Implementation of DSN-MUI Fatwa Number 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Fund (ETF): A Review of Sharia Economic Law

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Abstract

This study analyzes the implementation of Fatwa DSN-MUI No. 163/DSN- MUI/VII/2025 concerning Sharia Exchange Traded Fund (ETF) Gold within Indonesia's Islamic capital market regulation. The research aims to examine its legal foundation, the integration of sharia principles with OJK and IDX regulations, and the challenges of harmonizing religious and state law. Using a qualitative descriptive- normative approach with content and legal analysis, data were drawn from official fatwas, regulations, and scholarly literature. The study finds that the fatwa fills a legal vacuum for gold-based ETFs by institutionalizing sharia principles such as wakalah bil ujrah and bai' al-musawamah, yet its implementation faces issues of dual jurisdiction, technical reporting, and low investor literacy. The study recommends strengthening institutional coordination between DSN-MUI, OJK, and IDX through an integrated Sharia Governance Framework and enhancing legal codification and investor education for sustainable sharia investment growth.

Keywords **:** *Fatwa DSN-MUI, Islamic Capital Market, Sharia ETF, Legal Harmonization, Islamic Economic Law*

INTRODUCTION

The development of the Islamic finance industry in Indonesia over the past two decades has shown significant and innovative progress. As the country with the largest Muslim population in the world, Indonesia's Islamic economic potential is vast—covering banking, microfinance, and sharia investment in the capital market (KNEKS, 2025:12). Data from the Indonesian Islamic Finance Development Report show that the total assets of the Islamic finance industry, excluding sharia stock capitalization, reached IDR 2,883.67 trillion by the end of 2024, marking a significant increase compared to the previous year (KNEKS, 2025:14).

One of the Islamic investment instruments that has experienced notable growth is the Sharia Exchange Traded Fund (ETF)—a collective investment contract mutual fund whose units are traded on the stock exchange, resembling stock mechanisms (Azmiana & Muhammad, 2021:45). The Sharia ETF serves as an Islamic-compliant investment solution free from elements of riba, gharar, and maysir. However, empirically, the development of Sharia ETFs in Indonesia still lags behind other Islamic investment products such as sukuk and sharia mutual funds. Data from the Indonesia Stock Exchange (IDX, 2025:31) indicate that the trading volume of Sharia ETFs from 2020 to 2024 remains stagnant, contributing only 14.71% to the national ETF market. The main obstacles stem from low investor literacy, limited product diversification, and regulatory misalignment between Islamic finance and capital market regulations (Utomo, 2021:56).

Before 2025, the regulation of Sharia ETFs referred only to DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 and Fatwa No. 80/DSN-MUI/III/2011, neither of which covered commodity-based ETFs such as gold. To address this, the National Sharia Council – Indonesian Ulema Council (DSN-MUI) issued Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Fund (ETF) Gold as a normative measure to strengthen the application of sharia principles in the capital market mechanism (DSN-MUI, 2025:2). The fatwa stipulates that gold, as the underlying asset of the ETF, must exist in physical form (allocated account) equivalent to the number of issued units, to prevent uncertainty (gharar) in transactions (DSN-MUI, 2025:4). Transactions in the primary market use the wakalah bil ujrah contract, while those in the secondary market employ bai' al-musawamah (Fatwa DSN-MUI No. 163/2025:5). Institutionally, the issuance of this fatwa represents a strategic step in bridging the legal vacuum surrounding Sharia Gold ETFs while testing the readiness of harmonization between religious norms and Indonesia's capital market regulations governed by OJK and IDX (JournalCenter, 2024:47).

Azmiana and Muhammad (2021:46) explain that the stagnation of Sharia ETFs in Indonesia stems from limited investor education and the absence of specific supporting regulations. Pradini (2021:32) highlights that ETFs hold significant potential to boost sharia mutual fund growth due to their efficiency and transparency; however, regulatory frameworks have yet to fully adapt to the principles of sharia asset ownership. Empirical research by Ibrahim and Fitriani (2023:70) finds that Sharia ETFs show relatively stable performance but face challenges related to tracking errors and market liquidity. Furthermore, Umam (2021:114) emphasizes the importance of formal recognition of DSN-MUI fatwas in OJK regulations through POJK No. 15/POJK.04/2015 to strengthen the legal legitimacy of sharia capital market products. Meanwhile, JournalCenter (2024:53) asserts that collaboration between DSN-MUI and OJK is crucial in creating legal integration between sharia norms and positive law. Internationally, Fauzi, Rahma, and Aziz (2022:220) state that Sharia ETFs have become a global choice for Muslim investors seeking portfolio diversification, although most are still concentrated on equity-based indices rather than commodities like gold.

The novelty of this research lies in its analytical focus on the implementation of DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 in the context of legal harmonization between religious institutions (DSN-MUI) and capital market regulators (OJK and IDX). Most previous studies focused on economic or market performance aspects of Sharia ETFs (Azmiana & Muhammad, 2021:48; ICMR, 2024:72), while their legal and governance dimensions have not been deeply examined. This study aims to bridge that gap by exploring, both normatively and empirically, how DSN-MUI fatwas are translated into Indonesia's positive legal framework. Therefore, this research contributes not only theoretically to the development of Islamic economic law but also practically by proposing a more adaptive model of religious-state legal synchronization in response to innovations in Islamic financial products (Utomo, 2021:60; JournalCenter, 2024:55).

The main objective of this research is to analyze the implementation of DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Gold ETFs within Indonesia's Islamic capital market law and to examine its synchronization with regulations issued by OJK and IDX. The specific objectives are to: 1) explain the legal basis and background of the issuance of DSN-MUI Fatwa No. 163/2025 (DSN-MUI, 2025:1); 2) analyze the sharia principles

applied in the management of Sharia Gold ETFs (Fatwa DSN-MUI No. 163/2025:6); 3) assess the synchronization between DSN-MUI fatwas, OJK policies, and IDX regulations (Utomo, 2021:64); 4) identify the challenges in implementing the fatwa from both Islamic and positive law perspectives (Ibrahim & Fitriani, 2023:75); and 5) propose a model of inter-institutional coordination to strengthen legal certainty and support the future development of Sharia ETFs (KNEKS, 2025:18).

LITERATURE REVIEW

Implementation of the Fatwa

1. The Concept of Fatwa and Its Role in the Islamic Economic Legal System

   In the context of Islamic economics in Indonesia, a fatwa is a non-positive legal ruling issued by a religious authority—namely the National Sharia Council of the Indonesian Ulema Council (DSN-MUI)—to provide guidance for Islamic financial institutions to conduct their operations in accordance with Islamic principles. The fatwa functions as a secondary source of law that complements national legal instruments from a sharia perspective. The role of fatwa in Indonesia's economic practice has gained formal recognition through Law No. 21 of 2008 on Islamic Banking, which stipulates that all activities of Islamic financial institutions must comply with sharia principles as determined by DSN-MUI.

   According to Barlinti (2020), the existence of DSN-MUI fatwas fills the legal vacuum not covered by statutory regulations, as Islamic economics continues to develop new products and contracts that require confirmation of sharia compliance. Therefore, fatwas possess both normative and functional value—normative because they are rooted in Islamic legal sources, and functional because they are implemented through integration with state regulations such as those issued by OJK or Bank Indonesia.

2. Mechanism for Implementing Fatwas in Islamic Financial Institutions

   The implementation of DSN-MUI fatwas occurs through two main mechanisms: (1) normative recognition by Islamic financial institutions (LKS) through their Sharia Supervisory Boards (DPS), and (2) administrative enforcement by state authorities such as the OJK. The DPS ensures that the operational practices of institutions comply with applicable DSN-MUI fatwas. Through this system, all products and services offered by Islamic banks or issuers must first obtain a fatwa compliance opinion before being marketed to the public. Research by Widayanti, Waning, and Puspita (2023) indicates that collaboration between DSN-MUI and OJK has formed a layered supervisory structure: DSN-MUI issues the fatwas, DPS monitors their implementation within financial institutions, and OJK audits their compliance with national regulations. This synergy positions the fatwa not merely as a moral recommendation but as an operational legal guideline mandatory for all Islamic financial institutions in Indonesia.

3. Implementation of Fatwas in the Islamic Capital Market

   Within the capital market context, the role of DSN-MUI fatwas is increasingly strategic. DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 on the Application of Sharia Principles in the Capital Market marked the beginning of sharia product regulation on the Indonesia Stock Exchange (IDX). Since its issuance, additional fatwas such as Fatwa No. 80/DSN-MUI/III/2011 on the Trading Mechanism of Equity-Based Securities

and Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Funds (ETF) Gold have expanded the scope of sharia principle implementation.

A study by JournalCenter (2024) found that the implementation of DSN-MUI fatwas in the capital market has directly increased investor interest and public trust in Islamic financial products. Fatwas serve as moral assurances, creating confidence among Muslim investors that their investments are free from riba, gharar, and maysir. Nevertheless, there remain technical obstacles in harmonizing fatwas with OJK regulations and IDX trading mechanisms, particularly regarding the alignment of contract administration and monitoring of transaction objects (such as gold in Sharia ETFs).

4. Integration of Fatwas with National Regulations

Although DSN-MUI fatwas are not formally part of Indonesia's hierarchy of laws and regulations, their integration into the national legal system occurs through a process of regulatory adoption. The OJK, for instance, uses DSN-MUI fatwas as normative references in drafting Financial Services Authority Regulations (POJK) and Circular Letters. In banking, Bank Indonesia has also incorporated DSN-MUI fatwas into its operational regulations, such as those governing murabahah, mudharabah, and ijarah contracts in Islamic financing products.

Research by Fariana (2023) in the Journal of Islamic Economics explains that integrating fatwas into positive law requires cross-institutional synergy to prevent jurisdictional conflicts between religious and state laws. Fatwas recognized by OJK or BI effectively possess binding force over industry players since they are used as references in licensing and supervisory regulations. Therefore, even though fatwas do not have direct positive legal force, their implementation through regulatory instruments gives them functional binding authority.

5. Challenges of Implementation: Dualism and Legal Harmonization

Despite progress in integrating fatwas into state regulations, challenges remain in the form of legal dualism. According to Barlinti (2020), the absence of fatwas within the formal legislative structure creates legal vulnerabilities in enforcement when disputes arise. This underscores the need for codification through the Compilation of Islamic Economic Law (KHES) to provide DSN-MUI fatwas with stronger formal references.

Recent research by Nasution (2025) also reveals that implementation challenges are not only legal but also institutional—such as the capacity of Sharia Supervisory Boards and coordination among authorities. In the era of digital Islamic finance, DSN- MUI fatwas must become more adaptive to emerging financial technologies (fintech) and digital assets such as cryptocurrencies or sharia-compliant tokens, which remain subject to ongoing jurisprudential debate.

6. Directions for Strengthening Fatwa Implementation

Efforts to strengthen DSN-MUI fatwa implementation can be pursued through three approaches. First, enhancing the legal foundation through the formalization of KHES so that fatwas are systematically incorporated into the national legal structure. Second, strengthening DSN-MUI and DPS institutions through professional training and certification programs to ensure more consistent fatwa

application in practice. Third, fostering greater collaboration among DSN-MUI, OJK, and IDX to ensure synchronized interpretation of fatwas with state policies.

Within the framework of Islamic economic law, the implementation of fatwas should not only focus on compliance but also on promoting justice and sustainable investment in line with maqashid al-shariah. Accordingly, studies over the past five years have emphasized the importance of positioning fatwas as substantial legal sources in the governance of Indonesia's Islamic economy—particularly in the capital market and digital finance sectors.

Exchange Traded Funds (ETF)

One of the main theoretical foundations underlying the emergence of ETFs is the Efficient Market Hypothesis (EMH). According to EMH, all relevant information about an asset is reflected in its market price, making it difficult for investors to consistently earn abnormal returns. ETFs, which track market indices, emerged as a response to investors' need for transparent, low-cost, and flexible investment products. The tradable nature of ETFs and their valuation based on Net Asset Value (NAV) make them efficient instruments in terms of both information and liquidity. Research by Safitri and Winahyu (2022) confirms that ETFs effectively minimize tracking errors relative to benchmark indices.

Theoretically, ETFs support portfolio diversification efficiency through Modern Portfolio Theory (Markowitz). Markowitz proposed that a combination of securities in one portfolio reduces total investment risk without sacrificing expected returns. ETFs naturally embody this concept since each unit represents multiple securities or assets in a single product. Research by Pratiwi and Akhmad (2020) shows that ETF portfolio variance is statistically lower than that of single stocks or actively managed mutual funds. ETFs employ a structured arbitrage mechanism that allows market participants to correct pricing discrepancies between the ETF's market value and its NAV. The Arbitrage Pricing Theory (APT) explains how such mechanisms maintain price equilibrium through primary and secondary market transactions. A study by Lestari (2021) on Indonesian ETFs found that arbitrage volume plays a key role in keeping ETF prices aligned with their benchmarks.

ETFs are primarily developed within a passive management framework—investments that track market indices without stock selection or market timing. This approach is based on passive investment theories by Sharpe and Fama, which assert that most investors cannot outperform the market in the long run after accounting for costs. However, the emergence of smart-beta ETFs, which combine elements of active and passive management, introduces flexibility in index composition. Research by Dewi (2022) comparing passive and active ETFs on the IDX found varying results depending on market conditions. Behavioral Finance Theory also helps explain ETF popularity—transparency, low fees, and transaction convenience influence modern investor preferences. Novianti and Gunawan (2024) reveal that millennial investors tend to prefer ETFs over conventional mutual funds due to higher transparency, liquidity, and more predictable risk perception.

Thus, ETFs represent a synthesis of multiple investment theories: market efficiency, diversification, arbitrage, passive management, and investor behavior. Together, these form the theoretical foundation underpinning modern ETF development and justify the research variables applied in this study.

DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Funds

The DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Funds represents an Islamic legal response to the need for regulating sharia-compliant investment instruments in the modern capital market. This literature review presents the theoretical basis underlying the emergence of this fatwa and the conceptual framework of the variables relevant to its analysis.

One of the principal Islamic legal theories supporting the fatwa's issuance is the theory of ijtihad and istihsan in Islamic jurisprudence. As stated by Asy-Syatibi (2007), ijtihad is essential in addressing new economic practices not encountered during the classical era. ETFs, as modern capital market instruments, require new legal interpretations to remain consistent with maqashid al-shariah. The principle of istihsan allows flexibility in creating contemporary financial rulings as long as they do not contradict the Qur'an, Sunnah, or fundamental sharia principles (Nurdin, 2022). Munir (2023) emphasizes that sharia capital market fatwas embody a maslahah-oriented approach, permitting innovation in Islamic investment products provided that their benefits outweigh potential harm and they uphold justice, lawfulness, and freedom from riba and gharar.

The fatwa also draws from contemporary Islamic finance theory, which prohibits riba (usury), gharar (uncertainty), and maysir (gambling). The Sharia ETF system is designed so that all contracts and structures align with sharia principles, ensuring transactions are interest-free and based on tangible ownership of real assets (in this case, physical gold). This is consistent with Qardhawi (2017), who stresses that Islamic financial transactions must be backed by real assets, distinguishing them from conventional finance. Furthermore, as Lubis (2020) explains, the fatwa reflects the theory of integration between religious and state law. In Indonesia's dual legal system, religious fatwas serve as substantive guidelines, while OJK regulations provide administrative enforcement. Consequently, DSN-MUI fatwas function as both normative and operational references in forming and supervising sharia capital market products.

Research on the implementation of this fatwa typically involves several key variables derived from theoretical foundations:

a. Sharia Compliance – based on maqashid al-shariah (Al-Ghazali), assessing the alignment of investment practices with principles of justice, benefit, and avoidance of non-halal elements.
b. Contract Effectiveness – derived from fiqh muamalah, evaluating the validity of contracts such as wakalah bil ujrah and bai' al-musawamah used in primary and secondary markets.
c. Investor Protection – grounded in Islamic Consumer Protection Theory, requiring transparency and legal certainty for both institutional and individual investors (Salam, 2020).
d. Regulatory Synchronization – based on Legal Harmonization Theory, assessing the extent to which DSN-MUI fatwas are integrated with OJK regulations and other capital market policies (Zainuddin, 2023).

The DSN-MUI Fatwa No. 163/2025 formalizes these theoretical principles through the practice of gold-based ETFs, combining collective investment, real-asset attachment (physical gold), allocated storage schemes, and sharia-compliant contracts. Accordingly, this fatwa embodies modern fiqh muamalah, risk management, and sharia-based investor protection.

The theoretical perspectives above form the foundation for studying the implementation of DSN-MUI Fatwa No. 163 of 2025, particularly in assessing its effectiveness, compliance, and challenges of legal harmonization between religion and state in Indonesia's gold-based Islamic capital market industry. By examining theories of ijtihad, Islamic finance, legal harmonization, and integration between sharia concepts and state regulations, this research provides a comprehensive analysis of the fatwa's relevance and role in supporting national Islamic financial innovation.

RESEARCH METHOD

This study employs a qualitative approach using a descriptive-analytical research design. The focus of the research is directed toward analyzing the implementation of DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on Sharia Exchange Traded Funds (ETF) within the context of Indonesia's Islamic capital market. The research population consists of regulations, policies, fatwa documents, and legal instruments issued by capital market institutions related to Sharia Gold ETFs. The research samples were selected purposively, comprising authentic documents, official DSN-MUI decrees, and relevant implementing regulations of the OJK and IDX—without involving human respondents, as the study did not employ surveys or interviews.

The sampling method used was purposive documentation, deliberately selecting primary and secondary data sources containing substantial aspects of the process, content, and impact of the fatwa's implementation. The measurement of research variables refers to indicators of sharia compliance, contract effectiveness, regulatory synchronization, and legal protection for investors, which were identified and examined through document content analysis, regulatory review, and academic literature.

Data were analyzed using content analysis and normative legal analysis, interpreting the meaning, relationships, and implications of the examined documents based on theoretical frameworks of Islamic law and Indonesia's capital market regulatory system. Accordingly, the study provides an in-depth mapping of the patterns of fatwa implementation and harmonization within the practice of national sharia investment.

RESULTS AND DISCUSSION

1. Analysis of the Legal Basis and Sharia Principles in DSN-MUI Fatwa No. 163/2025

DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 concerning the Sharia Exchange Traded Fund (ETF) Gold was issued as a normative response to the need for regulating a new investment instrument that combines modern capital market mechanisms (ETF) with strict sharia compliance requirements. Functionally, this fatwa is not merely a theoretical declaration; it serves as a practical guideline directing market participants— issuers, investment managers, and sharia supervisory bodies—to ensure that the structure of the product, the contractual framework (akad), and the asset storage mechanisms adhere to the principles of contemporary fiqh al-mu'āmalah (Islamic commercial jurisprudence).

The position of the DSN-MUI fatwa as a normative reference becomes crucial when there exists a legal vacuum between financial innovation in capital markets and the administrative regulations of the Financial Services Authority (OJK) and the Indonesia Stock Exchange (IDX) (Mubarak, 2024; Lawang, 2025).

The normative foundation of Fatwa No. 163 can be examined through two dimensions. First, the sharia source dimension: the Qur'an and the Sunnah as primary sources, which are interpreted through ijtihad methodology to formulate concrete provisions regarding real asset ownership, lawful contracts, and trading mechanisms in the secondary market. Second, the institutional dimension: the necessity to harmonize religious norms (fatwa) with technical capital market regulations to provide legitimacy and legal certainty for new instruments in practice (Agustono, 2024; Mubarak, 2024). Hence, the fatwa functions as an ijtihadi bridge, ensuring that modern market practices remain within the framework of Islamic law.

The sharia principles underpinning this fatwa explicitly require the elimination of riba (usury), gharar (uncertainty), and maysir (speculation or gambling). In the context of the Sharia Gold ETF, the primary emphasis lies on the obligation to maintain clear and allocated physical ownership of gold (allocated physical gold) so that each investment unit genuinely represents a right to tangible gold rather than an abstract or non-existent claim. This requirement is designed to close the gharar loophole that often arises when the underlying asset is not physical or when the storage mechanism lacks transparency. The practical implications include the establishment of transparent warehousing and custody governance, ownership auditing, and periodic reporting accessible to investors and the Sharia Supervisory Board (DPS) (Prasetyo, 2024).

From the perspective of contractual structure, Fatwa No. 163 prescribes two different contracts for the two levels of market operations. In the primary market (ETF unit issuance), the wakālah bil ujrah contract is applied, while in the secondary market, transactions between investors are governed by bai' al-musāwamah. The use of wakālah bil ujrah in the primary market is relevant because the ETF structure requires the presence of an investment manager authorized to manage collective assets and act on behalf of investors. Wakālah bil ujrah emphasizes the agency role—an appointed representative (wakil) entitled to compensation (ujrah) for management services— consistent with the practice of sharia mutual funds, as long as the manager operates under a clear mandate and accountability (Maulana, 2024; Haq, 2023). This contract helps minimize ownership overlaps and establishes a transparent contractual relationship among investors, managers, and custodians.

Meanwhile, in the secondary market, transactions among investors are executed under bai'al-musāwamah—a regular sale without cost-based pricing—which accommodates exchange trading mechanisms. This approach is pragmatic since secondary transactions do not always involve physical gold transfer; however, the fatwa insists that the existence of physical gold as the underlying asset must be guaranteed through clear allocation mechanisms, ensuring that such trading does not amount to the sale of non-existent claims (gharar). Thus, bai' al-musāwamah is adopted to maintain market liquidity while ensuring certainty of the underlying asset (Haq, 2023; Maulana, 2024).

The jurisprudential rationale (fiqh reasoning) behind these legal methods is closely tied to the application of ijtihad and istihsan. In a contemporary context, ijtihad serves as a tool for translating classical legal principles into new circumstances without precedent—such as gold-based ETFs traded like shares. Contemporary studies emphasize that DSN-MUI's ijtihad combines classical textual interpretation with considerations of maslahah (public interest) and daruriyyah (necessity), allowing the fatwa to provide applicable solutions without violating the core tenets of sharia (Agustono dan Prasetyo, 2024). Furthermore, istihsan (juristic preference for more beneficial rulings) allows the selection of contracts that, while not identical to classical precedents, yield greater utility and minimize the harm of modern practices—for instance, choosing wakālah bil ujrah to regulate relationships between fund holders and investment managers.

In summary, DSN-MUI Fatwa No. 163/2025 represents an institutional ijtihad effort: formalizing the requirement of real ownership, determining practical contracts for both market levels (primary and secondary), and mandating transparency and accountability mechanisms to eliminate gharar and maysir. These choices are not solely based on classical texts but are also adapted to the needs of modern capital market governance—a methodological approach widely discussed in contemporary fiqh al-mu'āmalah literature and recent Islamic economic law scholarship (Mubarak et al., 2024).

2. Implementation of the Fatwa in Indonesia's Islamic Capital Market Regulation

The implementation of DSN-MUI Fatwas within Indonesia's Islamic capital market system reflects the synergy between religious authority and state authority in shaping an investment ecosystem that complies with sharia principles while remaining subject to positive law. DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on the Sharia Exchange Traded Fund (ETF) Gold serves as a concrete example of how a religious institution plays a significant role in developing modern financial instruments, particularly within a capital market sector that is strictly regulated by the state. The fatwa does not stand independently as a religious norm; rather, it functions operationally through a mechanism of integration with regulations issued by the Financial Services Authority (OJK) and the Indonesia Stock Exchange (IDX). This process illustrates a pattern of legal hybridization between religious law and positive law—a distinctive feature of Indonesia's Islamic economic legal system, where religious norms are adopted into the formal regulatory framework without losing their sharia substance (Fadilah, 2024; Syarif, 2023).

a. Integration of the Fatwa into OJK and IDX Regulatory Systems

The integration of fatwas into capital market regulation occurs through formal and substantive processes. Formally, OJK adopts DSN-MUI fatwas as normative references when drafting Financial Services Authority Regulations (POJK) and OJK Circular Letters (SEOJK). This provision is evident in POJK No. 15/POJK.04/2015 on the Implementation of Sharia Principles in the Capital Market, which stipulates that all Islamic capital market products must obtain DSN-MUI approval of sharia compliance before being granted issuance permits. This requirement places the fatwa in a functionally binding position because, without DSN-MUI's endorsement, a financial product cannot be recognized as a sharia-compliant instrument under OJK supervision (Ramli, 2024).

Substantively, the IDX adjusts its trading rules to align with the sharia principles set by DSN-MUI. For example, the listing and trading mechanisms for Sharia ETFs are regulated to ensure transparency of the underlying assets, fair pricing mechanisms, and prohibition of margin trading and short selling, which potentially involve riba or speculative elements (Nurhadi, 2024). Thus, the fatwa serves not only as a moral guide but also as a normative foundation for the technical policy formulation of state institutions. This integration creates a two-way synergy: DSN-MUI provides sharia legitimacy (shariah endorsement), while OJK and IDX translate these provisions into positive law with administrative authority. According to Hidayat (2025), such an integration model ensures that fatwas are followed not merely out of religious conviction but also due to their legal enforceability through state regulations.

b. Supervision Mechanisms by the Sharia Supervisory Board (DPS) and OJK

The application of fatwas in Islamic capital market practices is carried out through a dual-layer supervisory mechanism involving the Sharia Supervisory Board (DPS) and OJK. The DPS ensures that all operational activities and products issued by Islamic financial institutions—including Sharia ETF investment managers—comply with DSN- MUI fatwas. This micro-level supervision uses an internal sharia audit approach (Marzuki, 2023). Conversely, OJK performs macro-level oversight through compliance audits and product licensing based on sharia principles. Coordination between DPS and OJK is conducted through periodic reporting, whereby the DPS submits audit findings to OJK as part of institutional compliance reports (Ramli, 2024). This collaboration demonstrates that fatwas are not only codified in written regulations but also operationalized through a structured supervisory process.

In the case of the Sharia Gold ETF, DPS ensures the conformity of asset structure (allocated physical gold), contract mechanisms (wakālah bil ujrah and bai‘ al- musāwamah), and storage and reporting procedures with sharia principles. Meanwhile, OJK guarantees the aspects of legality, transparency, and investor protection, including disclosure requirements. These institutions complement each other—DPS safeguards sharia compliance, while OJK enforces adherence to state law (Rahman, 2024).

c. Recognition of Fatwas as Functional Sources of Law in Capital Market Practice

Theoretically, fatwas are not part of Indonesia’s statutory hierarchy. However, in practice, they function as functional legal sources with binding force through regulatory adoption mechanisms. In other words, although a fatwa is not lex formal, it is recognized as lex substantia—influencing the formation of positive norms within the Islamic economic legal system (Syarif, 2023). This recognition aligns with the concept of living law, which is the law that lives and operates in society based on social and religious legitimacy. In the Islamic capital market, the validity of a fatwa rests not only on its moral authority but also on its formal acknowledgment by the state through institutions such as OJK and IDX. According to Rahman (2024), the position of DSN-MUI fatwas in sharia economic practice indicates a shift from moral authority to functional legal authority, where fatwas become integral to the national regulatory framework

without losing their religious identity.

This functional recognition enhances the legitimacy of Islamic capital market products in the eyes of both domestic and global investors by providing certainty that the traded instruments are not only legally valid under state law but also compliant with Islamic principles. This dual legitimacy represents a hallmark of Indonesia's Islamic economic legal system, which integrates religious and state authority into a mutually reinforcing legal structure.

d. Analysis of the Legal Vacuum before Fatwa 163/2025 and Its Resolution by DSN MUI

Before the issuance of DSN-MUI Fatwa No. 163/2025, Sharia ETFs in Indonesia faced a legal vacuum, particularly regarding the sharia foundation for commodity-based products such as gold. Previous fatwas—namely DSN-MUI Fatwa No. 40/DSN- MUI/X/2003 on Sharia Principles in the Capital Market and Fatwa No. 80/DSN- MUI/III/2011 on the Trading Mechanism of Equity Securities—did not address the real-asset ownership aspect fundamental to gold-based ETFs (Fadilah, 2024). Consequently, Islamic financial institutions lacked adequate legal guidance to issue ETFs backed by physical gold, despite increasing demand for commodity-based Islamic investments.

This regulatory gap created uncertainty regarding contract legality, product structure, and the risk of non-compliance with sharia principles due to the absence of guidelines on allocation and redemption mechanisms for gold-backed units. DSN-MUI responded through Fatwa No. 163/2025, which stipulates that all underlying assets of Sharia Gold ETFs must be physically allocated accounts, not derivatives or paper gold. The fatwa further prescribes the use of wakālah bil ujrah in the primary market and bai' al-musāwamah in the secondary market to ensure the validity of transactions from the perspective of fiqh al-mu'āmalah (Hidayat, 2025).

Thus, the fatwa serves to fill the legal void and bridge the normative gap between financial innovation and the technical limitations of prior regulations that had not comprehensively accommodated sharia principles. In this context, DSN-MUI acts as a complementary law-making body, formulating norms that supplement state legislation in the field of Islamic economics. According to Marzuki (2023), this mechanism exemplifies the dynamic interaction between religious and positive law, strengthening the national financial system without creating jurisdictional conflicts.

Overall, the implementation of DSN-MUI Fatwa No. 163/2025 within Indonesia's capital market regulation demonstrates the success of an integrative model combining religious norms and positive law. The integration of fatwas into OJK and IDX regulations, the dual-layer supervision by DPS and OJK, and the recognition of fatwas as functional legal sources collectively indicate that Indonesia's Islamic capital market system has achieved institutional maturity. The fatwa has evolved beyond a mere moral guide to become an operational legal instrument ensuring alignment between sharia values and modern capital market governance.

3. Challenges in the Implementation and Harmonization of the Fatwa with Positive Law

The implementation of DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on the Sharia Exchange Traded Fund (ETF) Gold marks a significant advancement in the development of Islamic financial instruments in Indonesia. However, like many legal instruments situated at the intersection between religious norms and positive law, the application of this fatwa faces a range of structural, technical, and socio-regulatory challenges. These challenges are related to institutional jurisdictional differences, administrative complexities in managing physical assets (gold), limited investor literacy, and weak inter-agency coordination. Empirical data from the capital market also indicate that despite having both a legal and sharia foundation, the participation rate and trading volume of Sharia ETFs have remained stagnant over the past four years.

a. Jurisdictional Differences between DSN-MUI and Capital Market Authorities

One of the primary challenges in harmonizing fatwas with positive law is the jurisdictional divergence between the National Sharia Council of the Indonesian Ulema Council (DSN-MUI)—a religious authority—and the Financial Services Authority (OJK)—a state body with formal legal jurisdiction. DSN-MUI has the normative authority to issue fatwas that determine whether a financial product or transaction complies with sharia principles, while OJK holds administrative and enforcement authority over market participants. This functional distinction often leads to jurisdictional tension, especially when interpretations of sharia principles must be translated into technical and procedural regulations (Amiruddin, 2024).

In practice, DSN-MUI operates outside the national legal hierarchy, meaning its fatwas do not carry direct legal force unless formally adopted by OJK or another governmental institution. Conversely, OJK often encounters challenges when adapting positive-law-based regulations to the substantive Islamic legal principles embedded in fatwas. The harmonization process thus requires dual interpretation—one grounded in maqāṣ id al-sharīʿah (the objectives of Islamic law) and the other in administrative legal certainty. This dualism can generate potential institutional conflicts, especially when DSN-MUI and OJK hold differing views regarding the legal substance of a particular contract (ʿaqd) or financial product (Harahap, 2023). In the context of the Sharia Gold ETF, for instance, DSN-MUI emphasizes the necessity of real ownership of the underlying physical asset, while OJK focuses more on market compliance and public disclosure requirements. If not properly harmonized, such differences can lead to overlapping authorities and potentially hinder innovation in Islamic capital market products.

b. Technical Issues in Administrative Alignment of Contracts and Asset Reporting (Physical Gold)

The second challenge pertains to technical and administrative complexities. DSN- MUI Fatwa No. 163/2025 mandates that all units of the Sharia Gold ETF must be backed by physically allocated gold, not derivatives or unallocated representations. While this aligns with the fiqh muamalah principle of tangible ownership, its implementation requires an intricate system of administration and auditing. Difficulties arise when Sharia ETF managers must synchronize records of physical gold ownership with the units traded on the exchange. Delays in reporting,

variations in sharia accounting standards, and the lack of blockchain-based or digitized record-keeping systems have resulted in informational asymmetries between investment managers, custodians, and supervisory authorities (Kusnandar, 2024).

Additionally, the contractual mechanisms employed—wakālah bil ujrah in the primary market and bai‘ al-musāwamah in the secondary market—pose administrative challenges in documentation and reporting. The wakālah contract requires clear documentation establishing the agency relationship between investors and fund managers, while bai‘ al-musāwamah demands transparent pricing disclosures in every secondary market transaction. These requirements place additional burdens on institutions lacking robust digital sharia compliance systems (Hidayani, 2023).

In terms of supervision, auditing the ownership of physical gold presents further difficulties. Differences in storage standards between Islamic financial institutions and conventional commodity custodians complicate the verification process for matching physical holdings with issued ETF units. Consequently, sharia audits often proceed slowly, reducing overall market efficiency.

c. Limited Investor Literacy and Weak Institutional Coordination

Another major obstacle is the low level of sharia financial literacy among retail investors. Although the Sharia Gold ETF offers transparency and sharia compliance, many potential investors remain unfamiliar with its contract structures, trading mechanisms, and operational distinctions from conventional ETFs. A study by Najib (2024) reveals that 62% of respondents in Indonesia were unaware of the difference between conventional and sharia ETFs, with most assuming the two were identical because both are traded on the exchange. This lack of understanding has led to limited investor participation, resulting in stagnant trading volumes. Ignorance regarding wakālah bil ujrah, bai‘ al-musāwamah, and real gold ownership principles also generates uncertainty about product security and legality.

Beyond investor literacy, institutional coordination remains a persistent issue. Collaboration among DSN-MUI, OJK, IDX, and the Ministry of Finance is often fragmented. Each institution maintains its own procedures for verification, licensing, and supervision. For instance, while DSN-MUI provides sharia compliance opinions, product licensing at OJK still faces delays due to additional administrative audits (Sukmana, 2025). Consequently, the innovation of Islamic financial products progresses more slowly than that of conventional products. To address this, several scholars have proposed the establishment of a National Sharia Financial Coordination Board, tasked with unifying regulation, auditing, and public education under a single integrated policy framework (Rahmadani, 2023). Such a coordinated approach is expected to accelerate policy synchronization and strengthen investor confidence in Islamic financial products.

d. Empirical Analysis of the Stagnation of Sharia ETF Trading Volume on IDX (2020–2024)

Data from the Indonesia Stock Exchange (IDX) indicate that trading volumes for Sharia ETFs have remained stagnant over the past four years. Between 2020 and 2024, Sharia ETFs accounted for only 14–15% of total national ETF

transactions, whereas conventional ETF products grew by 45% during the same period (IDX Data, 2025). This highlights a substantial gap between market potential and actual performance of sharia instruments. Empirical analysis by Santoso (2024) attributes this stagnation to three main factors:

(1) Limited diversification of Sharia ETF products, which are still predominantly equity- or gold-based;
(2) Low market liquidity, due to limited participation from large institutional investors such as Islamic pension funds; and
(3) Administrative bottlenecks delaying the issuance of new Sharia ETFs.

Regulatory factors have also contributed. Prior to DSN-MUI Fatwa No. 163/2025, gold-based Sharia ETFs lacked clear sharia legitimacy, prompting many institutional investors to postpone participation. Even after the fatwa's issuance, challenges remain in the technical implementation of gold storage, sharia audit reporting, and regulatory harmonization—all requiring a lengthy adjustment period (Hidayani, 2023). This stagnation underscores that the success of fatwa implementation depends not only on normative legitimacy but also on institutional readiness and market education. The fatwa provides sharia legitimacy, but its effectiveness can only be realized through enhanced technical capacity, supportive regulation, and active investor engagement.

In summary, the challenges in implementing DSN-MUI Fatwa No. 163/2025 are not merely juridical, but also technical and socio-structural. Jurisdictional differences between DSN-MUI and OJK create potential authority conflicts, while administrative difficulties in aligning contracts and asset reporting introduce compliance risks. Meanwhile, low investor literacy and weak inter-agency coordination hinder the wider adoption of sharia-based products. The stagnation of Sharia ETF performance on the IDX during 2020–2024 further demonstrates that the harmonization of religious and positive law still requires institutional strengthening, integrated supervision, and enhanced public education to ensure that fatwas function effectively in supporting the growth of Indonesia's Islamic capital market.

4. Implications and Recommendations for Strengthening the Implementation of the Fatwa

The implementation of DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on the Sharia Exchange Traded Fund (ETF) Gold carries strategic implications for the governance of Islamic economic law in Indonesia. This fatwa not only provides sharia guidance for modern investment practices but also serves as a test of how well the national legal system can adapt to religious principles within the context of financial markets. Synthesizing various findings reveals that the effectiveness of fatwa implementation largely depends on four key aspects: institutional coordination, formal regulatory development, investor literacy and transparency, and contribution to sustainable Islamic investment instruments.

a. Effective Coordination Model between DSN-MUI, OJK, and IDX

Institutional coordination is the primary foundation for strengthening fatwa implementation. Currently, the relationship between the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), the Financial Services Authority (OJK), and the Indonesia Stock Exchange (IDX) remains sectoral and not yet fully integrated. Each institution has its own specific role: DSN-MUI sets sharia norms, OJK regulates and supervises financial institutions, and IDX handles the operational aspects of sharia securities trading. These three entities require a unified coordination framework to prevent policy overlap and accelerate the implementation of new financial products.

One proposed model is the Integrated Sharia Governance Framework (ISGF)—a governance system that unites religious and state authorities within a single regulatory forum. Through ISGF, DSN-MUI would serve as the normative institution defining principles, while OJK and IDX would act as policy implementers with oversight mechanisms that directly reference the fatwa (Naufal, 2024). This framework parallels the Sharia Advisory Council (SAC) model in Malaysia, where Islamic financial fatwas acquire formal legal authority once adopted by regulators. The ISGF model would also establish a regular consultative mechanism between DSN-MUI and capital market authorities. For example, every new product issuance would undergo a joint review committee comprising representatives from DSN-MUI, OJK, IDX, and the Sharia Supervisory Board (DPS). Such a collaborative process would not only accelerate legal synchronization but also strengthen market confidence in the consistency of sharia policy (Rahim, 2023).

b. Strengthening the Role of DSN-MUI in Formal Regulation Formation

The second implication concerns the need to enhance DSN-MUI's role in formal regulatory development. Although DSN-MUI's fatwas possess functional binding power through adoption by OJK, they remain outside the formal hierarchy of national legislation. This creates vulnerability to varied interpretations and limits their legal enforceability. To strengthen the legitimacy of fatwas, it is necessary to institutionalize Islamic economic law through the development of a new Compilation of Islamic Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES) covering capital markets, fintech, and digital sharia assets.

Within this KHES framework, DSN-MUI fatwas could be codified as part of the nationally recognized written legal sources. Such codification would provide a stronger legal foundation for sharia product supervision and clarify the relationship between religious and state law (Mahendra, 2024). Furthermore, DSN-MUI's involvement in drafting OJK Regulations (POJK) and IDX Rules should be formalized through a co- regulation mechanism, meaning a collaborative regulatory process between state and religious institutions.

This initiative aligns with international trends. In countries with advanced Islamic finance industries—such as Malaysia, Bahrain, and the United Arab Emirates—national fatwa councils hold strategic positions in public policymaking. By reinforcing DSN- MUI's role within Indonesia's legal system, the country can assert the autonomy of its Islamic economic law while enhancing the global competitiveness of its sharia capital market (Yunus, 2025).

c. Enhancing Literacy and Transparency for Investor Protection

Investor literacy and transparency are crucial in ensuring the successful implementation of the fatwa. Many investors, especially among the millennial and retail segments, still lack understanding of the fundamental differences between conventional ETFs and the Sharia Gold ETF. Limited awareness of sharia principles, wakālah bil ujrah and bai'al-musāwamah contracts, and physical gold ownership mechanisms has resulted in low participation among sharia investors.

Improving literacy can be achieved through tiered educational programs jointly administered by DSN-MUI, OJK, and IDX. For instance, launching the "Sharia Capital Market Literacy 2030" initiative could focus on digital education, online training for prospective investors, and certification of sharia investment advisors (Ramdani, 2024). In addition, OJK and IDX should expand information transparency regarding product structures, contractual mechanisms, investment risks, and annual sharia audit reports. Such transparency would not only strengthen investor trust but also prevent the potential misuse of fatwas for purely commercial interests. Investor protection could further be enhanced by establishing a Sharia Financial Ombudsman, a mediation body for disputes between investors and sharia product providers. This institution would serve as a bridge between DSN-MUI and OJK in resolving cross-jurisdictional legal issues. According to Khalid (2024), independent sharia dispute-resolution institutions have been proven to increase public confidence in the stability of Islamic financial markets across Southeast Asia.

d. Contribution of the Fatwa to Sustainable Islamic Investment and Market Confidence

The final implication lies in the fatwa's contribution to sustainable Islamic investment instruments. DSN-MUI Fatwa No. 163/2025 opens the door to innovative financial products that combine sharia principles with economic and environmental sustainability. For example, the development of a Green Sharia ETF, which invests in environmentally friendly companies aligned with maqāṣ id al-sharī'ah (Azzahra, 2025).

The concept of sustainable Islamic investment emphasizes the integration of religious values and social responsibility. The fatwa functions as a guarantee that financial innovations are not only halal but also consistent with the Sustainable Development Goals (SDGs). Thus, the fatwa serves not merely as a moral guideline but also as a strategic instrument to ensure that the growth of Islamic economics aligns with justice, ethics, and sustainability principles (Fahmi, 2023). From a market confidence perspective, fatwas offer moral assurance to Muslim investors that their funds are managed ethically and in compliance with Islamic law. This psychological assurance fosters investor loyalty and long-term market stability. Data from the Islamic Finance Development Indicator (IFDI) 2024 indicate that countries with institutionalized fatwa structures exhibit 27% higher investor confidence compared to those relying on fragmented sectoral policies (Azzahra, 2025). Moving forward, DSN-MUI should expand its fatwa mandate to encompass digital instruments such as sharia tokens, Islamic crowdfunding, and digital sukuk. Developing these products will make Indonesia's sharia capital market more adaptive to global digital economic transformations while maintaining the relevance of Islamic law in the modern era (Yunus, 2025).

Overall, strengthening the implementation of DSN-MUI Fatwa No. 163/2025 requires institutional synergy, inclusive legal structuring, and the enhancement of educational and ethical dimensions. Institutional integration through the ISGF model would increase coordination efficiency among DSN-MUI, OJK, and IDX. Strengthening the fatwa's position through KHES would provide stable legal legitimacy. Enhancing investor literacy and transparency would ensure market sustainability, while developing sustainable sharia-based products would reinforce the contribution of Islamic economics to both national and global stability. Through this integrated approach, the fatwa evolves beyond a religious norm—it becomes both a legal pillar and ethical foundation within Indonesia's national financial system. Indonesia's Islamic capital market.

CONCLUSION

This study concludes that DSN-MUI Fatwa No. 163/DSN-MUI/VII/2025 on the Sharia Exchange Traded Fund (ETF) Gold plays a central role in strengthening the legal foundation and sharia compliance framework of Indonesia's capital market sector. The fatwa effectively fills the legal vacuum regarding commodity-based investment instruments—particularly gold—by establishing core principles of real ownership, transactional transparency, and the validity of contracts used in Sharia ETF trading. Normatively, the fatwa reinforces the integration of Islamic law and national law through institutional collaboration between DSN-MUI, the Financial Services Authority (OJK), and the Indonesia Stock Exchange (IDX), while simultaneously promoting the development of a sharia financial governance model that is adaptive to modern capital market innovations.

The findings indicate that the success of the fatwa's implementation largely depends on the synchronization of regulations and coordination among relevant authorities. The fatwa functions as a functional legal source that gains administrative force once adopted by OJK and IDX. However, its practical application still faces several obstacles, including jurisdictional dualism, administrative difficulties in monitoring physical assets, and low investor literacy. These challenges suggest that the fatwa's presence has not yet been fully and effectively implemented within the positive legal system and that further refinement of an integrated supervisory structure is needed.

Substantively, this research provides evidence that a fatwa can transform from a moral norm into an operational legal instrument, provided that it is accompanied by a clear regulatory coordination mechanism and robust institutional support. The integration of religious and state law through this fatwa also demonstrates Indonesia's unique co-regulation model, in which sharia values become part of the public legal system without losing their spiritual and ethical essence.

From a policy perspective, this research presents four main recommendations:

1. Establishing an Integrated Sharia Governance Framework (ISGF) as a formal coordination forum among DSN-MUI, OJK, and IDX to jointly formulate and evaluate sharia financial policies in an integrated manner.
2. Codifying the fatwa into a revised Compilation of Islamic Economic Law (KHES) to provide it with positive legal force and nationwide recognition.
3. Enhancing investor literacy and transparency through digital education programs,

sharia investment advisor certifications, and public reporting systems based on independent sharia audits.

4. Developing sustainable sharia investment products such as Green Sharia ETFs and Digital Sukuk, which combine maqāṣ id al-sharī'ah principles with economic sustainability.

The limitation of this study lies in its normative-documentary nature, as it does not include field data or in-depth interviews with market practitioners and regulators. Future empirical studies are needed to measure the fatwa's actual impact on investor participation rates, product performance, and the quantitative stability of the Islamic capital market. The academic implication of this research is the need to expand studies on religious–state legal synchronization within the digital Islamic economy. Practically, the findings serve as a valuable reference for policy-makers seeking to strengthen Indonesia's national legal and sharia financial governance systems. Thus, DSN-MUI Fatwa No. 163/2025 stands not merely as a normative guideline but as a strategic foundation for building an inclusive, competitive, and sustainable sharia capital market ecosystem in Indonesia.

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