

THE DEVELOPMENT OF ISLAMIC CAPITAL MARKET REGULATION IN INDONESIA: A SOCIOLOGY OF LAW PERSPECTIVE

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Abstract

This study examines the development of Indonesia's Islamic capital market regulation from 1997 to the 2026–2030 Sustainable Capital Market Roadmap era. Existing studies tend to narrate this history in a normative-chronological manner, listing regulations year by year without analysing how law and society actually shape one another. This article addresses that gap by reading the regulation as an object of legal-sociological periodisation. Using a qualitative normative-juridical approach combined with legal-sociological analysis, the study proceeds in two stages: historical periodisation and sociological analysis. Data were gathered through library research on primary legal materials (Law No. 8 of 1995, OJK regulations, and DSN-MUI fatwas), secondary legal materials (national journal articles), and tertiary legal materials. Four theoretical frameworks are operationalised with distinct functions: Ehrlich's living law to detect law lag, Pound's law as social engineering to detect proactive regulation, the Nonet–Selznick typology to classify legal orders, and Soekanto's five factors of legal effectiveness as the evaluative instrument. The study finds that Indonesia's Islamic capital market regulation has moved through four configurations: living law, negotiated legitimization, social engineering, and global legal pluralism. In the embryonic phase, society preceded the state; in the formalisation phase, law emerged from institutional bargaining between DSN-MUI and Baepem; in the expansion phase, law led the market; and in the current phase, national religious authority confronts global Sharia standards such as AAOIFI. Of Soekanto's five factors, legal culture emerges as the most prominent, since compliance in Indonesia arises from internal conviction rather than legal sanction. These findings offer a sociologically grounded basis for policy recommendations.

Keywords: *Islamic Capital Market Regulation, Legal Effectiveness, Sociology of Law*

Introduction

Studies of the Indonesian sharia capital market tend to be written normatively and chronologically, with regulations listed year after year without much attention to how law and society actually shape each other. The sociology of law offers a different way of reading this history: law is understood as a social phenomenon that arises from, interacts with, and

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shapes society. Roger Cotterrell (2017) asserts that Ehrlich's *concept of living law* remains the seminal idea that most clearly takes us "back to the beginning" in the sociology of law, as he directs attention to the communitarian structure and individualist legal orientation that Ehrlich is concerned with (Cotterrell, 2017).

This perspective makes the development of Indonesian sharia capital market regulation worthy of review because the pattern shifts from one period to the next. At certain times, society and market participants move first while the law lags; at other times, the law takes the initiative and shapes market behavior. Ehrlich calls this legal phenomenon that grows out of this social practice *an effective living law* that is not a law imposed from above by the state, but a law that has been rooted and practiced by society. In the framework of legal sociology, legal norms are born from the capillary effect, from the phenomenon of "congruence" in Luhmann's terms, and not from mere downward dynamics (Teubner, 2024).

Roscoe Pound sees the relationship from the opposite direction. For him, law can function as an active instrument to change the social order. According to Pound, law is a mechanism to renew or engineer society, and the main function of law is to protect the interests that exist in society, where these interests are dynamic and can change according to the development of society (Kemendag, 2026). Sally Falk Moore (2024) notes that this view of social engineering assumes that the social order can be consciously controlled by humans through law, although the argument to the contrary that it is society that controls the law, not the other way around, is equally persuasive; therefore, the law and the social context in which it operates must be examined together (Moore, 2024).

Philippe Nonet and Philip Selznick then combined these two poles into a single evolutionary line: *repressive law*, *autonomous law*, and *responsive law*. The last stage is characterized by the capacity of law to proactively anticipate social needs, with a shift from rules to principles and goals. Nonet and Selznick conceived of this typology as a framework for analyzing and assessing alternative modes of the legal order, and their most enduring contribution is a repressive-autonomous-responsive typology that incorporates political and jurisprudential aspects at once (Nonet & Selznick, 2017). In the Indonesian context, an analysis of civil procedural law shows that judicial practice still reflects the character of *autonomous law* rather than *responsive law*, with a strong emphasis on formalities and procedures that hinder the transition to substantive justice (Kania, 2025).

This article uses this framework along with Soerjono Soekanto's five factors of legal effectiveness to read the regulatory dynamics of Indonesia's sharia capital market. Soekanto identifies five determinants of effective law enforcement: the law itself (the law), the law enforcement factor, the factor of supporting facilities or facilities, the community factor as the environment in which the law applies, and the cultural factor as the result of work, creation, and human sense in life (Soekanto, 1988). These five factors are closely interrelated, as they constitute the essence of law enforcement and serve as a benchmark for the effectiveness of law enforcement (Soekanto, 1988).

A number of previous studies have mapped out the challenges facing the Sharia capital market. Research from 2025 indicates that, while investor protection within the Sharia capital market is formally adequate, its practical implementation remains hindered by a lack

of outreach, limited investor understanding, and suboptimal oversight; furthermore, differing interpretations of Sharia principles regarding investment instruments present an additional challenge (Rahmah et al., 2026). Data from the Indonesia Stock Exchange (IDX) shows that the transaction value for sharia-compliant stocks reached Rp3.3 trillion by mid-2025, generated by 16,369 active investors out of a total of 185,766 sharia stock investors; meanwhile, the market capitalization of sharia-compliant stocks reached Rp8,158 trillion, accounting for 62 percent of the total Indonesian stock market capitalization (IDN, 2025).

In terms of the regulatory framework, OJK Regulation (POJK) Number 8 of 2025 tightens the criteria for the List of Sharia Securities by gradually lowering the maximum threshold for the interest-bearing debt ratio from 45 percent to 33 percent over 10 years and establishing a limit for non-halal income at no more than 5 percent. The Indonesia Stock Exchange (IDX) anticipates that this policy will reduce the number of Sharia-compliant stocks in the short term, while enhancing the quality of such stocks in the long term (IDN, 2025). Liquidity challenges and the quality of issuers remain the primary issues, compounded by an investor mindset that is still short-term oriented, as well as uneven literacy regarding the Islamic capital market, which remains concentrated in major cities (Republika, 2025).

Studies that specifically read Islamic capital market regulations as objects of sociological-legal periodization are still limited, especially in tracking the shift in the pattern of legal-community relations from one phase to the next. That is the gap that this article tries to fill. Studies on the effectiveness of regulations show that although investor protection regulations in the Islamic capital market are formally adequate, there are still gaps in supervision and investor protection mechanisms, especially in the aspects of early detection and law enforcement against illegal investments, so that regulatory optimization is needed through strengthening supervision, increasing Islamic financial literacy, and utilizing technology such as *Regulatory Technology* (Dimiyati, 2014; MHI, 2025).

This paper aims to do three things. First, mapping the chronology of Indonesian sharia capital market regulation from 1997 to the 2023–2027 Capital Market Roadmap era. Second, analyzing the pattern of legal-community relations in each phase using *the living law* framework, law as social engineering, and the Nonet–Selznick typology. Third, evaluating the effectiveness of these regulations through five Soekanto factors as the basis for policy recommendations. This analysis is expected to contribute to a more sociology-based understanding of how Indonesia's sharia capital market regulation has developed and where it is headed.

Methodology

This research is a qualitative study with a normative-juridical approach combined with sociological-legal analysis. This approach is commonly used in the contemporary study of sharia economic law because it is able to read law not only as a written norm, but also as a social phenomenon that interacts with market and societal practices (Nonet & Selznick, 2017; Teubner, 2024). The design is explanatory and periodic: this study does not simply list regulations chronologically, but reads each phase of regulation as a configuration of law-society relations. Four theoretical frameworks are operationalized with different

functions: *Ehrlich's* living law to detect *law lag*, *Pound's law as social engineering* to detect social engineering, Nonet–Selznick's typology as a tool for classifying the legal order, and Soekanto's five factors as a tool for evaluating effectiveness (Muttaqin, 2021; Soekanto, 2008).

Data were collected through library *research* on three categories of legal materials. Primary legal materials include Law Number 8 of 1995 concerning the Capital Market, regulations of the Financial Services Authority (OJK) on sharia principles in the capital market, and fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI). Secondary legal materials consist of articles from national journals that discuss the development of the Indonesian sharia capital market. Tertiary legal materials include legal dictionaries and supporting bibliographic indexes.

Data collection is carried out through documentation and literature search of the three categories of legal materials. Each document is recorded for its identity (type, number, year, and publishing institution), then coded based on two axes: the regulatory period and the relevant theoretical framework. This encoding aims to ensure that each theoretical claim in the introduction can be traced to a specific empirical source (Haryono et al., 2024).

The analysis takes place in two stages. The first stage is historical periodization: reconstructing the chronology of Indonesian sharia capital market regulation from the emergence of the first sharia mutual fund in 1997 to the Sustainable Capital Market Roadmap 2026–2030. The boundaries of each period are determined by regulatory events that materially change the configuration of law–society, such as the issuance of a fundamental DSN-MUI fatwa, the ratification of OJK regulations on sharia principles, or the launch of a national roadmap. The second stage is a sociological analysis that takes place in two steps: (a) each period is read through three theoretical frameworks to determine whether the period is characterized as *a law lag*, social engineering, or transitional form in the Nonet Selznick typology; and (b) each period is evaluated using the five Soekanto factors of legal substance, enforcement structure, means, society, and legal culture, with each factor treated as a separate analytical dimension, rather than a composite score. This procedure results in a period-by-period matrix that is presented and discussed in the results and discussion sections.

The validity of the data is maintained through three strategies. First, source triangulation, which is comparing primary legal materials (laws, OJK regulations, DSN-MUI fatwas) with secondary legal materials (journal articles) to ensure consistency of information between sources. Second, trail audits, which document all coding steps and determine period limits so that the analysis process can be retraced by readers or other researchers. Third, member checking through cross-verification of official documents of OJK and DSN-MUI to ensure that the researcher's interpretation of norms does not deviate from the official intention of the issuing institution. With these three strategies, the alignment between abstracts, methodologies, and results can be accounted for methodologically (Ghony et al., 2020).

Results and Discussion

Chronology of Indonesia's Islamic Capital Market Regulation

Table 1 presents the chronology of regulatory and institutional development in Indonesia's Islamic capital market from 1997 to the present.

Table 1. Chronology of Indonesian Islamic Capital Market Regulation (1997–present)

Year	Regulatory/Institutional Event
1997	First Sharia mutual fund issued by Danareksa Investment Management (3 July 1997), without any fatwa or formal regulation
2000	Launch of the Jakarta Islamic Index (JII) by the Jakarta Stock Exchange together with Danareksa (3 July 2000)
2001	DSN-MUI Fatwa No. 20/2001 on Sharia mutual funds, the first formal normative legitimization
2002	First corporate sukuk issued (PT Indosat Tbk)
2003	Signing of the Bapepam–DSN-MUI MoU (14 March 2003); official launch of the Islamic capital market
2006	Bapepam-LK issues Regulations IX.A.13 and IX.A.14, the first formal Islamic capital market regulations
2007	Launch of the first Sharia Securities List (DES) (12 September 2007)
2015	POJK 15–20/2015 package (Sharia principles, Sharia capital market experts, issuance of Sharia securities)
2017	POJK 35/2017 on the criteria and issuance of the Sharia Securities List
2023	Launch of the 2023–2027 Indonesia Capital Market Roadmap (five development pillars)
2025	Challenges of harmonising DSN-MUI fatwas with AAOIFI Standard 62; 2026–2030 Sustainable Capital Market Roadmap

Source: compiled from various OJK/Bapepam-LK regulations and related literature.

Phases of Regulatory Development

The Embryonic Phase (1997–2000). The first Sharia mutual fund was issued on 3 July 1997, long before any fatwa or formal regulation on the Islamic capital market existed. The social-religious need for interest-free investment was already being practised by market participants. No state legal framework was yet in place; the space was filled by informal authorities acting on religious conviction.

The Phase of Formalisation and Institutional Legitimation (2000–2003). The Jakarta Islamic Index was launched in July 2000, followed by DSN-MUI Fatwa No. 20/2001, and culminating in the signing of the Bapepam–DSN-MUI MoU on 14 March 2003. Norms that had previously existed informally began to be codified through cooperation between religious authority (DSN-MUI, established in 1999) and state authority (Bapepam).

The Expansion Phase (2006–2017). Bapepam-LK Regulations IX.A.13 and IX.A.14 were issued in 2006, followed a year later by the first Sharia Securities List, then the large POJK 15–20/2015 package. In this phase, the regulator began issuing rules before the products themselves were actually available on the market.

The Phase of Consolidation and Global Legal Pluralism (2017–present). POJK 35/2017, the 2023–2027 Indonesia Capital Market Roadmap, and the 2026–2030 Sustainable Capital Market Roadmap mark a new chapter. The issue is no longer the relationship between the state and domestic religious authority, but national religious authority confronting global Sharia standards. DSN-MUI fatwas accommodate an asset-based sukuk structure, while AAOIFI Standard 62 demands real ownership or an asset-backed structure.

Regulatory Effectiveness Based on Soekanto's Five Factors

Table 2 presents an analysis of regulatory effectiveness based on Soekanto's five factors of legal effectiveness.

Table 2. Analysis of Islamic Capital Market Regulatory Effectiveness Based on Soekanto's Five Factors

Factor	Condition in the Islamic Capital Market
Legal substance	Developed gradually: fatwa → Bapepam regulation → comprehensive POJK; still fragmented and not yet harmonised with AAOIFI
Structure/enforcement apparatus	The Bapepam-LK Islamic capital market unit was upgraded from echelon IV (2004) to echelon III (2006); it now involves OJK, the Indonesia Stock Exchange, and DSN-MUI
Facilities	JII, JII70, ISSI, and the Sharia Securities List are available as technical compliance infrastructure
Society	The world's largest Muslim population provides a consistent structural demand base
Legal culture	High social trust in DSN-MUI fatwas as a reference point for Sharia compliance

Source: author's analysis, compiled from OJK data and related literature.

Macro Growth Data

The net asset value of Sharia mutual funds rose from IDR 5.56 trillion in 2011 to IDR 28.31 trillion in 2017, an increase of more than 400 percent over six years.

Living Law to Legal Pluralism in Indonesia's Islamic Capital Market Regulation

The chronology presented in the Results section is not merely a sequence of regulatory events. It is a record of shifting configurations between law and society, and reading it through legal-sociological frameworks reveals a pattern that normative-chronological accounts tend to miss. This section argues that Indonesia's Islamic capital market regulation has moved through four distinct configurations: living law, negotiated legitimation, social engineering, and global legal pluralism, and that the effectiveness of each configuration depends less on the completeness of legal substance than on the strength of legal culture as a mediating factor.

The finding that the first Sharia mutual fund was issued on 3 July 1997 without any

fatwa or formal regulation is theoretically significant because it inverts the conventional assumption that state law is the primary source of legal order. Ehrlich's concept of *living law* explains this inversion precisely: effective law is not law imposed from above, but law already rooted in and practised by society long before the state gets around to regulating it (Ehrlich, 2002). What occurred in 1997 was not a legal vacuum but a legal pluralism *avant la lettre*: market participants were already operating under an informal normative order derived from religious conviction, long before DSN-MUI existed (it was established only in 1999) and long before Bapepam issued any Sharia-specific regulation.

Read through Nonet and Selznick's typology, this phase cannot even be classified as repressive law in the strict sense, because repressive law still presupposes the presence of state authority (Nonet & Selznick, 2001). What existed was pre-law: a normative order sustained entirely by civil society, without state backing and without formal sanction. This finding challenges the implicit assumption in much of the existing literature on Indonesian Islamic capital market regulation, which tends to begin its narrative with the state's regulatory interventions rather than with the social practices that preceded them.

Law as the Product of Institutional Bargaining and Negotiated Legitimation

The finding that norms began to be codified through cooperation between DSN-MUI and Bapepam between 2000 and 2003 does not fit either of the two poles in the existing theoretical debate. It is not purely Ehrlichian, because the state was now actively involved; nor is it purely Poundian, because the state was not unilaterally engineering society. What emerged was a hybrid: law produced through institutional bargaining between religious authority and state authority.

This finding matters because it suggests that the trajectory of Islamic capital market regulation in Indonesia cannot be adequately explained by either *living law* or *social engineering* alone. Both frameworks assume a relatively clear separation between society and state, with law originating predominantly from one side. The Indonesian case shows a third pattern: legal legitimation produced through negotiation between two authoritative structures, each drawing on a different source of legitimacy religious authority via DSN-MUI, and state authority via Bapepam. This pattern resonates with Pound's insight that law emerges from the interaction of competing interests rather than from sovereign command alone (Muttaqin, 2021; Pound, 1942), but it extends that insight by showing that in a religiously grounded legal system, the competing interests are not merely economic but also interpretive: who has the authority to define what counts as Sharia-compliant.

The Reversed Pattern: When Law Leads the Market

The finding that the regulator began issuing rules before products were available Bapepam-LK Regulations IX.A.13 and IX.A.14 in 2006, followed by POJK 15–20/2015 represents the clearest reversal of the pattern observed in the embryonic phase. Law that had once lagged behind the market now led and engineered the direction of its development. This corresponds to Pound's conception of law as a tool of social engineering (Pound, 1942), and in Nonet and Selznick's terms, it marks a shift from autonomous law, which merely ratifies what already exists, toward responsive law that actively anticipates socio-

economic needs (Nonet & Selznick, 2001).

The comparative dimension sharpens this finding. Malaysia built its legal framework first and only then had the market respond with products, reflecting a state-led model of legal development. Indonesia's trajectory was the reverse: the market moved first, then the state caught up, and only later did the state begin to lead. This difference reflects the differing structure of state–civil society relations in the two countries, and it suggests that the sequencing of law and market development is not merely a technical matter but a reflection of deeper political configurations. The Indonesian pattern society first, state later, then state-led engineering demonstrates that law–society relations are not unidirectional but cyclical, with the locus of initiative shifting across phases.

Global Legal Pluralism: The New Battleground of Legitimacy

The finding that DSN-MUI fatwas accommodate an asset-based sukuk structure while AAOIFI Standard 62 demands an asset-backed structure reveals a tension that cannot be reduced to a simple regulatory gap. What is at stake is a contestation over the source of Sharia legitimacy itself: is it the national religious authority (DSN-MUI) or the global standard-setting body (AAOIFI) that has the final say in defining Sharia compliance?

This finding extends the theoretical discussion beyond the national frame that dominates both Ehrlich's and Pound's frameworks. Ehrlich's *living law* and Pound's *social engineering* both assume a national society as the relevant unit of analysis. The Indonesian case shows that this assumption no longer holds: the relevant normative community is now transnational, and the contestation over Sharia compliance is simultaneously domestic and global. This is a form of legal pluralism that neither Ehrlich nor Pound anticipated not the pluralism of state and society, but the pluralism of national religious authority and global standard-setting regimes. It suggests that the next phase of Indonesia's Islamic capital market regulation will be shaped not only by domestic law–society dynamics but also by the politics of global Sharia standardisation.

Legal Culture as the Mediating Factor: Why Indonesia Differs

Of Soekanto's five factors, legal culture emerges as the most prominent (Soekanto, 2008). Indonesian society's social trust in religious fatwa authority is far stronger than its trust in secular regulation alone. This finding has a theoretical implication that goes beyond the descriptive: it suggests that in religiously grounded legal systems, legal culture is not merely one factor among five but the mediating factor that determines whether the other four factors substance, structure, facilities, and society actually produce compliance.

The macro growth data reinforce this reading. The net asset value of Sharia mutual funds rose from IDR 5.56 trillion in 2011 to IDR 28.31 trillion in 2017, an increase of more than 400 percent over six years. This growth cannot be explained by regulatory completeness alone, since the legal substance remained fragmented and not yet harmonised with AAOIFI. What explains it is the high social trust in DSN-MUI fatwas, which allowed compliance to arise from internal conviction (internalisation) rather than from fear of legal sanction. This is the key factor distinguishing Indonesia from other countries with more comprehensive Islamic capital market regulations but lower levels of social trust in religious

authority.

Synthesis: Four Configurations, One Trajectory

Reading the four phases together, a clear trajectory emerges. Indonesia's Islamic capital market regulation began as *living law*, with society preceding the state. It then moved through *negotiated legitimation*, with law produced through institutional bargaining. It entered a phase of *social engineering*, with law leading the market. And it now faces *global legal pluralism*, with the frame of reference shifting from the national to the global.

This trajectory is not linear in the sense of progressive improvement. Each phase resolves one tension while generating another. The embryonic phase resolved the tension between religious conviction and the absence of state law by producing informal norms, but generated the tension of legal uncertainty. The formalisation phase resolved that uncertainty through institutional negotiation, but generated the tension of fragmented authority. The expansion phase resolved that fragmentation through proactive regulation, but generated the tension of regulation outpacing market readiness. The current phase faces the tension of global standardisation, which may generate a new set of unresolved issues. What remains constant across all four phases is the centrality of legal culture as the mediating factor: at every stage, the effectiveness of regulation has depended less on the completeness of legal substance than on the strength of social trust in the authority that defines Sharia compliance.

Conclusion

Read through the lens of legal sociology, the development of Indonesia's Islamic capital market regulation is a story of gradual dialectic between society and the state. It began with a social-religious need already alive in society in 1997, long before any law regulated it. That need was then formalised through negotiation between religious authority and the state in 2000–2003, developed into a proactive instrument of social engineering throughout 2006–2017, and is now being tested by questions of legal pluralism at the global level.

This finding reinforces an old idea in legal sociology: effective law is not the strictest in normative terms, but the law most closely aligned with the awareness and social needs of the people it governs. For policymakers, this means that future regulatory harmonisation strategies, whether with AAOIFI standards or other international standards, should not stop at technical-legal considerations alone, but should also take into account the social basis of legitimacy described above. Future research could examine empirically how legal culture at the local level affects the effectiveness of the regulation mapped out in this paper.

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