

# Law Review of Islamic Capital Market Role to Support Sustainable Economic Development

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## Abstract

**Objective** - The objective of this paper is to assess on how the rule of Islamic capital markets to support sustainable economic development and what kind of instruments can be developed.

**Method** – The method used in this research is the study of normative juridical approach to legislation and the concept of Islamic economics through literature review.

**Result** – Issuer's business activities related to support for environmentally friendly business activities are part of the implementation of sharia principles despite the provisions of the implementation of Islamic finance through a decision has not been stated . All types of instruments issued by issuers of sharia in Indonesia should be consistent with Islamic economic values, including the commitment to enforcement of environmentally friendly business activities.

**Conclusion** – This finding suggests to strengthen the legal instruments in the issuer's issuance of Islamic instruments in the form of regulations issued by the Securities and Exchange Commission and through the National Fatwa Council of Sharia.

Keywords : Islamic Capital Markets, sustainable economic development, friendly environment

## Abstrak

**Tujuan** - Tujuan dari paper ini adalah untuk membahas bagaimana seharusnya aturan hukum pasar modal syariah diterapkan untuk mendukung pembangunan ekonomi yang berkelanjutan termasuk Instrumen pasar modal syariah yang dapat dikembangkan guna mengimplementasikan maksud tersebut.

**Metode** - Metode yang digunakan dalam pembahasan makalah ini adalah metode penelitian yuridis normatif yakni melalui pendekatan perundang-undangan dan konsep ekonomi Islam.

**Hasil** - Kegiatan usaha perusahaan publik yang tercatat di pasar modal (emiten) yang terkait dengan dukungannya terhadap kegiatan usaha ramah lingkungan merupakan bagian dari implementasi prinsip-prinsip syariah. Meskipun dalam beberapa aturan yang terkait dibidang pasar modal belum mencantumkan secara tegas. Pada prinsipnya, segala jenis instrumen emiten syariah yang diterbitkan di pasar modal harus konsisten dengan implementasi nilai-nilai ekonomi Islam, termasuk pada komitmen penegakan kegiatan usaha yang ramah lingkungan.

**Kesimpulan** – Temuan ini menunjukkan perlu dilakukan penguatan instrumen hukum dalam penerbitan berbagai instrumen emiten syariah tersebut dalam bentuk regulasi yang dikeluarkan oleh BAPEPAM (sekarang tugas OJK), serta penguatan melalui fatwa Dewan Syariah Nasional.

Kata Kunci : Pasar Modal Syariah, Pembangunan Ekonomi yang Berkelanjutan, Ramah Lingkungan

## 1. Introduction

The Implementation of economic transactions based on sharia in Indonesia is become alternatives which increased significant. Similarly, transactions in the Islamic capital market also provide an alternative for investors, especially for Muslims. Through Islamic capital market, the psychological barrier for Muslims to enter capital market which has element of speculation can be avoided.

Islamic Capital Market was officially launched on March 14, 2003 concurrent with Memorandum of Understanding (MoU) signing between the Securities and Exchange Commission with the National Sharia Council. Although officially launched in 2003, but the Islamic capital market instruments has been present in Indonesia since 1997. It is marked by the launch of Sharia Danareksa on July 3, 1997 by PT Danareksa Investment Management. Furthermore IDX cooperating with PT Danareksa Investment Management launched Jakarta Islamic Index (JII) on July 3, 2000 which aims to give guidance for investors who want to invest their funds align with shariah principle.

Although investing in the stock market has not been as popular as invest in the real sector, the capital market is basically a very lucrative form of investment. But the success of capital market and domestic economy did not benefit all parties. While the economy grew rapidly and produces goods and services, the environment is increasingly damaged, increasing social inequality and poverty arise. It has become a struggle for conservationists (Timothy, 2011).

There are four (4) very serious environmental problems facing Indonesia today, namely (Basri, et.al in Susiastuti, 2013):

- a. High deforestation level in Indonesia threaten raw material supply and secondary forest products, and reducing the environmental services such as water source protection and preservation of important natural habitats.
- b. Land degradation in the form of erosion is a serious environmental problem in Indonesia. The problem occurs not only because the process of deforestation but also the impact of modern intensive agriculture. In the regions outside Java, the best marginal lands for forests has changed much for agriculture. Similarly, in Java, fertile farmland has been turned into urban interests and industry. The conversion rate has reached 187,719.710 ha /yr. Deforestation in upland areas around streams and rivers cause erosion and threaten water transport, irrigation systems, and the life of the fish in the river downstream.
- c. Shortage and excess of water, since deforestation in upland areas (upland) has resulted in increasing demand for water and increasing water pollution due to surface erosion. In the dry season, both Java and outside Java face shortage of surface water. While during the rainy season, surface water erosion, deforestation is also the rainy season led to a flood.
- d. Air and water pollution, the process of industrialization and rapid urbanization along the northern island of Java has resulted high air pollution levels and further threaten the industrial and urban growth. Industrial effluents polluting rivers in the port cities, pose health risks, as well as killing the species and damaging coral reefs along the ocean. Besides that air pollution, in addition to large population, as well as growing number of industries are largely unaware of adequate waste handling equipment. USAID study on fish and shellfish in 1997 taken from the harbor Jakarta (Jakarta Bay), contain heavy metal content far exceeds the WHO standard is 76% for cadmium (cadmium), 51% for copper (copper), 44% for tin (lead), 38% for mercury (mercury), and 2% for chromium (chromium). The content of PCBs

and DDT in the water port ranging from 9 ppb and 13 ppb, the standard exceed the WHO threshold of pollution of 0.5 ppb.

Economic development has two (2) side effects for both building and improving the welfare of the community and the negative impact to society itself primarily related to the environment both physically and socially. If economic development policy does not pay attention to social and environmental factors and think only of economic policy in the short term it can cause environmental degradation from time to time and in the end the capacity of natural resources will not be able to sustain the lives of people in the future (Basri, et.al in Susiastuti, 2013).

To bridge these gaps, in July 2009 Kehati in collaboration with IDX launched index based on Sustainable and Responsible Investment (SRI). Issuers that included in the index are not only making profit but also caring for sustainable development which is based on six fundamental. Those six things are preservation of the environment, society, human rights, business behavior, employment practices, and ethics (Basri, et.al in Susiastuti, 2013).

## **2. Methodology**

The method used in this research is the study of normative juridical approach to legislation and the concept of Islamic economics. To discuss the issues raised in this study, researchers conducted a normative approach, which emphasize in literature study or secondary data. In accordance with the field of law study, normative methods used to assess the meaning, purpose and existence of Islamic Capital Market as an alternative infrastructure financing in Indonesia. The research was supported was supported by a comparative law and economics approach (economic analysis of law).

The source of Islamic law including economics that recognized by ulama consensus are Al-qur'an, Sunnah Rasul atau *Hadist*, *Ijmak*, and *Qiyas* (Kara, 2005). Al Quran and Sunnah have prime position in a legal source of Islamic economics. Al Quran is the word of God given to mankind through the Prophet Muhammad. Whereas the Sunnah, according to the science of hadith experts, synonymous with hadith, and they define it with all the words and deeds, proof, nature, circumstances, nature / character, and the prophet Muhammad's life journey both related to legal issues or not (Nazir and Hasanuddin, 2004).

Islamic economic philosophy is based on the philosophy of the Triangle concept of God, Man, and Nature. So the key philosophy of Islamic economics lies in relationship between humans with God, nature and other human beings. Besides Islamic economics also discusses the purpose of human life on this earth.

Man's relationship with Allah formulated with Tauhid. Tauhid in Islamic economics means that all the natural resources that exist in the universe is Allah's creation in absolute. The concept of tauhid teaches that Allah is one, creator of all human beings and human being have the same rights and obligations as the khalifah of Allah on earth. Natural resources, flora, and fauna subjugated by God as a source of economic benefit to mankind (Surah Al-An'am 142-145, An-Nahl: 10 -16).

### *2.1 Definition and Concept of Islamic Economics*

According to M.Akram Khan in Hidayat (2010), Islamic Economics is:

*“Islamic economics aims to the study of human falah (well being) achieved by organizing the resources of the earth on the basic of cooperation and participation”*

Islamic economics aims to conduct a study about the happiness of human life (human *falah*) which is achieved by organizing the natural resources on the basis of mutual cooperation and participation.

Chapra stated in Hidayat (2010):

*“Islamic economics was defined as that branch of knowledge which helps realize human well-being through an allocation and distribution of scarce resources that is in conformity with Islamics teaching without unduly curbing individual freedom or creating continued macroeconomic and ecological imbalance”.*

Islamic economics is defined as a realization of knowledge that help the efforts of human happiness through the allocation and distribution of scarce resources in the corridor which refers to the teachings of Islam in which forbid full individual freedom (*laissez faire*), unsustained macro behavior and without the environmental balance ”.

Both conventional and economic definition of Islamic economics, in many cases have in common, which are equally investigate human behavior in production, distribution, and consumption relating to the selection of these resources to meet human needs. But in Islamic economics, the objectives has been defined clearly, it is achieving a balanced not only worldly happiness but also hereafter and further creating social and economic justice (Hidayat, 2010).

## *2.2 Sustainable Economics Development*

Conceptually, the notion of sustainable development comes from economics term, especially in associate with issues of efficiency and fairness (equality) to ensure the sustainability of economic development for the welfare of the community. This is also motivated by the biological sciences that addresses sustainability in terms of ability and

suitability a location with regenerative potential/ productivity of the environment (Silalahi, 2003).

The concept of sustainable economic system shows that in applying the implementation of development it should be considered and taken into account the impact of any future economic activity so that development is not merely for present moment, but also continued its sustainability in the future.

As a term, the words sustainable development was introduced by Rachel Carson through his book *Silent Spring* that was first published in 1962. In the concept of sustainable development, the process of construction or development is expected to meet the needs of the present without compromising the ability of future generations to meet their needs in harnessing the potential of natural resources for life (Carson in Asshiddiqie, 2010).

The principles of sustainable development in the managing natural resources and environment in has developed rapidly since Stockholm Declaration - 72, then developed and expanded in the Rio Declaration - 92, and then peaked in Johannesburg Declaration in 2002. among these principles are expected to affect the formation of new legal rules including (Silalahi, 2003):

- a) Obligations contained in Principle 21 of the Stockholm Declaration and principle 2 of the Rio Declaration governing sovereign rights over natural resources and the responsibility of the state to prevent the environmental impact that cuts across national boundaries;
- b) Preventive action principle;
- c) Good-neighborliness and cooperation of international obligations principle;
- d) Sustainable development principle;
- e) Precautionary principle;
- f) Polluters pay principle; and

g) Common but differentiated responsibility principle.

### *2.3 Legal Basis for Sustainable Development and Environmental Concept*

The foundation of Indonesia's economic development policies in the provisions of 1945 Constitution, clearly reflects the realization to achieve the welfare of society as a whole.

Article 33 of the 1945 Constitution mentioned:

- (1) Economy is structured as common effort based on the principle of kinship
- (2) Production sector which important for the control of the state and welfare of the majority is controlled by government
- (3) Land and water and the natural resources contained therein controlled by the government and used for the people's welfare.
- (4) National economy shall be conducted in accordance with the principles of economic democracy, efficiency, justice, sustainability, environmentally sound, independence, and balancing progress and national unity.
- (5) Further provisions on the implementation of this Article shall be regulated by law.

Under the provisions of Article 33 of the 1945 Constitution, particularly in paragraph (4), that national development must also be guided by the principles of sustainable economic development and environmentally sound. Provisions on this matter are also confirmed in the provisions of Article 28H Paragraph (1) of the 1945 Constitution which stated:

"Everyone has the right to live in prosperity both physically and spiritually, having place to live, and earn a good and healthy living environment as well as the right to health services"

Under the provisions of Article 28H Paragraph (1) of the 1945 Constitution, it is human rights to live in healthy and secure environment. In the Law No. 32 Year 2009 on Environmental Protection and Management in the note said that that good and healthy



environment is a fundamental right of every citizen in Indonesia as mandated in Section 28H of the 1945 Constitution of the Republic of Indonesia and that the national economy is conducted by the principles of sustainable development and environmentally sound.

In Article 1 paragraph 3 of Law No. 32 of 2009 stated that sustainable development is a conscious and planned effort that integrates aspects of environmental, social, and economic development strategies to ensure the environmental integrity and safety, capacity, welfare, and quality of life for present and future generations.

Further explanation of the Law No. 32 Year 2009 on the Protection and Management of the Environment stated that the availability of natural resources in terms of quantity or quality is uneven, while the construction activities demands increasing natural resources. Development also carries the risk of pollution and environmental damage. This condition can result in the carrying, capacity, and productivity of the environment, which in turn become social burden.

Therefore, Indonesia's environment should be protected and managed under the principles of state responsibility, sustainability principles, and the principles of justice. In addition, environmental management must be able to provide economic benefits, socially and culturally and conducted based on the precautionary principle, environmental democracy, decentralization, and the recognition and respect for local and environment wisdom. Protection and environmental management demands the development of an integrated system in the form of a national policy of environmental protection and management and should be implemented in strict principles and consistent from the center to the regions.

#### *2.4 Regulations of Islamic Capital Market in Indonesia*

Kind ship economic principle according to Article 33, 1945 Constitution has close links with capital market activities in Indonesia as stipulated in Law no. 8 of 1995 on Capital Market. Through shares ownership of companies listed in the stock market by investor, means to provide equitable opportunities in the field of economy. Besides, the company needs additional funds to finance business expansion by selling shares through stock market mechanism. Simply put, Islamic capital market can be interpreted as a capital market that applies the principles of sharia in economic transactions and activities and free from the things that are prohibited, such as usury, gambling, speculation, etc (Darmadji and Fakhruddin, 2008).

The application of Islamic principles in the capital market inherent in instruments or securities through Sharia and Fatwa Council and several provision issued by BAPEPAM (Securities and Exchange Commission Securities and Exchange Commission and now the position is replaced by the Financial Services Authority / OJK based on Law no. 21 in 2011) and stock exchange commission, while the trading mechanism does not change.

Stocks which included in Islamic Capital Market in Indonesia consists of:

- a. Islamic Shares; Sharia securities that represents a capital investment into a company. While the Islamic principles, equity investments made in companies that must not violate Islamic principles, such as the field of gambling, usury, prohibited goods such as beer production, and others.
- b. Islamic Bonds; based on the National Fatwa Council No. 32/DSN-MUI/IX/2002 Sharia, Islamic Bonds is a long-term securities issued by emiten to bond holders

that require the issuer to pay the income to its holders in the form of profit sharing / margins / fees, as well repay the initial bond at maturity.

- c. Islamic Bonds Mudaraba is an Islamic bonds using revenue sharing contract so that investor earning is acquired after emiten earnings is materialized.
- d. Syariah Ijarah Bonds; Syariah Ijarah Bonds are Islamic bonds, which use a rental agreement such that the coupon (Ijarah fee) is fixed, and can be calculated from the beginning of bonds issuance.
- e. Sharia Mutual Funds mutual fund is a mutual fund that allocates all funds / portofolio into Islamic instruments such as stocks belonging to the Jakarta Islamic Index (JII), Islamic bonds, and some other Islamic financial instruments.

For Islamic Capital Markets activities, Bapepam (currently its role was replaced FSA) as a regulator and supervisor of the capital market in Indonesia is based on Law No. 8 of 1995 on Capital Market has published Decree of Chairman of Bapepam- LK No. Kep-130/BL/2006 and No. Kep -131/BL/2006 has published a package of regulations related to the implementation of sharia principles in capital market, ie IX.A.13 Rule on Issuance of Islamic Securities and Regulation No. IX.A.14on akad/ contract used in the Issuance of Securities Sharia in the Capital Market.

In the Appendix of Chairman Decree of Bapepam Number: Kep-130/BL/2006 Date: November 23, 2006 Rule Number IX.A.13 on Islamic Securities Issuance explained that Sharia Principles in Capital Markets is the principles of Islamic law in the activities in capital market based on Sharia Board of National Council of Ulama Fatwa (DSN-MUI), both DSN-MUI fatwa set in BAPEPAM LK and established before these regulation, as long as the fatwa is not contrary to this regulation and other Bapepam-LK regulation based on the DSN-MUI fatwa.

In the Chairman Decree of the Capital Market Supervisory Agency and Financial Institution Number: Kep - 130/BL/2006 on Sharia Securities Issuance, Islamic securities are securities as defined in the Capital Market Law and its implementing regulations as well as the way the publishing contract meets Sharia principles in Capital Market.

All business activities related to sharia listed companies in Chairman Decree of Capital Market Supervisory Agency and Financial Institution Number: Kep - 130/BL/2006 must meet and not contrary to the principles of sharia business. Business activity that against Sharia principles are:

- a. Gambling and activities which is classified as gambling or prohibited trade;
- b. Conduct financial services that implement the concept of usury, risk trading containing gharar or maysir;
- c. Producing, distributing, trading and or provide:
  - 1) Goods or services that are illegal because of his substance (haram li-dzatihi);
  - 2) Goods or services that are illegal not because of his substance (haram li-ghairihi) specified by the DSN-MUI, and or
  - 3) Goods or services that damage morale and harmful, and or
- d. Invest in companies that at the time of the transaction level (ratio) corporate debt to usurious financial institutions is more dominant than its capital, unless the investment is stated syariah by DSN-MUI.

### **3. Result**

In Indonesia, the realization of Islamic capital market are not realized in the form of sharia and non-sharia stocks, rather the establishment of a stock index that meet Islamic principles. Jakarta Islamic Index (JII) is one of index among indexes in Indonesia Stock Exchange which including sharia category. JII intended to be used as a benchmark

(benchmark) of the performance of investment on sharia basis. The determination of criteria for stock selection in JII involves the Sharia Supervisory Board of PT. Danareksa Investment Management.

The number of shares registered in the List of Islamic Securities (DES) increased to as many as 320 by the end of February 2013. This is increased by 22 compared to the initial period in 2012. Based on the data cited from the Financial Services Authority (FSA) of 320 securities, as many as 317 was obtained from the review of the effects of DES until the period 22 November 2012.<sup>4</sup> Islamic stock market capitalization listed on the Jakarta Islamic Index (JII) reached as much as 1812.68 trillion, while the market capitalization of Indonesia Sharia Stock Index 2676.29 trillion, and Jakarta Composite Index market capitalization (stock price index-IHSG) until the end of February 2013 and reached as much as 4,639 trillion.<sup>5</sup>

The steps taken to encourage emiten to develop environmentally sound economic has provided an option for fund managers to offer green economy product for investors. In July 2009 KEHATI in collaboration with IDX has launched the SRI KEHATI index based on Sustainable and Responsible Investment. This index consists of companies whose performance also contributed for the environment, social and good corporate governance / GCG.<sup>6</sup>

This index was formed in cooperation between Indonesian Stock Exchange with the Indonesian Biodiversity Foundation (KEHATI). SRI stands for Sustainable Responsible Investment. This index is expected to provide additional information to investors who want to invest in emiten that have performed very well in encouraging sustainable business, and have an awareness of environmental and good corporate

<sup>4</sup> Daftar Efek Syariah, <http://www.beritasatu.com/emiten/102521-daftar-efek-syariah-tambah-jadi-320-efek.html>, 08 April 2013.

<sup>5</sup> *Ibid.*

<sup>6</sup> Indeks Sri Kehati : Investasi Ramah Lingkungan, <http://majalahpialang.com/index.php?show=pialang&task=detail&id=8>, 29 Nov 2011

governance. This index consists of 25 stocks selected Listed Company with criterion-criteria into account such as: Total Assets, Price Earning Ratio (PER) and Free Float.<sup>7</sup>

As a result, there are currently 25 stocks included in this index. A list of 25 stocks included in the SRI-Care Index has reflected 53% of the total weight of JCI, 78% of the weight of LQ45 Index and 79% of the weight of the Jakarta Islamic Index. Reconsideration of the shares will be conducted twice a year. Companies that are not included in the Index are tobacco companies, nuclear power companies, agricultural pesticide use, gambling and pornography, including so-called ethical investment arms.<sup>8</sup>

The development of SRI KEHATI index is highly relevant to the implementation of Islamic economics Formation KEHATI SRI index is highly relevant to the implementation Islamic economics principles in maintaining balance and environmental sustainability through investment in the equity markets. Islamic issuers should also be a part of this category. Investors can also consider the types of Islamic stocks listed in SRI KEHATI index.

Emiten in this category is not only make a profit but also make efforts in sustainable development that is based on six fundamental, namely the preservation of the environment, community, corporate governance, human rights, business behavior and labor practices and decent work.<sup>9</sup> Emiten that included in SRI KEHATI index for the period November 2012 until April 2013 is shown below:

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<sup>7</sup> Sekilas Indeks SRI-KEHATI, <chrome://tavgp/content/html/tabswelcome.htm>, 30-3-2013.

<sup>8</sup> *Ibid.*

<sup>9</sup> Indeks Sri Kehati : Investasi Ramah Lingkungan, *Op. Cit.*



**Daftar Saham untuk Penghitungan Indeks Sri-Kehati  
Periode November 2012 s.d. April 2013**  
(Lampiran Pengumuman BEI No. Peng-00588/BEI.PSH/10-2012 tanggal 29 Oktober 2012)

No.	Kode	Nama Saham	Keterangan
1.	AALI	Astra Agro Lestari Tbk.	Tetap
2.	ADHI	Adhi Karya (Persero) Tbk.	Tetap
3.	ANTM	Aneka Tambang (Persero) Tbk.	Tetap
4.	ASII	Astra International Tbk.	Tetap
5.	BBCA	Bank Central Asia Tbk.	Tetap
6.	BBNI	Bank Negara Indonesia (Persero) Tbk.	Tetap
7.	BBRI	Bank Rakyat Indonesia (Persero) Tbk.	Tetap
8.	BDMN	Bank Danamon Indonesia Tbk.	Tetap
9.	BMRI	Bank Mandiri (Persero) Tbk.	Tetap
10.	INDF	Indofood Sukses Makmur Tbk.	Tetap
11.	INTP	Indocement Tunggul Prakasa Tbk.	Tetap
12.	ISAT	Indosat Tbk.	Tetap
13.	JSMR	Jasa Marga (Persero) Tbk.	Tetap
14.	KLBF	Kalbe Farma Tbk.	Tetap
15.	LPKR	Lippo Karawaci Tbk.	Tetap
16.	LSIP	PP London Sumatra Indonesia Tbk.	Tetap
17.	MEDC	Medco Energi International Tbk.	Tetap
18.	PGAS	Perusahaan Gas Negara (Persero) Tbk.	Tetap
19.	<b>PJAA</b>	<b>Pembangunan Jaya Ancol Tbk.</b>	<b>Baru</b>
20.	PTBA	Tambang Batubara Bukit Asam (Persero) Tbk.	Tetap
21.	SMGR	Semen Gresik (Persero) Tbk.	Tetap
22.	TINS	Timah (Persero) Tbk.	Tetap
23.	TLKM	Telekomunikasi Indonesia (Persero) Tbk.	Tetap
24.	UNTR	United Tractors Tbk.	Tetap
25.	UNVR	Unilever Indonesia Tbk.	Tetap

**Daftar Saham yang Keluar dari Penghitungan Indeks Sri-Kehati  
Periode November 2012 s.d. April 2013**

Kode	Nama Saham
AKRA	AKR Corporindo Tbk.

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Indonesia Stock Exchange Building, Tower I 6<sup>th</sup> Floor, Jl. Jend. Sudirman Kav. 52-53 Jakarta 12190 - Indonesia  
Phone: +62 21 515 0515, Fax: +62-21 515 0330, Toll free : 0800 100 9000, Email: callcenter@idx.co.id

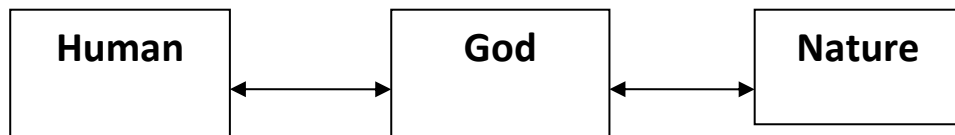
### Figure 1 SRI KEHATI Stocks

The emergence of sustainable economic development and environmentally friendly movement is in tune with the principles of Islamic economics. Islamic economic philosophy is based on the concept of "Triangle" the philosophy of God, man, and nature, highly related and inseparable. Economic concepts of divinity in Islam relates to the concept of monotheism that all the resources in the universe is created by Allah and belongs to Allah in absolute terms and human being is given the mandate to be caliph and manage nature in accordance with the rules, in order to achieve prosperity and worldly and hereafter balance to achieve social justice in the community, as well as avoid any kind of damage to the economic system and the natural environment.

Provisions of the 1945 Constitution in the implementation of national development in Indonesia in relation to the provision of sustainable economic development and

environmental basically aligned with the values of the Islamic economic philosophy based on the concept of "Triangle" as an inseparable unity philosophy of God, man, and nature.

In that perspective, As-shiddiqie (2010) suggesting that man and nature have to be connected with God. In this relationship, God must be placed in the middle, so that man and nature are in a balanced position. In fact, all three, have deemed to have the rights and powers as he illustrates the concept through images below:



**Figure 2 : Concept and Relationship between God, Human, and Nature.**

With the recognition of the presence of Almighty God, humans are forced to act justly towards their fellow creatures of God, which is the natural surroundings and the universe that is outside human beings. This is the time when the environment is also regarded as a legal subject. The things considered as subjects of power and rights are not only human, but also of the universe. Nature has fundamental rights not to be disturbed its balance. Natural carrying capacity for human life from generation to generation should be maintained its continuity time to time. This is the main substance doctrine of sustainable development that has been widely accepted as a principle of development in the contemporary times (Asshiddiqie, 2010)

Business activities in Islamic securities must also meet and not conflict with Islamic principles as stated in the Chairman Decree of Capital Market Supervisory Agency and Financial Institution Number: Kep - 130/BL/2006, including business activities which is contrary to Shariah principles include: producing, distributing, trading and or provide: goods and or services that illegal because of his substance (haram li-



dzatihi); goods and or services that are illegal not because of his substance (haram li-ghairihi) set by DSN-MUI, and or goods and or services that damage morale and harmful, and or invest in companies that at the time of transaction has ratio of corporate debt to usurious financial institutions more dominant than its capital, unless the investment is stated syariah by DSN -MUI. This provision does not expressly state about the business or service that violates or is not environmentally friendly. But the broader interpretation that the prohibition against the goods or services that are harm in the provision according to researchers, including a ban on the business practices of emiten not to conduct business activities that cause harm, such as pollution and adversing environmental surrounding ecosystem.

In a broader interpretation that Islamic securities must meet Islamic principles. One of the pillars of Islamic business ethics provisions contained in the Qur'an is the principle of "Balance and Justice" means that the business attitude must be balanced and fair. Balance means not excessive in the pursuit of economic profit as stated in surah Al-A'raf verse 31, as well as the balance of that property has a social function as stated in Surat Adh-Dzaariyaat verse: 19, and the corresponding economic philosophy of Islam which includes triangle concept divinity, man and nature, and the balance of which is environmentally friendly as it has been warned in the Qur'an in the letter: Ar-Rum verse: 41 that:

*“Corruption has appeared throughout the land and sea by (reason of) what the hands of people have earned so He may let them taste part of (the consequence of) what they have done that perhaps they will return (to righteousness)”*

Emiten activities related to environmentally friendly business is part of implementation of sharia principles despite the implementation of the provisions of

Islamic finance through the Securities and Exchange Commission decision has not explicitly stated.

Development aspects of business activities that are environmentally friendly through capital market instruments mentioned above is basically an integral part of the implementation of sharia principles.

Referring to Chairman Decree of the Capital Market Supervisory Agency and Financial Institution Number: Kep - 130/BL/2006, according to BAPEPAM, the Issuance of Islamic Securities shall be based on Sharia Akad. Parties who conduct issuance of Islamic securities Shariah must obey sharia principles relating to securities offered, the regulations and legislation in the field of Capital Market. Each Party issuing Islamic securities shall comply with Shariah Principles regarding Islamic Capital Market Shariah.

Important information must to be submitted by sharia emiten containing business activities reports which is in accordance and not contradict to Islamic principles and environmentally friendly. This is related to "tawazun" or balance principles, one of economic pillars in Islam, in various aspects of economic, worldly and hereafter interests, social justice, and the balance towards the environment.

Some companies included in the index group Sri Kehati green and sharia economy for instance PT Astra International Tbk (ASII) and PT Telekomunikasi Indonesia Tbk (TLKM), including companies engaged in related fields such as mining is potentially damage the environment. However, companies support and commitment to maintain friendly environment for sustainable development sustainability.

In principle, any sharia emiten should consistent with the implementation of Islamic economic values, including commitments to conduct environmentally friendly business activities. To reinforce this commitment, the rules need to be supported through regulation by the Financial Services Authority / OJK (Securities and Exchange Commission pursuant to Article replaces Article 6 letter b of Law No. 21 of 2011), as the

regulator and supervisor of the capital market in Indonesia, including DSN fatwa as integral part of the Islamic capital market regulatory authority in collaboration with the FSA.

For Islamic Capital Markets activities, Bapepam provisions as regulator and supervisor capital markets in Indonesia concerning DSN fatwa based on Law No. 8 of 1995 on Capital Section in conjunction with Law No. 21 Year 2011 on the Financial Services Authority. Bapepam - LK via the Chairman of Bapepam- LK Decree No. Kep-131/BL/2006 Kep-130/BL/2006 has published a package of regulations related to the sharia implementation in the capital market, namely Rule Number IX.A.13 about issuance of Islamic Securities and Regulation No. IX.A.14 about akad/ contract used in the issuance of Islamic securities in the capital market. In the implementation of the Capital Market, through the regulation of Bapepam also involving the DSN to establish the rules of Islamic capital market activities.

In the Appendix of Chairman of Bapepam Decree Number: Kep-130/BL/2006 Date: November 23, 2006 Rule Number IX.A.13 on Issuance of Islamic Securities explained that Sharia Principles in Capital Markets is the principles of Islamic law in the activities in capital market by the Sharia Board of National Ulama Council of Indonesia (DSN-MUI), DSN-MUI fatwa well defined in Bapepam and LK and DSN-MUI fatwa that has been issued before the enactment of this legislation, as long as the fatwa is not contrary to this regulation and or Bapepam-LK or other regulation based on the DSN-MUI fatwa.

Listed below is DSN fatwa regarding Islamic Capital Market :

1. Bapepam-LK decree No. Kep-130/BL/2006 about sharia stock issuance
2. Bapepam-LK decree No. Kep-131/BL/2006 about akad/ contracts which are used in sharia stock issuance in capital market.
3. Law Number 19 year 2008 about government shariah bond

4. PMK No. 118 year 2008 about government sharia bond establishment and sales using book building mechanism in domestic primary market..

In legal positivism view, DSN fatwa has formal application force in any Islamic capital market activities which also ordered through Bapepam (now under the authority of the Financial Services Authority) is given by the statutory provisions in as the regulator and supervisor of the capital market in Indonesia including the regulation and supervision of Islamic capital markets. DSN need to create fatwa which contains obligation of the sharia emiten to support the environmentally friendly development effort and the prevention of all forms of destruction and environmental pollution. Through fatwa, it is expected to spur active participation of sharia emiten to apply the principles of Islamic economics holistically (kaffah).

#### **4. Conclusion and Suggestion**

##### *4.1. Conclusion*

For Islamic Capital Market Operational, Bapepam as regulator and supervisor of the capital market in Indonesia under Law Number 8 of 1995 on Capital Market has published decree of Chairman of Bapepam-LK No. Kep-130/BL/2006 and No. Kep-131/BL/2006 has published a package of regulations related to the implementation of sharia in the capital market, ie IX.A.13 Rule on Issuance of Islamic Securities and Regulation No. IX.A.14 about akad/ contracts used in the issuance of Islamic securities in the capital market. Issuer's business activities related to the support for environmentally sound business activities are part of the implementation of sharia principles despite the implementation of the provisions of Islamic finance through the Securities and Exchange Commission decision has not been explicitly stated.

In principle, all types of instruments issued by sharia emiten in Indonesia today should consistent with the implementation of values of Islamic Economics, including commitment to enforcement environmentally friendly business activities.

#### *4.2. Suggestion*

In principle, philanthropy in the field of Islamic economics, including capital markets strongly supports the application of the environmentally sustainable development. This is consistent with one of the pillars of Islam business ethics to maintain "balance" the interests of both individual and social, as well as the implementation of the concept of natural balance that recognizes the Tauhid concept of Allah as absolute ruler and man as caliph shall prosper and avoid damage. Islamic principles have been set forth in the provisions of the implementation of Islamic Capital Market in Indonesia in Decree Securities and Exchange Commission. However, clear provision is needed so that each emiten included in the list of Islamic Sharia Stock are mandatory to implement and support sustainable economic and environmentally sound development. National Islamic Council fatwa (DSN) should also strengthen this regulation.

#### **References**

- A. Karim ,Iswahjudi. (2005). *Implementasi Prinsip-Prinsip Syariah di Pasar Modal dan Perbankan (Tinjauan Hukum,)*. Jakarta: KarimSyah Law Firm.
- Asshiddiqie, Jimly. (2010). *Green Constitution, Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta: Rajawali Pers
- Ali, Mohammad Daud. (2001). *Hukum Islam, Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia Cetakan kesembilan*. Jakarta: PT. Raja Grafindo Persada

Darmadji, Tjiptono dan Hendy M. Fakhruddin. (2008). *Pasar Modal di Indonesia pendekatan Tanya Jawab*. Penerbit Salemba Empat, edisi 2 cetakan ketiga

H. Kara, Muslimin. (2005). *Bank Syariah di Indonesia, Analisis Kebijakan Pemerintah Indonesia Terhadap Perbankan Syariah..* Yogyakarta: UII Press.

Hidayat, Mohammad. (2010). *An Introduction The Sharia Economic Pengantar Ekonomi Syariah*. Cetakan Pertama. Jakarta: Zikrul Hakim.

Indeks Sri Kehati : Investasi Ramah Lingkungan,  
<http://majalahpialang.com/index.php?show=pialang&task=detail&id=8>, 29 Nov  
2011

Keputusan Ketua Bapepam-LK Nomor Kep-130/BL/2006

Keputusan Ketua Bapepam-LK Nomor Kep-131/BL/2006

Nazir, Habib dan Muhammad Hassanuddin. (2004). *Ensiklopedi Ekonomi dan Perbankan Syariah*. Bandung: Penerbit Kaki Langit.

Peraturan Bapepam Nomor IX.A.13 tentang Penerbitan Efek Syariah

Peraturan Bapepam Nomor IX.A.14 tentang Akad-akad yang digunakan dalam Penerbitan Efek Syariah di Pasar Modal.

Sekilas Indeks SRI-KEHATI, <chrome://tavgp/content/html/tabswelcome.htm>, diunduh, tanggal 30-3-2013.

Silalahi, Daud. *Pembangunan Berkelanjutan dalam rangka Pengelolaan (termasuk perlindungan) sumber daya alam yang berbasis Pembangunan Sosial dan Ekonomi*.

Makalah disampaikan pada Seminar Pembangunan Hukum Nasional VIII, Tema Penegakan Hukum dalam Era Pembangunan Berkelanjutan diselenggarakan oleh

Badan Pembina Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia  
RI Denpasar, 14-18 Juli 2003.

Susiastuti, Darwati. *Pembangunan Ekonomi dan Kepedulian Masa Depan*. dalam  
Proceeding Seminar dalam rangka 10 Tahun Ikatan Alumni Doktor Ilmu Ekonomi,  
Managing and Increasing the Wealth of Nations, Program Pascasarjana  
Universitas Borobudur, Jakarta, 16 Februari 2013.

Timothy, Andreas. “Berinvestasi Hijau di Lantai Bursa”, Media Indonesia, Kamis 12  
Mei 2011

Undang-Undang Dasar 1945

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan  
Lingkungan Hidup

Undang-Undang Nomor 21 tahun 2011 tentang Otoritas Jasa Keuangan

Undang-Undang Nomor 8 tahun 1995 tentang Pasar Modal