

The Role of DSN-MUI to Ensure Shariah Compliance of Islamic Financial Transactions in Indonesia (A Political Ambiguity Perspective)

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Abstract

This article proved the National Shariah Boards-Muslim Expert Council of Indonesia (DSN-MU) had failed to engage the modern transaction needs in modern Islamic stock exchange in Indonesia. By doing an analytical method on political law against Islamic law in Indonesia, DSN MUI was not able to ensure the Islamic financial industries to achieve the Shariah compliance for legal substance and structure perspective. The dynamic of Indonesian political law against Muslim interest is the main factor of the failure of Fatwa DSN-MUI to ensure the shariah compliance.

Keywords: DSN-MUI, Islamic political law, Indonesia)

1. Introduction

Every Muslim belief they have to practice Islam for all parts of their life including financial life. DSN-MUI is the board issued by MUI to ensure the Islamic compliance to their economic activities. How could the board determine Islamic compliance in the financial activities?

This research focus on the main question, how could the transactions in the Islamic Stock Exchange be ensured to meet the shariah compliant by comparing the Fatwa MUI-DSN regulation on securities trading with OJK and BAPEPAM-LK's ordinances. Furthermore this research seeks to explore the political law system which has effect the Islamic stock exchange practices in Indonesia. This research used the analytical method to study the complexity of legal concepts and rules in different legal systems i.e. Islamic and national law system (Mark Van Hoecke1, 2015). Such materials arranged by both law systems would be analyzed to find out the reasonable argument. Furthermore the political background from both would be explored to enrich the argument. These steps will ensure that Fatwa as the tool of law which allegedly meet the shariah compliance is less suitable for Islamic financial trading then OJK and BAPEPAM LK's ordinance. The significance of this study will bring the advantage especially for DSN-MUI to regulate further aspect in order to achieve the Islamic law principles in Islamic Financial industry.

2. Method

This research focus on the main question, how could the transactions in the Islamic Stock Exchange be ensured to meet the shariah compliant by comparing the Fatwa MUI-DSN regulation on securities trading with OJK and BAPEPAM-LK's ordinances. Furthermore this research seeks to explore the political law system which has effect the Islamic stock exchange practices in Indonesia. This research used the analytical method to study the complexity of legal concepts and rules in different legal systems i.e. Islamic and national law system. Such materials arranged by both law systems and they would be analyzed to find out the reasonable argument. Furthermore the political background from both would be explored to enrich the argument. These steps will position the DSN-MUI Fatwa on Islamic Financial industry with the OJK and BAPEPAM LK's ordinance. The significance of this study will bring the advantage especially for DSN-MUI to regulate further aspect in order to oversight and ensure the Islamic law principles in Islamic Financial industry.

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3. Literature Review

In this part, I would review how shari'ah compliance is necessary for every Moslem. The obligation to engage Islamic economic activities with shariah compliance have evolved in two perspectives, the conservative and moderate ways. Salman had conceived Shariah compliance achievement in a strict way that religious beliefs and cultural characteristics of Muslim society intents to the consistent of fulfillment shariah compliance over all Islamic banks and other financial institutions activities. According to prevailing interpretations of Islamic Law, the interest system should be resisted to meet the shariah compliance in Islamic financial area and emphasized profit-and-loss sharing (Syed Ali, Salman and Ausaf Ahmad: 1961, 6). Likewise Timur Kuran said Islamic economics was originally developed as a counterbalance to conventional economic ideas which showed disapprove of interest being made (Kuran, Timur: 1995, p.155–173). Similarly Umer Chapra viewed that the Islamic financial institutions have to operate the activities in a different manner. Muslim communities has become anxiety in a fairly long period after the issuing the fatwa on interest principle however in practice this fatwa does not provide pressure against the conventional banking activities. The scholars and experts of Islamic economics today pretext to give a broad understanding of the scope for interest system in conventional banking and finance system (M. Umer Chapra: 1985, p.60)

Other while, the moderate experts argued that Islamic economics has transformed from a theoretical concepts to a practical realities. Mohsin Khan states that “ The policy makers in Islamic countries face a number of difficult problem... including the respective roles of monetary and fiscal policies, exchange rate policies, and the effect of changes in the system on saving and investment and thereby on growth and development.” From that view Mohsin Khan exposes that the main obstacles in changing in to free interest economic-based system are the government policies in monetary and fiscal sector and also the impact of the change against saving and investment system and after all in the development and the growth of economics. (Mohsin Khan, 1989). Additionally, Abul Hasan claim that the main problem of conventional economic system lies on the paradox between the real economy with the financial market which has led to collapse the economics especially in the bank and capital market industry. The Islam economic system differs from the conventional system because of the risk-sharing system that substitute interest system (Abul Hasan, 2010).

From this political perspective, majority Muslim need legal substance that accommodate Muslim`s concerns certainly by appearance the DSN-MUI (National Shariah Boards-Muslim Expert Council of Indonesia), which has authorities to conduct a view fatwa related to the Islamic financial institution including Islamic Stock Exchanges. Since the rapid growth of Islamic financial institutions in Indonesia, DSN-MUI has the authority to role the Islamic economic and financial issues. In this case the DSN-MUI is expected to encourage the implementation of Islamic teachings in the economic life. Therefore the role of DSN is very important but the development of Islamic financial transaction rapidly has not been followed by the capability of DSN-MUI to regulate Islamic financial transaction activities. Hence, many transaction commonly occupy in Islamic financial industry have not been instructed by the Fatwa of DSN-MU. Yet, the regulations have been issued by BAPEPAM-LK (The Controlling Board to the Stock Market and Finance) or OJK (The Authorities of Financial Service) to arrange the Islamic financial derivative products.

After all, even in practical perspective, Syed Ali and Ahmad declared that the religious beliefs and cultural characteristics of Muslim society intents to the consistent of fulfillment shariah compliance over all Islamic banks and other financial institutions activities. Based on prevailing interpretations of Islamic Law, to meet the shariah compliance in Islamic financial area should be resisted from the interest system and emphasized profit-and-loss sharing (Syed Ali, Salman and Ausaf Ahmad: 1961, 6).

The prohibition of interest which took place in the Islamic principle, has brought the Islamic economics scholars to formulate a partnership system of profit and loss sharing to build a society based on honesty and fairness. The fairness in this context has two dimensions: the first investor is entitled to obtain a reward, but the benefits must be in accordance with risk and effort, both the profits are from business. So, the advantages previously set or predetermined before transaction is forbidden in Islam. Predetermined profit sharing in Islamic economy is the ratio and not the level of benefits (Mervyn K. Lewis dan Lativa M. Algaoud: 2001, 64). Benefit ratio depends on the outcome of the effort had done by each partnership party, not as an absolute determination. According to the Hanafi`s thought, profits can be obtained in three ways. First, use the capital of other people. Second, take advantage of working people. Third, using the opinions of people, that means bearing the risk (Mervyn K. Lewis dan Lativa M. Algaoud: 2001, p.64).

Legally, the prohibition of *riba* has shown as a *profit and lost sharing* (PLS) contracts which is equivalent to control rights of debt contracts. The return on capital will depend on productivity. Allocation of investable funds will be guided by the project itself. This will improve the efficiency of capital allocation, and the creation of money by expanding credit will also be created only when there is a strong likelihood of a corresponding increase in the supply of goods and services. In case the enterprise loses, repayment of capital to the bank is diminished by the amount of loss. Thus in the profit-sharing system, the supply of money is not allowed to overstep the supply of goods and services.

M. Fahim Khan and Mario Porzio explained why interest is not a problem in capitalism system. In fact, now, Western banks do not often pay interest on deposits, especially in the case of current accounts. Generally, the operations of Islamic finance are often very similar to common European finance operations. Islamic banking is far from problematic; indeed recently, many European bank and investment institutions have made their financial instruments compliant with Muslims' needs. The ethical-religious character assumed by both Islamic and conventional banks and finance is a common historical heritage, only in more recent times the conventional one have forgotten the ethical aspects (M. Fahim Khan and Mario Porzio: 2010, p.63)

Otherwise, the rise of Islamic finance due to the banking crisis of 2008 had led the world into financial disaster. It redefined the boundaries between market and state and forced everyone to confront their inability to manage the financial sustainability of the global economy. Political response to the crisis had pressured every country to save and recapitalize failing banks. No doubt, this excused on the grounds that the alternative was simply unthinkable. The collapse of the financial markets has involved to a massive and completely unpredictable global recession. Entire nations would have been bankrupted. Commerce would have failed *en masse*. Livelihoods would have been destroyed. Homes would have been lost. The humanitarian cost of failing to save the banking system would have been enormous (Tim Jackson: 2009). In *The End of History and the Last Man*, Fukuyama recognizes that the rise of Islamic fundamentalism constitutes a potential exception to his thesis, but responds that it will be limited to the zone of existing Islamic predominance, thus ruling it out as a "potentially universal ideology." But the spread of Islam in Europe and other places raises doubts about this claim (J. Barkley Rosser, Jr., and Marina v. Rosser: 2004, p.4).

Therefore in the economic system, the free interest economic-based system is one of Muslim's needs to satisfy their religious belief and practice. Dawam Rahardjo said that the thought of Muslim about financial interest has polarized in two views, they who consider the practice of interest in the conventional finance does not belong to usury (*Riba*) and other who consider does. A. Hassan revealed that so-called usury is capitalizing the money by conducting the interest rate as high (*adh`afan mudha`afah*). Mohammad Hatta argued that *Riba* just cover the consumer loan products, not productive loans because the money was useful to bring profits in the productive loans. Basically, the legal regulation of activities of Islamic financial institutions sought to enforced "equal treatment regulations" or the principle of legal equality. However, sometimes there is a special regulation on the business activities of Islamic finances have been tailored to the character of Islamic financial institutions. The different character of the business activities of Islamic financial institutions and the conventional ones have accepted universal standard and applied to the world financial system. (Adiwarman Karim: 2004, p. xxi)

After that discussion, I discover the urgent connection between the Islamic principle in the financial industries and political aspect. In Indonesia, the fulfillment of the Islamic law requirement meet the fact that Indonesia does not adopt theocracy system. Imam Tholhah stated the relation between religion and state in Indonesia is very synergistic and not in a position to separate dichotomy between both religion and state. The legitimacy of the existence religion in Indonesia constitutionally protected in accordance with religious worship and belief respectively. However, for Indonesia context, the relation between Islamic law and the national legal system in Indonesia's experience is going up and down. Since the Dutch colonial period the conflicts among religious communities with government had taken place.

Furthermore, the effort to bring Islamic Law system into Indonesia law faced dichotomy obstacles between customary law and Islamic law. In this context G.A. Wilken viewed that customary rules have had strong roots in the villages, since the arrival of Islam. They also saw that submission of Islam, unable to shake their loyalty to tradition. In line with this, they argued that Islamic law is never in a rigid sense being applied in Indonesian society in which the force of customary law still holds. In contrast to the above thinkers, scientists later as B.W. Andaya and J. Johns convinced that Islamic doctrine has played a very important role in the life of the kingdom. This is true especially in Aceh and Malacca during the early days of Islam in Southeast Asia through the *Sufi*.

They argued that even though the local indigenous power has manifested itself into Indonesian society, Islamic law had effective power to modify some legal practice, in particular the areas of family law and social values (A. Ibrahim: 1985, 20).

Before the colonial period, Indonesia traditional societies and Islamic law typically had run smoothly in accordance with the respective jurisdiction. In moments conflict between Islamic and customary legal systems had been worst after the Dutch policy had stand on customary law systematically. Later, the Dutch policy had turned while they established some policies to accommodate Islamic Law. It could be seen in 1882 when Dutch Government stand a tribunal court religion, and in 1937 they also formed religious courts in South Kalimantan and East Kalimantan. This period well-known as *Receptio in complexu theorie* that applied Islamic law in Indonesia although with little deviation. The systemic efforts later had taken by the Dutch government to remain absolutely avoid the issue of hudud and qishash (Islamic criminal law). The Dutch confirmed the criminal law with Wet Boek Van Strafrecht effectively since January 1919 (Government Gazette 1915 No. 732). The Dutch neither allow constitutional politics strictly and only concerned Islamic law on the marriage and inheritance law (M.B. Hoeker: 1978).

In early years of independence in 1945, Muslim leaders and Islamic political parties have struggled for adopting the Syariah as the Indonesian Constitution. Their efforts had met persistent failure. Anis Baswedan (2004) analyzed the conflict lied on adoption Muslim aspirations fully excepted by the state policies. Although some political decisions had been stated as the Basic Law of Religious Justice in 1989 (Law No. 7), and the Compilation of Islamic Law in 1991 (Presidential Instruction No. 1) but this political movement only regarded as the ambiguity of Indonesian legal system.

This situation had been continued in the modern era especially the economics legal system. The lack of that theoretical model makes Indonesia can not avoid the conventional system. The concept of usury or interest in that system is still a very required instrument. Afterward, Islamic financial institutions must consult itsown legal and ethical authorities for advice on how to ensure the Shariah compliance being achieved creatively.

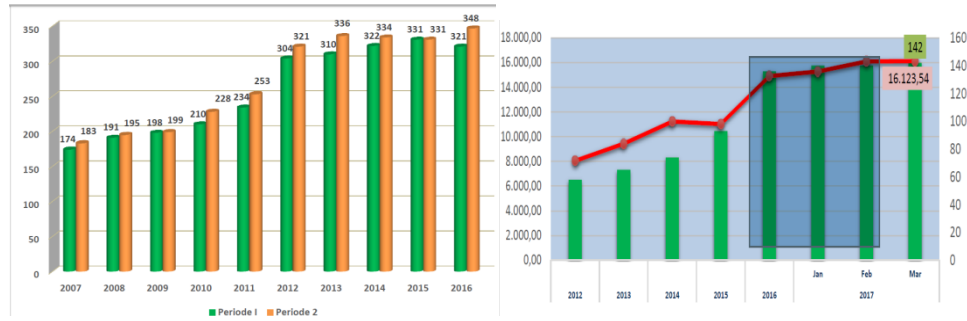
4. Political Ambiguity on Islamic Capital Market In Indonesia

4.1. The growth of Islamic Capital Market In Indonesia

The development of Islamic financial institutions generally especially because these institutions have the privilege, which appear as an alternative to the system of interest in the conventional financial institutions. During the last two decade, Islamic banking has grown from a niche market into a mainstream industry. Islamic banking appeared as a global reality in the early 1970s when Islamic financial institutions popped up in Geneva, Luxembourg, Dubai and Jeddah. Since then this phenomenon has showed an unprecedented growth over the global scene. Now the institutions dealing with Islamic finance exist in more than 50 countries. The total number of such institutions is more than 275 of which 54 are reported in Europe. M. Fahim Khan and Mario Porzio says that the institutions are estimated to be handling funds somewhere around \$500 billion growing at a rate of more than 15 percent per annum. The emergence of these institutions is helping to bring out funds into the banking channels which were previously avoided on the grounds of the religious injunctions against interest- based banking. (M. Fahim Khan and Mario Porzio, 2010, p. 1-2).

In Indonesia, Islamic banking industry started 17 years ago, in 1992 with the establishment of the first Islamic bank in Jakarta, namely Bank Muamalat Indonesia. (Gudarzi Farahani, Yazdan and Sadr, Seyed Mohammad Hossein, 2012, p.5). The growth of total Islamic banking asset reaches Rp.228,8 trillion of iB (Commercial sharia Banks + Shariah commercial units + Shariah rural Banks) in August 2013 (eq to US\$ 23 billion). Unfortunately Islamic Banks in Indonesia only account for 4.9% of Indonesian banking industry, but annual growth in last 5 yrs \pm 40% which double from global Islamic finance growth (Edi Setiadi, 2013, p.5).

In sequence, the syari`ah capital market began since the emergence of capital market instrument using sharia principles in the form of mutual funds shari'ah. This industry had been implemented on March 14, 2003 with the official opening of Shariah capital market by the Minister of Finance Indonesia. The number of sharia shares per April 30, 2017 was 354 shares, up 0.29 percent compared to the end of 2016 as many as 347 sharia stocks. Meanwhile, the capitalization of shariah shares amounted to Rp3,402.98 trillion, an increase of 9.09% compared to 2016's end-year capitalization of Rp3,119.42 trillion. (Proceeded data from <http://www.ojk.go.id>). The amount of shariah stocks and mutual fund until march 2017 in Indonesia has grown as figured bellow:



Source: Indonesia Stock Exchange

Figure 1. The Growth of Shariah Stocks and Mutual Fund until March 2017

In practice, those large transactions are carrying potential hazard in trading stock exchange as front running, Misleading information, Wash sale, Pump and Dump, Hype and Dump, Creating fake demand/supply, Pooling interest, Cornering, Marking at the close, Alternate trade, Insider Trading, Short Selling and Margin Trading. In practice, settlement in the stock market began with the stock and bond trading on the stock exchange through primary market and then proceeded to the secondary market. The initial market as the prime selling stocks or bonds by the issuing company at the stock exchange furthermore can be sold back on the stock exchange in order to gain an advantage. Transactions that occurred after the initial market named as the secondary market. In fact, people who buy all securities traded (stocks or bonds or derivative instruments) have to excess, however the mechanism of capital market transactions has allowed speculation possibility. There are several aspects to become a benchmark assessment of whether a stock exchange is allowed or not, i.e. instruments traded, transaction mechanisms, and the harm it causes.

In 2015, The Indonesia Stock Exchange was examining six securities firms suspected of short selling transactions outside the prevailing regulations of the stock market. The firms used to play the risk in market to take advantage of psychological effects in the midst of the situation of global stock market that is less conducive. The index was still trying to lower the stocks through the short selling mechanism, but the transaction was rejected, because the Exchange had issued a 10 percent auto rejection restriction policy.² In Islamic stock exchange market this trading model could potentially occurred because some traders support the short selling for benefit. They argue that short selling can actually guarantee stock prices really reflect its fundamental value. Short sell transactions are an integral part of the index arbitrage strategy. The arbitrage usually will not be silent to see stocks that are felt overpriced. Without short sell, stock prices tend to be higher than their value. If that continues, according to supporters of short sell, the stock market will become a bubble and just wait for the time to see the bubble burst.

4.2. Legal Substance Perspective

From the legal substance perspective, Indonesia adopts a hierarchy system of legislation and the Constitution of the Republic of Indonesia of 1945 is the highest in the hierarchy of legislations in Indonesia. Civil law in Indonesia is adopted from the Roman civil law covering both written law and unwritten or custom law (Irawan Soerodjo: 2016, p.30). In the positivism context, the law is resulted as a scientific doctrine that only experience is true because it can be assured in reality through science. The tendency was based upon facts that could be observed. By this system the implementation of law is preferred to provide certainty as guidance to the community and permanent guidelines to the law enforcement (Agussalim Andi Gadjong, 2011).

Indonesia political law consistently follow that system even while absorb other law system to national law. In economics law aspect, Indonesia begun to accommodate the Islamic law system bay issuing the Act no. 21 year 2008. Some people assess that this act still being an unaccomplished Law to support Islamic Banking industries. The Act has been accused as the ambiguous policy of Indonesia Government to accommodate Muslim needs in Islamic financial law and practice. Even though many conventional banks have spun-off their Islamic windows to full-fledged Islamic bank and conversion of rural banks to Islamic rural banks (Gudarzi Farahani, 2012, p. 8). On the other hand, even the Islamic Banking Act No. 21 Year 2008 have arisen the Islamic Banking in Indonesia, the some customers are still being doubt of banking transaction under shari' ah principles. M. Sieddieq said that the effect of the implications a zero rate of interest in a mixed economic system involve must have a full-scale theoretical model of the economy (M. Sieddieq Noorzoy, 2009).

² (<https://www.cnnindonesia.com/ekonomi/20161115013331-92-172667/ihsg-longsor-bei-awasi-transaksi-short-selling/>)

The ambiguity become more contrast when the DSN-MUI which has authority to issue fatwa as legal substance instrument. Otherwise fatwa itself is not a law instrument which has a significant position Fatwa as a product of construction of law is formulated by the reasoning process explaining (*bayaniyah*) of the Quran and Prophet traditions. In forward, understanding legal maxim (*qawa'id fiqhīyyah*) absolutely is necessary to construct a fatwa. Since the end of the 2nd century of Hijra the scholars and jurists earlier has started pointing a milestone laying legal maxim through their great works, which could derive the benefits of modern life, including the economy. The Muslim scholars have compiled the legal maxim as principles, methodology, and rules drafted by the experts as a guide to establish a law. The scholars of Islamic law have taken laws Personality 'of the arguments that could not be separated from the use of Islamic legal methodology. Coulson has illustrated how important legal maxim towards exploring legal texts of the Quran and Prophet tradition`s revelation (Coulson, N.: 1987, 24).

Even so the OJK commissioners, BI Governor or head of BAPEPAM-LK`s ordinances are proceed by legal drafting method. This method more concerns to legal performance nor substance. They only need to adjust the laws hierarchies as been statute in the Indonesia constitution. Refer to the hierarchy of legislation in Act. No. 12 Year 2011 on the Establishment Regulation Legislation, the position of the MUI Fatwa is not a kind of legislation which have binding legal force. MUI Fatwa only binding and adhered to Muslims who have engaged to the MUI itself. Otherwise OJK has signed a memorandum of understanding with the DSN-MUI to intent sustainability Islamic financial industry accordance with Islamic principles. This cooperation had done to support the monitoring integrated financial services while enhancing the Islamic financial literacy and consumer protection in the Islamic financial services sector.

Nevertheless, the ambiguous perception appears whether Fatwa DSN-MUI is a law product or not. Moreover if we discuss about the Central Bank of Indonesia (BI) Regulation no. 17/4/PBI/2015 article 5 subsection (3) says that shariah commercial or shariah rural Bank which is issuing the shariah based interbank money have to obtain the shariah compliance Fatwa from DSN-MUI firstly. However, in the explanation part of that BI Regulation says that Fatwa DSN is one consideration for Bank Indonesia to commit the shariah based interbank money being purposed automatically. This Bank Indonesia regulation is clearly in contrast with the Bank Indonesia Decree No. 32/PBI/1999 article 31, stated that "to carry out its business activities, shariah banks are required to pay attention to DSN-MUI fatwa".

This discussion proofed that the polemic on the position of Fatwa of DSN-MUI actually has not been confirmed through the legislation of the state. Therefore it is not proper to provide legal certainty while the Islamic financial industry need the certainty of those who have authority in the field of sharia. In terms of the mechanism of transactions on the stock exchange, stock and bond trading also loaded to the Islamic Shari'ah. In the secondary market, stocks and bonds can be traded at prices above or below the nominal value of the nominal price. Therefore investors gains not only through the distribution of dividends and interest, but derived from the difference between the sale price and the purchase price. In fact this is the main purpose of trading activity on the trading floor, which benefited from the difference between the sale price and the purchase price. Someone will buy shares of companies that are considered to have good performance and have a bright prospect on the trading floor. Likewise, the prohibition of short selling in capital market transactions as well as Islamic mutual funds, based on the *dharar* contained therein.

Dealing with this potential problem, the DSN-MUI fatwa did not engage with mechanism activities, especially regarding the issuer, the type of securities traded and trade mechanism in accordance with Shariah compliance could be met. The presence of DSN-MUI's fatwa, only covers the general arrangement like fatwa number 20/DSN-MUI/IV/2001 about Guidelines to Mutual Funds Infestation. This Fatwa just regulate that shariah Mutual Funds has to obey the provisions and principles of Islamic law, either in the form of contract between the investor and the investment Manager by using *Mudharabah* contract. This fatwa indeed has arranged the operational mechanism which ought to avoid banned trading like usury, the investment transactions in which n *gharar or Najsy* (i.e offering false), *Bai al-ma'dum* (execute the sale of goods that have not owned / short selling), insider trading, as well as investments in companies that at the time of the transaction level (ratio) is more dominant than debt capital. Furthermore, this fatwa has not regulated how to control them in detail.

Similarly the Fatwa DSN-MUI number 40 / DSN-MUI / X / 2003 on Capital Market and the General Guidelines for Application of Shariah in the Capital Market has set the Islamic capital markets have banned the margin trading but particularly it has not reflected actual conditions of the asset on which the issuance of such securities in accordance with the market mechanism orderly.

Likely the DSN-MUI Fatwa Number 80/ DSN-MUI/III/2011 on the Application of Shariah Principles in Equity Securities Trading Mechanism In the Regular Stock Exchange, only regulated using the sale and purchase agreement. In such transactions the buyer may sell the securities after the purchase contract referred albeit rated unauthorized settlement administration purchase transaction (settlement) is carried out at a later date. To ensure such transactions to avoid speculation, the price to buy and sell can be determined based on an agreement which refers to the fair market price through continuous bargaining mechanism.

4.3. Legal Structure Perspective

Therefore Indonesia law system on the positivism perspective implements the hierarchy system as paired in the act. 12 year 2011 about Establishment of legal regulations. In this act article 7 verse (1) cited that "Types and hierarchy of Rules consists of Constitution of the Republic of Indonesia of 1945, People's Consultative Council Decree, Law/Government Regulation In Lieu of Law, Government Regulation, Presidential Regulation, Province Regulation and Regency/Municipality Regulation.

Comparing with the existence of DSN-MUI, actually the issuing of DSN-MUI has proofed Indonesia government adopting Muslims interest. If we pay attention on the political policies against Muslim communities in Indonesia, the government tends to accept the Islamic principle as the element of national development. Afterward, the political economic of government policy that still allowed the interest based trading in the stock market has proofed that the Islamic Stock Exchange have to adjust the rate by using a compatible system with both Islamic principles and the market demands. Despite Islamic law explicitly prohibits interest in all its manifestations, interest based finance have become the dominant system during the colonial period, and continued in many Muslim countries even after their independence. During that period conventional market had occupied centre stage of the financial industries in mobilization of savings and providing of loans. Naturally, the models of Islamic Stock Exchange has been purported could not work without conventional banks.

In constant, the political government actually have positioned the OJK's ordinances to control both Islamic and conventional stock market. As we elaborate the OJK ordinance number 19/POJK.04/2015 on issuing and requirement shariah mutual fund article 9 stated that the issuers whose are offering of shares of Shariah Mutual Fund obliged to follow the laws and regulations in the sector of capital market concerning general provisions filing of registration statement, regulations in the registration statement for a public offering investment fund company, and regulations concerning other Corporate Investment Fund, unless otherwise regulated and specifically regulated in this Regulation of the Financial Services Authority. This article clearly does not conclude the DSN MUI Fatwa as a legal consideration. The role of DSN MUI as a board only mentioned in the article 3 verse (1) that the issuers of Islamic or Shariah Public Company shall have a Shariah Supervisory Board. In the OJK ordinance number 16/POJK.04/2015 about Shairah Stock Exchange Expert article 3 made a requirement for the expert to have appropriate knowledge in the field of capital market, evidenced by a certificate that is recognized by the OJK and published by educational institutions in the capital market based on the recommendation of the Committee on Standards Expertise conducted by OJK. DSN MUI only has the authorities to nominate the expert candidate to OJK and would be assigned in the General Meeting of Shareholders.

Hence, the detail arrangement about Islamic Stock Exchange have issued by Decisions of the Head of Indonesia Stock Exchange. One of the them is the decision number Kep-00071/BEI/11-2013 about equity stock trading which covered the rules about the device used in securities trading; trade execution; handling interference or damage trading system; operational and technical service. This ordinance also banned the trading that can potentially cause market manipulation, either for itself or its clients. It also prohibit that involved either directly or indirectly, or cooperate with the ajnother in a transaction that is fraudulent, manipulative, or using insider information; and carry out a transaction if the transaction is based on a statements or information that is false or misleading. This ordinance also specified the Stock Exchange to control all trading in the stock including regular, spot and negotiation market, Islamic either conventional stock market and both shares and bonds market.

5. Conclusion

One of the main tasks of the DSN is to examine, explore and formulate the values and principles of Islamic law in the form of fatwa to guide the activities of financial institutions shariah transactions. The role of DSN-MUI is to supervise the implementation of the shariah principle in the system and the management of shariah financial institutions. DSN main task is to oversee the business activities of shariah financial institutions to comply with the provisions and principles which have been stated by a number DSN Fatwa.

Otherwise the ambiguity of Indonesia Political Law causes DSN MUI unable to ensure the shariah compliance in the stock exchange Indonesia. As the Act no 12 year 2011 never mentioned Fatwa as the element of law hierarchies but OJK required the Fatwa to Islamic financial allowance. The Indonesia Government through the finance ministry had directed the Authorities of Financial services (OJK) and ISE to control the stocks, but also obligate the Islamic investment company to have Sharia controlling board which is nominated by the DSN-MUI. Finally, DSN-MUI have authorities to arrange the rule about Islamic stock generally but OJK regulated the detail particularly. Thus it can be seen that the DSN-MUI as a Legal Opinion has been accommodated by the law in developing Islamic stock exchange legislation but the ambiguity of Indonesia political law bring the DSN-MUI role diminished.

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