

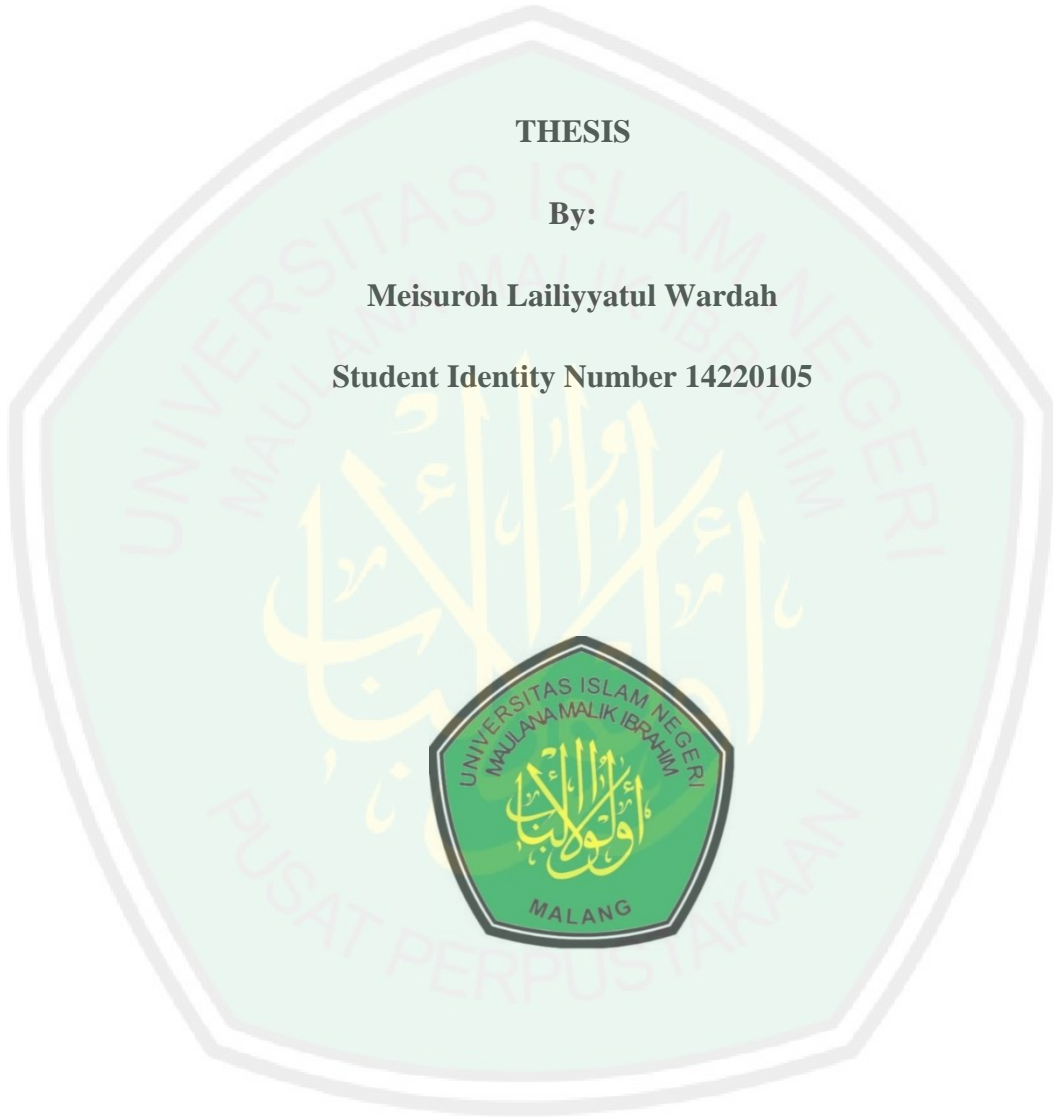
**MARGIN TRADING TRANSACTION IN STOCK EXCHANGE UNDER
PERSPECTIVE *MUSYARAKAH* CONTRACT**

THESIS

By:

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Student Identity Number 14220105



SHARIA BUSINESS LAW DEPARTMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATE ISLAMIC UNIVERSITY MALANG

2019

**MARGIN TRADING TRANSACTION IN STOCK EXCHANGE UNDER
PERSPECTIVE *MUSYARAKAH* CONTRACT**

THESIS

Presented to

Sharia Faculty of State Islamic University of Maulana Malik Ibrahim Malang
in Partial Fulfillment of the Requirements
for the Degree of Bachelor of Law (S.H)

By:

Meisuroh Lailiyatul Wardah



SHARIA BUSINESS LAW DEPARTMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATE ISLAMIC UNIVERSITY MALANG

2019

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility towards the development of sciences, the author declares that the thesis entitled:

**MARGIN TRADING TRANSACTION IN STOCK EXCHANGE UNDER
PERSPECTIVE MUSYARAKAH CONTRACT**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degrees the result of this action will be deemed legally invalid.

Malang, 9th of July 2019



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“MARGIN TRADING TRANSACTION IN STOCK EXCHANGE UNDER PERSPECTIVE MUSYARAKAH CONTRACT”

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 9th of July 2019

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LEGITIMATION SHEET

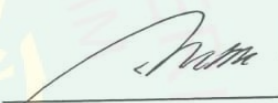
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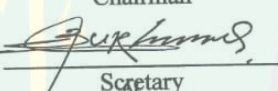
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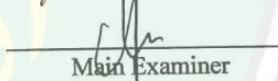
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MOTTO

“ *Every Cloud Has a Silver Lining* ”

~ *British Proverbs* ~

“ 항상 탈출구가 있다 ”

~ *korean aphorisms* ~

العلم نور ونور الله لا يهدى للعاصي

~ الإمام الشافعي ~



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Malang, 9th of July 2019

Author,

Meisuroh lailiyyatul wardah
Student Identity Number 14220105



TRANSLITERATION GUIDANCE

A. General

The transliteration guidance which is used by the Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim Malang is the *EYD* (*Ejaan Yang Disempurnakan*). This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543.b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	'

ص

Sh

ي

Y

ض

Dl

C. Vocal, Long-pronounce, and Diphthong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represent by “i”, unless it is written as “iy” so as to represent *ya' nisbat* at the end. The same goes for sound of a diphthong, *wawu* and *ya'* after *fathah* it is written as “aw” and “ay”. Study the following examples:

Diphthong (aw) = و example قول becomes *qawlun*

Diphthong (ay) = ي example خير becomes *khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* in the end of word, it transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or in the standing among two words that in the form *mudlaf and mudlaf ilayh*, it transliterated as

“t” which is enjoined with the previous word, for example *في رحمة الله* *fi*

rahmatillah.

E. Auxiliary Verb and *Lafadh al-Jalalah*

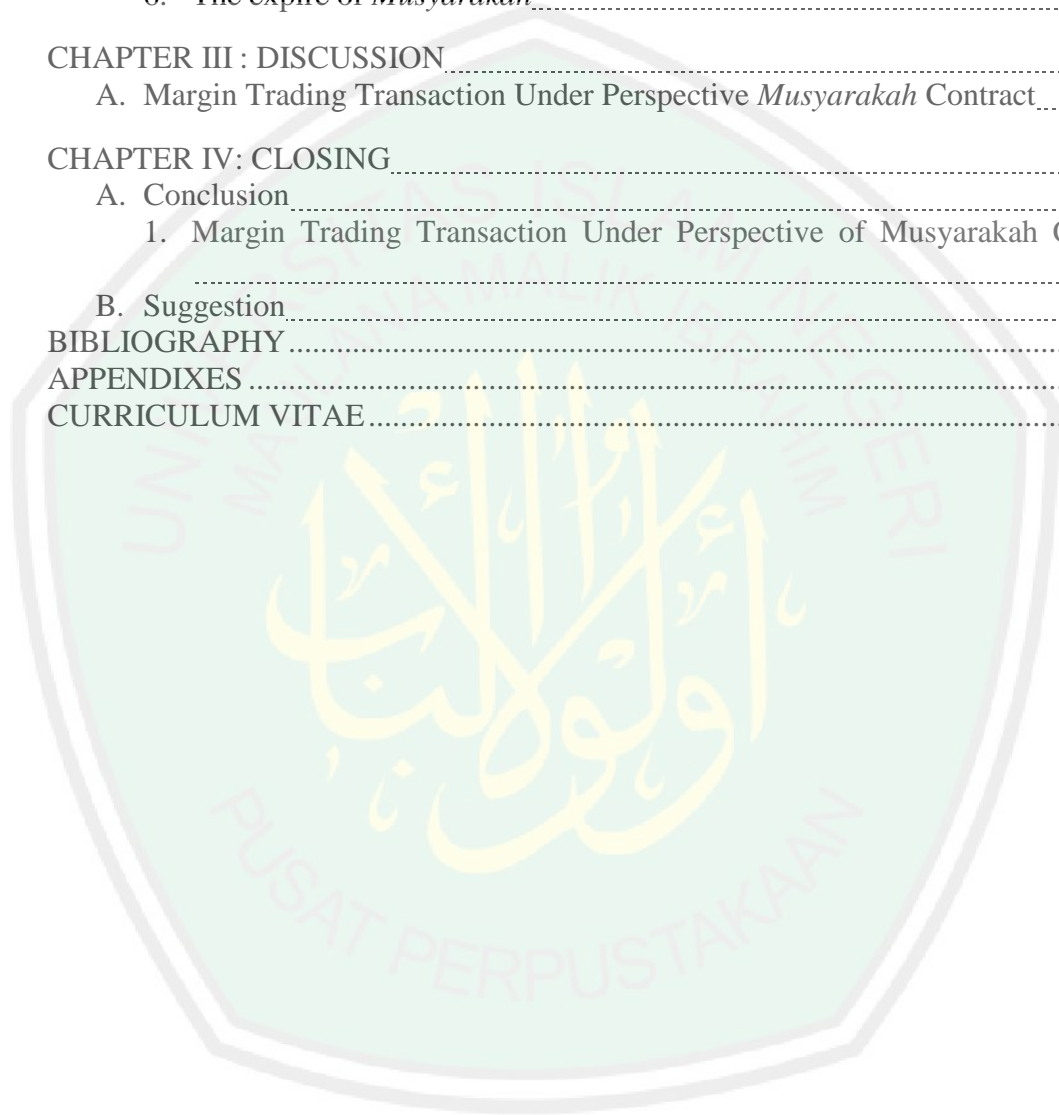
Auxiliary verb “al” (لا) written with lowercase form, except if it located at the beginning of word, while “al” in *lafadh al-jalalah* which located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *MasyâAllâh kâna wamâ lam yasya” lam yakun.*
4. *Billâhi ,,azzawajalla.*

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ABSTRAK

Meisuroh Lailiyyatul Wardah, 14220105, 2019. *Transaksi Margin Trading di Bursa Efek Perspektif Akad Musyarakah*. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Burhanuddin Susanto, S.H.I., M.Hum.

Kata Kunci: Margin Trading, *Musyarakah Contract*, Bursa Efek

Perkembangan ekonomi suatu Negara erat kaitannya dengan kegiatan investasi dalam bentuk pasar modal, banyak para ahli yang mengemukakan bahwa pasar modal merupakan media yang sangat efektif untuk menyalurkan dan menginvestasikan dana. Margin trading sebagai salah satu produk dari pasar modal menjadi salah satu produk yang digemari oleh para investor, karena investor akan mendapatkan kemudahan dalam transaksinya. Dalam penelitian ini, terdapat rumusan masalah sebagai berikut yaitu bagaimana transaksi margin trading berdasarkan tinjauan *Musyarakah Contract*?

Penelitian ini tergolong dalam jenis penelitian Normatif. Pendekatan penelitian ini menggunakan pendekatan undang-undang serta pendekatan konseptual. Dengan teknik analisis kualitatif yakni menganalisis data yang digambarkan dengan bentuk kalimat-kalimat secara deskriptif serta dapat dilakukan penafsiran dengan metode interpretasi yang dikenal dalam ilmu hukum sebagai analisis gramatikal dan sistematis, sehingga dapat mendeskripsikan bagaimana transaksi margin trading berdasarkan *Musyarakah Contract*. Metode pengumpulan bahan hukum berupa pengumpulan (dokumentasi) data-data sekunder, yaitu yang dilakukan dengan studi kepustakaan.

Dan hasil penelitian ini menunjukkan bahwa: penerapan Margin Trading dilakukan sesuai dengan peraturan Bapepam dan LK Nomor V.D.6. mengenai pembiayaan transaksi sekuritas oleh perusahaan sekuritas untuk investor dan transaksi short selling oleh perusahaan sekuritas. Karena perdagangan margin dapat menumbuhkan potensi ekonomi suatu negara, maka perlu ada inovasi yang mendukung keberhasilan, adanya perdagangan margin yang diterapkan dalam pasar modal syariah yaitu dengan menggunakan kontrak musyarakah, yang mana dalam kontrak Musyarakah disini tidak memerlukan kesamaan dalam jumlah modal yang disediakan oleh masing-masing pihak, yaitu, investor dan perusahaan saham atau bank. jika para pihak mendapat manfaat dari ini, keuntungan harus dibagi sesuai dengan perjanjian yang dibuat, dan jika ada kerugian, maka kerugian juga harus ditanggung bersama.

ABSTRACT

Meisuroh Lailiyyatul Wardah, 14220105, 2019. *Margin Trading Transaction In Stock Exchange Under Perspective Musyarakah Contract..* Thesis, Department of Islamic Business Law, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim of Malang. Supervisor: Dr. Burhanuddin Susanto, S.H.I., M.Hum.

Keywords: Margin Trading, *Musyarakah* Contract, Stock Exchange

The economic development of country is related tightly with investment in case of capital market, so many expert who gives an opinion that capital market is one of effective media to invest the funds. Margin trading as one of the product of capital market that become one of product that most likely by the people or investor, cause of investors will get the in their transaction. In this research, there are one statement of problems that how was margin trading transaction under perspective of *Musyarakah* Contract?.

This research is classified into the types of normative research. And approach of this research use the statute approach and also conceptual approach. With qualitative analysis technique that is analyzing the data that is describe into sentences descriptively and also can do the interpret by interpretation that known in laws by grammatical and systematical analysis, so can describe how margin trading transaction under perspective of *Musyarakah* Contract. The legal basis collecting method used is collecting (documentation) of secondary data, that is doing by library research.

And the result of this research is shows that: first, the implementation of Margin Trading carried out in accordance with regulations of Bapepam and LK Number V.D.6. concerning financing of securities transactions by securities company for investors and short selling transactions by the securities company. Because margin trading can grow the economic potential of a country, it is necessary to have innovation that supports the success, the existence of margin trading applied in the Islamic capital market here is using the *musyarakah* contract, which in *Musyarakah* contract does not require the similarity in the amount of capital provided by each party, namely, investors and stock companies or banks. if the parties benefit from this, the profits must be divided according to the agreement made, and if there is a loss, then the loss must also be borne together.

ملخص البحث

ميسورة ليلية الوردة، ١٤٢٢٠١٠٥، ٢٠١٩. **بيع مرجين في سوق الأوراق المالية في وجهة نظر عقد المشاركة** ، قسم التجار الشريعة، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشريف: الدكتور برهان الدين سوسمتو، الماجستير

الكلمة الرئيسية: بيع المرجين، عقد المشاركة، سوق الأوراق المالية

التنمية الاقتصادية ترتبط ارتباطاً وثيقاً بأنشطة الإستثمار في شكل سوق رأس المال. كثير من الخبراء الذين يعبرون على الأرائهم أن سوق رأس المال هو وسائل الإعلام فعالة لإستثمار الأموال بيع مرجين كمنتج عن سوق رأس المال أصبحت واحدة من المنتجات التي يفضلها المستثمرون. لأن سوف ينالون المستثمرون على السهولة في معاملتهم. في هذا البحث بيان المشكلات التالي هي: كيف بيع مرجين في نظر عقد المشاركة؟.

ينتمي هذا البحث إلى نوع البحث المعياري. يستخدم هذا النهج البحثي مقارنة قانونية ونهج مفاهيمي. باستخدام أساليب التحليل النوعي التي تحلل البيانات الموصوفة في شكل جمل وصفية ويمكن تفسيرها باستخدام طريقة التفسير المعروفة في القانون على أنها تحليل نحوي ومنهجي ، بحيث يمكن أن تصف كيف تستند معاملات التداول بالهامش إلى مسلسل مرسل. طريقة جمع المواد القانونية في شكل جمع (وثائق) البيانات الثانوية ، والتي تتم عن طريق البحث في المكتبة.

وتشير نتائج هذه الدراسة إلى أنه: أولاً ، يتم تنفيذ بيع مرجين وفقاً للوائح BAPEPAM LK رقم V.D.6. فيما يتعلق بتمويل معاملات الأوراق المالية من قبل شركات الأوراق المالية للمستثمرين ومعاملات البيع على المكشوف من قبل شركات الأوراق المالية. نظرًا لأن تداول الهامش يمكن أن ينمو الإمكانات الاقتصادية لبلد ما ، فمن الضروري وجود ابتكارات تدعم النجاح ، ووجود تداول الهامش مطبق في الشريعة. تستخدم أسواق رأس المال التي تستخدم عقد المشاركة ، والتي في عقد الشركة لا تتطلب تشابهات في مقدار رأس المال المقدم من كل طرف ، أي المستثمرين وشركات الأوراق المالية أو البنوك. إذا استفادت الأطراف من ذلك ، فيجب تقسيم الأرباح وفقاً للاتفاقية المبرمة ، وإذا كانت هناك خسارة ، فيجب تقاسم الخسارة أيضاً.



CHAPTER I

INTRODUCTION

A. Background of Research

In increasing the acceleration of economic development of a country, it requires no small amount of funds. These funds can be obtained from loans and own capital. In its use, funds can be allocated as investments, where investment here can be interpreted as investment for one or more assets owned and usually has a long time span in the hope of obtaining future profits. The owner of capital can invest funds owned by the company that is healthy and well managed.

Economic development of a country is closely related to investment activities in the form of capital markets. Many experts suggest that the capital market is a very effective media to channel and invest funds that have a

positive impact and benefit investors. So the company can get funds to finance operational activities and company expansion.

Capital markets are one form of economic alternative that can grow the economy of a country where capital markets are markets for various long-term financial instruments that can be traded, both in the form of debt, equity (shares), derivative instruments, and other instruments. The capital market is a funding tool for companies and other institutions and means for investing activities. Thus, the capital market facilitates various facilities and infrastructure for buying and selling activities and other related activities in the capital market.¹

Definition of capital markets as a market in general, which is a meeting place for sellers and buyers. What is traded here is capital or funds. So capital markets bring together capital sellers or funds with buyers of capital or funds.²

Capital buyers or funds are either individuals or institutions or business entities that set aside excess funds or money for productive businesses. While the seller of capital or funds is a company that needs funds or additional capital for its business needs.³

Formally, according to Suad Husnan, the capital market can be defined as a market for a variety of financial instruments or long-term securities that

¹ Darmadji dan Hendi M. Fakhruddin, *Pasar Modal di Indonesia*, (Jakarta: Salemba Empat, 2006), 1.

² Sumantoro, *Pengantar tentang Pasar Modal di Indonesia*, (Jakarta: Ghalia Indonesia, 1990), 9.

³ Sumantoro, *Pengantar tentang Pasar Modal di Indonesia*, 9.

can be traded, either in the form of debt or equity, whether issued by the government, public authorities or private companies. Thus, the capital market is a form of activity from non-bank financial institutions as a means to expand the company's financing sources. This activity is primarily intended for companies that need large amounts of funds and their use is needed for the long term. Large amounts of funds and long-term use often cannot be met by banking institutions so alternative sources of funds can be sought through the capital market.⁴

According to Munir Fuady, the definition of capital markets is a market and long-term funds, both debt and self-traded capital. Long-term funds that are debt are usually in the form of bonds, while long-term funds are usually in the form of shares.⁵

All efforts are made by the government to socialize the capital market, so that people are moved to invest in the capital market by buying a number of securities from companies. Ownership of the effects of corporate companies by the community turned out to provide hope and opportunities to improve welfare as a positive impact of the company's performance.⁶

Thus capital markets can play an important role for the economic development of a country, because as stated by Munir Fuady a capital market has the following functions:

⁴ Adrian Sutedi, *Segi-segi Hukum Pasar Modal*, (Jakarta: Ghalia Indonesia, 2009), 2.

⁵ Munir Fuady, *Pasar Modal Modern (Tinjauan Hukum)*, (Bandung: PT. Citra Aditya Bakti, 1996), 8.

⁶ M. Irsan Nasarudin, dkk., *Aspek Hukum Pasar Modal Indonesia*, (Jakarta: Kencana, 2008), 2.

1. Means to collect public funds to be channeled into productive activities.
2. An easy, inexpensive and fast source of finance for business and national development.
3. Encouraging the creation of business opportunities and at the same time creating employment opportunities.
4. Enhancing the efficiency of production source allocation.
5. Strengthening the operation of the financial market mechanism in managing the monetary system, because the capital market can be a means of "open market operation" at any time needed by the Central Bank.
6. Pressing the high interest rate to a reasonable "rate". As an alternative investment for investors.⁷

The money market and capital market are both part of the financial market which is a means of mobilizing funds or a place to bring together excess funds and those who experience a lack of funds and are formed to facilitate the exchange of money between savers and borrowers. Therefore it can be said economically, the purpose of financial markets is to efficiently allocate savings (savings) from the owner of the funds to the end user of funds. The owners of funds are those, both individuals and business entity

⁷ Munir Fuady, *Pasar Modal Modern (Tinjauan Hukum)*, 11.

institutions, who set aside the excess funds they have to invest to be more productive.⁸

The capital market is an alternative or a means of mobilizing public funds as well as an investment vehicle for capital owners. Seeing the growth potential of the capital market in Indonesia, the government realizes the importance of the capital market to the country's development. The step taken by the capital market in the development of the Republic of Indonesia is by conducting a public offer (go public).⁹

Definition of public offerings according to Article 1 number 15 of Act Number 8 of 1995 concerning Capital Market, namely securities offering activities conducted by Issuers to sell Securities to the public based on the procedures stipulated in this law and the implementing regulations.¹⁰

Companies that will go public their initial shares (Initial Public Offering or IPO) are required to first issue a brief prospectus regarding the company. In addition to discussing company management, financial performance and company operations, the prospectus also contains the company's future plans, investment risks, and the use of funds for the company's interests.

In the capital market there are known primary and secondary markets.

The first term relates to Issuer's securities offering activities to the public

⁸ M. Paulus Situmorang, *Pengantar Pasar Modal*, (Jakarta: Mitra Wacana Media, 2008), 1.

⁹ Adrian Sutedi, *Segi-segi Hukum Pasar Modal*, 2.

¹⁰ Undang-Undang Republik Indonesia Nomor 8 Tahun 1995 tentang Pasar Modal, Bab I Ketentuan Umum Pasal 1 angka 15.

using a prospectus before the offered securities are traded on the stock exchange. The term primary market is also known as the primary market or IPO. After the period of the initial public offering expires, if the securities of the Issuer are listed on the stock exchange, the investor who owns it can sell it through the securities broker who is a member of the stock where the effect is recorded.¹¹

This activity of trading securities of issuers on the stock exchange is called securities trading on the secondary market. In other words, the secondary market is the stock exchange where the issuer's securities are traded.¹² Understanding of issuers according to Article 1 number 6 of Act Number 8 of 1995 concerning Capital Market, namely Parties conducting Public Offering.¹³ Whereas the definition of a stock exchange according to Article 1 number 4 of Act Number 8 of 1995 concerning the Capital Market, namely the Party that organizes and provides a system and / or means to bring together offers of sale and purchase of securities of other parties for the purpose of trading Securities between them.¹⁴

The Transactions on the capital market are very simple, where today transactions are carried out using electronic media or transactions are made online through the internet. In conducting this transaction, investors do not need to meet physically, in short, scriptless or scripless stock transactions,

¹¹ M. Paulus Situmorang, *Pengantar Pasar Modal*, 117.

¹² M. Paulus Situmorang, *Pengantar Pasar Modal*, 118.

¹³ Undang-Undang Republik Indonesia Nomor 8 Tahun 1995 tentang Pasar Modal, Bab I Ketentuan Umum Pasal 1 angka 6.

¹⁴ Undang-Undang Republik Indonesia Nomor 8 Tahun 1995 tentang Pasar Modal, Bab I Ketentuan Umum Pasal 1 angka 4.

when transactions occur online. At present the ownership rights of shares have been managed electronically and are no longer proven through certificates or stock certificates. When an investor buys shares through a broker, the stock broker will order the investor's order to the stock exchange. The transaction is only in the form of the word "done" on the computer screen.¹⁵

Share ownership used to be through a stock / script certificate. Today, securities transactions are not carried out physically because the documentation has been done electronically. This electronic documentation is carried out in a safe and reliable place so there is no need to worry about ownership being lost. This fast transaction system makes circulation on the exchange very fast and large.¹⁶

As a result of the faster and greater amount of money movements in the capital market. This makes many investors more eager to invest their money. Can be seen from the volume of transactions in the extraordinary capital market. Transactions in the capital market reach Rp. 6.6 trillion rupiah per day is quite fast compared to last year around Rp. 4.5 trillion rupiah per day.¹⁷ The investor's passion makes the securities innovate by providing facilities for investors to be able to transact more.

The Explanation of Article 6 of Law No. 8 of 1995 concerning Capital Market, among others, states that "the activities of a stock exchange are

¹⁵ Benny Sinaga, *Kitab Suci Pemain Saham*. (Jakarta: Dua Jari Terangkat, 2009), 15.

¹⁶ Benny Sinaga, *Kitab Suci Pemain Saham*, 15.

¹⁷ Ferry Kiandi, *Perlindungan Hukum dalam Transaksi Margin Trading dan Short Sales di Pasar Modal* (Skripsi sarjana Fakultas Hukum: Universitas Sumatera Utara, 2014) , 2.

basically to organize and provide a system and / or means of trading securities for its members".¹⁸ In the world of the stock market, there are many facilities offered by securities. These include margin trading and short selling. Margin trading is one of the facilities provided by a stock brokerage company to investors. The facility said, because indeed a stock brokerage company provides a kind of loan to investors. However, this loan does not have to be returned on a scheduled basis, as is a loan from the bank. New investors return if they sell the shares they bought at a price higher than the purchase price. Or conversely, successfully liquidating its sell position, at a price lower than the selling price.

Margin trading is a form of securities transaction activity that resembles a bank business carried out by a securities company. As can be concluded from its name, then by conducting or providing margin trading facilities (to its customers), securities companies fund basically part of the funds needed by customers in carrying out their securities transaction activities. This means investors in purchasing shares use third party loans to pay for their purchases.

With margin trading, the ability of customers to transact will increase with the provision of loan facilities by securities companies, where the customer has opened a margin account for securities. An example of this

¹⁸ Bunyi lengkap dari penjelasan atas Pasal 6 Undang Undang No 8 Tahun 1995 tentang Pasar Modal adalah "Kegiatan Bursa Efek pada dasarnya adalah menyelenggarakan dan menyediakan sistem dan atau sarana perdagangan Efek bagi para anggotanya. Mengingat perdagangan dimaksud menyangkut dana masyarakat yang diinvestasikan dalam Efek, perdagangan tersebut harus dilaksanakan secara teratur, wajar, dan efisien. Oleh karena itu, penyelenggaraan kegiatan Bursa Efek hanya dapat dilaksanakan setelah memperoleh izin usaha dari Bapepam".

margin trading facility is that if a customer with a value of one million rupiahs can make a transaction of up to two million rupiah. The excess of one million rupiah is financed by a securities company, where the customer opens a securities account. If the customer does not make a transaction with a margin facility, then the customer makes a cash (cash) transaction.

Thus, margin transactions can be defined as investments using funds that are partially provided by securities companies. Practically, a margin transaction can be said to be investing using debt from a securities company. Because it uses funds from debt, margin transactions are often called investing with leverage.

Islamic capital market investment offers an alternative investment for investors and is theoretically safer because it prohibits investors from taking speculative actions such as pseudo sales transactions (Short Selling), loan purchases (margin trading) or buying companies whose debt ratio is high. This makes investors more careful in carrying out their investment activities. The Sharia-based trading system can automatically only trade stocks included in the Sharia Securities List category, so it will greatly help investors who want to focus on sharia-based stock investments.

In the Islamic view, the market must be removed from various distortions (market irregularities) such as monopoly. Oligopoly, cartels, conglomerates and so on. A good Islamic stock price is the nominal value of sharia shares determined in accordance with Islamic religion, namely through

contracts or transactions, as a method of fulfilling capital requirements in a sharia-based business. The financial transactions referred to are partnerships and buying and selling. The sharia-based trading terms include contracts that must be valid in accordance with the established rules, namely the presence of sellers and buyers (investors), the shares that are sold are beneficial, sacred and belong to the seller and recite the qobul license, and the contract must be free from usury and all types of contracts must be explained in detail and openly so that they can be mutually agreed upon.

Shares that do not conflict with sharia principles and are expected to be a benchmark for the performance of sharia-based shares and to further develop the Islamic capital market. Sharia shares are stocks that have characteristics in accordance with Islamic law or better known as sharia compliant. The concept of capital participation with the right to profit sharing of this business is a concept that does not conflict with sharia principles. For example the business activities of issuers and public companies are not gambling, usury, cigarettes and goods or services that are unlawful.

Margin trading is a transaction that is very attractive to investors, because in margin trading transactions, investors will be financed in part by the price of the purchase of shares by the securities company. This makes investors' interest to transact using these stock exchange products more, and in margin trading transactions, both parties that make transactions, namely investors and securities companies will benefit from each other. in addition to the large number of investors coming to use this product, investors will also

get convenience in the transaction, and this will also trigger the progress of the Islamic capital market.

But in reality Margin trading is one of the securities transactions that are prohibited from its application in the Islamic capital market, this is stated in DSN-MUI fatwa number 40 / DSN-MUI / X / 2003 concerning the Capital Market and General Guidelines for the Implementation of *Sharia* Principles in the Capital Market mentioned in article 5 number 2 point f. This is because according to the Fatwa above, margin trading is a transaction with an interest-based loan facility for the obligation to settle the *sharia* securities purchase.

Based on the description above, there is a legal issue namely legal obscurity (Vague of Norm), this is because the DSN-MUI fatwa cannot cover the needs of the community, especially in terms of Margin Trading, where margin trading is very popular with the community and benefits all parties. So that with these problems, an alternative or other regulation is needed on margin trading which must be based on Islamic *sharia* rules.

Responding to the problems above, on this occasion the author would like to discuss about margin trading in the stock exchange based on the review of *Musyarakah Contract*, in the form of writing a thesis entitled “**MARGIN TRADING TRANSACTION IN STOCK EXCHANGE UNDER PERSPECTIVE MUSYARAKAH CONTRACT**”.

B. Statement of Problem

From the background of the problem, the questions will be proposed in the title are as follow:

1. How is the Margin Trading Transaction under perspective of *Musyarakah Contract*?

C. Objectives of Research

From the statement of problems above, the objectives of research are as follow:

1. Want to know the Margin Trading Transactions under perspective of *Musyarakah Contract*.

D. Significance of Research

There are some benefits that are able to obtain from the results of this research covers two things, namely theoretical benefits or academic benefits and practical benefits.

1. Theoretical benefits
 - a. Providing understanding to capital market players especially for investors in terms of systems and procedures for transactions in the capital market, especially margin trading.
 - b. It is expected that the results of this study can be a reference and reference and provide input in the thinking of developing science to academics, generally in the study of Sharia Business Law and

especially margin trading transactions within the scope of the study of *Musyarakah Contract*.

2. Practical Benefits

- a. Provide answers to research conducted by researchers.
- b. To develop a dynamic mindset and to find out the ability of the author to apply the knowledge obtained.
- c. The results of this study are expected to be able to provide proposals or references for the parties, especially for investors in terms of margin trading transactions to be able to find out a good transaction system in margin trading.

E. Research Method

The method is the main method used to achieve a goal, to achieve the level of accuracy, number and type faced. However, by holding a classification based on experience, it can be determined regularly and thought about a coherent and good flow to achieve a purpose.¹⁹ Research is an attempt to find, develop, and test the truth of a knowledge, symptom or hypothesis, which is carried out using scientific methods²⁰ Thus the understanding of research methods is a way of thinking regularly, coherently and well using scientific methods that aim to find nor test the truth or untruth of a knowledge, symptom or hypothesis.

¹⁹ Winarto Surakhmad, *Pengantar Penelitian Ilmiah Dasar* (Bandung : Teknik Tarsito, 1982), 131

²⁰ Sutrisno Hadi, *Metodologi Research* (Yogyakarta : Andi Offset, 1989), 4.

1. Type of Research

This type of research is normative juridical research or library research, namely legal research focused on examining the application of legal norms or norms in positive law.²¹ Referring to Soerjono Soekanto that legal research is carried out by examining library materials or mere secondary data can be called normative legal research or library legal research. Normative legal research or literature includes:

- a. Research on legal principles;
- b. Research on systematic law;
- c. Legal comparison;
- d. Legal history²²

The research used by the author in this normative study is the Margin Trading Transaction In Stock Exchange Under Perspective *Musyarakah* Contract.

2. Research Approach

In legal research, there are several approaches. With this approach the researcher will get information from various aspects in order to support his research so that researchers can solve the problem he is trying to solve.

²¹ Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*. (Malang: Bayumedia, 2006), 177

²² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 1990), 15.

In this study, the author uses a statute approach, which is done by examining all regulations and laws that have something to do with this research. With this approach, the law will open opportunities for researchers to analyze the margin trading system in the stock exchange based on *Musyarakah* contract. And the results of the study are an argument to solve the issues at hand.²³

Furthermore, this research approach also uses a conceptual approach. the conceptual approach is to examine the concepts that move from the views and doctrines that develop in the views and opinions of the scholars in the context of *Musyarakah* Contract.²⁴ In this case the author will see the development of law in the field that the author will examine so that the legal concept is found to be appropriate for the legal issue.

3. Legal Material

The type of legal material used in this study is secondary legal material, namely legal material or information on the results of a review of similar research documents that have been done before, library materials such as books, literature, newspapers, magazines, journals and archives according to research discussed.

²³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta : Kencana Prenada Media Group, 2007), 93.

²⁴ Tim Penyusun, *Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN Maulana Malik Ibrahim Malang*, (Malang: Fakultas Syariah, 2012), 21.

Legal materials in this study include:

Table : E.3.1

Legal Material

No	Primary legal material	Secondary legal material	Tertiary legal material
1.	Thesis by Ferry Kiandi entitled <i>Perlindungan Hukum dalam Transaksi Margin Trading dan Short Sales di Pasar Modal (Perjanjian Fasilitas Pembiayaan Penyelesaian Transaksi Efek PT. RHB OSK Securities Indonesia</i>	Law Number 8 year 1995 Capital Market	Articles and materials from internet media
2.	DSN MUI FATWA Number 08/DSN-MUI/IV/2000 concerning	Journals of law	Indonesia dictionary

	<i>Musyarakah</i> Financing		
3.	Bapepam and LK regulations Number V.D.6. regarding financing of securities transactions by securities companies for investors and short selling transactions by securities companies	The results of research and scholarly scientific work relevant to this study,	Legal dictionary
3.	IDX Regulation number II-H concerning Requirements and Securities Trading in Margin trading and Short Selling Transaction		
4.	IDX Regulation number II-I concerning Margin Trading and Short		

	Selling Membership		
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4. Legal Material Collecting Method

In the relation with the type of research that is a normative research, to obtain legal material that supports, the activity of collecting legal materials in this study is by collecting (documentation) secondary data. Legal material collection techniques are carried out by library research to collect and compile legal materials related to the problem under study, inventory legal materials that have been obtained and conduct legal material studies.²⁵ The authors will compile data relating to the Margin Trading transaction system in the Stock Exchange based on *Musyarakah* Contract then inventory and conduct an assessment of these materials.

5. Legal Material Processing Techniques

Data processing methods explain the procedure of data processing and analysis of legal materials in accordance with the approach used. Data processing is usually done through stages, namely examination (editing), classification (classifying), verification (verifying), analysis (analyzing), and making conclusions.

²⁵Soerjono Soekamto, *Pengantar Penelitian Hukum* (Jakarta : UI Press , 1986), 21.

a. Editing

The first step is to re-examine the data that has been obtained mainly from the completeness, clarity of meaning, suitability and relevance to other data groups with the aim of whether the data is sufficient to solve the problems studied and to reduce errors and lack of data in research and to improve data quality. Then the data contained in this study come from observations, sources and books that explain the system of margin trading transactions and *Musyarakah* Contract.

b. Classifying

Reducing existing data by compiling and classifying the data obtained into certain patterns or certain problems to facilitate reading and discussion according to research needs. The second step is done by examining the research data then grouped or classified based on needs in order to facilitate reading.

c. Analyzing

The process of simplifying words into forms that are easier to read and also easy to interpret. In this case, the analysis of the data used by the author is descriptive qualitative, which is an analysis that describes a result with words or sentences, then separated according to the category to obtain conclusions.

d. Concluding

The final stage in processing data is concluding. Concluding is taking conclusions from data obtained after being analyzed to obtain answers to the reader for the anxiety of what is presented in the background of the problem.²⁶

6. Legal Material Analysis Techniques

Legal materials obtained from research results are grouped according to the problems which are then analyzed qualitatively. Qualitative analysis means that the analysis does not depend on the amount of data based on numbers but the data analyzed is described in the form of descriptive sentences. Based on the analysis of the subject matter, interpretation can be made with the method of interpretation known in law. (grammatical and systematic analysis)

F. Previous Research

Previous research is needed to clarify, emphasize, see the strengths and weaknesses of various theories used by other authors in research or discussion of the same problem. The related research in Margin Trading is not the first to do, particularly relate to specifically discuss about it, which has previously done some research related to this. In this case, the author finds some things have not gotten around by researchers before. Then, this research is not research duplication.

²⁶Tim Penyusun, *Pedoman Penulisan Karya*, . . . , 29.

There are some previous researches about Margin Trading. Some of the results of these studies are as follows:

1. “Juridical Analysis of Margin and Short Selling Transactions in the Indonesian Capital Market: Case Study of PT DBS Vickers Securities Indonesia and Deddy Hartawan Jamin” by Firman El Amny Azra from University of Indonesia in 2012. In this paper, the author discusses juridical analysis of margin transactions and short selling for the case of PT. DBS Vickers Securities Indonesia and Deddy Hartawan Jamin. The similarity between author research and the thesis is a research study which both discuss about margin trading transactions. The difference that arises between the research of the author and the research is that the study discusses the juridical analysis of margin transactions and short selling of a case and the company's legal liability for investor losses that occur due to violations in margin transactions and short selling, while the author's research discusses margin transactions trading based on *Musyarakah Contract*.²⁷
2. “Legal Protection in Margin Trading and Short Sales Transactions in the Capital Market” by Ferry Kiandi from the University of North Sumatra in 2014. In this paper, the author discusses the legal protection of margin trading transactions and short sales in the capital market. The similarity between author research and the thesis is a

²⁷ Firman El Amny Azra, *Analisis Yuridis Transaksi Marjin dan Short Selling dalam Pasar Modal Indonesia: Studi Kasus P.T DBS Vickers Securities Indonesia dan Deddy Hartawan Jamin*, (Universitas Indonesia, Jakarta, 2012)

research study which both discuss the margin trading mechanism and short selling. The difference that arises between the research of the author and the research is that the study discusses legal protection for customers or investors in margin trading transactions and short selling in the Indonesian capital market, while the author's research discusses margin trading transactions based on *Musyarakah Contract*.²⁸

3. “Analysis of Investor Protection Against Margin Transactions and Short Selling for Securities Companies” by Verdi J. Pangaribuan from University of Indonesia in 2012. In this paper, the author discusses margin trading transactions and short selling in stock trading on the stock exchange. The similarity between author research and the thesis is a research study which both discuss about margin trading transactions. The difference that arises between the research of the author and the research is that the study discusses the implementation of Bapepam-LK regulations regarding securities transaction financing by securities companies as well as forms of legal protection for investors against margin trading transactions and short selling conducted by securities companies while the authors discuss transactions margin trading based on *Musyarakah Contract*.²⁹

²⁸ Ferry Kiandi, *Perlindungan Hukum dalam Transaksi Margin Trading dan Short Sales di Pasar Modal*, (Universitas Sumatera Utara, Medan, 2014)

²⁹ Verdi J. Pangaribuan, *Analisis Perlindungan Investor Terhadap Transaksi Marjin dan Short Selling pada Perusahaan Efek*, (Universitas Indonesia, Jakarta, 2012)

Table : F.1
Previous Research

Name, Year	Title	Material Object	Formal Object
Firman El Amny Azra, University of Indonesia, 2012	Analisis Yuridis Transaksi Marjin dan Short Selling dalam Pasar Modal Indonesia: Studi Kasus P.T DBS Vickers Securities Indonesia dan Deddy Hartawan Jamin	Margin Trading transaction	Juridical analysis of Margin Transactions and short selling of a case an also the legal liability of the securities company for investor losses that occur as a result of a violation in the margin transaction
Ferry Kiandi, University of North Sumatera,	Perlindungan Hukum dalam Transaksi Margin	Margin Trading transaction	legal protection for margin trading customers

2014	Trading dan Short Sales di Pasar Modal		
Verdi J. Pangaribuan, University of Indonesia, 2012	Analisis Perlindungan Investor Terhadap Transaksi Marjin dan Short Selling pada Perusahaan Efek	Margin Trading transaction	legal protection for margin trading customers

G. Structure of Discussion

Chapter I is an introductory chapter that contains several sub-chapters, including: background of problems that describe the background in conducting research. Then is the problem statements of Problem that talks about what will be studied. Followed by the objectives of Research and the benefits of the study as an impact that will be obtained by the parties involved in the theme under study. Then next is the research method used by researchers, starting from the type of research, research approach, type of data / legal materials, data collection methods, data processing techniques, data analysis techniques, this sub-chapter describes how researchers travel from the beginning to data collection to analysis data so that researcher can easily do

the research. Next is the previous research that presents the results data from previous research. And the last is the structure of discussion that contains the logic of the discussion that will be used in this study starting from the first chapter of the introduction to the closing chapter, conclusions and suggestions.

Chapter II is a Conceptual Framework that explains in detail about the mechanism of capital market transactions in general and a special review of margin trading, then a discussion about *Musyarakah* Contract taken from the DSN MUI FATWA, OJK regulations and regulations governing of margin trading and so on.

Chapter III is Discussion, This chapter describes the data that has been obtained from the results of Conceptual Framework (reading and reviewing literature), namely by combining studies between margin trading and *Musyarakah* Contract which have been reviewed in the Conceptual Framework and then edited, classified, verified, and analyzed to answer formulated problem set.

Chapter IV is a Closing, In this chapter, the author writes conclusions on his research and suggestions addressed to the parties related to the research theme. In this chapter the author explains the conclusions of his research, namely the conclusions of the answers to the problem statements outlined in the discussion, then the author also explains the suggestions addressed to the relevant parties in accordance with the themes taken in this study.



Chapter II

Conceptual Framework

A. The Overview of Capital Market

1. Capital Market

a. Definition

Along with the development of the globalization of the capital market world followed by the increasing number of new products offered by banking institutions and other financial institutions / emerging new businesses called margin trading and short selling. This business later became one of the business fields of investment banks and other financial institutions that had permission to do so. In fact, it has recently become a profitable investment choice by entrepreneurs, especially those in the financial sector.

Formally the capital market can be defined as a market for various long-term financial instruments that can be traded, either in the form of debt or equity, whether issued by the government, public authorities, or private companies. The capital market is a concept that is narrower than the financial market. In the financial market, all forms of debt and equity are traded, both short-term funds and long-term funds, whether negotiable or not.³⁰

Capital markets carry out economic and financial functions. In carrying out economic functions, the capital market provides facilities to move funds from parties that have excess funds (lenders / investors) to those who need funds (borrowers). Financial functions are carried out by providing funds needed by borrowers and lenders providing funds without having to be directly involved in the real asset ownership needed for the investment.

Husnan³¹ stated that the capital market has an appeal, namely:

- 1) It is expected that the capital market can be an alternative to raising funds other than the banking system. Companies that need funds to expand will have other funding sources in addition to obtaining funds in the form of loans from banks. In financial theory there are limits to the use of debt. In accordance with the balancing theory of capital structure, when

³⁰ Suad Husnan, *Dasar-dasar teori Portofolio dan Analisis Sekuritas*, (Yogyakarta: UPP-AMP YKPN, 1998), 3.

³¹ Suad Husnan, *Dasar-dasar teori*, . . . , 4-5.

the debt to equity ratio is too high, the company's capital costs are no longer minimum, but will increase with the increasing amount of debt used.

- 2) The capital market allows investors to have various investment choices that are in accordance with their risk preferences. Lenders no longer can only invest their funds in the banking system and real assets. With the existence of the capital market, investors are able to diversify investments, form portfolios according to risk preferences and the level of profit they expect.

Many experts define capital markets, from these definitions actually have no different meaning even though they are poured into different grammar. Understanding the capital market according to the minister of finance regulation number 153 /pmk.010/2010 concerning share ownership and capital of securities companies, the Capital Market is the activity concerned with Public Offering and Securities trading, Public Companies relating to Securities issued, as well as institutions and professions relating to Securities.³²

In essence, the capital market is an order network that allows the exchange of long-term claims, the addition of financial assets (and debt) at the same time, allowing investors to change and adjust the investment portfolio (through the secondary market). According to

³²Peraturan menteri keuangan nomor: 153 /pmk.010/2010 tentang kepemilikan saham dan permodalan perusahaan efek

Marzuki Usman, the capital market is complementary in the financial sector to two other institutions, namely banks and financial institutions. The capital market provides its services, namely bridging the relationship between owners of capital in this case referred to as investors (investors) with borrowers of funds in this case referred to as issuers (companies that go public).³³ U Tun Wai and Hugh T. Patrick in the IMF paper cite the 3 meanings about capital markets as follows. Mutual fund, 1986 and economics at FEUI, 1987.³⁴

- 1) A broad definition The capital market is the need for an organized financial system, including commercial banks and all intermediaries in the financial sector as well as long-term and short-term, primary and indirect securities.
- 2) Definition in the intermediate sense Capital markets are all organized markets and institutions that trade credit documents (usually those with a maturity of more than 1 year), including stocks, bonds, term loans, mortgages and savings, and time deposits.
- 3) Definition in a narrow sense Capital markets are organized markets that trade stocks and bonds using the services of brokers, commissioners and underwriters.

The capital market is a market for various long-term financial instruments that can be traded, both in the form of debt, equity

³³ Pandji Anoraga, Piji Pakarti, *Pengantar Pasar Modal* (Jakarta : Rineka Cipta, 2008), 5.

³⁴ Pandji Anoraga, Piji Pakarti, *Pengantar*, . . . , 7-8.

(shares), derivative instruments, and other instruments. The capital market is a funding tool for companies and other institutions and means for investing activities. Thus, the capital market facilitates various facilities and infrastructure for buying and selling activities and other related activities in the capital market.

According to Suad Husnan “Formally, the capital market can be defined as a market for various long-term financial instruments that can be traded both in the form of debt or equity, whether issued by public authorities or private companies.”³⁵

So that the capital market is a concept that is narrower than the financial market. In financial markets, all forms of debt and equity, both long-term and short-term, are traded, whether they can negotiate or not.

b. Legal Basis of Capital Market

1) Law Number 8 of 1995

In article 1 point 13, it is explained that the Capital Market is an activity concerned with Public Offering and Securities trading, Public Companies relating to Securities issued, and institutions and professions related to Securities. Furthermore, in the capital market there are various kinds of markets, transactions and products, which have separate arrangements and are regulated

³⁵ Suad Husnan, *Dasar-dasar Teori Portofolio dan Analisis Sekuritas*. (Yogyakarta, Edisi kelima, 2005) : BPFEE

in various specific regulations that contain understanding and procedures.

- 2) Government Regulation Number 45 of 95 concerning the implementation of activities in the capital market sector jo 12 of 2004

In government regulation Number 45 of 95 concerning the implementation of capital market activities in 12 years 2004, it was explained how the licensing of the stock exchange can run the business along with the provisions of the parties in the capital market.

c. Functions and duties of Capital Market

The function of the capital market existence is: ³⁶

- 1) Providing a source of funding or financing (long term) for the business world while at the same time enabling the optimal allocation of funds.
- 2) Providing investment vehicles for investors while at the same time enabling diversification efforts.
- 3) Providing leading indicators for the country's economic trends.
- 4) Enabling the spread of company ownership to the middle class.
- 5) Creating attractive jobs / professions.

³⁶ Darmadji and Hendi M. Fakhruddin, *Pasar Modal di Indonesia*, 3.

- 6) Providing opportunities to have a healthy company with good prospects.
- 7) Alternative investments that provide potential benefits with risks that can be calculated through openness, liquidity and investment diversification.
- 8) Fostering a climate of openness to the business world and providing access to social control.
- 9) Encouraging the management of companies with an open climate, the use of professional management and the creation of a healthy business climate.

Part of Supervision of the Capital Market Sector has the task of organizing an integrated capital market regulation and supervision system for all activities in the financial services sector.

In carrying out the functions of the Capital Market, Supervision sector main tasks are: ³⁷

- 1) Prepare regulations for implementation in the Capital Market sector;
- 2) Implementing the Capital Market Crisis Management Protocol;
- 3) Establish accounting provisions in the Capital Market sector;
- 4) Formulating standards, norms, guidelines for criteria and procedures in the Capital Market sector;

³⁷ <https://www.ojk.go.id/id/kanal/pasar-modal/tentang-pasar-modal/Pages/Tugas.aspx> accessed on 30th of april 2019

- 5) Carry out analysis, development and supervision of the Capital Market including the Sharia Capital Market;
- 6) Carry out law enforcement in the Capital Market sector;
- 7) Resolving objections submitted by parties subject to sanctions by OJK, Securities Exchanges, Clearing and Guarantee Institutions, and Deposit and Settlement Institutions;
- 8) Formulating principles of Investment Management, Transactions and Securities Institutions, and governance of Issuers and Public Companies;
- 9) Conducting guidance and supervision of parties that obtain business licenses, approvals, registration from OJK and other parties engaged in the Capital Market;
- 10) Provide written orders, appoint and / or determine the use of statutory managers to financial service parties / institutions that carry out activities in the Capital Market sector in the context of preventing and reducing the loss of consumers, the public and the financial services sector; and
- 11) Carry out other tasks given by the Board of Commissioners

d. Kind of Capital Market

The sale of shares (including other types of securities) to the public can be done in several ways. Generally sales are carried out

according to the type or form of the capital market where the securities are traded. Types of capital markets there are several types, namely:³⁸

1) Primary Market (Primary Market)

The primary market is a capital market that trades shares or other securities sold for the first time (initial offering) before the shares are listed on the stock. The price of shares in the primary market is determined by the underwriters and companies that will go public (issuers), based on the fundamental analysis of the company concerned. The role of the underwriter on the primary market in addition to determining the stock price, also carrying out the sale of shares to the public as potential investors. From the description above, it is stated that the issuer and the proceeds from the sale of the shares are issued for the first time in the stock market as a whole.

2) Secondary Market

Secondary markets are markets where stocks and other securities are traded on a regular basis after going through the sale period on the primary market. The price of shares in the secondary market is determined by demand and supply between buyers and sellers. Basically this demand and supply is influenced by several

³⁸ Sunariyah, *Pengantar Pengetahuan Pasar Modal*, (Yogyakarta : UPP STIM YKPN, 2006), 12-14.

factors, namely: (a) company internal factors, namely things related to internal policies in a company along with the performance achieved; (b) the company's external factors, namely things beyond the company's ability or beyond the ability of management to control, such as politics, monetary policy, and high inflation rates. So it can be concluded that the secondary market is a market that trades shares after passing through the primary market so that the sale of shares here is usually no longer included in the company's capital, but rather goes into the cash of the shareholders concerned.

3) Third Market (Third Market)

The third market is a place to trade stocks or other securities outside the market (over the counter market). Parallel Exchange is an organized securities trading system outside the official stock exchange, in the form of a secondary market that is regulated and carried out by the Union of Money and Securities Trade by being supervised and fostered by the Capital Market Supervisory Agency (BAPEPAM). The operation on the third market is in the form of information formulation called "trading information". Information provided in this market includes stock prices, number of transactions, and other information regarding the securities in question. In this trading system brokers can act as securities traders as well as securities brokers.

In addition to securities transactions conducted on the BEI, in Indonesia there are also known securities transactions conducted outside the BEI or over the counter (OTC). Securities transactions outside the exchange have long been known and carried out by securities companies. Non-exchange securities transactions can only be made after the securities sold in the primary market are listed on the stock exchange. In OTC securities trading, the parties that will carry out securities transactions (the party making the sale or the party making the purchase of securities) are met directly through their respective securities companies to trade the securities, so the mechanism for trading the OTC securities is not like the mechanism inside stock Exchange.

Securities transactions outside the stock exchange are regulated in Bapepam Regulation Number III.A.10 Year 1997 concerning Securities Transactions. Non-exchange securities transactions are defined by Bapepam Regulation Number III.A.10 as transactions between securities companies or between securities companies and other parties that are not securities companies that are not regulated by the stock exchange and transactions between parties that are not securities companies. Securities companies that conduct OTC transactions must record the transaction on the date the transaction begins to bind. In the implementation of OTC transactions, securities companies that conduct OTC transactions

send confirmation of transactions to other securities companies or other parties who are parties to OTC transactions on the date the transaction is executed.

4) Fourth Market

The fourth market is a form of securities trading between investors or in other words the transfer of shares to other shareholders without going through a securities broker. This form of transaction in trade is usually carried out in large quantities (block sale).

According to Abdul Aziz in his book *Micro-Islamic Economics Micro and Macro Analysis*, Various Types of Capital Markets are:

- 1) Primary Market (Primary Market) The primary market is a stock offer from a company that issues shares (issuers) to investors during the time determined by the issuing party, before the shares are traded on the secondary market.
- 2) Secondary Market The secondary market is trading shares after passing a bidding period on the primary market.
- 3) Third Market (Third Market) The third market is a place to trade shares or other securities outside the stock exchange (over the counter market).
- 4) Fourth Market The fourth market is a form of securities trading between investors or in other words the transfer of shares from

one shareholder to another without going through a securities broker³⁹

e. Institutions Involved In The Capital Market⁴⁰

1) Bapepam (Capital Market Supervisory Agency)

The task of the Capital Market Supervisory Agency according to Presidential Decree No. 53 of 1990 concerning the Capital Market is:

- a) Keep abreast of developments and regulate the capital market so that securities can be offered and traded regularly and efficiently and protect the interests of investors in the general public
- b) Carry out guidance and supervision of the following institutions:
 - i. Stock Exchange
 - ii. Clearing, settlement and storage institutions
 - iii. Mutual funds
 - iv. Securities companies and individuals
 - v. Capital market supporting institutions, namely deposit facilities, securities administration bureau, trustee or guarantor
 - vi. Capital market supporting professionals

³⁹ Abdul Aziz, *Ekonomi Mikro Islam Analisis Mikro dan Makro* (Yogyakarta: Graha Ilmu, 2008), 147-148.

⁴⁰ <http://staffnew.uny.ac.id/upload/132318570/pendidikan/pasar-modal.pdf> Chapter 13 Pasar Modal, accessed on 5th of September 2018

- c) Give opinions to the Minister of Finance regarding the capital market

Bapepam as a capital market supervisory institution must stipulate provisions for the guaranteed implementation of securities in an orderly and fair manner in order to protect investors and the public in the form of:

- i. Information disclosure about securities transactions on the stock exchange by all securities companies and all parties. This provision must contain disclosure requirements to the Chairperson of Bapepam and the public regarding all securities transactions by all major shareholders and insiders and parties associated with them.
- ii. Record keeping and reports provided by parties who have obtained business licenses, individual permits, approvals, or professional registration
- iii. Rationing of securities, in case there is an excess number of requests in a public offering. This provision does not require the issuance of certificates in an amount less than the number of standards applicable in securities trading on a stock exchange.

Bapepam led by a chairman whose principal duty is to lead Bapepam in accordance with the policies outlined by the government and foster Bapepam apparatus to be efficient and effective. In addition, the Chairperson of Bapepam has the duty to make provisions on the technical implementation in the capital market sector which is functionally the responsibility in accordance with the policies stipulated by the Minister of Finance and based on applicable laws and regulations.

2) Primary Market Supporting Institutions

a) Underwriters The tasks of the guarantor of securities include the following:

- i. Provide advice on the types of securities that should be issued, reasonable prices and the period of securities (bonds and credit securities)
- ii. In submitting a statement of securities emission registration, helping to complete administrative tasks related to filling out the securities emission registration statement document, preparing a prospectus, designing securities specimens, and assisting the issuer during the evaluation process
- iii. Regulates the implementation of emissions (distribution of securities and preparing supporting facilities).

b) Public Accountants

The duties of public accountants include:

- i. Examine the company's financial statements and give their opinions
- ii. Checking bookkeeping is in accordance with generally accepted accounting principles and the provisions of Bapepam
- iii. Provide instructions for implementing good accounting methods if necessary.

c) Legal Consultant

The duty of a legal consultant is to examine the legal aspects of the issuer and provide legal opinions about the state and legitimacy of the issuer's business, which includes articles of association, business permits, proof of ownership of the issuer's assets, commitments made by issuers with third parties, and claims in cases. civil and criminal.

d) Notary

The notary is in charge of making minutes of the GMS, drafting the deed of amendment to the articles of association, and preparing the draft agreement in the context of securities issuance.

e) Selling Agent

This sales agent generally consists of a brokerage company (broker / dealer) who is in charge of serving investors who will order securities, carry out refund orders, and submit securities certificates to customers.

f) Appraisal Company

The appraisal company is required if the issuer's company will revalue its assets. The assessment is intended to find out the fair value of the company's assets as a basis for making emissions through the capital market.

3) Supporting Institutions in Bond Emissions

In bond issuance, in addition to supporting institutions for share issuance, the institution is also known as follows:

- a) Trustee (Trustee) The duties of the Trustee include:
 - i. Analyze the ability and credibility of the issuer
 - ii. Assessing part or all of the issuer's assets received by him as collateral
 - iii. Provide advice calculated by the issuer
 - iv. Supervise the repayment of principal loans along with interest that must be carried out by the issuer on time
 - v. Carry out the task as the main agent of payment

- vi. Continuously follow the development of the management of listed companies
- vii. Make a trusteeship agreement with the issuer
- viii. Calling the Bondholders General Meeting (RUPO), if it necessary

b) Insurer (Guarantor)

The insurer is responsible for fulfilling the payment of the principal loan and the interest from the issuer to the bondholders on time, if the issuer does not fulfill its obligations.

c) Paying Agent

Paying agent is in charge of paying interest on bonds which are usually carried out twice a year and repayment when the bonds are due.

4) Secondary Market Supporting Institutions

Secondary market supporting institutions are institutions that provide services in the execution of buying and selling transactions on the exchange. This supporting institution consists of:

a) Securities Traders

In addition to buying and selling securities for themselves, securities traders also function to create markets for certain securities and maintain a balanced price and maintain securities liquidity by buying and selling certain securities on the secondary market.

b) Securities Trading Intermediaries (Brokers)

Brokers are in charge of receiving selling orders and buying orders for investors and then offered on the stock exchange. For this intermediary service, the broker charges a fee to investors

c) Securities Companies

Securities companies or securities companies can carry out one or more activities, either as underwriters, securities brokers, investment managers, or investment advisors

d) Securities Administration Bureau

Namely parties who are based on a contract with the issuer regularly provide services to carry out bookkeeping, transfer and recording, payment of dividends, distribution of option rights, emission certificates, or annual reports for issuers.

e) Mutual Funds

mutual fund or investment fund are companies whose activities are managing funds from investors which are generally invested in the form of capital market instruments and / or money markets by investment managers. The managed fund is issued a stock unit or certificate as proof of the participation of investors in the mutual fund company.

According to Burhanuddin Susanto in his book entitled Islamic capital market (Legal Review), Parties in the Capital Market are:⁴¹

- 1) Capital market: functions as an intermediary between investors and issuers as users of funds.
- 2) Stock exchanges: the party that provides the system and or advice to bring investors together with the issuer.

Currently in Indonesia there are two exchanges, namely the Jakarta Stock Exchange (JSX) and the Surabaya Stock Exchange (BES).

- 3) Clearing and Guarantee Institutions (LKP): parties that provide clearing services and guarantor for settlement of exchange transactions.

⁴¹ Burhanuddin, S. *Pasar Modal Syariah (Tinjauan Hukum)* (Yogyakarta: UII Press, 2008), 17-41.

- 4) Deposit and Settlement Institutions (LPP): parties that hold central custodian activities for custodian banks.
- 5) Public companies (issuers): public companies that have conducted public offerings through the emission process.
- 6) Investors: parties that place surplus of funds for investment activities in the business sector that are lawful and productive.
- 7) Custodian Banks: carry out safekeeping and securities storage for account holder owners held by the Depository and Settlement Institutions (LPP), securities companies, and public banks at the government's expense.

f. Products of Capital Market ⁴²

1) Mutual Funds

Mutual funds are certificates that explain that the owner entrusts money to the mutual fund manager (investment manager) to be used as investment capital. Through this mutual fund good investment advice, do not put all the eggs in a basket, it can be done. In principle, investment in mutual funds is to invest in a number of investment instruments that are traded in the capital market and money market.

Buying a mutual fund is like saving money. The difference between saving letters cannot be traded, while mutual funds can be traded. The benefits of investing in mutual funds can come from

⁴² <http://staffnew.uny.ac.id/upload/132318570/pendidikan/pasar-modal.pdf> chapter 13 Pasar Modal, accessed on 5th of September 2018

three sources, namely interest / interest, capital gain, and increase in net asset value (NAV). To get dividends, investors must choose mutual funds that have income targets. Each mutual fund prospectus will include the target when bidding.

The mutual fund targets include income, growth and balance. The decision to choose a stock that gives dividends / interest is in the hands of the investment manager. The investment manager has the right to distribute or not dividends / interest earned to investors. If the prospectus explains that the dividend / interest will be distributed, the investor will receive dividends / interest at a certain time.

Capital gains will be given by mutual funds that have growth targets. This income comes from the increase in stock prices or bond discounts which are mutual fund portfolios. Investment managers must successfully buy shares at low prices and sell them at high prices. Furthermore, the investment manager will distribute to investors. However, income from capital gains depends on the investment manager's policy. If the investment manager in his prospectus explains that he will distribute capital gains, then in a certain time the holder of the mutual fund will get a capital gain distribution. There are also mutual funds that do not distribute this capital gain, but add it to the net asset value. The value of net assets is a comparison between the total value of

investments made by investment managers and the total volume of mutual funds issued.

2) Stock

In simple terms stocks can be defined as a sign of the ownership or ownership of a person or entity in a company. The form of shares is a piece of paper that explains that the owner of the paper is the owner of the company that issued the paper. Buying stocks is like saving money. The benefit that will be obtained by the ownership of shares is the ability to provide unlimited profits. Not infinitely this does not mean the profits of ordinary stock investment are very large, but depend on the development of the publishing company. If a publishing company is able to generate large profits, it is possible that the shareholders will enjoy large profits. Because the large profits provide large funds to be distributed to shareholders as dividends.

Every year the company will issue financial statements. In the financial statements can be seen the amount of company profits in the year concerned. This profit will be allocated for two interests: distributed as dividends and retained earnings used for business development. Shareholders must be willing to hold or hold shares purchased in a relatively long time (at least one year) to get dividends. During this period the issuer has been obliged to issue financial statements and distribute dividends. Even so, it can

also not take too long to hold shares. This can happen if we buy shares before the issuer pays dividends. With share ownership, shareholders can also obtain capital gains.

Capital gain will be obtained if there is an excess selling price above the purchase price. There are rules that must be implemented to get capital gains. One of them is buying when prices go down and sell when prices rise.

3) Preferred Shares

Preferred stock is a hybrid between bonds and common stock. This means that in addition to having characteristics such as bonds also have the characteristics of common stock. The characteristics of bonds, for example preferred stocks provide a fixed yield such as bond interest. Usually preferred shares provide certain options for dividend distribution rights. There are preferred stock buyers who want dividend receipts that have a fixed amount every year, some who want to prioritize dividend distribution, and so on.

Preferred stocks have the characteristics of common stock because the preferred stock cannot always provide income as desired by the holder. If one day the issuer suffers a loss, the preferred shareholders cannot receive dividend payments that have been previously determined. The choice to invest in preferred shares is driven by the privilege of this investment tool, which is to

provide more definite income. In fact, there is a possibility that the profit is greater than the deposit interest rate if the issuing company is able to produce dividend which can be adjusted to the interest rate.

Preferred shareholders do not bear the risk of ordinary shareholders, but the risk of preferred shareholders is greater than the bondholders. There are two reasons, first in a situation where the issuer is declared bankrupt and conducts liquidation, the right of the preferred shareholder in the payment of the liquidation of the order is under the bondholders. Second, bondholders are more assured in terms of revenue generation. Under no circumstances can bond issuers have to pay bond interest. Preferred shares that provide dividends still have prices that will not change. Even though the publishing company can make large profits. Thus, preferred shareholders who provide fixed dividends will not get income from capital gains

4) Bond

Bonds are securities or certificates that contain contracts between lenders and loan recipients. Bonds are a piece of paper that states that the owner of the paper provides a loan to the company that issued the bond. Basically, having bonds is exactly the same as having time deposits. It's just that bonds can be traded. Bonds provide a fixed income, which is in the form of interest paid in a fixed amount at a predetermined time. Bonds also provide the

possibility to get capital gains, namely the difference between the selling price and the purchase price. The difficulty in determining bond income is due to the difficulty of estimating the development of interest rates. Though bond prices are very dependent on the development of interest rates. If bank interest rates show a tendency to increase, bond holders will suffer losses.

Besides facing the risk of developing interest rates that are difficult to monitor, bondholders also face capability risk, namely repayment before maturity. Before a bond is offered in the market, it is first rated by the authorized agency. The rating is referred to as a credit rating which is a risk scale of all bonds traded. This scale shows how secure a bond is for investors. This security is indicated by its ability to pay interest and repay the loan principal.

One variant of bond products is convertible bonds. Convertible bonds, at a glance it is no different from ordinary bonds, for example giving a fixed coupon, having a maturity and having a nominal value or par value (par value). It's just that the convertible bonds are unique in that they can be exchanged with ordinary shares. In convertible bonds there is always a requirement for conversion. For example, each convertible bond can be converted into 3 ordinary shares after 1 January 2005 with a predetermined conversion price.

The choice of this investment tool is because of its ability to provide optimal income because convertible bonds can be used as bonds or stocks. If the interest rate offered by a convertible bond is higher than the bank's interest rate or the company does not distribute large dividends, the convertible bond holder does not need to convert the convertible bond. If it is estimated that the issuer managed to get high profits so that it can divide dividends that are greater than the interest on convertible bonds, convertible bondholders are better to convert their bonds into shares in order to get dividends.

Rewards that can be obtained by convertible bondholders can consist of interest (if retaining as a bond), dividend (if converting), capital gain (if you sell the bond at a price higher than the acquisition price, or get a discount when buying. Capital gain can also be obtained if the convertible bond holder converts, then successfully sells the shares above the acquisition price).

The risks faced by convertible bondholders are mistakes in making conversion decisions, including:

- a) If at the time specified, investors use their rights to convert convertible bonds into shares, and it turns out that the condition shows that bank interest rates tend to rise
- b) If the issuer does not make a profit, so it does not distribute dividends. Thus investors face the risk of not getting the

opportunity to get interest rates. If he did not use his rights, he would get the opportunity.

5) Warrants

Warrants are the right to buy ordinary shares at a predetermined time and price. Usually warrants are sold together with other securities, such as bonds or shares. Warrant issuers must have shares that will be converted by warrants. But after the bonds or shares accompanied by warrants enter the market both bonds, shares and warrants can be traded separately.

Having a warrant is like saving money. Only, warrants can be traded. Besides that warrants can be exchanged with shares. The choice of this investment tool is because of its ability to provide double income, especially warrants that accompany bonds. Because in addition to getting the bond interest later after the warrants are converted into shares will receive dividends and capital gains.

Interest income is obtained by investors who buy warrants that accompany bonds. By buying automatic bonds investors will get interest. That this bond is accompanied by warrants that can be converted into shares in the future, it does not affect the investor's right to bond interest. Bond interest rates accompanied by warrants are usually lower than bank interest rates.

If the investor wants to get a dividend, he first uses warrants to buy shares. To get dividends, he must be willing to hold shares for a relatively long time. Capital gain can be obtained if the bondholders who are accompanied by warrants sell it at a price higher than the price at their acquisition. Capital interest can also be obtained if the bondholders accompanied by warrants get a discount when making a purchase. At maturity, he will get repayment at the price of pari. Capital gains can also be obtained if after converting into ordinary shares, investors can sell their shares above the acquisition price.

6) Right Issue

Right issue is the right for investors to buy new shares issued by the issuer. Because it is a right, investors are not bound to buy it. This is different from bonus shares or stock dividends, which are automatically received by shareholders. Right issues can be traded. The choice of this investment tool is because of its ability to provide the same income by buying shares, but with lower capital. Usually the price of the right stock issue is cheaper than the old stock. Because buying a rights issue means buying the right to buy shares, then if investors use their rights automatically investors have purchased shares. Thus, the reward that will be obtained by the right issue buyer is the same as buying shares, namely dividends and capital gains.

B. The Overview of Secondary Market

1. Definition

After the securities are sold on the primary market, then the securities are then registered on the stock exchange. The securities registration process on the stock exchange is often referred to as listing. After being listed on the stock exchange, the securities can be traded on the secondary market (stock exchange), along with other securities. Buying and selling securities on the secondary market can be done by and between investors through between brokers, with the aim of gaining profits, both capital gains and stock dividends. So with the existence of this primary market, investors do not need to worry about the liquidity of the securities they have, because the secondary market promises liquidity to investors, not to companies like in the primary market. The types of securities that are often traded in an exchange include ordinary shares, preferred shares, bonds, warrants, and derivative securities (options and futures).

Trading on the secondary market can be done in two types of markets, namely in the auction market (auction market) and in the negotiated market (negotiated market).⁴³

The secondary market which is an auction market is a securities market that involves the auction process (bidding) at a physical location.

⁴³ Eduardus Tandelilin, *Analisis Investasi dan Manajemen Portofolio*, (BPFE: Yogyakarta, 2001), 16.

Transactions between buyers and sellers use broker intermediaries that represent each party buyer and seller, thus investors cannot directly make transactions, but are done through broker brokers. Unlike the auction market, the negotiation market consists of a network of various dealers who create their own markets outside the trading floor for securities, by buying from and selling to investors. The negotiation market is often referred to as over the counter market (OTC) or in Indonesia known as parallel exchanges.

The price of securities sold on the primary market (offering price) has been determined in advance by companies that will go public (issuers) with underwriters (underwriters), where the security prices have been included in the prospectus. In contrast to the pricing mechanism in the primary market, where the price of securities is determined by the agreement of the issuer and underwriter, the price of securities in the secondary market will be determined by the market mechanism (the power of attraction of demand and supply that occurs in an exchange).

The characteristics of the secondary market are:

- a. Stock prices are formed by investors (order driven) through exchange members (securities brokers) who trade on the exchange;
- b. Buying and selling transactions are subject to selling costs and buying costs;
- c. There are no restrictions for orders;

- d. Exchange members (securities brokers) enter selling or buying offers through investors into the trading system provided by the exchange;
- e. The buyer of the exchange member completes the payment of funds to KPEI, then receives the shares by way of transfer by KSEI by showing proof of payment settlement from KPEI;
- f. The selling exchange member completes the submission of shares to the KSEI central, then receives funds by way of transfer by KPEI by showing proof of delivery of securities from KSEI.

2. Types of Secondary Market

After holding a public screening, the next stage the issuer can register its shares on the IDX by submitting a listing application as a continuation of the public offerings that have been made before. The company submits a request for listing shares to the stock exchange accompanied by proof that the registration statement has been declared effective by the FSA, the prospectus document, and a report on the composition of the company's shareholders. IDX will give approval and announce the listing of company shares and the company's stock code (ticker code) for the purpose of trading shares on the stock. This stock code will be widely known to investors in conducting transactions in company shares on the IDX. After the shares are listed on the stock exchange, investors will be able to trade the company's shares to other investors in the secondary market trading through brokers or securities

companies that are members of the exchange listed on the IDX. The settlement of secondary market transactions on the IDX is carried out by the Indonesian Central Securities Depository (KSEI) and the Indonesian Securities Guarantor Clearing (KPEI).

The secondary market is divided into four, namely the Regular Market, Negotiation Market, Cash Market and Market Immediately. The following will be explained further in each of these divisions:⁴⁴

- a. Regular Market is a securities trading facility for transactions carried out based on a continuous or continuous auction market process for securities in securities trading units or lots. One lot is currently equal to 100 (one hundred) shares.
- b. The Negotiation Market is basically almost similar to the Regular Market, the difference is that the bargaining process does not occur on the stock exchange and is done individually, but the bargaining activity remains under the supervision of the stock exchange. Negotiation Market is chosen if there is a trade in block sale or block trading, namely the purchase of shares that exceed 200,000 (two hundred thousand) shares, odd lot trading, which is trading shares that are under one lot, closing trades themselves, namely trading shares that offer selling and Buying bids come from one exchange member for customers who are different and foreign

⁴⁴ <http://digilib.unila.ac.id/28609/3/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>
accessed on 1st of may 2019

portion trading, namely the trading of shares which the majority of the owners are foreign investors (have reached 49% or more) and the trade is carried out among foreign investors.

- c. Cash Market, namely securities trading facilities for transactions carried out in the context of fulfilling the obligations of exchange members who fail to fulfill obligations in securities transaction settlement in the regular market and negotiating market or fail to submit shares on the third exchange day (T + 3) based on payment principles and instant delivery or cash and carry.
- d. The Immediate Market, namely securities trading whose settlement is determined on the first day (T + 1), to fulfill the desire of a fast transaction in the practice of trading on the stock exchange.

The characteristics of the secondary market are: ⁴⁵

- a. Stock prices are formed by investors (order driven) through exchange members (securities brokers) who trade on the exchange;
- b. Buying and selling transactions are subject to selling costs and buying costs;
- c. There are no restrictions for orders;
- d. Exchange members (securities brokers) enter selling or buying offers through investors into the trading system provided by the exchange;

⁴⁵ <https://www.coursehero.com/file/p4a4j1i/D-Jenis-Jenis-Pasar-di-Pasar-Sekunder-1-Pasar-Reguler-Karakteristik-a-Sistem/> accessed on 1st of May 2019

- e. The buyer of the exchange member completes the payment of funds to KPEI, then receives the shares by way of transfer by KSEI by showing proof of payment settlement from KPEI;
- f. The selling exchange member completes the submission of shares to the KSEI central, then receives funds by way of transfer by KPEI by showing proof of delivery of securities from KSEI.

There are 4 types of secondary markets, namely:

- a. Regular market
 - 1) The characteristics of the regular market are as follows
 - a) Continuous bargaining system (continuous auction)
 - b) Trading system with LOT: One lot = 500 sheets for non-bank companies. One lot = 5000 sheets for a bank company
 - c) Bidding is carried out with the Multi fraction scheme
 - d) Transactions that occur based on price and time priorities
 - 2) Transaction settlement: T + 4
 - 3) Prices formed as a basis for calculating the JCI
- b. Non Regular Market
 - 1) The system of the non-regular market is a negotiation system
 - 2) The types of trade from the non-regular market are as follows:
 - a) Block Sale: trade at least 400 lots (200,000 shares)
 - b) Odd Lot: Trade with a volume of less than 1 lot.

- c) Crossing: Trade closes on its own, namely the sale / purchase transaction of shares carried out by one broker with the same amount and price.

c. Cash Market

The system used by the cash market is using a negotiation negotiation system based on cash payments. The cash market is intended for brokers who fail to fulfill the obligation to settle transactions in the regular / non-regular market.

d. Immediately Market

Immediate markets are securities trading markets conducted by stock exchange members and KPEI who want to sell or buy securities whose settlement is carried out on the next trading day after the exchange transaction takes place (T + 1).

C. Margin Trading

1. Definition

In the stock market, margin is a facility provided by stock brokerage firms to investors. The facility said, because indeed a stock brokerage company provides a kind of loan to investors. However, this loan does not have to be returned on a scheduled basis, as is a loan from the bank. New investors return if they sell the shares they bought at a price higher than the purchase price. Or conversely, successfully liquidating its sell position (short selling), by buying at a price lower than the selling

price. In return for facilities provided by the futures brokerage company, investors must pay interest on loans and fees.

Margin trading is a form of securities transaction activity that resembles a bank business carried out by a securities company. As can be concluded from its name, then by conducting or providing margin trading facilities (to its customers), securities companies fund basically part of the funds needed by customers in carrying out their securities transaction activities. Margin trading means trading shares through buying shares with cash and borrowing from third parties to pay for additional shares purchased. Margin buyers hope to get multiple profits with little capital. With margin trading, the ability of customers to transact will increase with the provision of loan facilities by securities companies.⁴⁶

Although in its transaction value, the customer has the opportunity to transact more, but this also means adding to the risks that must be borne by Nasbaha given the very volatile nature of transaction securities. Because of its risk of customer wealth, this margin trading gets special attention from capital market authorities, one of which is the Decision of the Directors of PT. Jakarta Stock Exchange No. Kep-019 / BEJ / 0897 dated August 1, 1997.

Although margin makes it easy for investors to invest, it does not mean that convenience is an advantage for investors. That is, if an investor

⁴⁶ Mahmud M. Balfas, *Hukum Pasar Modal Indonesia*, (Jakarta: PT Tatanusa, 2006), 388-389.

has traded with a margin system, it will definitely benefit. Remember, margin trading is a way for a futures brokerage company to expand its customers. On the other hand, if investors take advantage of margin trading, it means that investors have decided to invest. With that investment the risks that must be borne are already attached. Even in the investment literature, margin trading is one investment strategy that tends to approach speculation. Because, if there is a loss of investment with a margin system this will create greater value of investment with the physical system / cash trading.

Margin trading is a service provided by a securities company to its customers in the form of a loan facility, so customers only need to pay a certain percentage of the price of the securities purchased. Customers are required to pay interest to securities companies on the loan funds.⁴⁷

According to the Decree of the Chairman of Bapepam and LK No. Kep-258 / BL / 2008, margin trading is interpreted as follows:⁴⁸

- a. Securities purchase transactions for the benefit of customers financed by the company. Margin transactions are facilities provided by securities companies to investors by providing loans in the form of money. However, this money loan does not have to be returned on a scheduled basis, as is a loan from the bank.

⁴⁷ Astrid Amalia, *Penyalagunaan Short Selling dalam Transaksi Perdagangan Efek, Analisis Kasus: Paul Berliner dengan The Blackstone Group dan ADS Corp.* (Universitas Indonesia: Jakarta, 2009), 30.

⁴⁸ Sawidji Widoatmodjo, *pasar modal Indonesia*, (Jakarta : Ghalia Indonesia, 2009), 196.

- b. New investors return if they have succeeded in selling the shares they bought at a price higher than the purchase price so that investors can benefit from the difference in buying and selling. In return for facilities provided by securities companies, investors must pay interest on loans and fees. The interest of the loan and fee has been agreed upon by investors and securities through a financing agreement and settlement of securities transactions.

In margin trading, there are several parties who can provide loans or guarantees for transactions carried out by investors:

- a. Loans made by third parties, in this case the bank
- b. Loans given by securities companies or companies where investors make a share loan

There are no difference between both of them in the mechanism of transactions, only the types of loans are different. In some capital markets investors who want to buy shares can borrow funds from the securities company where they place an order to buy shares. For the purpose of purchasing these shares, investors who are customers of the company are required to pay a down payment in an amount in accordance with the applicable provisions. The amount of this advance differs from each exchange ranges from 40% - 80% (forty percent to eighty percent).

The more loosening of securities companies in providing margin trading facilities to customers is one of the triggers for the increasingly

passionate share transactions on the stock exchange. Stock market performance has increased, among others, measured by the increasing Composite Stock Price Index, the increasing frequency, volume and value of daily transactions due to improved stock liquidity.

2. Legal Basis

- a. Decision of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number Kep-258 / BI / 2008 concerning Financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions by Securities Companies

In Indonesia this margin trading transaction is not regulated in Law No. 8 of 1995 concerning the Capital Market. In the Capital Market Law only regulates general transactions while special transactions are regulated outside the law. Transaction margin trading is regulated by Bapepam-LK Regulation (now OJK) Number V.D.6 concerning Financing of Securities Transaction Settlement by Securities Companies for Customers and Jakarta Stock Exchange Regulation Number 19 of 1997 concerning Margin Transactions. As well as the Decree of the Chairman of Bapepam-LK No. Kep-556 / BL / 2008 concerning Financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions by Securities Companies.

b. Regulation Number II-H concerning Requirements and Securities Trading in Margin and Short Selling Transactions

According to regulation II-H, what is meant by Margin Securities are Securities that fulfill the requirements as Securities that can be transacted in Margin Transactions in accordance with the Margin Securities list set by the Exchange.

c. Civil Code

In Indonesia, margin trading transactions are not regulated in Law No. 8 of 1995 concerning the Capital Market. In the Capital Market Law only regulates general transactions while special transactions are regulated outside the law. Margin trading transaction is regulated by Bapepam-LK Regulation (now OJK) Number V.D.6 concerning Financing of Securities Transaction Settlement by Securities Companies for Customers and Jakarta Stock Exchange Regulation Number 19 of 1997 concerning Margin Transactions.

Arrangements regarding margin trading transactions relate to the settings in Book III of the Civil Code, specifically arrangements regarding agreement issues that occur in margin trading transactions. An agreement in a margin trading transaction occurs between the two parties where one party promises the other to do something. This is in accordance with Article 1313 of the Civil Code, which is stated: “An

agreement is an act in which one or more people attach themselves to one or more people”.

Civil law applied in Indonesia recognizes the existence of contractual freedom, this can be concluded from the provisions of Article 1338 paragraph (1) of the Civil Code, which states that "all contracts (agreements) that are legally made apply as laws for those who load them." ⁴⁹

The source of freedom of contract is individual freedom, so that which is the starting point is also the interests of individuals. So that the nature of the book III of the Civil Code is open and opens the possibility of an agreement that has not been regulated in the Civil Code concretely, but still in accordance with the principles and conditions of the legal agreement in the Civil Code, in other words it is allowed to override the rules contained in the third book. ⁵⁰

3. The Mechanism of Margin Trading

The agreement made must be in accordance with Article 1320 of the Civil Code in order to have binding strength, so that with the principle of freedom of contract and the open nature of the Civil Code III, the

⁴⁹ Prof subekti Subekti. dan R.Tjitrosuidio, *kitab undang-undang hukum perdata*. (PT. Pradnya Paramita: Jakarta, 1996), 342.

⁵⁰ Endi Budiman, *Perlindungan Hukum terhadap Perusahaan Sekuritas dalam Transaksi atas Fasilitas Margin Trading*, (Universitas Diponegoro: Semarang, 2010), 101.

parties in the margin trading transaction are free to determine the agreed contract content which will ultimately bind the two party.⁵¹

The agreement that occurs in a margin trading transaction can use Article 1313 of the Civil Code as its arrangement, so that what becomes the legal requirement of an agreement contained in the Civil Code must be considered so that the agreement in Indonesia using the Civil Code can be applied and the agreement in the Margin Trading transaction can be its validity is recognized, where the legal terms of an agreement listed in article 1320 KUHperdata are:

- a. Agreement that those who bind themselves to this first condition, all margin trading agreements must be a result of an agreement between investors and securities companies that there must be no coercion, oversight and fraud (*dwang, dwaling, berdrog*).
- b. Skills to make a requirement agreement or benchmark to determine whether or not a person is capable of entering into an agreement listed in article 1330 of the Civil Code, namely: Men who are minors, those who are placed under the custody, and women, in matters stipulated by law, and generally everyone to whom the law prohibits certain agreements.
- c. A certain thing, a certain thing related to the object of the agreement, meaning that the object of the agreement must be clear, can be determined and calculated type and amount, permitted by

⁵¹ Subekti, *kitab undang-undang, . . .*, 339.

law and possibly for the parties. In margin trading where the object of the agreement is shares. Then in accordance with the provisions of the stock exchange, they must meet the specified securities requirements.

- d. A reason that is lawful, a reason that is lawful, means that the agreement must be carried out by investors and securities on the basis of good faith. Based on Article 1335 of the Civil Code which reads: "An agreement without cause, or that has been made for something that is false or forbidden, does not have power" so that an agreement without cause has no power, because in this case the agreement is made. If investors and securities do not meet the above conditions, the margin trading and short selling agreements made do not have legal force or are null and void by law.

Opening an account is an initial requirement to be able to conduct securities transactions on the stock exchange. However, if investors want to use margin trading financing facilities or short selling, investors must enter into an agreement for financing the settlement of securities transactions. Margin trading and short selling transactions are formulated in the form of an agreement which is the implementation of the principle of freedom of contract between securities companies and customers / investors, one of which is the rights and obligations of the parties as a form of agreement and legal protection.

The following are the steps that investors must take to use the facility:

a. Signing of the agreement for settlement of securities transaction financing facilities.⁵²

1) Customer Data

- a) Full name of account holder;
- b) Citizenship;
- c) Address / Residence (according to KTP / SIM / Passport);
- d) Work;
- e) Source of funds;

2) Financing Facilities / Values

The amount of the loan or the amount of the loan that the customer can use is a maximum of 50% of the guarantee value for the initial transaction and 65% of the collateral value for the next transaction. As well as provisions regarding the customer's obligation to make additional guarantees if the ratio reaches more than 65%.

3) Interest

In the margin transaction, investors are required to pay interest in accordance with an agreement to securities that provide

⁵²Ferry Kiandi, *Perlindungan Hukum dalam Transaksi Margin Trading dan Short Sales di Pasar Modal (Perjanjian Fasilitas Pembiayaan Penyelesaian Transaksi Efek PT. RHB OSK Securities Indonesia., Pasal 5)*, (Sumatra: University of North, 2014), 54

financing facilities as interest. Interest is calculated effectively at the maturity of the transaction, namely T +⁵³, both buy and sell.

4) Duration

The period starts on the Exchange Day after the Customer meets the requirements and makes an agreement through a financing agreement. And ending instantly is 360 days or 1 year this facility will be extended periodically if there is no notification in writing.

5) Guarantee

In the form of money transferred directly to the account of a securities company;

6) Payment Date

7) Stock Status

In the terms of the agreement on financing facilities and transaction settlement, it is also regulated about the status of shares purchased with this financing facility. That is, the shares that are submitted and purchased are recorded as collateral for financing in the customer's account the margin is recognized by the margin customer controlled by the securities. Everything inherent in shares

⁵³ T+3 adalah hari bursa ke 3 setelah terjadinya transaksi bursa, dalam pasar modal penyelesaian keuangan terjadi pada hari ketiga setelah transaksi dilakukan.

obtained from transactions that use facilities is owned by margin customers but controlled by securities.

8) Customer Requirements and Obligations

Contains transaction costs, liabilities and the total amount of collateral with the value of financing provided by the securities company to the customer. As well as a statement of authorization to the securities to be able to use securities in the customer's account.

With this, the investor authorizes the securities company. It is stated in Article 5 that the customer authorizes the securities to withdraw and / or transfer and / or sell the guarantee and use the proceeds from disbursement, transfer, loan or sale to pay off the facilities provided by the securities.⁵⁴

In the securities transaction settlement financing agreement, it also regulates that the customer authorizes the securities to be able to use securities in the margin account as collateral for bank or other financial institutions' credit and use the terms and mechanisms that are considered good by securities. It is clear in this article that the power granted is inseparable from the

⁵⁴ Ferry Kiandi, *Perlindungan Hukum (Perjanjian Fasilitas article 5 page 2)*, . . . , 56

agreement and because of that the power of attorney cannot be revoked for any reason.⁵⁵

In Article 1972 of the Criminal Code which reads “The giver of power is an agreement which contains the granting of power to another person who accepts it to carry out something on behalf of the person who gives power”.

In accordance with article 1813 of the Criminal Code, one of the mechanisms for ending the power of attorney is when the authorizer dies, in the case of either the party or bankruptcy, in any case, the terms of the termination of the article are very logical. Even the simplest legal analysis will say that given the power comes from the authorizing party, with the death of the authorizer, then the power given will disappear by itself. While if the deceased power recipient also automatically terminates the power of attorney.

b. Depositing security deposits for opening account margins.

After opening the account, the next step, the customer must make a minimum deposit of Rp. 200,000,000. (two hundred million rupiah).

c. Notification of investment risk in Margin and Short selling transactions

⁵⁵ Ferry Kiandi, *Perlindungan Hukum (Perjanjian Fasilitas article 5 page 2)*, . . . , 56

Notification of investment risk in margin trading and short selling is a provision that aims for customers to know the risks that will be borne by the customers themselves for the financing of transaction settlement.

Customers can use the Margin facility to transact on the Stock Exchange. After the above process has been completed, the customer / investor can make transactions on the stock exchange. But it must be remembered that not all shares can be purchased with this facility. In accordance with the provisions of Bappepam (now OJK) only certain shares can be purchased by margin.

In sum, financing for settlement of margin transactions can only be provided by securities companies if the customer meets all the following criteria.⁵⁶

- a. has a regular securities account, to find out the customer's transaction history;
- b. has opened a margin transaction financing securities account for customers who will conduct financing and still have regular securities accounts as referred to in letter a to accommodate securities transactions not financed by securities companies; and

⁵⁶ Peraturan Bapepam-LK No. V.D.6. angka 3

- c. has deposited the initial guarantee with a value of at least Rp. 200,000,000 (two hundred million rupiah) for each margin transaction financing securities account.

Contracts in margin transactions are a result of agreement between investors and securities companies involved in it, although in reality the contract is not a balanced negotiation between the two parties, but a form of contract that can be categorized as a standard contract where the contract has existed before there is an agreement, in which one party presents to the other party then the other party approves the contract enough, so that the entry into force of the principle of consensus according to Indonesian treaty law establishes the principle of freedom of contract.⁵⁷

The contract that occurs between a securities company and an investor is not just a contract that is spoken orally, but a written contract, in which a written contract in a margin trading transaction is in the form provided, in which the intention to bind themselves to the parties is due to an equal will.⁵⁸

A contract in a margin trading transaction occurs when a securities company offers a form that contains a contract and the investor approves the contents of the contract by providing the correct data and signing it as

⁵⁷ Endi Budiman, *Perlindungan Hukum ...*, 102

⁵⁸ Endi Budiman, *Perlindungan Hukum ...*, 103

a sign of agreement, so that it shows an equal will between the securities company and the investor.⁵⁹

However the civil law in force in Indonesia recognizes the existence of contractual freedom, this can be concluded from the provisions of article 1338 paragraph (1) of the Civil Code, which states that all contracts (agreements) that are legally made apply as laws for those who make them. The subject of margin trading is a contract between securities companies and investors. Margin trading has the potential to cause disputes between customers or investors and securities companies, for example if one party violates an agreed contract. In this margin trading transaction, the principle of good faith and good communication should apply, good faith means the principle of disclosing information accurately and completely while good communication is the principle of communication, which is providing information to investors openly and quickly. Both of these principles are very important because the implementation of margin trading and short selling is more based on the contract. If one of these principles does not work as it should, then the practice of margin trading will cause problems that are usually caused by mutual trust and the perpetrators are reluctant to confirm every transaction that occurs. In the margin trading, investors are declared default if they do not make additional capital if the loan ratio has reached 65%, the security

⁵⁹ Endi Budiman, *Perlindungan Hukum ...*, 104

has the right to sell the shares guaranteed at the securities company by force.

- d. Decree of the Directors of PT. Indonesia Stock Exchange concerning Amendment to Regulation Number III-I concerning Margin Membership and / or Short Selling

Margin transactions are securities purchase transactions for customer interests financed by securities companies, as referred to in number 1 letter K of BAPEPAM and LK regulations Number V.D.6. regarding Financing Securities Transactions by Securities Companies for Clients and Short Selling Transactions by Securities Companies, Attachment of Decision of Chairman of Bapepam LK Number Kep-258 / BL / 2008 dated June 30, 2008.

According to the Decree of the Chairman of Bapepam and LK No. Kep-258 / BL / 2008, margin trading is interpreted as follows:⁶⁰

- a. securities purchase transactions for the benefit of customers financed by the company. Margin transactions are facilities provided by securities companies to investors by providing loans in the form of money. However, this money loan does not have to be returned on a scheduled basis, as is a loan from the bank.

⁶⁰ Sawidji Widodoatmodjo, *Pasar Modal*, . . . , 196.

- b. A new investor returns if he has succeeded in selling the shares he bought at a price higher than the purchase price so that the investor gains from the difference in buying and selling
- c. In exchange for facilities provided by securities companies, investors must pay interest on loans and fees. The interest of the loan and fee has been agreed upon by investors and securities through a financing agreement and settlement of securities transactions.

In margin trading, there are several parties who can provide loans or guarantees for transactions carried out by investors:

- a. Loans made by third parties, in this case banks
- b. Loans given by securities companies or companies where investors make a loan

Both of them there is no difference in the mechanism of transactions, only the types of loans are different. In some capital markets investors who want to buy shares can borrow funds from the securities company where they place an order to buy shares. For the purpose of purchasing these shares, investors who are customers of the company are required to pay a down payment in an amount in accordance with the applicable provisions. The amount of this advance differs in each exchange, ranging from 40% - 80% (forty percent to eighty percent).⁶¹

⁶¹ Astrid Amalia, *Penyalagunaan, . . .*, 32

The more loosening of securities companies in providing margin trading facilities to customers is one of the triggers for the increasingly passionate share transactions on the stock exchange. Stock market performance has increased, among others, measured by the increasing Composite Stock Price Index, the increasing frequency, volume and value of daily transactions due to improved stock liquidity.

D. *Musarakah* Contract

1. The Definition of Financing

Financing is the activity of sharia financial institutions in channeling funds to other parties based on sharia principles. Funding in the form of financing is based on trust given by the fund owner to the users of funds. Funding provided by Islamic financial institutions is different from conventional banks. In sharia financial institutions, returns on financing are not in the form of interest, but with other forms in accordance with the contracts provided by sharia financial institutions.

In sharia financial institutions it is not known as the credit system, because Islamic financial institutions have a different scheme than conventional banks in channeling funds to those in need. Islamic financial Institutions channel their funds to customers in the form of financing.

According to the nature of its use, financing can be divided into the following two things:

- a. Productive financing, namely financing aimed at meeting production needs in the broadest sense, namely to increase business, both in production, trade and investment. According to their needs, productive financing can be divided into two, namely:
- 1) Working capital financing is financing to meet needs: increase in production, both quantitatively, namely the amount of production, as well as qualitatively, namely the increase in quality or quality of production as well as the need for increased utility of place of goods.
 - 2) Investment financing, is to fulfill the needs of capital goods (capital goods) and facilities that are closely related to it.
- b. Consumptive financing, is financing used to meet consumption needs, which will be used up to meet needs.⁶²

Financing in Islamic financial institutions can be divided into three, namely:

- 1) Return bearing financing, which is a form of financing that is commercially profitable, when the owner of the capital is willing to bear the risk of loss and the customer also benefits.
- 2) Return free financing, which is a form of financing that is not for seeking benefits that are more aimed at people who need (poor), so that no benefits can be given.

⁶² Muhammad Syafi'i Antonio, Bank Syariah dari Teori ke Praktek, (Jakarta : Gema Insani, 2001), 160-161.

- 3) Charity financing, which is a form of financing that is indeed given to the poor and needy, so that there are no claims on the principal and profit.

Financing products in sharia financial institutions, especially in the first form, are intended to channel investment and public savings to the real sector with productive objectives in the form of joint investment (investment financing) carried out with business partners (creditors) using profit sharing patterns (*mudharabah* and *Musyarakah*) and trade financing to those who need financing using buying and selling patterns (*murabahah*, *salam* and *istishna*) and leasing patterns (*ijarah* and *ijarah muntahiya bittamlik*).⁶³

2. The Definition of *Musyarakah*

In the term of language, *syirkah* is a mixture between one asset and another asset so that they are indistinguishable.⁶⁴ Whereas according to *syara* '*Musyarakah* is an agreement between two or more parties who agree to do work with the aim of gaining profit.⁶⁵

Syirkah or *Musyarakah* means a contract of cooperation between two or more parties for a particular business where each party contributes

⁶³ Ascarya, Akad dan produk Bank Syariah, (Jakarta: rajawali pers, 2006), 122-123.

⁶⁴ Wahbah az-Zuhaili, Fiqih Islam 5, (Depok : Gema Insani, 2011), 441.

⁶⁵ Nur Khoirin, Menyoal Kesyarahan Bank Syariah (Studi Kasus Kerjasama Masyarakat CV. Miskasari dengan Bank Syariah Mega Indonesia Semarang), (Semarang : IAIN Walisongo Semarang, 2010), 17-19.

funds or a mall, with an agreement that the risks and benefits will be borne together according to the agreement.⁶⁶

So, from the definition above, it can be concluded that *Musyarakah* is a contract of cooperation between two or more parties, each party contributes funds to finance a particular business, both established and new, where profits and losses are shared according to the agreement.

In general, *Musyarakah* is categorized into two types, namely, ownership *Musyarakah* (*syirkah al amlak*) and *Musyarakah akad* (*syirkah al ‘aqd*). *Musyarakah* ownership is created due to inheritance, will or other conditions which result in the ownership of one asset by two or more people. While *Musyarakah* contract is created by means of an agreement, where two people or more agree that each of them contributes *Musyarakah* capital, they also agree to share profits and losses. *Musyarakah* contract is divided into: *syirkah al an inan*, *al mufawadhah*, *al a’maal*, and *syirkah al wujuh*.

- a. *Syirkah al ‘inan*, namely two people partnering on a certain matter, not in all their assets, for example partnering in buying an item. The law was agreed upon by the mujtahidin and allowed.⁶⁷ In the form of *syirkah al-‘inan* there is no requirement for equality in the amount of capital, profit sharing or division of labor. If they experience a loss,

⁶⁶ Muhammad Ridwan, *Konstruksi Bank Syariah Indonesia*, (Yogyakarta : Pustaka SM, 2007), 39.

⁶⁷ Teungku Muhammad Hasbi Ash Shieddieqy, *Hukum-hukum Fiqh Islam (Tinjauan Antar Mazhab)*, (Semarang : Pustaka Rizki Putra, 2001), 389.

then the loss must be borne together based on the percentage of capital invested.⁶⁸

- b. Syirkah al mufawadhah, that the partners must be adults, the funds from each partner invested in the partnership business must be equal in number, each of the capabilities of the partners to assume responsibility and receive profit sharing and bear losses must be the same, each - each partner has full authority to act.⁶⁹ In the Sunnah fiqh, it is mentioned that the similarity reaches the question of religion. This syirkah will be valid, if all parties have fulfilled their obligations in full. In the business world, this syirkah model can be found in the formation of cooperatives. Because the share of the capital is the same, both profits and losses are also borne together by the union parties.⁷⁰
- c. Syirkah al a'maal is also called syirkah abdan which is the cooperation of two or more people who have the same profession to complete a particular job. For example, two carpenters together completed an order for furniture making in a closet. The sharing of the results is mutually agreed. Because the nature of this cooperation is only limited to work, then actually not only applies to similar professions but to different professions but mutually supportive. For example, cooperating with bag sewing with screen printing workers, etc.⁷¹

⁶⁸ Qomarul Huda, *Fiqh Muamalah*, (Yogyakarta : Penerbit Teras, 2011), 107.

⁶⁹ Sutan Remy Sjahdeini, *Perbankan Islam dan Kedudukannya dalam tata hukum Perbankan Indonesia*, (Jakarta: Pustaka Utama Grafiti, 2005), 60.

⁷⁰ Muhammad Ridwan, *Konstruksi . . .*, 40.

⁷¹ Muhammad Ridwan, *Manajemen Baitul Maal Wa Tamwil*, (Yogyakarta : UII Press, 2004), 95.

Hanafi and Maliki schools allow this type of *musharaka*, but by giving a lot of limitations to it.⁷²

- d. *Syirkah Wujuh* is cooperation between two or more people to buy something without capital, but only trust capital and profits are shared between their fellow citizens.⁷³ In this cooperation, usually the parties who work together have a reputation or good name, both in business and because of their character. According to Hanafi and Hambali, this form of *syirkah* may be because the parties are united in work, and the figure has influence in the work. But according to Syafi'i and Maliki, *syirkah* is vanity, because *syirkah* is only based on capital and work.⁷⁴

Musyarakah financing has also been arranged in the decree No. DSN Fatwa. 08 / DSN-MUI / IV / 2000 dated April 13, 2000. It is stated that the needs of the community to improve welfare and business sometimes require funds from other parties, including *Musyarakah* financing, namely financing based on cooperation agreements between two or more parties for a particular business where each party contributes funds provided that profits and risks will be shared.⁷⁵

⁷² Dimyauddin Djuwaini, *Pengantar . . .*, 212.

⁷³ M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam (Fiqh Muamalat)*, (Jakarta : PT. Raja Grafindo Persada, 2003), 164.

⁷⁴ Sayyid Sabiq, *Fiqh Sunnah*, (Jakarta : Pena Pundi Aksara, 2006), 319.

⁷⁵ Abdul Ghofur Anshori, *Perbankan Syariah di Indonesia*, (Yogyakarta : Gajah Mada University, 2009), 134-135.

3. Legal Basis of *Musyarakah*

Musyarakah foundation has two parts, namely syar'i consideration and juridical considerations.

- a. Consideration of the principle of *Musyarakah* financing is based on Al-Qur'an, Al-Hadist, and ijma 'as follows:

1) Al-Quran⁷⁶

قال لقد ظلمك بسؤال نعجتك إلى نعاجه وإن كثيرا من الخلطاء ليبغي بعضهم على بعض إلا الذين ءامنوا وعملوا الصالحات وقليل ما هم وظن داود أنما فتنه فاستغفر ربه وخر ركعا وأناب

Meaning: Dawud (David) said (immediately without listening to the opponent): “he has wronged you in demanding your ewe in addition to his ewes. And, verily, many partners oppress one another, except those who believe and do righteous good deeds, and they are few,” and Dawud (David) guessed that we have tried him and he sought forgiveness of his Lord, and he fell down prostrate and turned (to Allah) in repentance.

⁷⁶ Muhammad taqiuddin al-hilali and Muhammad muhsin khan, Translation of the meanings of The Noble Qur'an in The English Language. King fahd complex for the printing of the holy qur'an, madinah, K.S.A., 1404 H.

2) Hadits

حدثنا محمد بن سليمان المصيصي أخبرنا محمد بن الزبير قان عن أبي حيان التيمي عن أبيه

عن أبي هريرة رفعه قال: إن الله تعالى يقول: أنا ثالث الشريكين ما لم يكن أحدهما صاحبه ,

فإذا خانه خرجت من بينهم. (رواه أبو داود وصححه الحاكم)

Meaning:

“From Abu Hurairah who was told to the Prophet SAW said," Indeed Allah SWT. He said, "I am the third of two people who fellowship, as long as one of them does not betray his friend, I will come out of that fellowship if one betrays him”⁷⁷

3) Ijma '

Muslims agree that syirkah is permissible. It's just that they differ on their types.⁷⁸ Syirkah is based on the Muslim ijma (consensus).

b. Juridical considerations

Legal basis based on the MUI Fatwa DSN No. 08 / DSN-MUI /

IV / 2000 concerning *Musyarakah* Financing.⁷⁹

⁷⁷ Abi Thayyib Muhammad Syamsi Al-Chaq al-,Adhim Abadii dan Syamsudin Ibnu Qayyim al-Jauziyah, ‘Aunul Ma’buud (Syarah Sunan Abi Dawud), (Beirut : Darul Kutub Al,Ilmiyah, 1990), 169-170.

⁷⁸ Rachmat Syafei, Fiqh Muamalah, (Bandung: Pustaka Setia, 2017), 185-186.

⁷⁹ Fatwa DSN MUI No. 08/DSN-MUI/IV/2000 tentang Pembiayaan *Musyarakah*.

4. Terms and Conditions of *Musyarakah*

In essence, the terms and conditions of *Musyarakah* are as follows:

a. *Musyarakah* Pillars

- 1) A party who is mindful;
- 2) Object of contract / project or business (capital and work);
- 3) Sighat / ijab qabul.⁸⁰

b. *Musyarakah* Terms

- 1) Speech: there is no special form of a *Musyarakah* contract, it can take the form of a pronouncement that shows the purpose. Coming is considered valid if spoken verbally or written. Musharaka contracts are recorded and witnessed.
- 2) Contracting parties: it is required that partners must be competent in giving or given representative power.
- 3) The object of the contract (funds and work): the funds or capital provided must be cash, gold, silver, or the same value. The scholars agreed on this. Some scholars also provide possibilities if tangible capital of trading assets, such as goods, property, equipment, and so on. Even in the form of invisible rights, such as licenses, patents, and so on. If it is feared, according to scholars, all of the capital must be assessed in advance in cash and agreed upon by its partners.

⁸⁰ Wiroso, *Produk Perbankan Syariah*, (Jakarta : LPFE Usakti, 2009), 297.

The Syafi'i and Maliki scholar require that the funds provided by each party be mixed. It is not permissible to separate funds from each party for special purposes.⁸¹

5. The Mechanism of *Musyarakah* Financing

Regarding the *Musyarakah* financing mechanism according to DSN Fatwa No. 08 / DSN-MUI / IV / 2000 concerning *Musyarakah* financing, that the statement of consent and qabul must be stated by the parties to show their willingness to enter into a contract (contract), the contracting parties must be competent law, then regarding the Object contract consists of capital, employment, profits and losses. The capital requirements that must be considered are the capital provided must be cash, gold, silver or the same value, but capital can consist of trading assets, such as goods, property, and so on. If capital is in the form of assets, it must first be assessed in cash and agreed upon by the partners. Regarding the division of labor, it is stated that the participation of partners in work is the basis for the implementation of *Musyarakah*, but the similarity in the portion of work is not a requirement. A partner may carry out more work than the others, and in this case he may demand an additional share of his profits. Then for the calculation of profits, that profits must be clearly quantified to avoid differences and disputes at the time of profit allocation or termination of musharaka. Each partner's profit

⁸¹ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer*, (Bogor: Ghalia Indonesia, 2012), 155.

must be distributed proportionally on the basis of all profits and there is no predetermined amount determined for a partner, for the profit sharing system must be clearly stated in the contract. Whereas for losses, proportion must be shared among the partners according to their respective shares in capital.⁸²

Then in a book by Abdullah Saeed entitled *Questioning Islamic Banks*, it is explained about the mechanism of *Musyarakah* financing, namely, the portion of profits given to partners as management fees varies from one *Musyarakah* to another, depending on the amount of work spent and the level of expertise needed by the partner . Of course it is expected that the greater the amount of work spent and the higher the level of expertise of the partner, the higher the percentage he gets. If there is a loss at the end of the *musharaka*, which is not caused by an error in the contract clause by the partner, the loss will be borne jointly by both parties according to the proportion of capital they provide. However, when the losses incurred as a result of an error in the contract clause by the customer, the customer alone is responsible for the loss.⁸³

6. The expire of *Musyarakah*

Musyarakah will end if the following things occur:

- a. One party cancels it even if without the consent of the other party because *syirkah* is a contract that occurs on the basis of being

⁸² Fatwa DSN MUI No. 08/DSN-MUI/IV/2000 tentang Pembiayaan *Musyarakah*.

⁸³ Abdullah Saeed, *Menyoal Bank Syariah*, (Jakarta : Paramadina, 2004), 101- 102.

willingly willing from both parties that there is no necessity to do it if one party does not want it anymore. This shows the revocation of willingness by a party.

- b. One party loses the ability to fight (expertise in managing assets), both because of crazy and for other reasons.
- c. One of the parties dies, but if more than two members of the syirkah, only the deceased will die. Syirkah continued on the surviving members. If the heirs of the deceased member wish for and in the syirkah, an agreement is made for the heirs concerned.
- d. One party is placed under guardianship, both because of the wastefulness that occurred at the time the Shirkah agreement was underway and the other cause.
- e. One of the parties went bankrupt which resulted in no longer having power over the assets that became shares of Syirkah. This opinion was expressed by Maliki, Syafi'i and Hanbali. Hanafi argued that the bankruptcy did not cancel the agreement made by the person concerned.
- f. The capital of the Shirkah members disappeared before being spent in the name of Shirkah. If the capital disappears before a mixture of assets can not be separated again, the risk is the owners themselves. If assets disappear after a mixture that cannot be separated again, it becomes a joint risk. Damage that occurs after

spending becomes a joint risk. If there are still assets left, syirkah can still take place with the remaining wealth.⁸⁴



⁸⁴ Hendi Suendi, *Fiqh Muamalah*, (Jakarta : Rajagrafindo Persada, 2008), hlm. 133-134.



CHAPTER III

DISCUSSION

A. Margin Trading Transaction Under Perspective *Musyarakah* Contract

On August 1, 1997, Bapepam-LK issued a regulation with No. 6 V.D in 1997 which regulates the implementation of margin trading with a decision letter from the Chairman of Bapepam-LK No.09 / PM / 1997, this regulation became the first regulation that regulates margin transactions in Indonesia. But in 2008 an annex to the Decree of the Chairman of Bapepam-LK No. was issued. Kep-258 / BL / 2008 for improvement of regulation number V.D.6. This is motivated by the government's commitment to improve the efficiency and effectiveness of the implementation and supervision of margin transactions as stated in the presidential instruction (Inpres) No. 5 of 2008 concerning the Focus of the Economic Program for 2008-2009, increasing the

liquidity of securities transactions and the quality of financing for securities transaction settlement by securities companies for customers as well as increasing legal certainty over securities transactions.⁸⁵

In order to ensure legal certainty and protect the interests of the capital community through law No. 8 of 1995 concerning the Capital Market, a Capital Market and Financial Institution Supervisory Agency (Bapepam LK) was formed which has the authority to guide, regulate and supervise daily capital markets in Indonesia, but since 31 December 2012 the task of supervising the non-bank financial industry and the market The capital officially moved from the Ministry of Finance and Bapepam-LK to the OJK, which was based on Law Number 21 of 2011 concerning the Financial Services Authority. In this case the OJK functions in the regulation, supervision, inspection and investigation as referred to in Act 21 of 2011.

With the development of the capital market, there are also growing trade activities. The development of trading activities in the capital market was driven by the increasing need to invest in increasing value over time. One of the driving forces in innovation in capital market trading is the need for risk control and hedging to reduce the potential and impact of losses or to use leverage in trade to optimize profits in the trade carried out.

One of the important instruments to meet these needs is the existence of a margin trading transaction facility. The need for margin trading

⁸⁵ Ferry kiandi, *Perlindungan Hukum Dalam Transaksi Margin Trading Dan Short Sales Di Pasar Modal*, 13.

transactions in the capital market is very supportive of the rapid investment activities in the capital market, margin trading transactions are transactions that have special characteristics when compared to the usual normal transaction. Margin trading transactions have leverage, that is, investors can buy securities in excess of the guarantee value for completion, the use of leverage allows investors to maximize the potential profits exceeding the capital owned by investors.

However, beside its important functions as a means of hedging and leverage, the use of margin trading transactions has its own risks. Margin trading transactions have a higher risk compared to ordinary long position trading if without using analysis, risk calculation, or using speculative basis. A higher risk on margin trading transactions is generated by leverage which not only increases the potential profits that can be obtained but leverage also increases the potential losses to be suffered in the event the market moves in the opposite direction.

In Indonesia, margin trading transactions is not regulated in Law No. 8 of 1995 concerning the Capital Market. In the Capital Market Law only regulates general transactions while special transactions are regulated outside the law. Transaction margin trading is regulated by Bapepam-LK Regulation (now OJK) Number V.D.6 concerning Financing of Securities Transaction Settlement by Securities Companies for Customers and Jakarta Stock Exchange Regulation Number 19 of 1997 concerning Margin Transactions. As well as the Decree of the Chairman of Bapepam-LK No. Kep-556 / BL / 2008

concerning Financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions by Securities Companies.

Even though the margin transaction is a facility that can give investors the freedom to catch large fish using borrowed money from securities. Margin trading is also accompanied by a large investment risk. The advantages of doing Margin Trading are

1. Credit facilities provided by securities companies allow investors to buy shares in excess of the amount they have;
2. Opening up the possibility for investors to obtain profits in the form of faster capital gains.

While the losses that can be caused by Margin trading are investors must be prepared if there is a decline in the value of shares, so that investors must add collateral or liquidate or sell shares that are authorized to the securities company. In this situation, investors who have used all of the available capital and the low likelihood of capital will return or even still leave debt to the securities company.⁸⁶

Not all shares can be transacted and guaranteed in margin transactions and short selling. According to regulation Number II-H concerning Requirements and Securities Trading in Margin Transactions and Short Selling Transactions. In the context of margin and short selling transactions, the exchange authority determines securities that can be transacted and / or

⁸⁶Verdi j, *Analisa perlindungan investor terhadap transaksi marjin dan shrot selling pada perusahaan efek* (UI:Jakarta,2012), 29.

guaranteed in margin transactions and short selling. The Exchange sets a list of margin effects and short selling and announces to the public and reports to the OJK on the last working day of each month. The following effect criteria can be transacted:⁸⁷

1. The effect has been recorded in the stock exchange, provided that:
 - a. If the securities have been listed on the Exchange for 6 (six) months or more, then:
 - 1) The securities are transacted at the Exchange with the average daily transaction value in the Regular Market in the last 6 (six) months at a minimum of Rp. 10,000,000,000 (ten billion rupiahs);
 - 2) Minimum daily transaction value in the Regular Market is Rp. 1,000,000,000 (one billion rupiah).
 - b. If the Securities have been recorded at the Exchange for less than 6 (six) months, then;
 - 1) The securities are transacted at the Exchange with the average daily transaction value in the Regular Market at a minimum of Rp. 50,000,000,000 (fifty billion rupiah) for a period of at least 3 (three) months from the time of registration until the review period by the Exchange;
 - 2) Minimum daily transaction of Rp. 5,000,000,000 (five billion rupiah).

⁸⁷ Peraturan V.D.6, angka 1b

2. The securities must be transacted every Exchange Day, unless the Securities are subject to a maximum suspension of 10 (ten) Exchange Days within a period of time:
 - a. The last 6 (six) months for Securities registered for 6 (six) months.
 - b. At least 3 (three) months from the time of registration until the review period, for Securities that are less than 6 (six) months.
3. Price Earning Ratio (PER) no more than 3 (three) times market PER.⁸⁸
4. Market capitalization of shares with a share below 5% (five percent) of the total listed shares is greater than the market capitalization of shares with ownership below 5% (five percent) of the total listed shares greater than Rp. 1,000,000,000 (one trillion rupiah) based on data at the end of the month in the data review period.
5. The number of shareholders of at least 600 (six hundred) shareholders is based on the latest data at the end of the month in the data review period.
6. In particular for the Short Selling transaction, the total shares with ownership below 5% (five percent) of the total listed shares must be at least 20% (twenty percent) which is calculated during:
 - a. The last 6 (six) months to the review period by the Exchange for Securities that have been listed on the Exchange for 6 (six) months or more at the Exchange.

⁸⁸Price Earning Ratio (PER) adalah salah satu ukuran dalam analisis saham secara fundamental. PER adalah perbandingan antara harga saham dengan laba bersih perusahaan yang dihasilkan oleh emiten dalam setahun sehingga dapat diketahui harga sebuah saham tergolong wajar atau tidak.

- b. At least 3 (three) months after being recorded until the review period by the Exchange for securities that have been listed on the Exchange for less than 6 (six) months.

As one form of trading in the capital market, margin transactions are not regulated directly by Law No. 8 of 1995. Regulations regarding margin transactions are governed by the decision of the Chairman of the Capital Market Supervisory Agency. The first time regarding this margin transaction is regulated by regulation Number V.D.6, Attachment of Decision of Chairman of Bapepam Number: Kep-09 / PM / 1997 concerning Financing of Securities Transaction Settlement by Securities Companies for Customers.

Margin Transactions are regulated by regulation V.D.6, Attachment of Decision of Chairperson of Bapepam-LK Number: Kep-258 / BL / 2008 concerning Financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions by Securities Companies. Under these regulations Margin transactions are limited by certain criteria, where margin transactions can only be carried out on securities that meet the requirements of qualified customers and securities companies.⁸⁹

Securities companies that can provide margin transaction settlement financing are only securities companies that meet the following conditions:

⁸⁹ Mahmud M. Balfas, *Hukum Pasar*, . . . , 390-395.

1. Having a business permit from the bapepam and LK to conduct activities as a securities broker that administers the customer's securities account.
2. Having net working capital adjusted according to the regulation number V.D.5 concerning Maintenance and Reporting of Net Adjusted Working Capital.
3. Obtain approval from the Stock Exchange to conduct Margin Trading transactions.
4. In the event that a securities company provides funding for funds through margin Transactions, the securities company must have sufficient funding sources to finance the settlement of the Securities purchase transaction.

In the fatwa of the National Sharia Council Number 40 / DSN-MUI / X / 2003 concerning the Capital Market and General Guidelines for the Implementation of Sharia Principles in the Capital Market, in Chapter V of Securities Transactions in article 5, it is prohibited to mention that:⁹⁰

1. The transaction must be carried out according to the principle of prudence and not allowed to carry out speculations and manipulations which contain elements of dharar, gharar, usury, defense, risk, immorality and tyranny.

⁹⁰ Pasal 5 Fatwa Dewan Syariah Nasional Nomor 40/DSN-MUI/X/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah Di Bidang Pasar Modal

2. Transactions that contain elements of dharar, gharar, riba, maisir, risywah, immorality and tyranny as referred to in paragraph 1 above include:

- a) Najsy, which is to make a fake offer;
- b) Bai 'al-ma'dum, which is selling goods (Sharia Securities) that are not yet owned (short selling);
- c) Insider trading, which is using inside information to obtain profits from prohibited transactions;
- d) Inflicting misleading information;
- e) Margin trading, namely conducting transactions on Sharia Securities with an interest-based loan facility for the obligation to settle the purchase of the Sharia Securities; and
- f) Ihtikar (hoarding), namely to purchase or collect a Sharia Securities to cause changes in the price of Sharia Securities, with the aim of influencing the other Party;
- g) And other transactions that contain the elements above.

According to DSN-MUI Fatwa above at Chapter 5 article 5 point b point 5 stated that Margin Trading is a prohibited transaction, this is because Margin Trading is a Sharia Securities transaction with an interest-based Loan Facility for the obligation to settle the purchase of Sharia Securities.

This is based on considerations from the arguments taken from the Qur'an and the hadith of the Prophet, namely:

...وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا... (البقرة: ٢٧٥)

"... whereas Allah has permitted trading and forbidden *Riba* ..."

(Surah al-Baqarah [2]: 275).

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ. فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِن تَبَتُّمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَاتُظْلَمُونَ وَلَا تَظْلَمُونَ. (البقرة: ٢٧٩-٢٧٨)

"O you who believe! Be afraid of Allah and give up what remains (due to you) from *Riba* (usury) (from now onward), if you are (really) believers. And if you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums)." (Surah al-Baqarah [2]: 278-279).

As for those based on the hadith of the prophet, that is:

لَا ضَرَرَ وَلَا ضِرَارَ (رواه ابن ماجه عن عبادة بن الصامت وأحمد عن ابن العباس ومالك عن يحيى)

"It must not harm yourself and may not harm others" (HR. Ibn Majah from 'Ubadah bin Shamit, Ahmad from Ibn ' Abbas, and Malik from Yahya).

Along with the development of the globalization of the capital market world followed by the increasing number of new products offered by banking institutions and other financial institutions / emerging new

businesses called margin trading and short selling. This business later became one of the business fields of investment banks and other financial institutions that had permission to do so. In fact, it has recently become a profitable investment choice by entrepreneurs, especially those in the financial sector.

Margin trading is a service provided by a securities company to its customers in the form of a loan facility, so customers only need to pay a certain percentage of the price of the securities purchased. Customers are required to pay interest to securities companies on the loan funds.⁹¹

In this case, the practice of margin transactions is not only open opportunities but margin transactions also have positive benefits to the capital market as a whole when used in a disciplined manner.⁹² The opportunities opened by margin transactions are very broad, because for investors who are smart and smart enough to use these facilities, they ultimately enjoy benefits far above ordinary investors.

Margin transactions provide positive influences which can be a driving factor in the development of the capital market. One of the benefits provided by margin transactions is providing additional liquidity in the capital market. Liquidity in the capital market is an important thing because like other financial institutions the capital market requires

⁹¹ Astrid Amalia, *Penyalahgunaan Short Selling*, . . . , 30

⁹² Manfaat margin Trading dalam valuasi sekuritas masih menjadi perdebatan. Akan tetapi dari sisi likuiditas ketentuan Margin Trading mempunyai peranan besar bagi likuiditas investor institutional

sufficient liquidity to achieve stability and carry out functions. Without adequate liquidity, urged sellers can sell at large discounts because of the absence of the best offer, thereby driving the volatility of price movements higher.

The existence of liquidity is also a factor in encouraging the valuation of securities in the capital market with an increase in trading volume so the stock market will be encouraged to increase.⁹³ Increasing the value of the stock market provides an opportunity for the development of the capital market where increasing stock market valuation means that the issuer has the opportunity to offer securities with a higher value. These higher securities offerings ultimately optimize the potential of the capital market as an alternative financing with increasingly active financing that can be obtained from the capital market.

Margin trading is a form of securities transaction activity that resembles a bank business carried out by a securities company. As can be concluded from its name, then by conducting or providing margin trading facilities (to its customers), securities companies fund basically part of the funds needed by customers in carrying out their securities transaction activities. This means investors in purchasing shares use third party loans to pay for their purchases.

⁹³ Peningkatan likuiditas yang tersedia yaitu termasuk ketentuan bunga, dan kemudahan pinjaman yang diperoleh oleh investor dalam ketentuan margin cenderung mendorong investor untuk melakukan pembelian aset lebih lanjut, dan dorongan beli yang dihasilkan pada akhirnya akan mendorong kenaikan harga aset. Lebih lanjut baca Market Liquidity: Funding Liquidity.

With margin trading, the ability of customers to transact will increase with the provision of loan facilities by securities companies, where the customer has opened a margin account for securities. An example of this margin trading facility is that if a customer with a value of one million rupiahs can make a transaction of up to two million rupiah. The excess of one million rupiah is financed by a securities company, where the customer opens a securities account. If the customer does not make a transaction with a margin facility, then the customer makes a cash (cash) transaction.

So that, margin transactions can be defined as investments using funds that are partially provided by securities companies. Practically, a margin transaction can be said to be investing using debt from a securities company. Because it uses funds from debt, margin transactions are often called investing with leverage.

Islamic capital market investment offers an alternative investment for investors and is theoretically safer because it prohibits investors from taking speculative actions such as appearance sales transactions (Short Selling), loan purchases (margin trading) or buying companies whose debt ratio is high. This makes investors more careful in carrying out their investment activities. The Sharia-based trading system can automatically only trade stocks included in the Sharia Securities List category, so it will greatly help investors who want to focus on sharia-based stock investments.

In the capital market, margin trading products are certainly no stranger, margin trading is one of the most desirable products for investors because there are so many benefits to investors. The existence of margin trading is not only profitable for investors but also very profitable for securities companies.

However, margin trading here is only owned by conventional capital markets, the Islamic capital market does not allow margin trading transactions because margin trading is an interest-based or usury transaction. Even if it is reviewed in terms of the economy, the existence of margin trading is very good for the development of the Islamic capital market if applied in it.

Because the spread of margin trading is very extensive in Indonesia, and the impact on the economy in Indonesia is also very good, then with the problem here it can make legalized trading to be applied in the Islamic capital market, in order to support the Islamic system based economy.

Because margin trading can grow the economic potential of a country, it is necessary to have innovation that supports the success, one example is the existence of margin trading applied in the Islamic capital market that is using the musyarakah contract system, and the application of margin trading in the Islamic capital market here is using the syirkah contract, which in this syirkah contract does not require the similarity in

the amount of capital provided by each party, namely, investors and stock companies or banks. If the parties benefit from this, the profits must be divided according to the agreement made, and if there is a loss, then the loss must also be borne together.

The application of margin trading in the Islamic capital market can use the *Musyarakah* contract which in the *Musyarakah* contract used here, the capital market does not need to use an interest-based or usury-based system.

The terms of *Musyarakah* as stated by DSN-MUI are as follows:

1. Statement of consent and qabul must be stated by the parties to show their willingness to enter into a contract (contract), taking into account the following:
 - a. Offer and acceptance must explicitly indicate the purpose of the contract (contract).
 - b. Receipts from offers are made at the time of the contract.
 - c. The contract is written in writing, through correspondence, or by using modern communication methods.
2. Contracting parties must be legal, and pay attention to the following:
 - a. Competent in giving or given representative power.
 - b. Each partner must provide funds and work, and each partner carries out work as a representative.

- c. Each partner has the right to regulate *Musyarakah* assets in normal business processes.
- d. Each partner authorizes other partners to manage assets and each is deemed to have been authorized to carry out musharaka activities by paying attention to the interests of their partners, without neglecting and intentional errors.
- e. A partner is not permitted to withdraw or invest funds for his own benefit.

3. Object contract (capital, work, profits and losses)

a. Capital

- 1) Capital given must be cash, gold, silver or the same value.
Capital can consist of trading assets, such as goods, property, and so on. If capital is in the form of assets, it must first be assessed in cash and agreed upon by the partners.
- 2) The parties may not borrow, lend, donate or award *Musyarakah* capital to other parties, except on the basis of an agreement.
- 3) In principle, in *Musyarakah* financing there is no guarantee, but in order to avoid irregularities, LKS can request collateral.

b. Work

- 1) The participation of partners in work is the basis for the implementation of *Musyarakah*; however, the similarity of work portions is not a requirement. A partner may carry out

more work than the others, and in this case he may demand an additional share of his profits.

- 2) Each partner carries out work in *Musyarakah* on behalf of individuals and representatives of their partners. The position of each in the work organization must be explained in the contract.

c. Advantage

- 1) Benefits must be clearly quantified to avoid differences and disputes at the time of profit allocation or termination of musharaka.
- 2) Each partner's profit must be distributed proportionally on the basis of all profits and there is no amount determined at the start set for a partner.
- 3) A partner may propose that if the profit exceeds a certain amount, the excess or percentage is given to him.
- 4) The profit sharing system must be clearly stated in the contract.

d. Loss

Losses must be shared among partners proportionally according to their respective shares in capital.

4. Operational and Dispute Costs

- a. Operational costs are charged with joint capital.

If one of the parties does not fulfill its obligations or if there is a dispute between the parties, the settlement is carried out through

the Syari'ah Arbitration Board after no agreement is reached through deliberation.

Based on the *Musyarakah* provisions above, the writer conclude that margin trading here can use the *Musyarakah* contract in terms of appliedin sharia capital market or stock exchange. And margin trading here does not use the interest or usury system but can use the *Musyarakah* contract where there is no compensation, because basically this contract is a cooperation or the collaboration.





CHAPTER IV

CLOSING

A. Conclusion

Based on the analysis carried out by the author above, it can be concluded as follows:

1. Margin Trading Transaction Under Perspective of Musyarakah Contract

The mechanism of margin Trading transaction is stated in regulations of Bapepam and LK Number V.D.6. concerning financing of Securities Transactions by Securities Companies for Customers and Short Selling Transactions.

Islamic capital market investment offers an alternative investment for investors and is theoretically safer because it prohibits investors from taking speculative actions such as pseudo sales transactions (Short Selling), loan purchases (margin trading) or buying companies whose debt ratio is high. This makes investors more careful in carrying out their investment activities. The Sharia-based trading system can automatically only trade stocks included in the Sharia Securities List category, so it will greatly help investors who want to focus on sharia-based stock investments.

However, margin trading here is only owned by conventional capital markets, the Islamic capital market does not allow margin trading transactions because margin trading is an interest-based or usury transaction. Even if it is reviewed in terms of the economy, the existence of margin trading is very good for the development of the Islamic capital market if applied in it.

The spread of margin trading is very extensive in Indonesia, and the impact on the economy in Indonesia is also very good, then with the problem here it can make legalized trading to be applied in the Islamic capital market, in order to support the Islamic system based economy.

Because the spread of margin trading is very extensive in Indonesia, and the impact on the economy in Indonesia is also very good, then with the problem here it can make legalized trading to be applied in

the Islamic capital market, in order to support the Islamic system based economy.

Because margin trading can grow the economic potential of a country, it is necessary to have innovation that supports the success, one example is the existence of margin trading applied in the Islamic capital market that is using the musyarakah contract system, and the application of margin trading in the Islamic capital market here is using the syirkah contract, which in this syirkah contract does not require the similarity in the amount of capital provided by each party, namely, investors and stock companies or banks. if the parties benefit from this, the profits must be divided according to the agreement made, and if there is a loss, then the loss must also be borne together.

B. Suggestion

Based on the research that has been done by the research above, the author gives advice to all parties as follows:

1. For consumers, it is expected to be more careful in dealing in the capital market, and to prioritize or favor sharia-based transactions, because using sharia-based transactions, especially in the capital market, will be free from suffocating conditions, and risks that may be more greater than profit, which usually occurs to investors in conventional capital markets.

2. For DSN-MUI, it is expected for DSN-MUI to legalize or justify margin trading transactions in the Islamic capital market using the *Musyarakah* contract so that investors are more interested in the Islamic capital market and so that the Islamic capital market can contribute more to the Indonesian economy. And thus, the realm of the Sharia economy in Indonesia is becoming increasingly widespread.
3. For OJK, it is expected that the Financial Services Authority will make arrangements regarding the regulation of margin trading based musyarakah contract, so that capital market players can have a reference in transacting in the capital market, especially in sharia Margin Trading transactions.

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APPENDIX

FATWA

DEWAN SYARI'AH NASIONAL

Nomor 08/DSN-MUI/IV/2000

Tentang

PEMBIAYAAN MUSYARAKAH

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Dewan Syari'ah Nasional setelah,

Menimbang : a. bahwa kebutuhan masyarakat untuk meningkatkan kesejahteraan dan usaha terkadang memerlukan dana dari pihak lain, antara lain melalui pembiayaan musyarakah, yaitu pembiayaan berdasarkan akad kerjasama antara dua pihak atau lebih untuk suatu usaha tertentu, di mana masing-masing pihak memberikan kontribusi dana dengan ketentuan bahwa keuntungan dan resiko akan ditanggung bersama sesuai dengan kesepakatan;

b. bahwa pembiayaan musyarakah yang memiliki keunggulan dalam kebersamaan dan keadilan, baik dalam berbagi keuntungan maupun resiko kerugian, kini telah dilakukan oleh lembaga keuangan syari'ah (LKS);

- c. bahwa agar cara tersebut dilakukan sesuai dengan prinsip-prinsip syari'ah Islam, DSN memandang perlu menetapkan fatwa tentang *musyarakah* untuk dijadikan pedoman oleh LKS.

MEMUTUSKAN

Menetapkan: FATWA TENTANG PEMBIAYAAN MUSYARAKAH

Beberapa Ketentuan:

1. Pernyataan ijab dan qabul harus dinyatakan oleh para pihak untuk menunjukkan kehendak mereka dalam mengadakan kontrak (akad), dengan memperhatikan hal-hal berikut:
 - a. Penawaran dan penerimaan harus secara eksplisit menunjukkan tujuan kontrak (akad).
 - b. Penerimaan dari penawaran dilakukan pada saat kontrak.
 - c. Akad dituangkan secara tertulis, melalui korespondensi, atau dengan menggunakan cara-cara komunikasi modern.
2. Pihak-pihak yang berkontrak harus cakap hukum, dan memperhatikan hal-hal berikut:
 - a. Kompeten dalam memberikan atau diberikan kekuasaan perwakilan.
 - b. Setiap mitra harus menyediakan dana dan pekerjaan, dan setiap mitra melaksanakan kerja sebagai wakil.
 - c. Setiap mitra memiliki hak untuk mengatur aset musyarakah dalam proses bisnis normal.

- d. Setiap mitra memberi wewenang kepada mitra yang lain untuk mengelola aset dan masing-masing dianggap telah diberi wewenang untuk melakukan aktifitas musyarakah dengan memperhatikan kepentingan mitranya, tanpa melakukan kelalaian dan kesalahan yang disengaja.
 - e. Seorang mitra tidak diizinkan untuk mencairkan atau menginvestasikan dana untuk kepentingannya sendiri.
3. Obyek akad (modal, kerja, keuntungan dan kerugian)
- a. Modal
 1. Modal yang diberikan harus uang tunai, emas, perak atau yang nilainya sama.

Modal dapat terdiri dari aset perdagangan, seperti barang-barang, properti, dan sebagainya. Jika modal berbentuk aset, harus terlebih dahulu dinilai dengan tunai dan disepakati oleh para mitra.
 2. Para pihak tidak boleh meminjam, meminjamkan, menyumbangkan atau menghadiahkan modal musyarakah kepada pihak lain, kecuali atas dasar kesepakatan.
 3. Pada prinsipnya, dalam pembiayaan musyarakah tidak ada jaminan, namun untuk menghindari terjadinya penyimpangan, LKS dapat meminta jaminan.

b. Kerja

1. Partisipasi para mitra dalam pekerjaan merupakan dasar pelaksanaan musyarakah; akan tetapi, kesamaan porsi kerja bukanlah merupakan syarat. Seorang mitra boleh melaksanakan kerja lebih banyak dari yang lainnya, dan dalam hal ini ia boleh menuntut bagian keuntungan tambahan bagi dirinya.
2. Setiap mitra melaksanakan kerja dalam musyarakah atas nama pribadi dan wakil dari mitranya. Kedudukan masing-masing dalam organisasi kerja harus dijelaskan dalam kontrak.

c. Keuntungan

1. Keuntungan harus dikuantifikasi dengan jelas untuk menghindarkan perbedaan dan sengketa pada waktu alokasi keuntungan atau penghentian musyarakah.
2. Setiap keuntungan mitra harus dibagikan secara proporsional atas dasar seluruh keuntungan dan tidak ada jumlah yang ditentukan di awal yang ditetapkan bagi seorang mitra.
3. Seorang mitra boleh mengusulkan bahwa jika keuntungan melebihi jumlah tertentu, kelebihan atau prosentase itu diberikan kepadanya.

4. Sistem pembagian keuntungan harus tertuang dengan jelas dalam akad.

d. Kerugian

Kerugian harus dibagi di antara para mitra secara proporsional menurut saham masing-masing dalam modal.

4. Biaya Operasional dan Persengketaan

a. Biaya operasional dibebankan pada modal bersama.

Jika salah satu pihak tidak menunaikan kewajibannya atau jika terjadi perselisihan di antara para pihak, maka penyelesaiannya dilakukan melalui Badan Arbitrasi Syari'ah setelah tidak tercapai kesepakatan melalui musyawarah.

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