

Short Selling and Its Regulation in Indonesia: Debating Ownership through Fiqh Muamalah

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Abstract: Short selling has gained formal regulatory recognition in Indonesia through POJK No. 6 of 2024, yet its position remains contested in the Islamic capital market. The central problem lies in whether securities may be sold before they enter the seller's lawful ownership and possession. Using a normative juridical approach, this paper examines DSN-MUI Fatwa No. 40/2003, Fatwa No. 80/2011, Fatwa No. 135/2020, POJK No. 6 of 2024, and relevant *fiqh mu'āmalah* literature on *mulk*, *qabd*, *bay' al-ma'dūm*, *gharar*, *maysir*, and *ribā*. The analysis shows that POJK No. 6 of 2024 regulates short selling through authorization, securities lending, collateral, reporting duties, order marking, and market supervision. These mechanisms may reduce operational risk and support market governance, but they do not remove the Sharia ownership problem. DSN-MUI Fatwa No. 80/2011 prohibits short selling because the seller sells securities not yet owned at the time of transaction. Fatwa No. 135/2020 strengthens this reasoning by defining shares as ownership participation. Regulatory recognition, therefore, does not automatically create Sharia legitimacy. Short selling remains difficult to justify in Indonesia's Islamic capital market unless ownership, possession, fair risk bearing, and lawful entitlement are preserved.

Abstrak: *Short selling memperoleh pengakuan regulatif di Indonesia melalui POJK No. 6 Tahun 2024, tetapi praktik tersebut tetap menimbulkan persoalan dalam perspektif pasar modal syariah. Permasalahan utamanya berkaitan dengan keabsahan penjualan efek sebelum berada dalam kepemilikan dan penguasaan sah pihak penjual menurut prinsip syariah. Penelitian ini menggunakan pendekatan yuridis normatif dengan menelaah Fatwa DSN-MUI No. 40/2003, Fatwa DSN-MUI No. 80/2011, Fatwa DSN-MUI No. 135/2020, POJK No. 6 Tahun 2024, serta berbagai literatur fiqh mu'āmalah mengenai konsep mulk, qabd, bay' al-ma'dūm, gharar, maysir, dan ribā. Hasil penelitian menunjukkan bahwa POJK No. 6 Tahun 2024 mengatur short selling melalui mekanisme perizinan, securities lending, penyediaan agunan, pelaporan transaksi, penandaan order, serta pengawasan pasar untuk menjaga stabilitas dan transparansi perdagangan efek. Meskipun mekanisme tersebut mampu mengurangi risiko operasional dan memperkuat tata kelola pasar modal, pengaturan tersebut belum menyelesaikan persoalan mendasar mengenai kepemilikan dalam hukum syariah. Fatwa DSN-MUI No. 80/2011 secara tegas melarang short selling karena penjual menjual efek yang belum dimiliki saat akad berlangsung. Larangan tersebut diperkuat oleh Fatwa DSN-MUI No. 135/2020 yang menempatkan saham sebagai bukti partisipasi kepemilikan. Dengan demikian, pengakuan regulatif tidak otomatis melahirkan legitimasi syariah terhadap praktik short selling.*

Keywords:

**Short Selling;
Sharia Ownership;
Islamic Capital
Market;
DSN-MUI Fatwa;
POJK 6/2024.**

Introduction

Indonesian Islamic capital market law places short selling in a difficult position. *Dewan Syariah Nasional Majelis Ulama Indonesia* (National Sharia Board of the Indonesian Ulema Council, DSN-MUI) through Fatwa No. 80/DSN-MUI/III/2011 prohibits short selling in the trading mechanism of equity securities in the regular market of the stock exchange.¹ This prohibition rests on a basic *fiqh mu'āmalah* concern. A seller may not sell securities that the seller does not legally own or possess at the time of sale. Classical *fiqh* associates this problem with *bay' al-ma'dūm* (the sale of non-existent or non-possessed goods), because the object of sale is not yet under valid ownership (*milk*) or possession (*qabḍ*). Short selling also raises concern over *gharar* (excessive uncertainty), *maysir* (gambling-like speculation), and *ribā* when the transaction is connected to securities lending arrangements that generate unjustified gain.² For this reason, the issue is not limited to market technique. It touches the validity of ownership, the clarity of the traded object, and the moral basis of profit in Islamic commercial law.

Modern capital markets read short selling differently. Short selling usually refers to the sale of securities that are not currently owned by the seller, followed by a later repurchase when the price is expected to decline.³ Conventional finance often views this mechanism as part of market efficiency because short selling may support price discovery, liquidity, and the correction of overvalued securities.⁴ Indonesian positive law has also moved toward a more formal regulatory framework through *Peraturan Otoritas Jasa Keuangan* (Financial Services Authority Regulation, POJK) No. 6 of 2024 concerning securities financing transactions by securities companies for clients and short selling transactions by securities companies.⁵ Yet this regulatory development does not remove the normative problem found in *fiqh mu'āmalah*. Formal regulation may reduce operational risk, but it does not automatically resolve the question of whether the seller has valid ownership or possession over the securities being sold.⁶ Academic debate therefore remains open. Some scholars maintain the DSN-MUI prohibition because short selling conflicts with the requirements of *milk* and *qabḍ*. Other scholars discuss possible reconstruction through securities lending, *wa'd* (unilateral promise), *salam*, *ijārah*, or other contractual arrangements.⁷ This difference shows that short selling must be examined as a legal and ethical problem, not merely as a financial instrument.

Studies on short selling and Islamic capital market law have generally moved in three directions. The first group focuses on the normative position of DSN-MUI Fatwa No. 80/DSN-MUI/III/2011. This group tends to read short selling as a prohibited transaction because the

¹ Bianda, Ryan, Aang Gunaepi, and Muhammad Misbakul Munir. "Offering Sharia securities through technology based crowdfunding services based on sharia principles according to Mui Fatwa." *Journal of World Science* 2.3 (2023): 332-340. <https://doi.org/10.58344/jws.v2i3.240>

² Yang, Xiaoqi, et al. "Short selling and firms' long-term stock return volatility: Evidence from Chinese concept stocks in Hong Kong." *Finance Research Letters* 70 (2024): 106339. <https://doi.org/10.1016/j.frl.2024.106339>

³ Intihani, Siti Nur, et al. "Optimalisation of the Role of Basyarnas MUI in Dispute Resolution Sharia Capital Market." *RSF Conference Series: Business, Management and Social Sciences*. Vol. 6. No. 1. Research Synergy Foundation, 2026. <https://doi.org/10.31098/bmss.v6i1.1090>

⁴ Cao, Guohua, et al. "Overconfidence, short selling, and corporate fraud: Evidence from China." *The Quarterly Review of Economics and Finance* 97 (2024): 101889. <https://doi.org/10.1016/j.qref.2024.101889>

⁵ Putri, Riska Fitri Anggina, et al. "The Implementation of Sharia Principles in Stock Trading: A Comparative Analysis of Conventional and Sharia-Compliant Stock Markets." *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3.4 (2025): 484-489. <https://doi.org/10.5281/zenodo.17768922>

⁶ Muhammadiyah, Ali Akbar Ruhullah, et al. "Mitigating Gharar in Sharia Capital Market Volatility: Governance, Regulation, and Technology: Mitigasi Gharar Dalam Volatilitas Pasar Modal Syariah: Tata Kelola, Regulasi, Dan Teknologi." *Az-Zarqa': Jurnal Hukum Bisnis Islam* 16.1 (2024): 58-74.

⁷ Jiang, Haiyan, Ahsan Habib, and Mostafa Monzur Hasan. "Short selling: A review of the literature and implications for future research." *European Accounting Review* 31.1 (2022): 1-31. <https://doi.org/10.1080/09638180.2020.1788406>

seller transfers securities that are not yet owned or possessed. Putra and Hidayah, for instance, examine the tension between short selling and Sharia-compliant stocks on the Indonesia Stock Exchange.⁸ Their study points to legal uncertainty when Sharia securities are exposed to conventional trading mechanisms and argues that DSN-MUI fatwas need stronger formal recognition to protect investors in the Islamic capital market. Laksono reaches a similar position through an exegetical reading of the prohibition of short selling in Islamic stock investment.⁹ Short selling is considered impermissible because *gharar* is present in the object, the mechanism, and the expected gain. This argument is then connected to *maqāṣid al-sharī'ah*, especially *hifz al-māl* (protection of wealth) and the need to maintain market stability.

Another line of scholarship compares short selling under positive law and Sharia norms. Hikmara and Rahmayani argue that formal regulation under POJK No. 6 of 2024 does not automatically make short selling acceptable under Sharia principles.¹⁰ Their analysis underlines two issues that remain difficult to resolve. The first is speculative gain that resembles *maysir*. The second is *ribā*, which may arise from securities lending arrangements. Rahman and Ramle also identify three recurring Sharia concerns in short selling.¹¹ These concerns are the sale of assets without valid ownership, benefit gained from lending arrangements, and excessive speculation. Some jurisdictions, including Malaysia, have attempted to regulate short selling through structured securities borrowing and lending. Yet alternative models such as *wa'd* (unilateral promise), *salam*, *ijārah*, and *istiḥsān* remain debated because they do not fully remove the problem of ownership and possession at the time of sale.

Recent literature also shows that the debate is not entirely settled. Mujahidah's sentiment analysis finds that academic responses to short selling from an Islamic perspective tend to be neutral or negative, while direct support for permissibility remains limited.¹² This finding is important because it shows that the dominant academic view still follows a cautious approach. At the same time, studies on market regulation continue to note that Indonesia has entered a new phase after POJK No. 6 of 2024. Short selling is no longer only a theoretical issue in conventional capital market law, but a regulated mechanism whose implementation has been delayed due to market volatility and systemic risk concerns.¹³ This regulatory shift creates a new problem for Islamic business law. Sharia-oriented studies have explained why short selling is prohibited, and conventional legal studies have explained how short selling may be regulated. Yet fewer studies place the concept of ownership at the center of analysis

⁸ Sari Yulis Terfiadi et al., "The Potential of The Islamic Capital Market (ICM) as an Investment Model for the Baitul Mal," *Journal of Trends Economics and Accounting Research* 3, no. 4 (2023): 620–28, <https://doi.org/10.47065/jtear.v3i4.635>; Aditya Rahayu Pradikta and Arie Arie, "Sharia Investment: Understanding Prohibitions and Guidelines for the Right Investment Choices," *Al-Aghniya: Journal of Syariah Business Management* 1, no. 1 (2024): 43–52, <https://doi.org/10.58988/aghniya.v1i1.366>; Syah Budianto Chai Putra and Reinan Astika Nurul Hidayah, "Dilema Short Selling Terhadap Saham Syariah : Tinjauan Kepastian Hukum Di Bursa Efek Indonesia," *Pagaruyuang Law Journal* 8, no. 2 (2025): 57–80, <https://doi.org/10.31869/plj.v0i0.6287>.

⁹ Laksono, Muflih Adi. "Eksegesis Prohibisi Jual Beli Al-Maksyuf (Short Selling) Dalam Elaborasi Investasi Saham Syariah." *Hikamuna: Jurnal Kajian Hukum Islam* 9.1 (2024): 637-650.

¹⁰ Hikmara, M. Abdi, and Nuzul Rahmayani. "Tinjauan Hukum Mengenai Short Selling dari perspektif hukum perdata Konvensional dan Hukum Syariah." *Sakato Law Journal* 3.2 (2025): 173-181.

¹¹ Rahman, Md Habibur, and Siti Noor Shafiqha Binti Ramle. "Shari'ah Issues in Short Selling: Critical Analysis and The Alternatives." *The Journal of Management Theory and Practice (JMTP)* (2021): 104-109. <https://doi.org/10.37231/jmtp.2021.2.2.120>

¹² Mujahidah, Anisa Syahidah. "A Sentiment Analysis on Short Selling: An Islamic Perspective." *Text Analytics in Economics* 1.1 (2023). <https://doi.org/10.58968/tae.v1i1.462>

¹³ Harahap, Asrul Saputra, and Fauziah Lubis. "Legal Protection of Investors Due to Misleading Information in the Sharia Capital Market Perspective of DSN MUI Fatwa Number 80 of 2011." *Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE)* 6.3 (2023): 2930-2945.

while also reading the new regulatory landscape created by POJK No. 6 of 2024 and the postponement policy of the Indonesia Stock Exchange.¹⁴

This article addresses that gap by examining short selling through the question of ownership in *fiqh mu'āmalah*. The analysis does not treat POJK No. 6 of 2024 as a reason to revise the Sharia status of short selling. Rather, the regulation is read as a new legal background that makes the ownership issue more urgent to clarify. This study asks how the concept of ownership and possession in *fiqh mu'āmalah* explains the prohibition of short selling in DSN-MUI Fatwa No. 80/DSN-MUI/III/2011, and how this prohibition should be understood after the issuance of POJK No. 6 of 2024. The article aims to show that the legal debate over short selling is not only about market efficiency or regulatory technique. The deeper issue lies in whether a transaction may be considered valid when the object being sold has not yet become part of the seller's lawful ownership and possession.

Method

A normative juridical approach is used to examine short selling as a legal issue in *fiqh mu'āmalah* and Indonesian capital market regulation. The object of analysis is not the empirical practice of short selling in the market, but the legal reasoning that defines its validity, prohibition, and regulatory status. The study focuses on ownership in short selling transactions, especially the relation between *milkiyyah* (ownership), *milki* (legal ownership), *qabḍ* (possession), *bay' al-ma'dūm* (sale of non-owned or non-possession goods), *gharar*, *maysir*, and *ribā*. This approach is used because the central problem of the article concerns the normative status of selling securities that are not yet owned or possessed by the seller.

Primary legal materials consist of DSN-MUI Fatwa No. 80/DSN-MUI/III/2011 on the application of Sharia principles in the trading mechanism of equity securities in the regular market of the stock exchange, DSN-MUI Fatwa No. 40/DSN-MUI/X/2003 on capital markets and general guidelines for Sharia principles in the capital market, and DSN-MUI Fatwa No. 135/DSN-MUI/V/2020 on shares. Regulatory materials include *Peraturan Otoritas Jasa Keuangan* (Financial Services Authority Regulation, POJK) No. 6 of 2024 on securities financing transactions by securities companies for clients and short selling transactions by securities companies, along with relevant announcements of *Bursa Efek Indonesia* (Indonesia Stock Exchange, BEI) on the postponement of short selling implementation. Secondary materials include classical *fiqh* literature, contemporary Islamic finance studies, journal articles on short selling, and academic works on Sharia capital market regulation.

Data were collected through library research by identifying, selecting, and classifying legal and scholarly materials relevant to short selling, ownership, securities lending, and Sharia compliance. The materials were then analyzed through conceptual, statutory, and comparative readings. Conceptual analysis was used to clarify ownership and possession in *fiqh mu'āmalah*. Statutory analysis was used to examine DSN-MUI fatwas, POJK No. 6 of 2024, and BEI policy documents. Comparative analysis was used to read the difference between conventional regulatory acceptance and Sharia-based restriction. The analysis combines deductive reasoning from *fiqh* principles with inductive reading of regulatory developments, so the article can explain why formal regulation does not necessarily remove the Sharia problem of ownership in short selling.

¹⁴ Firdaush, Mustapha Bayu, and Citra Rahayu Indraswari. "The Effects of Short Selling Bans on the Stock Price Volatility of LQ45 Banking Companies in Indonesia." *Contemporary Studies in Economic, Finance and Banking* 4.3 (2025). <https://doi.org/10.21776/csefb.2025.04.2.17>

Results and Discussion

Short Selling

Short selling is usually understood as a trading strategy in which an investor sells securities that are not currently owned, with the expectation that the same securities can later be repurchased at a lower price. Conventional capital market theory does not always treat this practice as mere speculation.¹⁵ A large body of financial literature reads short selling as a mechanism that can help prices reflect negative information, correct overvalued securities, and strengthen market discipline. This view is important for the present article because the Sharia debate over short selling does not emerge in an empty space. It develops alongside a conventional market argument that sees short selling as useful, even though the practice also carries serious legal, financial, and ethical risks.

Early academic interest in short selling developed in the late 1960s and 1970s. At that stage, scholars began to examine whether short sale activity could indicate future price declines. Miller's argument became one of the most influential theoretical foundations. Restrictions on short selling, in his view, may cause stock overvaluation because pessimistic investors cannot fully express negative expectations in the market. Price formation then becomes biased toward optimistic investors.¹⁶ Diamond and Verrecchia later refined this debate by showing that short sale constraints do not always produce overpricing, but they may slow the incorporation of negative information into stock prices and widen bid ask spreads. Short selling therefore became closely associated with price discovery, information efficiency, and the ability of the market to respond to unfavorable information.¹⁷

Empirical studies from the 1980s to the early 2000s gave stronger support to this theoretical discussion. Figlewski and Meulbroek documented the relationship between short interest and subsequent stock returns,¹⁸ which helped form the view that short sellers often act as informed traders.¹⁹ Jones and Lamont,²⁰ followed by Cohen, Diether, and Malloy, used stock lending data to show that limited access to lendable shares may sustain overvaluation, especially when investors hold sharply different expectations about firm value.²¹ This line of research shifted scholarly attention from the moral suspicion of short selling to its informational function.²² Short sellers were no longer seen only as market pessimists. They were also treated as actors who may reveal hidden weaknesses in securities prices.

Financial crises, however, repeatedly exposed the fragile side of this mechanism. During the 2007 to 2009 global financial crisis, many jurisdictions imposed temporary bans on

¹⁵ Arif Surahman et al., "The Perspective of Islamic Economic Philosophy, Management, and Investment Decisions in Critique of Conventional Systems," *International Journal of Science, Technology & Management* 7, no. 2 (2026): 313-19, <https://doi.org/10.46729/ijstm.v7i2.1389>.

¹⁶ Miller, Edward M. "Risk, uncertainty, and divergence of opinion." *The Journal of finance* 32.4 (1977): 1151-1168. <https://doi.org/10.2307/2326520>

¹⁷ Diamond, Douglas W., and Robert E. Verrecchia. "Constraints on short-selling and asset price adjustment to private information." *Journal of financial economics* 18.2 (1987): 277-311. [https://doi.org/10.1016/0304-405X\(87\)90042-0](https://doi.org/10.1016/0304-405X(87)90042-0)

¹⁸ Figlewski, Stephen. "The informational effects of restrictions on short sales: Some empirical evidence." *Journal of Financial and Quantitative Analysis* 16.4 (1981): 463-476. <https://doi.org/10.2307/2330366>

¹⁹ Meulbroek, Lisa K. "An empirical analysis of illegal insider trading." *The Journal of Finance* 47.5 (1992): 1661-1699. <https://doi.org/10.1111/j.1540-6261.1992.tb04679.x>

²⁰ Jones, Charles M., and Owen A. Lamont. "Short-sale constraints and stock returns." *Journal of Financial Economics* 66.2-3 (2002): 207-239. [https://doi.org/10.1016/S0304-405X\(02\)00224-6](https://doi.org/10.1016/S0304-405X(02)00224-6)

²¹ Cohen, Lauren, Karl B. Diether, and Christopher J. Malloy. "Supply and demand shifts in the shorting market." *The Journal of Finance* 62.5 (2007): 2061-2096. <https://doi.org/10.1111/j.1540-6261.2007.01269.x>

²² Beber, Alessandro, and Marco Pagano. "Short-selling bans around the world: Evidence from the 2007-09 crisis." *The Journal of Finance* 68.1 (2013): 343-381. <https://doi.org/10.1111/j.1540-6261.2012.01802.x>

short selling. Beber and Pagano found that these bans did not effectively support stock prices and instead harmed market liquidity and delayed price adjustment. Boehmer, Jones, and Zhang reached a similar conclusion in their study of the 2008 short selling ban in the United States. The ban sharply reduced short selling activity, especially among large capitalization financial stocks, but it was also followed by wider bid ask spreads and higher intraday volatility.²³ These findings suggest that restricting short selling may reduce market quality, even though regulators often use such restrictions to protect stability during periods of stress.

Emerging market studies added another layer to the debate. Chang, Luo, and Ren examined China's pilot short selling program and found that the introduction of short selling and margin trading improved price efficiency and liquidity for eligible securities. Later studies also connected short selling with corporate discipline.²⁴ Engelberg, Reed, and Ringgenberg showed that short sellers are often capable of processing adverse information more effectively than ordinary market participants.²⁵ Grullon and other scholars argued that the threat of short selling may pressure managers to improve investment decisions and governance because poor corporate performance can quickly attract negative market attention.²⁶ This literature treats short selling not only as a trading mechanism, but also as an external monitoring device over-listed companies.

Research after 2020 continued to develop in two directions. Systematic review studies, including the work of Jiang, Habib, and Hasan, show that short sellers may use both public and private information and may contribute to the spread of information in capital markets.²⁷ Other studies examine the risks created by short selling under conditions of uncertainty. The COVID-19 pandemic led several jurisdictions, including Indonesia, to restrict or suspend short selling facilities.²⁸ Post pandemic studies still tend to recognize the role of short selling in improving market efficiency, but they also stress the possibility of market pressure, short squeeze events, and losses that can exceed the initial position of investors. Peng and other scholars further show that the threat of short selling may affect corporate decisions, including innovation investment.²⁹ These findings make the debate more balanced. Short selling may support efficiency, but its effects are not always neutral for firms or investors.

Recent studies also question whether restrictions on short selling consistently lead to higher asset prices. Barardehi and other scholars find that the empirical evidence does not always confirm the prediction that short sale constraints produce significant overvaluation.³⁰ Sharma and colleagues, through lexicometric analysis of more than one thousand

²³ Boehmer, Ekkehart, Charles M. Jones, and Xiaoyan Zhang. "Shackling short sellers: The 2008 shorting ban." *The Review of Financial Studies* 26.6 (2013): 1363-1400. <https://doi.org/10.1093/rfs/hht017>

²⁴ Chang, Eric C., Yan Luo, and Jinjuan Ren. "Short-selling, margin-trading, and price efficiency: Evidence from the Chinese market." *Journal of Banking & Finance* 48 (2014): 411-424. <https://doi.org/10.1016/j.jbankfin.2013.10.002>

²⁵ Engelberg, Joseph E., Adam V. Reed, and Matthew C. Ringgenberg. "Short-selling risk." *The Journal of Finance* 73.2 (2018): 755-786. <https://doi.org/10.1111/jofi.12601>

²⁶ Grullon, Gustavo, Sébastien Michenaud, and James P. Weston. "The real effects of short-selling constraints." *The Review of Financial Studies* 28.6 (2015): 1737-1767. <https://doi.org/10.1093/rfs/hhv013>

²⁷ Jiang, Haiyan, Ahsan Habib, and Mostafa Monzur Hasan. "Short selling: A review of the literature and implications for future research." *European Accounting Review* 31.1 (2022): 1-31. <https://doi.org/10.1080/09638180.2020.1788406>

²⁸ Kouzoubasis, Thomas, and Homam Al Sakka. "The Impact of Short Selling on Stock Returns-An Event Study in Sweden." (2021).

²⁹ Peng, Juan, et al. "Modeling the unintended consequences of short selling for innovation investment." *The North American Journal of Economics and Finance* 62 (2022): 101763. <https://doi.org/10.1016/j.najef.2022.101763>

³⁰ Barardehi, Yashar, et al. "Are Short-Selling Restrictions Effective?." *Management Science* 71.5 (2025): 3829-3851. <https://doi.org/10.1287/mnsc.2024.4987>

publications, identify several dominant themes in this field, including market discipline, volatility, crisis regulation, and informational efficiency.³¹ These studies show that short selling remains controversial even in conventional finance. Scholars may recognize its market function, but regulators still worry about its impact on volatility, systemic risk, and investor protection.

Indonesia occupies a particular position in this debate. Short selling has not developed as an ordinary market practice because implementation has repeatedly been delayed. Scholarly discussion in Indonesia is therefore still dominated by juridical and Sharia-oriented analysis. Legal studies usually focus on the compatibility between short selling, capital market regulation, and investor protection. Sharia-oriented studies give stronger attention to *gharar*, *ribā*, *maysir*, and the sale of securities that are not owned by the seller.³² The absence of full implementation on the Indonesia Stock Exchange also limits empirical evidence, so research on the Indonesian case still relies heavily on normative analysis, regulatory documents, and comparison with other markets.³³

This condition creates an important bridge to the main concern of this article. Conventional financial literature tends to ask whether short selling improves market efficiency, liquidity, and discipline. *Fiqh mu'āmalah* asks a different question. The main issue is whether a person may sell securities that have not yet entered valid ownership (*milik*) or possession (*qabḍ*). Positive market effects cannot by themselves settle this legal question. Even if short selling contributes to price discovery, its validity under Islamic commercial law still depends on the status of the traded object, the structure of securities lending, and the presence of *gharar*, *ribā*, or *maysir*. For this reason, the following discussion turns to the DSN-MUI fatwas, because those fatwas provide the main normative foundation for assessing short selling in the Indonesian Islamic capital market.

Fatwas and the Sharia Basis of Ownership in Stock Trading

Fatwa No. 40/DSN-MUI/X/2003

Dewan Syariah Nasional Majelis Ulama Indonesia (National Sharia Board of the Indonesian Ulema Council, DSN-MUI) issued Fatwa No. 40/DSN-MUI/X/2003 to provide general guidance on the application of Sharia principles in the Indonesian capital market. This fatwa did not discuss short selling as its main concern. Its importance lies in the way it opened a normative foundation for Sharia-compliant capital market activities.³⁴ Capital market transactions are basically permissible as long as the object, issuer, and transaction mechanism comply with Sharia principles. This position follows the general rule in *fiqh mu'āmalah* that commercial transactions are allowed unless there is a clear legal basis that prohibits them.³⁵

Fatwa No. 40/2003 places capital market activity under a conditional permissibility framework. Securities may be traded when they are connected to lawful business activities

³¹ Sharma, Nitika, et al. "Mapping the Literature on Short-Selling in Financial Markets: A Lexicometric Analysis." *International Journal of Financial Studies* 13.3 (2025): 135. <https://doi.org/10.3390/ijfs13030135>

³² Alsaif, Almuhammad. "An analysis of the role of short selling in detecting default risk." *Journal of Applied Finance & Banking* 14.6 (2024): 51-67. <https://doi.org/10.47260/jafb/1464>

³³ Abas, Dalia Adel, Hanan Hassan Gad Allah, and Hadeer Salama Gad Gouda. "Short-Selling as a Market Discipline Mechanism: A Survey of Academic Literature." *Scientific Journal for Financial and Commercial Studies and Research* 6.2 (2025): 1149-1197.

³⁴ Firdaus, Muhammad Irkham, and Theo Aditya Pradhana. "Share Trading in Limited Liability Companies According to the 2007 Law and Fatwa No. 40/DSN-MUI/X/2003." *Al-Muamalat: Journal of Islamic Economics Law* 8.2 (2025).

³⁵ Samsudin, Agus Rojak. "Evolution of The Concept of Gharar in DSN-MUI Fatwas on Islamic Insurance (2001-2024)." *Prosiding* 1.1 (2025): 15-41.

and free from prohibited elements. Issuers must not conduct businesses related to ribā, maysir, gharar, unlawful goods or services, and other activities that conflict with Sharia principles.³⁶ The transaction mechanism must also avoid deception, manipulation, excessive uncertainty, and speculative conduct that may harm market participants. This structure is important because Sharia compliance is not determined only by the legal status of the asset. Sharia compliance also depends on the way the asset is issued, traded, and transferred in the market.

Shares occupy a central place in this framework. Fatwa No. 40/2003 recognizes the possibility of shares as Sharia-compliant securities when the issuing company and its business activities meet Sharia requirements. From a *fiqh* perspective, shares may be understood as proportional participation in a company. Shareholders bear business risk and may receive returns according to the performance of the issuing company. This structure is closer to *syirkah*, especially *syirkah musāhamah* (shareholding partnership), because ownership is divided into units and each shareholder has rights according to the proportion of shares held. The logic of this arrangement is consistent with *al-ghunm bi al-ghurm* (entitlement to gain is tied to exposure to risk). Profit in shares is not treated as a guaranteed return, but as a consequence of participation in a business that may produce gain or loss.

This foundation distinguishes Sharia-compliant shares from instruments that promise fixed returns without genuine risk sharing. Shares can be accepted because they represent participation in real economic activity, not merely a claim to predetermined income. Yet this acceptance is not absolute. The validity of share trading still depends on ownership, lawful business activity, transparency, and the absence of prohibited elements in the transaction process. This point later becomes important for the discussion of short selling. If shares are understood as a form of ownership, then the transfer of shares in the market must also respect the requirement that the seller has valid ownership or possession over the securities being sold.

Fatwa No. 40/2003 also contributed to the institutional development of the Indonesian Islamic capital market.³⁷ Its principles provided a basis for identifying Sharia-compliant securities and for developing instruments such as *Daftar Efek Syariah* (Sharia Securities List) and the Jakarta Islamic Index.³⁸ These instruments show that Islamic law does not reject modern capital market structures as such. Islamic law accepts them through a selective and corrective framework. The market may operate, but it must remain tied to lawful assets, fair transactions, transparency, and real economic participation. For this reason, Fatwa No. 40/2003 should be read as the starting point of the discussion. It establishes the permissibility of Sharia-compliant shares, while the later fatwas clarify the limits of trading mechanisms that may undermine ownership, justice, and certainty in the Islamic capital market.

³⁶ Shofawati, Atina. "Islamic screening mechanism of islamic capital market – a comparison between the fatwa – DSN-MUI, the Kuala Lumpur stock Exchange islamic index and the Dow Jones islamic market index." *KnE Social Sciences* (2018). <https://doi.org/10.18502/kss.v3i10.3456>

³⁷ Widjaja, Hidajat. "The Effect of Theta Variable Before and After of Screening Process to Every Changes of Price and Volume of Jakarta Composite Index, Application of TSR Method." *Application of TSR Method (July 30, 2015)* (2015). <http://dx.doi.org/10.2139/ssrn.2638105>

³⁸ Rohma, Amilia, T. Sutrisno, and Aulia Fuad Rahman. "Financial Reporting Quality, Investment Efficiency, and the Role of Indonesian Sharia Stock Index (ISSI) as a Moderating Variable." *Asian Journal of Management, Entrepreneurship and Social Science* 3.03 (2023): 879-900. <https://doi.org/10.63922/ajmesc.v3i03.468>

Fatwa No. 80/DSN-MUI/III/2011

DSN-MUI Fatwa No. 80/DSN-MUI/III/2011 develops the general foundation established by Fatwa No. 40/DSN-MUI/X/2003. Fatwa No. 40/2003 affirms that capital market activities and shares may be accepted under Sharia principles when the object, issuer, and business activity are lawful. Fatwa No. 80/2011 moves to a more specific issue. It regulates the trading mechanism of equity securities in the regular market of the stock exchange.³⁹ This shift is important because Sharia compliance is not determined only by the permissibility of shares as assets. A share may be Sharia compliant as an object, but the transaction involving that share may still become invalid when the trading mechanism contains prohibited elements.⁴⁰

Fatwa No. 80/2011 places ownership at the center of Sharia compliant stock trading. Stock transactions must reflect a genuine transfer of securities that are legally owned and capable of being transferred by the seller.⁴¹ This requirement is closely related to *milk* and *qabd*. *Milk* refers to valid legal ownership, while *qabd* refers to possession or control that allows the owner to dispose of the object.⁴² A sale cannot be reduced to an order in the trading system or to an expectation of future settlement. It must be tied to the legal status of the object at the time of transaction. This point explains why short selling becomes problematic. A short seller sells securities that are not yet owned at the time of sale. The transaction therefore raises the problem of *bay' al-ma'dūm*, because the sold object has not yet entered the seller's valid ownership or possession.⁴³

Short selling is prohibited in Fatwa No. 80/2011 because the mechanism conflicts with the basic logic of ownership in *fiqh mu'āmalah*. The prohibition is not merely a reaction to price speculation. Its deeper basis lies in the absence of lawful control over the securities being sold. A transaction that transfers something not yet owned produces uncertainty over delivery, responsibility, and legal entitlement. This uncertainty may fall into *gharar* when the object, ownership status, or capacity to deliver remains unclear. Short selling may also approach *maysir* when profit depends mainly on price decline and market pressure rather than participation in real economic activity. *Ribā* may arise when securities lending arrangements generate benefit for the lender without a valid compensating structure recognized by Sharia. These elements explain why the fatwa treats short selling as more than a technical trading strategy.⁴⁴

Fatwa No. 80/2011 also prohibits other practices that damage market fairness, including market manipulation, misleading information, insider trading, and deceptive transactions. These prohibitions are linked to *tadlis*, injustice, and harm to market participants. The same ethical logic applies to short selling. A market may be liquid and active, but liquidity cannot be built through mechanisms that weaken certainty, ownership, and transparency. Islamic capital market law does not separate market efficiency from legal validity. Efficiency is valuable only when transactions remain tied to lawful assets, fair information, and genuine economic responsibility.

³⁹ Satiri, Ahmad, et al. "Dynamics of Fatwa DSN-MUI on Financing Products at Shari'ah Financial Institutions (LKS) from 2010 to 2021." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24.1 (2025): 6803-6828.

⁴⁰ Putri, Indriana Rezkia. "Sharia Stock Practices and Cases of Stock Speculation in Islamic Finance." *Jurnal Ekonomi dan Bisnis Indonesia* 7.2: 1-7. <https://doi.org/10.37673/jebi.v7i2.2167>

⁴¹ Andriansyah, Yuli. "Analysis of fatwas by the National Sharia Board-Indonesian Council of Ulama on the stock market." *Millah: Journal of Religious Studies* (2023): 525-552. <https://doi.org/10.20885/millah.vol22.iss2.art9>

⁴² Putri, Indriana Rezkia. "Sharia Stock Practices and Cases of Stock Speculation in Islamic Finance." *Jurnal Ekonomi dan Bisnis Indonesia* 7.2: 1-7. [Http://doi.org/10.37673/jebi.v7i2.2167](http://doi.org/10.37673/jebi.v7i2.2167)

⁴³ Selasi, Dini, Cory Vidiati, and Tardjono Tardjono. "Sharia Capital Market: Securities Fatwa, Derivative Securities and Mechanisms." *IJOBBA: International Journal of Bunga Bangsa Cirebon* 1.1 (2022): 1-24.

⁴⁴ Umar, Zulkarnaini, et al. "Syariah Stocks: A Normative Analysis of Islamic Law and Investment Practices in Indonesia." *Kanun: Jurnal Ilmu Hukum* 6.2 (2024): 317-336.

The normative aim of the fatwa can be read through *maqāṣid al-sharī'ah*, especially *ḥifz al-māl* and *'adl*. Protection of wealth does not only mean protecting individual property from direct loss. It also includes maintaining a market structure where ownership is clear, risk is fairly borne, and profit is not detached from lawful entitlement.⁴⁵ The principle of *al-ghunm bi al-ghurm* supports this view.⁴⁶ Gain should follow risk that is legally and economically assumed. Short selling disturbs this balance when the seller seeks profit from securities that are not yet owned and when the transaction depends on a later ability to borrow or repurchase those securities.

Fatwa No. 80/2011 therefore functions as the operational boundary of the Indonesian Islamic capital market. It does not reject share trading, because the permissibility of Sharia compliant shares has already been recognized. It restricts trading mechanisms that detach profit from ownership, possession, and fair risk bearing. This distinction is crucial for the present article. The problem of short selling does not lie only in the fact that prices may fall or rise. The main problem lies in the attempt to sell a security before the seller has valid ownership and possession over it. Fatwa No. 80/2011 makes this ownership problem explicit and provides the main normative basis for assessing short selling in *fiqh mu'āmalah*.

Fatwa No. 80/DSN-MUI/III/2011

DSN-MUI Fatwa No. 135/DSN-MUI/V/2020 provides a more systematic explanation of shares in the Indonesian Islamic capital market. Fatwa No. 40/2003 gives the general basis for accepting capital market activities under Sharia principles, while Fatwa No. 80/2011 sets limits on the trading mechanism of equity securities. Fatwa No. 135/2020 strengthens both foundations by clarifying the legal meaning of shares, the rights attached to them, and the conditions under which shares may be issued, owned, and transferred.⁴⁷ This fatwa is important for the present discussion because short selling cannot be assessed only as a trading technique. It must also be assessed through the legal nature of the share being sold.

Fatwa No. 135/2020 confirms that shares represent participation in company ownership. Shareholders are not merely price takers in the market. Shareholders hold proportional rights and obligations according to the number of shares owned. This structure reflects *syirkah musāhamah*, a shareholding partnership in which ownership is divided into transferable units.⁴⁸ The shareholder may receive dividends when the company earns distributable profit, but the shareholder also bears risk according to the proportion of ownership.⁴⁹ This idea is consistent with *al-ghunm bi al-ghurm*, because entitlement to gain must be connected to the assumption of risk. Profit from shares is therefore legitimate when it arises from real participation in the economic activity of the company, not from a guaranteed return detached from business risk.⁵⁰

⁴⁵ Pradana, Erwin. "Pengaruh Economic Value Added dan Market Value Added terhadap Return Saham pada Perusahaan yang Terdaftar di Jakarta Islamic Index Periode 2018-2023." *Jurnal Muamalat Indonesia-JMI* 5.2.

⁴⁶ Tuasikal, Muhammad Abduh, Jaih Mubarak, and Yulizar Djamaluddin Sanrego. "Cryptocurrency Volatility, Gharar, and Risk Perception in Islamic Economics: A Qualitative Descriptive Study." *Jurnal Ilmiah Akuntansi Kesatuan* 13.6 (2025): 1895-1910.

⁴⁷ Mujahidin, Mujahidin. "Analysis of the Application of the Maslahah Concept in DSN MUI Fatwa in the Sector of Sharia Economics and Finance." *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 4.6 (2022): 1958-1970.

⁴⁸ Ghaisani, Sabila Nur, and Cucu Susilawati. "Analysis of the Suitability of Sharia Stock Investment on the Indo Premier Securities Application." *Sighat: Jurnal Hukum Ekonomi Syariah* 4.1 (2025): 12-22.

⁴⁹ Suryomurti, Wiku, et al. "A data envelopment analysis of Sharia stock listed companies on the Jakarta Islamic Index." *Jurnal Ekonomi & Keuangan Islam* (2026): 130-145. <https://doi.org/10.20885/JEKI.vol12.iss1.art8>

⁵⁰ Hidayat, Enang. "Induction and Its Relevance to the Transformation of Sharia Economic Law in Indonesia: A Study of Four Madhhabs." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 7 (2023): 71-87. <https://doi.org/10.30659/jua.v7i1.28692>

This fatwa also provides criteria for Sharia compliant shares. The issuing company must not conduct prohibited business activities, including activities related to *ribā*, *maysir*, *gharar*, unlawful goods, or unethical services. The company's financial structure and income must also meet Sharia screening standards. These requirements show that Sharia compliance has two sides. The first side concerns the substance of the issuer and its business activity.⁵¹ The second concerns the legal and transactional process through which shares are issued and transferred. A share may come from a lawful issuer, but a transaction involving that share may still be unacceptable if the mechanism violates ownership, transparency, or fair risk bearing.

The relevance of Fatwa No. 135/2020 to short selling lies in its treatment of shares as a form of ownership. If a share represents participation in a company, the transfer of that share must be based on valid ownership and the ability to dispose of the object being sold. *Milk* and *qabd* are therefore not abstract concepts. They determine whether the seller has a lawful basis to transfer the share to another party.⁵² Short selling disturbs this structure because the seller enters a sale before the securities are owned or possessed. The problem is not merely that the seller expects a price decline. The deeper problem is that the sale is made before the seller has legal entitlement over the object of sale.

Fatwa No. 135/2020 also helps explain why the prohibition in Fatwa No. 80/2011 remains relevant after the issuance of POJK No. 6 of 2024. A positive regulation may arrange securities lending, margin requirements, reporting duties, and market supervision. These instruments may reduce operational and systemic risk. Yet the Sharia problem remains if the transaction still allows the sale of securities before valid ownership and possession exist.⁵³ Fatwa No. 135/2020 reinforces this point by placing shares within the logic of ownership, participation, and responsibility. The fatwa does not treat shares as neutral market objects that can be detached from the legal status of the holder.

Read together, the three DSN-MUI fatwas form a coherent normative structure. Fatwa No. 40/2003 establishes that Sharia compliant capital market activities are permissible under certain conditions. Fatwa No. 80/2011 draws the operational boundary by prohibiting trading mechanisms that contain short selling, manipulation, excessive speculation, and other prohibited practices. Fatwa No. 135/2020 clarifies the legal character of shares as ownership participation. This structure shows that the Islamic capital market accepts modern financial instruments selectively. Shares may be traded, but their transfer must remain connected to lawful ownership, clear possession, fair risk bearing, and real economic activity. Short selling becomes difficult to justify within this structure because it separates the sale from the seller's ownership at the time of transaction.

⁵¹ Ali Akbar Ruhullah Muhammadi et al., "Mitigating Gharar in Sharia Capital Market Volatility: Governance, Regulation, and Technology: Mitigasi Gharar Dalam Volatilitas Pasar Modal Syariah: Tata Kelola, Regulasi, Dan Teknologi," *Az-Zarqa': Jurnal Hukum Bisnis Islam* 16, no. 1 (2024): 58-74, <https://doi.org/10.14421/yxqd6f17>; Muhammad Ayub and M. Fahim Khan, "EVOLVING MONETARY ECONOMICS IN ISLAMIC PERSPECTIVE," *Journal of Islamic Monetary Economics and Finance* 7, no. 2 (2021): 317-40, <https://doi.org/10.21098/jimf.v7i2.1372>.

⁵² Muhammad Shahrul Ifwat Ishak and Nur Syahirah Mohammad Nasir, "Maqasid Al-Shari'ah in Islamic Finance: Harmonizing Theory and Reality," *The Journal of Muamalat and Islamic Finance Research*, June 1, 2021, 108-19, <https://doi.org/10.33102/jmifr.v18i1.334>.

⁵³ Sami M. Abbasi et al., "Islamic Economics: Foundations and Practices," *International Journal of Social Economics* 16, no. 5 (1989): 5-17, <https://doi.org/10.1108/03068298910367215>.

Short Selling Regulations in Indonesia

POJK No. 6 of 2024 marks an important shift in the Indonesian regulatory treatment of short selling. *Peraturan Otoritas Jasa Keuangan* (Financial Services Authority Regulation, POJK) No. 6 of 2024 regulates securities financing transactions by securities companies for clients and short selling transactions by securities companies. This regulation replaced POJK No. 55/POJK.04/2020 after it became effective six months from its promulgation. Its main concern is not only to open a space for short selling, but also to strengthen governance, prudential control, risk management, and investor protection in securities financing activities.⁵⁴

Short selling in this regulation is treated as a market mechanism that must be placed under strict institutional supervision. Securities companies may provide short selling facilities only when they meet the requirements set by *Otoritas Jasa Keuangan* (Financial Services Authority, OJK) and the exchange. The regulation requires agreements between securities companies and clients, including provisions on securities borrowing and lending, financing terms, eligible securities, client obligations, collateral, and risk disclosure. Sell orders must also be marked as short selling in the trading system.⁵⁵ This identification requirement is significant because short selling cannot be allowed to appear as an ordinary sale. The market must be able to distinguish between a sale made by an owner and a sale made through a short selling mechanism.

POJK No. 6 of 2024 also reflects a prudential approach. Investors must understand that short selling contains a different risk profile from ordinary stock selling. Losses may become very large when the price of the securities increases after the short position is opened. The regulation responds to this risk through collateral requirements, reporting duties, risk declarations, and supervision of securities companies. Bursa Efek Indonesia (Indonesia Stock Exchange, BEI) is also expected to publish a list of securities eligible for short selling and to regulate the execution of short selling orders.⁵⁶ These mechanisms show that Indonesian positive law does not treat short selling as a free market practice. Short selling is accepted only within a controlled structure.

Regulatory acceptance, however, has not been followed by full implementation. BEI has postponed the implementation of securities financing facilities and short selling transactions several times. The latest postponement was announced through Announcement No. Peng-00042/BEI.POP/03-2026 dated March 16, 2026. The announcement extends the postponement of short selling implementation until September 14, 2026.⁵⁷ This postponement affects the publication of the short selling securities list and keeps short selling transactions unavailable in the regular market. The policy reflects a cautious regulatory posture. Even after a formal legal framework has been prepared, market authorities still consider volatility, global uncertainty, systemic risk, and institutional readiness before allowing the mechanism to operate.

This regulatory development is important for the present study, but it must be read carefully. POJK No. 6 of 2024 shows that short selling can be organized under positive law

⁵⁴ Putri, Febbyanti Agustina Eka, Wahyu Akbar, and Haidi Hajar Widagdo. "A Comparison of Islamic Capital Market Supervision in Indonesia and Malaysia." *Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE)* 8.2 (2025): 3664-3680.

⁵⁵ Yunilhamri, Muhammad Syauqi, and Rozi Andriani. "Optimalisasi Akad dalam Produk Pasar Modal Syariah untuk Mendorong Literasi Investor di Indonesia." *Al-Muzdahir: Jurnal Ekonomi Syariah* 8.1 (2026): 1-17.

⁵⁶ Tuseno, Tuseno, Muhammad Syukri Albani Nasution, and Dhiauddin Tanjung. "Dissecting OJK Requirements for Companies That Go Public That Issue Sharia Shares." *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan Dan Sosial* 14.1 (2025): 184-193.

⁵⁷ Laila, Ahrina, Harianto Harianto, and Peny Cahaya Azwari. "Sharia Stock Investment On The Indonesia Stock Exchange In The Perspective Of Sharia Economic Law." *Jurnal Fokus Manajemen* 5.2 (2025): 241-250.

through institutional authorization, collateral, reporting, order marking, and supervision. These instruments may reduce operational risk and protect market stability. Yet they do not automatically resolve the Sharia problem discussed in the previous section.⁵⁸ The regulation can control how short selling is conducted, but it does not change the basic feature of the transaction. The seller still enters a sale before having ownership over the securities at the time of transaction.

For *fiqh mu 'āmalah*, this point is decisive. The central question is not only whether the transaction is supervised by OJK or BEI. The more basic question is whether the sold securities have entered the seller's valid ownership (*milk*) and possession (*qabḍ*). If the transaction depends on borrowing or later repurchasing the securities, the problem of *bay' al-ma'dūm* remains relevant. *Gharar* may also persist when the legal status of ownership and the certainty of delivery are not fully attached to the seller at the time of sale. POJK No. 6 of 2024 may make short selling more orderly in conventional capital market law, but the DSN-MUI framework still requires a different test. The test is whether the transaction preserves lawful ownership, clear possession, fair risk bearing, and a profit structure that does not rely on prohibited uncertainty or speculation.

Short Selling between Regulatory Recognition and Sharia Ownership Requirements

Regulatory recognition of short selling in Indonesia creates a new legal landscape, but it does not remove the basic Sharia question that stands behind the transaction. POJK No. 6 of 2024 shows that short selling can be arranged through authorization, collateral, securities lending, order marking, reporting duties, and market supervision. These instruments are designed to reduce operational risk and protect market stability. Yet *fiqh mu 'āmalah* asks a prior question. Before asking whether the transaction is supervised, Islamic commercial law asks whether the seller has the legal right to sell the securities at the time of sale. This question cannot be answered only by referring to market efficiency, liquidity, or regulatory design. It must be answered through the requirements of ownership and possession in a valid sale.

Classical *fiqh* places ownership and deliverability among the core requirements of the object of sale. The legal basis is often linked to the Prophetic prohibition, *lā tabi' mā laysa 'indaka* (do not sell what is not with you), which was narrated in the case of Ḥakīm ibn Ḥizām when he asked whether he could sell an item that he did not yet have and then purchase it from the market.⁵⁹ Wahbah al-Zuhaylī explains this requirement more explicitly by stating that the object of sale must be owned by the seller at the time of contract and must be capable of delivery. Something that cannot be delivered creates *gharar*, and *gharar* is prohibited.⁶⁰ Ibn Qudāmāh also formulates the same condition by stating that the sold object must be owned by the seller at the time of contract.⁶¹ These juristic formulations show that the validity of a sale is not determined only by the existence of the object in the market. A share may exist as a listed security, but the sale is still legally problematic if the seller does not own it when the sale is concluded.

Qabḍ further strengthens this point. Legal ownership without possession may still create a problem when the object has not yet entered the seller's control in a way that allows proper transfer and risk assumption. Al-Kāsānī, for example, states that movable property

⁵⁸ Sulaeman, A. Hanief Alfadhil, and Oman Fathurrahman SW. "Islamic Law Perspective on Sharia Stocks in the Capital Market as an Investment Alternative for Investors." *al-Afkar, Journal For Islamic Studies* 8.4 (2025): 443-456. <https://doi.org/10.31943/afkarjournal.v8i4.1805>

⁵⁹ Sulayman Abi Dāwūd, *Sunan Abi Dāwūd*, III (Dār Al-Kutub Al-'Ilmiyyah, n.d.), Hadith No. 3503.

⁶⁰ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuh*, 4th ed., vol. 5 (Dār al-Fikr, 1997).

⁶¹ Ibnu Qudāmāh, *Al-Mughni*, vol. 3 (Dār 'Alimul Kutub, n.d.).

may not be sold before *qabd*.⁶² AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) later restates this rule in the language of modern Islamic financial institutions by prohibiting an institution from selling what it does not own and from selling what it owns before possession.⁶³ This standard is important for contemporary capital market analysis because securities are movable financial assets whose transfer depends on legal control, settlement, and market infrastructure. A short sale begins before the seller owns or possesses the securities. The transaction therefore remains difficult to reconcile with *milk* and *qabd*, even if the securities can later be borrowed or repurchased.

Gharar is not merely a general label for market uncertainty. Price fluctuation exists in ordinary stock trading and does not automatically invalidate a transaction. The *gharar* concern in short selling is more specific. It arises from uncertainty over the seller's legal entitlement to the object, the seller's ability to deliver the securities, and the dependence of the transaction on a later borrowing or repurchase arrangement. The prohibition of *bay' al-gharar* in the hadith narrated by Abū Hurayrah provides the general foundation for avoiding sales that contain excessive uncertainty.⁶⁴ Ibn Rushd also records the juristic agreement that sales involving *gharar* are not permissible.⁶⁵ Read in this way, the Sharia objection to short selling is not simply that the price may move unpredictably. The deeper objection lies in the uncertainty created when a sale is made before ownership and possession have been established.

This analysis also clarifies the relevance of *maysir* and *ribā*. *Maysir* appears when the transaction is dominated by gain from price movement without genuine ownership participation or real economic responsibility. Short selling seeks profit from a decline in the price of securities that the seller does not own. Conventional finance may view this as a useful expression of negative information, but Sharia law examines whether the gain is tied to lawful entitlement and responsibility over the asset. The principle *al-ghurm bi al-ghunm* states that risk is tied to gain, meaning that the party who receives benefit must also bear the corresponding liability.⁶⁶ A short seller may face market risk, especially the risk of rising prices, but that risk is not the same as ownership risk over the asset being sold. The seller seeks gain from an asset whose ownership has not yet entered the seller's legal domain.

Ribā concerns may also arise when short selling depends on securities lending arrangements. This point should be stated carefully. Not every fee or arrangement in a modern financial transaction can be called *ribā* without examining the contract. Yet the Sharia concern becomes serious when a lending structure produces a stipulated benefit for the lender without a valid contractual basis recognized by Islamic law.⁶⁷ Ibn Qudāmah states that any

⁶² 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'ī' al-Ṣanā'ī' Fi Tartīb al-Sharā'ī'*, *Kitāb al-Buyū'*, *Bāb Mā Yabṭul Bihī al-Bay.*, vol. 5 (Dār al-Kutub al-'Ilmiyyah, 1986).

⁶³ Hay'at al-Muḥāsabah wa al-Murāja'ah li al-Mu'assasāt al-Māliyyah al-Islāmiyyah AAOIFI, *Al-Ma'āyir al-Shar'iyyah, Sharia Standard* (AAOIFI, 2015).

⁶⁴ Muslim ibn al-Ḥajjāj al-Naysābūrī, *Ṣaḥīḥ Muslim*, vol. 3, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Dār Ihyā' al-Turāth al-'Arabī, n.d.).

⁶⁵ Abū al-Walīd Muḥammad ibn Aḥmad Ibn Rushd, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, vol. 3 (Dār al-Ḥadīth, 2004).

⁶⁶ Flavia Cortelezzi and Alessandro Ferrari, eds., *Contemporary Issues in Islamic Law, Economics and Finance: A Multidisciplinary Approach*, Routledge-Giappichelli Studies in Religion, Law and Economics in the Mediterranean Space (Routledge, 2023); Landy Trisna Abdurrahman et al., "Rethinking Assets in Islamic Law: Understanding the Logic of Camels as Authorized-Value in Socio-Economic Context," *Az-Zarqa': Jurnal Hukum Bisnis Islam* 17, no. 2 (2025): 279–301, <https://doi.org/10.14421/az-zarqa.v17.i2.4710>.

⁶⁷ Abdul Azim Islahi, *History of Islamic Economic Thought: Contributions of Muslim Scholars to Economic Thought and Analysis* (Edward Elgar, 2014); Shamim A. Siddiqui, "Riba, Time Value of Money and Discounting," in *Handbook on Islam and Economic Life*, ed. M. Kabir Hassan and Mervyn K. Lewis (Edward Elgar Publishing, 2014), <https://doi.org/10.4337/9781783479825.00012>.

loan in which an additional benefit is stipulated is prohibited without disagreement.⁶⁸ This principle does not by itself settle every modern securities lending arrangement, but it explains why Fatwa No. 80/2011 treats the lending component of short selling with caution. A regulatory framework may classify the arrangement as securities borrowing and lending, while *fiqh mu'āmalah* still needs to ask whether the lending structure creates an unjustified benefit or disguises a prohibited gain.

POJK No. 6 of 2024 should therefore be understood as a framework for market governance, not as a Sharia validation of short selling. It regulates who may provide the facility, how clients must be assessed, how collateral is managed, how orders are marked, and how short positions are reported. These rules matter for investor protection and market stability. They may reduce information asymmetry, discipline securities companies, and prevent hidden short positions. Yet they do not change the ontological structure of the transaction. The sale still occurs before the seller owns the securities. From the perspective of DSN-MUI fatwas and *fiqh mu'āmalah*, this remains the decisive point.

The relationship between positive regulation and Sharia restriction should not be framed as a simple contradiction. Indonesian capital market law and Islamic capital market law work with different tests of validity. Positive regulation asks whether a transaction can be controlled, supervised, reported, and made compatible with market stability. Sharia law asks whether the transaction is valid in its object, ownership, possession, risk allocation, and ethical basis of profit. A transaction may pass the first test and still fail the second. This explains why short selling can be formally regulated in the conventional market while remaining prohibited in the Sharia capital market.

Three implications follow from this distinction. First, short selling may continue to develop in the conventional market under strict regulatory safeguards, especially if BEI later considers market conditions stable enough for implementation. Second, Sharia-compliant stocks require institutional protection from exposure to conventional short selling mechanisms, because the Sharia status of the securities would be undermined if the trading mechanism allows sale before ownership. Third, any proposed Sharia-compliant alternative must solve the ownership and possession problem directly. A mere change of contractual label is not enough. A valid alternative must ensure that the seller owns or possesses the securities before sale, that lending does not generate *ribā*, and that profit is linked to lawful risk bearing rather than speculative pressure.

Short selling in Indonesia therefore stands between regulatory recognition and Sharia ownership requirements. POJK No. 6 of 2024 may organize the practice as part of conventional market development, but DSN-MUI fatwas maintain a different normative boundary for the Islamic capital market. The gap between these two frameworks does not mean that Islamic law rejects modern financial markets. It shows that *fiqh mu'āmalah* accepts market development only when ownership, possession, certainty, and fairness remain intact. Short selling remains difficult to justify within that framework because its basic mechanism separates the act of sale from the seller's lawful ownership at the time of transaction.

Conclusion

Short selling ultimately stands at the intersection of two different legal and normative frameworks in Indonesia. From the perspective of positive law, the practice has now received formal recognition through POJK No. 6 of 2024 concerning securities financing transactions by securities companies. The regulation establishes mechanisms for authorization, securities

⁶⁸ Qudāmah, *Al-Mughni*, vol. 3.

lending, collateral management, reporting obligations, order marking, and supervisory control. Rather than treating short selling as a completely free market activity, Indonesian regulators appear to position it within a tightly monitored framework intended to balance market efficiency with prudential concerns. The repeated postponement of its implementation by *Bursa Efek Indonesia* until September 2026 further reflects regulatory caution, especially regarding market readiness, investor protection, and systemic stability.

A different conclusion emerges when the issue is examined through *fiqh mu'āmalah*. The central concern is not merely whether the transaction is supervised or economically beneficial, but whether the seller possesses lawful ownership and control over the shares at the moment of sale. DSN-MUI Fatwa No. 80/DSN-MUI/III/2011 explicitly prohibits short selling because the transaction involves selling securities that are not yet owned by the seller. That reasoning becomes stronger when read together with Fatwa No. 135/DSN-MUI/V/2020, which characterizes shares as evidence of ownership participation in a company. Once shares are understood as ownership rights, their transfer must satisfy the principles of *milk*, *qabd*, lawful entitlement, and the ability to deliver the object of sale. In practice, the mechanism of short selling separates the act of sale from actual ownership, making it difficult to reconcile with those Sharia requirements.

The existence of POJK No. 6 of 2024 therefore does not automatically alter the Sharia status of short selling. Regulatory safeguards may reduce operational risk, improve transparency, and strengthen market supervision, yet they do not eliminate the underlying *fiqh* concerns related to *bay' al-ma'dūm*, *gharar*, *maysir*, and the possibility of *ribā* within securities lending arrangements. As a result, a transaction may remain legally valid under conventional capital market regulation while still being unacceptable within the framework of Islamic law. This distinction carries important implications for the Indonesian Islamic capital market, particularly because Sharia compliance cannot be assessed solely from the issuer's business activities, but must also consider the structure and mechanism of the transaction itself.

The discussion in this article remains normative and doctrinal, relying on statutory regulations, DSN-MUI fatwas, *fiqh mu'āmalah* principles, and secondary literature. Empirical dimensions such as investor behavior, institutional readiness, enforcement practices, and market responses have not yet been explored. Future research may therefore examine how regulators, securities companies, Sharia supervisory boards, and investors respond if short selling is eventually implemented in Indonesia. Further inquiry is also needed to determine whether an alternative mechanism can be developed that accommodates market needs without compromising the Sharia principles of ownership, possession, equitable risk allocation, and the prohibition of unjustified gain in lending transactions.

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Conflict of Interest Statement

The authors declare that there is no conflict of interest regarding the publication of this article.

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