJK; (3). Financial Services Authority Regulation No. 15/POJK.04/2015 concerning the Application of Sharia Principles in the Capital Market; and (4). Financial Services Authority Regulation Number 35/POJK.04/2017 concerning Criteria and Issuance of Sharia Securities List.

Law Number 8 of 1995 concerning the Capital Market is as the legal basis for activities in the Capital Market Industry, while Law Number 21 of 2011 concerning the OJK is the legal basis and legal standing of the OJK in issuing a decision on the Sharia Securities List itself so that there are only two OJK Regulations Number 15 and Number 35 as the legal basis for declaring a stock to become a sharia share. (Fajar et al., 2022)

Based on Article 2 paragraph (1) of the Financial Services Authority Regulation Number 35/POJK.04/2017 concerning Criteria and Issuance of Sharia Securities List, it can be known that OJK references in determining a share can be declared as a sharia share, namely:

1. Companies that have shares listed in the Sharia Securities List are not allowed to run businesses that are contrary to sharia principles in the capital market. Prohibited business activities include:
 - a. All forms of gambling.
 - b. Riba-based financial services.
 - c. Risk buying and selling transactions that contain ambiguity (gharar) or gambling elements (maisir).
 - d. Production, distribution, trade, or supply activities:
 - 1) Something that is haram in substance (li-dzatihi);
 - 2) Something that is haram is not because of its substance (li-ghairihi) according to the DSN-MUI fatwa;
 - 3) Something that is morally destructive and harmful (harmful); and/or (4) contrary to sharia principles based on other provisions of DSN-MUI;
2. Companies are prohibited from conducting transactions that are contrary to Sharia Principles in the Capital Market:
3. Meet the financial ratios as follows:
 - a. The ratio of interest-bearing debt to the company's total assets should not exceed 45 percent.
 - b. Income from interest and other non-halal income should not be more than 10 percent of the company's total income. (Furohman et al., 2023)

In order for the company's shares to be designated as Sharia Shares and listed in the Sharia Securities List, in general, two (two) main factors must be considered, namely:

- 1) aspects of the company's business activities;
The Company's Business Activities that must be considered are businesses that do not conflict with sharia principles;
- 2) the financial aspects of the company;
A maximum of 45% interest-based debt to total assets and a maximum of 10% of interest income and other non-halal income to the company's total and other income are financial requirements for sharia stocks.

Based on the rules of Article 2 paragraph (1) of the Financial Services Authority Regulation Number 35/POJK.04/2017, the OJK analyzes companies that are registered as public companies whose shares are traded in the Capital Market. Even though the conventional company issues its shares, as long as it meets the criteria of two main

factors, namely the factor of the company's business activities that do not violate Islamic law and the financial factor where interest-based debt is not more than 45% and interest income is not more than 10%, then the company's shares can be declared as sharia shares. (Midesia, 2020)

That the basis of the aspect of activities that are required for companies whose shares can be listed as sharia shares is very clear and has been widely accepted, namely companies that do not carry out business activities that violate Islamic law, namely not carrying out business activities that violate Islamic law, namely not carrying out business activities that are in violation of Islamic law, namely not carrying out business activities that violate Islamic law and all activities that can cause damage and danger for humans. However, what is the value of *ijtihad* of ulama that is used as the basis by the OJK in making regulations is regarding the threshold of financial fairness of a company, namely as long as the company's usury debt is still below 45% and the opinion of the company's usury is below 10% is still categorized financially in accordance with Islam. This action is based on the difficulty of finding a company whose finances are 100% free from usury, so then the National Sharia Council-Indonesian Ulema Council issued a Fatwa Number: 135/DSN-MUI/V/2020 concerning Shares that are *ijtihad* by setting a threshold for the company's financial fairness.

As long as the company has fulfilled the provisions of business and financial activities, any company that is not a sharia company can be declared as a sharia stock so that it meets qualitative and quantitative requirements, the company's shares that are registered can be classified as sharia shares and included in the Sharia Securities List issued by the OJK periodically, namely on June 1 and December 1. In the preparation process, the OJK requests financial statements from issuers as data to select sharia securities to be included in the Sharia Securities List.

CONCLUSION

A company that goes public is a company that has decided to sell its ownership to the wider community so that the community can also own the company. Or they can trade the ownership in the capital market with a legal mechanism of buying and selling like the law of buying and selling in general. The Financial Services Authority as a state institution that was formed to regulate and supervise the financial industry has regulated the mechanism so that the shares of a company can be declared as sharia shares, namely if it has fulfilled two main aspects, namely the activity aspect that must not violate Islamic law and the financial aspect which must not have usury debt exceeding 45% and must not have usury income exceeding 10%. If the company has complied with OJK regulations regarding two main aspects, namely business activities that do not violate Islamic law and usury debts of no more than 45% and usury income of not more than 10%, then the shares can be declared as sharia shares. Sharia shares themselves are stocks that have fulfilled sharia principles based on OJK Regulations on these two aspects.

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