

## ***Al Hisbah* in Modern Era: Investor Protection Institution in Indonesian Islamic Capital Market**

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### ***Abstract***

*This research aims to explore the evolution of the role of al hisbah in the financial sector, especially the capital markets industry. Along with the times and the increasing complexity of today's government bureaucracy, the role of al hisbah has been formed differently in each country according to their respective needs. This research uses an exploratory qualitative method with secondary data. The research results show that the role of al hisbah is very complex, one of which is in the financial sector of the capital market to carry out supervision in order to protect investors from both external and internal risks. In this case, the Financial Services Authority (OJK) plays the role of al hisbah which coordinates with the National Sharia Council (DSN) to ensure transactions and activities in the Indonesian Islamic capital market are safe and healthy.*

**Keywords:** *Al Hisbah, Islamic Capital Market, Investor Protection*

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### **1. INTRODUCTION**

The market as the center of society's real economic activity is an important element that contributes to realizing a country's economic balance. Since the reign of the Prophet, the market has become a place that requires certain supervision so that irregularities do not occur and safe and healthy transactions are formed in it. However, the reality is that it is difficult for the market to run fairly on its own, there must be disturbances that cause damage to market balance. Market distortions can benefit one party and can also harm other parties. So the government's role as a policy maker is needed to improve market conditions.

Al hisbah is known as an institution that played a role in market supervision during the Islamic government. During the time of Rasulullah, al hisbah was just an informal activity which then became institutionally formal during the caliphate of friends. However, more generally, al hisbah plays a role in

regulating and maintaining community welfare in the political, social, economic and even environmental fields (Jaafar et al., 2021). So it is more complex, not only in the market economy sector. Along with the development of economic flows, various new terms or models of financial transactions have emerged, such as money markets. In modern times, the term market is not only defined as the traditional market for goods and services, but there is also the money market and capital market. Therefore, the role of al hisbah does not only focus on monitoring traditional markets, but also on the money market and capital market as a place for transactions in various financial instruments. So its role is not only to ensure fairness between sellers and buyers, but also to customers and investors involved. In research by Hassan & Ilias (2019) who explored the role of al hisbah, they explained that in Malaysia al hisbah also plays a role as a consumer protection institution in the sharia credit industry. Institutions that play a role in supervising the consumer credit

industry in Malaysia include BNM and MCSC which reflect the role of the al hisbah institution.

This research aims to explore the implementation of the role of al hisbah in modern times, especially in maintaining the balance and stability of the Islamic capital market in Indonesia. As a country that implements two economic systems, it is certainly important to explore this matter. About how and to what extent al hisbah contributes to maintaining sharia compliance in capital market transactions amidst various conventional capital market transactions that occur. Kasim et al (2013) emphasized the need for a complete framework for hisbah institutions to handle the Islamic capital market (ICM). So this research can be an additional reference that might be able to answer these complaints.

## LITERATURE REVIEW

### *Al Hisbah*

Al hisbah comes from the words "*ihitisaba*", "*yahtasibu*" and "*ihitisaban*" which means reward from Allah (*talab al-ajr*) or is also interpreted as an effort to prohibit all actions that are contrary to the Shari'a. Al hisbah is often interpreted as *al-amar bi al-ma'ruf wa al-nahy an al-munkar* which visualizes al hisbah as an institution that upholds goodness and shuns evil. Initially, the formation of al hisbah was intended for da'wah and counseling to encourage moral behavior and prevent immorality. Over time, the activities carried out went beyond religious preaching and even dealt with social problems in general (Shah et al., 2013).

In history, the concept of al hisbah already existed during the leadership of the Prophet Muhammad, but was not specifically known. The role of al hisbah became increasingly visible during the caliphate of Umar bin Khattab. As caliph, he himself ensures that all types of business transactions involving weighing, measuring, and the quality and quantity of goods sold must be free from elements of fraud and oppression. Specifically, the role of al hisbah is closely related to market supervision. During the Abbasid caliphate, especially during the time of Caliph Abu Jaafar al-Mansur, al hisbah became a separate department and even an independent institution that stood alone (Khan, 1985). In carrying out its authority, al hisbah is carried out by officials known as muhtasib. In practice, the muhtasib has the authority to supervise the entire market in order to guarantee all forms of needs in the market so that

market competition can run healthily and Islamically. Classical Muslim scientist, Al Mawardi, in his book *al-Ahkam al-Sultaniyya* explains the requirements for a muhtasib, including having to be free, which means not a slave, fair, sensible, firm in religion, and aware of what evil is, so that every action or The decisions he takes must be in accordance with Islamic teachings (Zada et al., 2016). A muhtasib must be knowledgeable and an expert in his field because he will be involved in various legal cases which require him to think quickly in solving problems and making policies.

### **Al Hisbah in the Financial Sector**

Al hisbah is the main institution for Muslim communities with different names according to the needs of Muslim countries. Along with the loss of Muslim power in the 18th century, changes in the government structure resulted in the role of al hisbah decreasing. The role of al hisbah began to take on a secular character by distributing the authority of the institution to various government departments thereby eliminating its religious elements (Ateş, 2017).

As an institution known for governing good and avoiding evil, the role of al hisbah is quite broad, covering financial and non-financial obligations. Non-financially, it relates to physical markets that meet people's basic needs. Meanwhile, financially it is related to obligations in the financial industry. In the financial sector, the muhtasib's task is to ensure that daily business transactions are carried out in a way that does not harm society (Rahim et al., 2012). The muhtasib's main responsibility is to ensure that the business practices prevalent in the market conform to the dictates of Islam and that each party gets its rights and carries out its duties. Through its economic function, al hisbah also ensures that products are marketed halally (religiously permitted) and follow Sharia provisions. Prevent fraudulent practices, price fraud and product fraud. Prevent usury practices and price manipulation and control prices (Zakiyah et al., 2019). Apart from that, the role of the muhtasib is also expanded to ensure that the government management and administration system can run smoothly, in accordance with Islamic principles.

### **Islamic Capital Market**

The Islamic Capital Market plays a role in channeling funds from surplus income units to deficit units and allocating resources efficiently. In practice, the Islamic capital market adheres to Islamic law so

that its products, transactions and operations do not conflict. In contrast to the conventional capital market which can provide a fixed level of profit, the Islamic capital market provides returns in accordance with the contract for each financial product (International Shariah Research Academy for Islamic Finance, 2012). Some contracts that are often used in sharia capital market products include *Murabahah*, *Ijarah*, *Salam*, *Istishna*, *Mudharabah* and *Musyarakah*. Along with fluctuations in economic conditions and the nature of each individual, there are still many problems that occur in the sharia capital market, such as conflicts of interest, independence, risk of non-compliance and sharia competence that need to be addressed as a form of protection for investors for problems that have the potential to result in losses and harm (Kasim et al., 2013). In fact, quite a few people question the halalness of investing in the capital market, so there is a need for investor protection efforts by the authorities to provide certainty and security that investment in the sharia capital market is in accordance with Islamic law.

## **2. RESEARCH METHODS**

This research uses an exploratory qualitative research method with a literature review approach. Exploratory research can be defined as research that aims to explore broad causes or things that influence the occurrence of something. The data used is secondary data. According to Sugiyono (2015) secondary data is a data source that is not obtained directly from data collectors but through other people or documents such as books, journals, articles. In this research, there are two types of secondary data used, the first is articles that have been published in journals and the second is credible articles from internet media such as organizational platforms or activities related to the topic taken.

## **3. RESULT AND DISCUSSION**

### **3.1. Investor Protection in the Capital Market System in Indonesia (Conventional and Sharia)**

The capital markets industry is an important component in a country's financial system. Indonesia implements a dual system in capital market activities, namely the conventional capital market and the sharia capital market. With the dual system, the government not only guarantees general investor protection in capital market activities, but also ensures that sharia-

compliant products and transactions are met by sharia investors. Along with economic growth and unlimited capital flow activities, investor protection has become one of the most important aspects that needs to be considered amidst various internal and external risks such as unpredictable crises. Investor protection describes how a country's capital markets are managed. To optimize investor protection, the capital markets industry requires special authority. Various regulations and institutional authorities were formed as a realization of the government's steps to support safe and reliable capital market activities. The role of authorities is a key aspect in managing risks and keeping capital markets orderly and fair. In contrast to the capital market financial industry, the banking industry in Indonesia has a Deposit Insurance Corporation (LPS) which will pay customers' money if the bank is liquidated or there is a loss, while the capital market industry does not have this institution, making investor protection an important factor in capital market regulation and financial industry (Hamzah & Ahmad, 2018)

Capital market regulations in Indonesia were first established through Government Regulation Number 7 of 1992 which was later refined into Capital Market Law Number 8 of 1995 which contains all the rules and regulations for activities in the capital market. The Law also explains the functions, roles, authorities and responsibilities of the Capital Market Supervisory Agency (BAPEPAM) as the institution responsible for supervising and enforcing legal provisions in the capital markets sector. In its role of protecting investors, BAPEPAM has the right to issue warnings to companies that violate regulations (Nasution, 2023). If not, BAPEPAM also has the authority to revoke the company's permit. In addition, certain government officials at BAPEPAM have special authority to investigate criminal acts in the Capital Market sector, based on the provisions of the Criminal Code. Other strategies for protecting investors in the Indonesian securities market include strengthening regulations, providing education to investors, empowering market supervision, and strengthening regulations and law enforcement. However, even though BAPEPAM has provided regulations and guidelines for transactions in the capital market, there are still some businesses that are inappropriate or involved in market violations. External risks such as fluctuations in economic conditions also weaken the capital market in Indonesia, as a result, many

companies experience losses and ultimately fail to pay investors' funds.

In order to integrate supervision in the financial sector, the Indonesian government delegated the task of capital market supervision from BAPEPAM to the Financial Services Authority (OJK) through Law Number 21 of 2011. This law is intended to strengthen market supervision and increase consumer protection in the sector. Indonesian financial services include capital markets, insurance, pension funds, and banking. Thus, OJK has the authority to replace BAPEPAM to supervise and regulate the implementation of financial services in the capital market. OJK also has the power to take action to stop losses for society and consumers by educating and providing information to the public about financial services. So the current legislation in force to support the consumer protection system in the Indonesian financial services sector is Law Number 21 of 2011 concerning the Financial Services Regulator (OJK). OJK exercises its authority in the field of consumer protection under the Directorate of Consumer Education and Protection. This directorate aims to ensure that OJK's responsibilities and duties in the field of consumer protection truly meet the needs of consumers and society. Developing a consumer protection system is a priority for the OJK as a new supervisory agency that handles consumer complaints and provides sanctions for those who do not comply (Manurung, 2016).

The discussion above is a regulation relating to conventional capital markets. In the sharia capital market, related regulations are issued through the POJK. Many Financial Services Authority Regulations have been issued which regulate sharia capital market principles, the issuance of sharia securities, contracts used in sharia securities and so on. This POJK is a form of government effort to provide certainty and security for investors that the sharia capital market system is in accordance with Islamic law. In issuing regulations and concepts, OJK coordinates with the National Sharia Council (DSN). DSN will provide guidance and fatwas regarding the conformity of products and transactions with sharia principles which will become a reference for parties in the sharia capital market. In developing capital market product innovations, DSN also plays a role in determining whether the product is in accordance with Islamic law or not. So in this case, OJK and DSN play a big role in providing guarantees for the goodness of

the capital market system in accordance with Islamic law.

### **3.2. Analysis of the Role of Al Hisbah in the Islamic Capital Market in Indonesia**

The task of the Hisbah institution is to guarantee equality for all Muslims, with regard to compliance with sharia in market trading, price control, prevention of monopolies and maintenance of public and government resources (Widiyanti et al., 2011). As time goes by and the times develop, the position and role of al hisbah varies in each country depending on needs, in fact, to maximize its role, al hisbah was formed in each sector of government, including finance. The authority of the Financial Services Authority in supervising the financial system in Indonesia shows the role of the OJK as al hisbah in the financial sector. If in the classical period the role of al hisbah was identical or focused on physical market activities in order to meet the basic needs of a just society, then in the modern era the role of al hisbah is not only limited to the goods market, but also the capital or financial market.

In the money market, the role of al hisbah can be to carry out supervision so that in financial transactions there is no fraud, deception, injustice, which is detrimental to consumers/investors/related parties. In the conventional capital market in Indonesia, in general the focus is on investor protection in terms of transactions, whereas in the sharia capital market it is not only the transactions but also the products transacted that are the authority's responsibility so that they do not conflict with sharia (Mutmainnah, 2023). Therefore, OJK's role is assisted by DSN in creating regulations, provisions and developing sharia capital market products.

## **4. CONCLUSION**

The role of al hisbah has evolved along with the times and the complexity of the government system in the modern era. In classical times, al hisbah's role was known as market supervisors in traditional markets where people met their basic needs. However, currently the market is not only limited to the goods market, but also the capital market where investors make transactions. In general, the role of al hisbah in the concept of amar ma'ruf nahi munkar is very broad, not only in sectors but also in various fields or sectors.

In this research, the role of al hisbah in the capital market is held by the OJK as the competent authority

in supervising and issuing regulations related to the capital market in Indonesia, both conventional and sharia. In the sharia capital market, OJK will coordinate with the National Sharia Council (DSN) to provide investor protection in relation to ensuring sharia compliance as well as protection from various risks that may occur both internally and externally. This research only focuses on al hisbah in the capital market financial sector. Suggestions regarding further research include conducting deeper and more complex exploration regarding the role of al hisbah in various fields and to what extent al hisbah exists in government structures or institutions.

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