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Stock Investment According to Classic and Contemporary Ulama Views: Comparative Law Studies

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Abstract

There is an increase in stock problems in the contemporary era. Various economic issues no longer have conventional nuances but are integrated with the digital world. Numerous applications and website portals have been created that promise attractive profits when investing and selling shares on their forums. Investing in stocks became a lucrative business with little effort put into its application. The highest power is vested in the largest shareholder, not in workers who have direct contact with the business it self. Problems arise when discussing the legal validity of the event. This is due to the presence of trade monopoly indications and capitalist elements. Furthermore, the concrete stock issues never discussed by classical ulemas are likely to differ from those discussed by current ulemas living in modern or postmodern society. Therefore, it is considered far more relevant to view contemporary economic problems such as stocks in light of contemporary ulema's views. This article examines the views of famous classical ulemas of their time, as well as contemporary ulemas, regarding stocks in general. This study uses a comparative analysis with a normative review of Islamic law and positive law in Indonesia.

Keywords: *stocks, classical ulemas, contemporary ulemas, and comparative studies.*

1. Introduction

In 2022, the number of investors in Indonesia reached 10.31 million people. This figure increased 38% when compared to the previous year or increased drastically by 536.42% in the last four years (2018). The Indonesian society's awareness in understanding investment is also quite good. Based on the research who has stated that 75% of people dominated by the younger generation begin to be literate about investment. Although it has increased significantly, the number of investors in Indonesia is still relatively low compared to other countries in the world. It was the reason why Indonesia falls into the category of developing countries. Due to low investment growth.

In the course of investor development in Indonesia, especially young investors, It does not rule out the possibility of violations in the Indonesian capital market which certainly cause a lot of losses for investors. For example, a large case occurred at PT Sarijaya Permana Sekuritas which caused losses of 8,700 customers with losses reaching Rp. 235 billion, then the case that occurred at PT Antaboga Delta Sekuritas which caused a loss of Rp. 1.4 trillion, then also happened to PT Andalan Artha Advisindo Sekuritas which caused losses to its investors of Rp. 120 billion. Therefore, the losses suffered by investors, they have not received compensation that is comparable to the losses they experienced.

Investing nowadays is considered as the ultimate path that is effective in producing a large amount of money. Sufficiently providing as much money as possible with the right calculation will result in multiple profits. With the passage of time, the investment activity has expanded. One of them is encroaching in the form of stock investments that are quite widely applied by the society. Shares can be interpreted as financial instruments that contain instructions to show that a person or organization has a right in the company. In addition, shares also have a function as proof of capital participation in a company's share ownership. The advantages of this stock lie in the nature and value that can be traded at any time in the capital market by using debt bonds.

Problems in stocks can be diverse and influenced by many factors, some common problems that often occur in the stock market are volatility. However, stocks can experience significant price fluctuations in a short time. Stock prices can be affected by news, company performance, general market conditions, or other factors. This volatility can cause suffering a loss, if the investor sells stocks at a low price. Stocks are particularly vulnerable to systematic market dynamics and impacts related to the overall market. Economic fluctuations, political events, or global turmoil can affect the stock market relatively. In addition, stocks also face risks related to the internal performance of the company. If a company experiences financial problems, poor management, or other negative news, the stock price can have a significant effect.

Stock growth in Indonesia is quite volatile. Since 1989 stock development has been good because the government accommodates various regulations related to the ease of investing. However, at the end of 1997, the existence of world stocks in Indonesia declined sharply until 2001 due to unstable socio-political conditions. Crises occurred everywhere, especially in the Asian region including Indonesia. Interest rates rose dramatically until Rp. 10,000-, a pretty big number at that time. Until the end of 1998, the face of the stock was the worst. At the beginning of 2002, the stock's development improved again and reached the highest number in the history since 2001. This shows that the development of stocks in Indonesia is unstable and due to various conditions, such as political interventions, national economic stability and the dynamics of changes in the social order of society.

Nevertheless, *ulama* has a different opinion about stock law. One of the *ulama* who banned the investment of shares is Taqiyudin al-Nabhani. He considered that the sale and purchase of shares is included in the *syirkah bathil*, agreement of cooperation or partnership between two or more parties in Islam that aims to carry out an illegal business, and contrary to the Islamic economic system. However, there are also scholars who allow sale and purchase of shares such as Sheikh Yusuf Al-Qaradawi, he considers that stocks are a permissible investment activity, but it must comply with the provisions of the *shari'a*. In addition, in terms of stock law issues that exist today, it is interesting to see how the views of classical and contemporary *ulama* in responding and interpreting the stock law which is currently practiced by the society.

The contradictory opinions of the *ulama* make this law of stock investment relative. In fact, during the current disruption era, a clear legal position is very important and is eagerly awaited by the society. Islamic law should be able to answer the confusion of legal standing on various contemporary issues which is the stock investment. In conclusion, it is important to explore the various opinions of *ulama* who lived in pre-modern (classical) and modern (contemporary) times regarding stocks. This research is expected to clarify the substance and legal considerations of this stock investment and its benefits and harms.

2. Research Methods

This study uses a comparative legal study approach with normative reviews and described in descriptive analysis. This type of research is library research. Library research is research by collecting various literature such as documents related to stock investments.

3. Results and Discussion

3.1. General Conception of Stock Investment

Investment is the placement of money or funds that purposes to obtain a certain additional or profit. Investments can be in the form of funds or money; such as stocks, bonds, mutual funds, and others. Subjects that make any type of investment are called investors. The purpose of investors to make investments is generally to obtain income or return on investment. Sutrisno defines investment decision making as the way financial managers allocate company funds for investments that will generate profits in the future. However, to make good investment decisions, investors must consider all the benefits and risks received by them. They can compare different types of investments by looking at accounting information and company financial statements. However, investors often think irrationally when making investment decisions because the investment is always uncertain.

According to Sapto Raharjo, stocks are securities that can show a person or organization owning or involving in a company. Rusdin also stated that shares are certificates indicating that a person owns the company and has the right to claim the company's profits and assets. Meanwhile, according to Fahmi, the shares contain the nominal value, name, and rights that are granted to each holder. Darmadji and Fakhruddin stated more concretely that shares indicate the participation or ownership of individuals or organizations in a company or limited liability company.

Based on the explanation above, it can be concluded that shares are a valuable document that shows a person to be part of a company. This means for those who buy shares of the company will be the owner of some of the companies that have been purchased indirectly. In addition, stock can be interpreted as a bookkeeping or unit of value that focuses on the form of ownership of a company. Therefore, when someone buys shares of a company, they already own the rights to an asset as well as the income the company generates according to the portion of the shares that they already buy. In simple words, shares can be defined as a proof of ownership of the company. Shares are usually in the form of paper that states the ownership of securities by the company.

Shares can be divided into two main categories based on their ability to meet their billing rights and claims, such as common stock and preferred stock. Common stock is a stock that can be claimed based on the company's current profits and losses. Common shareholders will have the last priority in terms of dividend distribution from the sale of the company's assets during the liquidation process. In a common stock, they do not have many responsibilities. This means that shareholders will incur losses equal to the value of the capital they have deposited when the company they founded is declared bankrupt. While preferred stock are stocks whose profit distribution value is fixed and given priority to preferred shareholders when the company suffers losses. Preferred stock is almost similar to bonds, which have claims of the profits and previous assets, dividends that remains as long as the stock is still valid, have redeem rights, and can also be exchanged for ordinary shares.

In general, stock investment can be defined as an effort to obtain multiple rights and benefits by investing in a particular company in the form of share certificates or business ownership. Meanwhile, in a deeper context, stock investment is interpreted as a strategic and effective step to raise money while securing one's wealth for a long time. Investing is the opposite of saving. Moreover, stock investing is a real enemy of the saving culture because saving is closely related to the rational and effective quantitative element. Meanwhile, stock investing is qualitative-irrational and effective in managing wealth. In conclusion, this means that stocks can have bigger or smaller results because they are uncertain. While saving is certain and takes a long time to accumulate wealth.

3.2. Classical Ulama's Views about Stock Investment

Investment is regarded as a way to generate wealth and contribute to the general advancement of society. Thus, it is encouraged in Islam. However, investing in stocks requires some rules and regulations. According to Ahmad Ghazali , Investors should consider four principles. The halal principle, which is the elements that does not violate Syarikat such as, the establishment of a place of business, there is no fraud, as well as the investment process that must be done transparently starting from the initial agreement to the distribution of company dividends. The principle of blessing, in this case every investor is sought to know how to manage the benefits obtained productively. Thus, it can provide benefits to others. The value principle, an investor is expected to look in terms of aspects of halal and blessing in getting profits. The realistic principle, in this principle an investor should choose stocks that have a positive *return*.

Islamic law is often associated with the term fatwa, because the term is derived from Arabic. In terms of legal sources, fatwas are not the main legal sources in Islamic law; the main legal sources are the Qur'an and the Sunnah, not human thought. But it can still be included in the category of ijtihad, because the process of determining fatwa is carried out by established methods of jurisprudence. Regarding the stock law that applies nowadays, classical ulama does not state specifically about it because there were no shares at that time. However, there are some things that have been discussed by classical ulama, namely trade, justice, and economic principles in Islam.

From the discussions that have been mentioned by classical ulama in the first place, it can be applied in the context of stocks. One of them is the prohibition of the practice of riba, excessive speculation, and unfair transactions. Thus, ulama argues that investing in companies who do not contain elements that are forbidden in Sharia is allowed. Therefore, in terms of dividend distribution, the ulama allows investors to receive dividend returns from a company which he invests if the company does not involve prohibited practices by *shari 'a*.

3.3. Contemporary Ulama's Views about Stock Investments

In general, contemporary ulama can be defined as scholars who have progressive, moderate, humanist thoughts and certainly not contrary to *syara'*, law based on sharia or sharia. Contemporary ulama usually lives in modern times, and they are concerned with current issues nowadays. In other terms, contemporary ulama use a perspective that is aligned with the current era that is suitable in their field or scientific competence. The urgency of ulama in providing views on various current problems such as social, economic, political, and technological should be done. This is because the texts of the Qur'an are limited and universal. It is necessary to interpret and re-intellectualize with a variety of complex-specific cases, especially in the context of Islamic law.

Ulama have an obligation to answer various problems and produce fatwas, legal opinions given by the ulama, that are in accordance with the relevant legal rules. This is done in order to provide understanding as well as guidance to the society so that they do not fall into a rut and make mistakes in implementing actions resulting from social, economic, political and technological changes that are not explained in concrete terms by the All-Quran or hadith. In socio-economic contexts such as stock investment, the result of no clear argument that regulates scholars makes a different point of view about the case.

In the context of this study, there are two perspectives of ulama who are elaborated in looking at stock investments, including Wahbah Zuhaili and Sheikh Yusuf al-Qaradhawi. Wahbah Zuhaili argues that stock investment is actually allowed by looking at it as part of a buying and selling effort. In fact, he considered that the results of stock investments that have reached nisab, the minimum amount of wealth that a Muslim must have before being obliged to give *zakat*, then they must do *zakat* or alms, especially assets from stock investments in the context of goods trading companies. However, there are exceptions for businesses such as services that can be avoided from that category.

Based on what Sheikh Yusuf Al-Qaradawi said is basically the same as what Wahbah Zuhaili stated. He mentions in his book that the shares are halal and there is no contradiction on them. Conversely, if the activities carried out are contrary to Sharia, the shares can have illegal status immediately. Yusuf al-Qardhawi divides the law of stock investing into three categories. First, shares are called halal because there is no conflict with *syara'*. Especially institutions or banks that are consistent with Islamic sharia in carrying out their operations, such as sharia banks, *sharia* insurance and so on. Second, shares that are considered illegal when there are doubts and illegal elements such as usury, buying and selling pigs, *khamar*, and others. Third, shares are considered halal if the company's activities are also carried out in the ways that are justified in *syara'* and there is no doubt in it, such as water companies, electricity companies, transportation companies, railways companies and so on.

Ibn Hazm, Shukani and Sadiq Hasan Khan mentioned that it is haram to take *zakat* from assets that are not clearly mentioned in the nash, Allah's revelations or texts in the Al-qur'an, such as stocks. Sheikh Yusuf Al-Qardhawi does not hesitate to dispute the opinion of the cleric who immediately banned stock investment. According to him, assets that have reached nisab are legally obliged to be issued *zakat*, including stock investment. The worship of *muamalah* such as shares should not be in qiyas with other cases because it tends to be irrational in the legal considerations. According to Al-Qhardawi, the methodology of ijtihad qiyas can be used in any case including analogizing the case of stock investment.

3.4. The Analysis of Legal Opinion

The opinions of both classical and contemporary *ulama* regarding the law of stock investment in general have something in common which is permissible but under certain conditions. The difference in these requirements lies in legal considerations and social-community conditions. In the era of classical *ulama*, there was no concrete stock practice at that time, so his views can be identified by analogy with the practice of buying and selling or other trade agreements. As long as there is no element of *riba*, *gharar* and fraud then it is legitimate to do so. On the other hand, if there are elements of *riba*, *gharar* and fraud, it is not permissible to do so. In addition, contemporary *ulama* knows directly how the investment in shares is implemented, so the views produced are more concrete. One of the ulama for example Yusuf Al-Qardhawi stated that stock investment is halal if it does not contradict with *syara*'. *Syara'* is explained in several concrete categories such as using *sharia* contracts. It is carried out by Islamic institutions or banks and activities that are mutually beneficial for all parties. This view is much more relevant than the views of the classical *ulama*. However, the views of both the classical and contemporary *ulama* eras are prone to wrong reinterpretation in their application.

There are several things that need to be emphasized when this stock is allowed. The connection is in the control of property by a few people or the monopolization of world shares. When stock investment is unconditionally permitted, a threat to human welfare will occur. In the principle of the world of stocks, investors who contribute the most capital will have the highest power as well. As a result, the macro economy is only controlled by a handful of people who have capital or wealth. It is actually contrary to the principles of Islamic economics which obliges us to be empathetic and loyal to other Muslims. This means that there needs to be affirmation requirements, such as the obligation to give *zakat*, to give to the poor and to donate some of the stock investment returns for the benefit of preaching in the context of religion and the country.

4. Conclusion

A negative view of stock investing in practice turns out to be unjustified. Especially those who call stock investment haram which the reasons not exemplified by the prophet. In accordance with traditionalist and conservative views, they have been examined by comparing classical and contemporary *ulama* as a result it shows that they agree that stock investing is permissible. It also concerns *ikhtiar* for maximizing existing assets in order to expand their usefulness. According to classical and contemporary ulama, stock investments halal is carried out without contrary to *syara'* such as no element of *riba*, *gharar* and fraud. However, this similarity of opinion needs to be anticipated. There are several things that must be considered so the shares are not directly allowed. Its relevance to global stock monopoly or ownership of property by a particular group. For the reason that the principle in the world of stocks, investors who contribute the most capital will have the highest power as well. Of course, it is also contrary to the principle of Islamic economics which obliges all people to prosper without exception. This means that there needs to be affirmation requirements, such as the obligation to give *zakat*, to give to the poor and to donate some of the stock investment returns for the benefit of preaching in the context of religion and the country.

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