

Analysis of Sharia Economic Law on the Transformation of Non-Halal Fund Management in Islamic Financial Institutions in DSN Fatwa

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Abstract

Islamic financial institutions have unique characteristics that base all operations on Sharia principles, including the management of sources and uses of funds. However, in its operational practice, Islamic financial institutions are sometimes faced with the potential for receiving funds from non-halal sources. Responding to this issue, DSN-MUI issued Fatwa Number 123/DSN-MUI/XI/2018, which provides comprehensive guidance regarding the management of funds originating from the non-halal sector. The purpose of this study is to describe how to analyze the management of non-halal funds after the issuance of fatwa by the National Sharia Council of MUI No. 123/DSN-MUI/XI/2018. This research adopts a descriptive-analytical qualitative method to explore the transformation of non-halal fund management in Islamic financial institutions, which is then analyzed through the perspective of Islamic economic law to understand the implications of the practices that occur. This study concludes that the transformation of the management of non-halal funds in Islamic financial institutions after the issuance of DSN fatwa No. 123/DSN-MUI/XI/2018 shows an effort to adapt and implement the principles of Islamic economic law in separating and distributing these funds. Nevertheless, uniform implementation and a comprehensive understanding of the concept of TBDSF Funds still require strengthening in various Islamic financial institutions. Non-halal funds are funds obtained from sources that are contrary to Islamic religious principles. Non-halal funds actually cannot be recognized as an institution's income because non-halal funds come from haram and shubhat funds. Therefore, its management and distribution must be fully directed for the benefit of the ummah or social welfare.

[Lembaga keuangan syariah memiliki karakteristik unik yang mendasarkan seluruh kegiatan operasionalnya pada prinsip-prinsip syariah, termasuk dalam pengelolaan sumber dan penggunaan dana. Namun, dalam praktik operasionalnya, lembaga keuangan syariah terkadang dihadapkan pada potensi penerimaan dana dari sumber yang tidak halal. Merespon hal tersebut, DSN-MUI mengeluarkan Fatwa Nomor 123/DSN-MUI/XI/2018 yang memberikan panduan komprehensif mengenai pengelolaan dana yang berasal dari sektor non halal. Tujuan dari penelitian ini adalah untuk mendeskripsikan bagaimana analisis pengelolaan dana non halal pasca dikeluarkannya fatwa Dewan Syariah Nasional MUI No. 123/DSN-MUI/XI/2018. Penelitian ini menggunakan metode kualitatif deskriptif-analitis untuk mengeksplorasi transformasi pengelolaan dana non-halal di lembaga keuangan syariah, yang kemudian dianalisis melalui perspektif hukum ekonomi Islam untuk memahami implikasi dari praktik yang terjadi.]

Penelitian ini menyimpulkan bahwa transformasi pengelolaan dana non-halal di lembaga keuangan syariah pasca dikeluarkannya fatwa DSN No. 123/DSN-MUI/XI/2018 menunjukkan adanya upaya adaptasi dan implementasi prinsip-prinsip hukum ekonomi syariah dalam memisahkan dan mendistribusikan dana tersebut. Namun demikian, penerapan yang seragam dan pemahaman yang komprehensif mengenai konsep dana TBDSP masih memerlukan penguatan di berbagai lembaga keuangan syariah. Dana non halal adalah dana yang diperoleh dari sumber yang bertentangan dengan prinsip-prinsip agama Islam. Dana non halal sebenarnya tidak dapat diakui sebagai pendapatan lembaga karena dana non halal berasal dari dana yang haram dan syubhat. Oleh karena itu, pengelolaan dan penyalurannya harus sepenuhnya diarahkan untuk kemaslabatan umat atau kesejahteraan sosial.]

Keywords: DSN Fatwa, Non Halal, TBDSP Funds

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INTRODUCTION

The role of Islamic financial institutions is none other than to create a prosperous and just society on the basis of economic democracy developed through sharia principles by prioritizing the values of togetherness, justice, equity, and usefulness (Hasan, 2009). The existence of Islamic financial institutions itself began to develop in Indonesia since it was initiated by Bank Muamalat Indonesia. The fresh air can only be felt by Islamic finance after the existence of the Banking Law, namely Law No. 10 of 1998. The occurrence of Islamic Bank development itself can increase due to the support of several related elements and also for several advantages (innovations) presented (Muhammad, 2014). The types of financial institutions with sharia principles in Indonesia are quite varied because some call them sharia financial institutions (LKS), sharia business institutions (LBS), and sharia economic institutions (LPS). As what is meant by LKS is a legal entity that, in the implementation of its financial business activities, is based on sharia principles and values. Meanwhile, LBS is a legal entity that, in the implementation of its business activities, is based on sharia principles. Meanwhile, LPS is a legal entity in the implementation of its economic business activities with sharia values but is not yet included in the LKS or LBS groups (Fatwa DSN Nomor 123/DSN-MUI/XI/2018, 2018).

The operation of Islamic financial institutions in principle will not be able to be separated from the name of non-halal funds, because it will definitely meet with sources of funds that are still doubtful of their validity. Non-halal funds themselves are all forms of collection of institutions that violate Islamic law, including interest from deposits/ demand deposits in conventional banks. In general, the inclusion of non-halal funds can occur when an emergency condition occurs (Kirana, 2020). The development of Islamic finance is followed by significant questions arising regarding the status of non-halal funds in the context of the operations of Islamic financial institutions. In fact, in some discourses, these funds have been categorized as “non-halal income”, which indicates the ambiguity of interpretation and accounting treatment of these sources of funds within the framework of Islamic finance.

Furthermore, problems arise among the public regarding different understandings of the concept of non-halal funds. The absence of standardized regulations in the

structuring and management of non-halal funds within Islamic financial institutions has the potential to trigger management and distribution practices that are not in accordance with sharia principles. Previously, prior to the issuance of DSN Fatwa Number 123 of 2018, there was a common practice where Islamic financial institutions integrated non-halal funds into the institution's income structure with the label of non-halal income. This condition raises fundamental questions regarding the validity of classifying non-halal funds as income of Islamic financial institutions and how the fund management system should be implemented accountably and in accordance with sharia principles.

The discourse on handling non-halal funds in Islamic financial entities has previously focused on issues such as late payment penalties and interest-based income. However, there is no adequate regulatory framework to limit and direct their utilization as operational guidelines for Islamic financial entities. In response to this polemic, the National Sharia Council issued provisions regarding the governance and allocation of TBDSP funds (Ariswanto, 2023). Nevertheless, the effectiveness of the conception of the TBDSP Fund contained in the DSN Fatwa as a normative reference in the management of non-halal funds by Islamic financial entities and its relevance in the theoretical framework of Islamic economic law is still a significant issue, thus requiring further academic elaboration.

Studies on TBDSP funds have previously been carried out by several researchers, the following is a description of the literature study related to this research framework. This study was initiated by Ariswanto in 2021 with a focus on analyzing the mechanism for collecting and distributing TBDSP funds at KSPPS BMT Bina Ummat Sejahtera Paciran Branch, analyzing the DSN-MUI foundation in establishing fatwas related to TBDSP funds and analyzing the implementation of DSN-MUI Fatwa Number 123/DSN-MUI/XI/2018 at KSPPS BMT Bina Ummat Sejahtera Paciran Branch (Ariswanto, 2021). Then Nursobah's research examines the application of *hîlah* in the fatwa of the Indonesian Ulema Council (DSN-MUI) regarding funds that are not considered halal (funds that cannot be recognized as income) (Nursobah, 2024). Lubby analyzed the implementation of the fatwa, which resulted in research showing that KSPPS Kopsim NU Batang has not made a special account to accommodate TBDSP funds that have been collected by the institution (Lubby, 2024). Meanwhile, there is still no study related to how the transformation of non-halal funds into TBDSP in DSN Fatwa No. 123 of 2018.

Based on the description of the facts above and given that the role of law is to develop Islamic economics, so that the discourse of non-halal funds and their relationship with the DSN-MUI Fatwa on TBDSP funds is very interesting to be described and described in a study. Seeing such facts and problems, the author is moved to conduct research on this topic with the aim of examining the transformation of TBDSP Fund management in LKS after the issuance of DSN Fatwa Number 123/DSN-MUI/XI/2018, using the perspective of Sharia Economic Law to understand the implications and innovations that arise in LKS efforts to comply with the provisions of the fatwa while maintaining its operational sustainability.

METHOD

This research uses qualitative research, which is a method used in describing in depth in an effort to provide responses, revisions, and other options as well as solutions to the problems of this research. (Nadzir, 1998). So that this research will describe the management of non-halal funds and then analyze it using a review of the concept of using TBDSP funds that have been regulated in DSN fatwa no. 123/DSN-MUI/XI/2018.

This type of research includes a literature study, research that is explored based on a literature review related to the management of non-halal funds by Islamic financial institutions after the issuance of the DSN fatwa which includes journals, books, laws and regulations, and other references that are still related. While the data analysis technique in this research is an inductive data analysis technique, namely a method for analyzing data starting from specific facts or problems and then concluded into a general form (Hadi, 2019). The author departs from empirical facts about the management of non-halal funds and TBDSF funds, especially those contained in the DSN-MUI Fatwa, then records, analyzes, and reviews then makes conclusions about the management of non-halal funds by Islamic financial institutions after the issuance of the DSN fatwa.

RESULT AND DISCUSSION

Theoretical Frameworks for Analyzing Non-Halal Fund Management

The development of the Islamic economy has made many parties realize that the legal certainty of a regulation is very important to answer the problems caused by the progress of Islamic economics in Indonesia lately. Changes and developments in Islamic economics in Indonesia cannot be separated from the point of view of political economy or political economic law, including those related to the regulation of non-halal funds. The following are several theoretical frameworks that can be used as material in parsing and analyzing the issue of non-halal fund management after the issuance of DSN fatwa number 123/DSN-MUI/XI/2018 in the view of Islamic economic law.

First, regarding changes in law, changes in law, according to Ibn Qayyim's perspective, occur due to changes in a fatwa. On the one hand, changes in a fatwa itself arise because of the transformation of the joints that surround a law. While the change in fatwa or the emergence of different laws is due to the place, era, intention, situation, and custom (Al-Jauziyah, 1996, p. 14). Revenue from Ibn Qayyim regarding changes in the law above essentially rests on the purpose of Islamic shari'a, which always boils down to and emphasizes the benefit of the people. Shari'a was presented to humans because the Prophet Muhammad SAW, had a goal to create justice, benefit, and virtue. So consequently, every rule or regulation that does not fulfill the elements of justice can be said to violate shari'a.

In line with Ibn Qayyim's opinion above, the formation of a rule of law must pay attention to one principle, namely the principle of legal certainty. As Gustav Radbruch has outlined the concept of the principle of legal certainty that has been quoted by Rahardjo. According to him, a law must have at least three basic values, including usefulness (*Zweckmassigkeit*), justice (*Gerechtigkeit*), and legal certainty (*Rechtssicherheit*) (Rahardjo, 2012, p. hlm. 19). The issue of legal certainty will be closely related to the principle of legal positivism. The connection in this case is in its purpose, namely to provide a firmness to positive law. As law in the positivistic area requires the existence of regularity and certainty in order to encourage the performance of the legal system in a structured and effective manner (Buana, 2010, p. hlm. 34). Therefore, legal certainty in this case must be realized to be used as a means to protect the public interest. On the other hand, the existence of legal certainty also functions as a vital driver of efforts to uphold the justice of its society, the trust of its citizens, and the authority of its government (Halim, 1987, p. hlm. 166.).

The issue of non-halal funds so far has received a lot of attention from researchers. Literature review that can be used as a reference in developing and identifying the specificity of research in this paper, namely research conducted by Kirana with the title "Management of Non-Halal Funds for Social Infrastructure Activities in the Perspective of Islamic Law (Case Study at Amil Zakat Institution Daarut Tauhid Care Metro) (Kirana, 2020). The results of this study found that the management of non-halal funds used for the

benefit of social infrastructure at Daarut Tauhid Care Metro in the perspective of Islamic law is permissible. Then the research conducted by Lenap with the title raised, namely "Disclosure of Non-Halal Income in PSAK 109 and Practice." (Lenap, 2019). This research itself resulted in the conclusion that it turned out that Islamic commercial banks during the 2015, 2016, and 2017 periods had succeeded in disclosing non-halal fund reports properly in accordance with PSAK 109.

Non-Halal Funds of Islamic Financial Institutions

Non-halal funds for Islamic financial institutions are income obtained from sources that are contrary to the principles of muamalah. The specific principles of muamalah consist of permissible (commanded) activities such as halal transaction objects, the willingness of each party to the transaction, and trustworthiness. As well as the existence of prohibited activities such as usury, gharar, tadbis, and other prohibitions that cause muamalah contracts to be canceled (Ernawati, 2020). Meanwhile, according to Adiwarmarman, transactions that are prohibited in Islam occur due to three factors, namely, forbidden because of the substance, forbidden because of non-essentials, and invalid contracts (Karim, 2011).

Non-halal funds are very important to be disclosed by Islamic financial institutions because, based on PSAK 109, Islamic financial institutions are required to make financial reports in which there is conformity with sharia principles. Regulations related to non-halal funds in the area of Islamic financial institutions as stated in PSAK 109. The management of non-halal income refers to the provisions in point 32, namely that what is called non-halal revenue is all income from activities that are not in accordance with sharia principles. Then in point 33 it is stated that revenue from non-halal funds whose income is different from the sources of zakat, infaq/shadaqah, and 'amil funds. While the distribution of these funds must be in accordance with sharia principles (Lenap, 2019).

The definition of non-halal funds from the Zakat Forum is funds obtained from conventional banks where these funds are a facility provided to recipients to facilitate a transaction. Meanwhile, non-halal funds come from external and internal sources of financial institutions. Infaq, shadaqah, and hibah are some of the internal sources. On the other hand, external funds usually come from several transactions that include fines, bank interest, and other non-halal things (Hisamuddin & Sholikha, 2014). However, it needs to be limited that what is meant by non-halal funds in this case is only in the second point, namely, external.

PSAK 101 states that non-halal income is part of the source of income of policy funds. DSN in this case also emphasizes that what is referred to as non-halal funds is all income or revenue derived from non-halal activities, or in Arabic terms, *al-kasbu alghairi al-mayru'* (Hartanto et al., 2019). Generally, non-halal funds listed and disclosed by LKS in the financial statements relating to transactions of Islamic financial institutions, the treatment lies in the interest generated from deposits in conventional banks, including receipt of funds from other banks and receipt of interest (Lenap, 2019).

The regulation also requires all Islamic financial institutions to be able to present the presentation of reports related to the use of non-halal funds as a principal instrument in the financial statements. So that because of this, non-halal revenues need to be described explicitly and in detail in the financial statements of Islamic banking. The regulation of non-halal funds in PSAK aims to create uniformity in the submission of financial reports in this case related to non-halal funds. As the PSAK itself functions to make it easier for the public to obtain information regarding the sources and uses of non-halal funds from the report (Risna, 2020).

TBDSP Funds at Islamic Financial Institutions

The National Sharia Council, hereinafter referred to as DSN, is an institution under the auspices of the Indonesian Ulema Council, causing the existence of DSN structurally within the Indonesian Ulema Council. In other words, the existence of this institution is intended as a means for MUI in an effort to resolve new sharia economic problems, both individually and institutionally (Gayo & Taufik, 2012). The National Sharia Council can spawn a fatwa in providing regulations related to the process of rotating assets among Muslim communities in Indonesia. The method used by the National Sharia Council in terms of the need to formulate a fatwa on a sharia economic issue is a scientific method on the initiative and guidance of fiqh scholars in deriving the law (Rasyid & Bahri, 2020). The absorption of a DSN Fatwa in the order of the Indonesian State legal system is possible by legitimizing it into the applicable laws and regulations and translating it into implementative ideas (Wahid, 2016). The legal force of the DSN Fatwa, when examined in terms of positive law, feels less binding. This condition is influenced by the fact that a fatwa can be said to have binding legal force if it has been strengthened through legitimization from authorized government elements in laws, Bank Indonesia regulations, OJK regulations, and others (Hasanah, 2017).

The National Sharia Council, in looking at the issue of non-halal funds, then regulates it in fatwa number 123/DSN-MUI/XI/2018 regarding the use of TBDSP funds. These funds are funds obtained or owned by LKS, LBS, and LPS but may not be recognized as wealth or income of the institution. So that means TBDSP funds must be separated from LKS income. TBDSP funds generally originate from all income placed in activities that violate sharia principles, where LKS is unable to avoid the potential for such income in its operations. The TBDSP funds are generated by LKS from certain transactions such as interest income classified as usury from conventional financial institutions, from sharia transactions that do not meet the limits and conditions (terms and conditions), from fines (sanctions) for not fulfilling obligations, and from funds whose owners are unknown or the owner is known but not found, or the owner is known but the cost of returning it is much more. Funds with unknown owners can then be recognized as TBDSP funds after 12 months of announcement, unless otherwise stated in the law. Some funds generated from transactions that are not in accordance with sharia must then be made a separate (special) account to hold TBDSP funds by Islamic financial institutions (Fatwa DSN Nomor 123/DSN-MUI/XI/2018, 2018).

TBDSP funds themselves must be used based on the provisions stipulated in Fatwa DSN-MUI as follows. First, the funds must be used directly for the benefit of the ummah and the public interest as long as it does not violate sharia principles. Second, the distribution is only allowed for direct assistance and donations that are used for the purposes of overcoming disaster victims, for the construction of public facilities, donations for musholla/mosques and their supporters, supporting media for Islamic educational institutions, socialization of sharia business education and literacy, providing scholarships for outstanding students and students as well as for underprivileged children, faqir-poor, productive activities for dhuafa', and for other social activities that are in accordance with sharia values and provisions.

Regarding the method of channeling funds, LKS may actually channel these funds either directly or in collaboration with other parties (community or social institutions). The utilization of these funds cannot be channeled arbitrarily, because the DSN fatwa has confirmed that TBDSP funds actually cannot be used by LKS for activities that smell of product promotion or company advertising; for the purposes of employee training and

education, payment of zakat, taxes, and waqf; for payment and paying off arrears from customers; and for other activities not in accordance with sharia provisions. LKS, in channeling these funds, must be with the knowledge or permission of the Sharia Supervisory Board. Meanwhile, if the funds are intended for productive activities, they must be channeled in accordance with sharia rules and applicable regulations.

Analysis of Non-Halal Fund Management After the Issuance of DSN Fatwa in the Perspective of Sharia Economic Law

Islamic financial mechanisms are rooted in Islamic financial principles, which prohibit the charging or payment of interest (*riba*) and the existence of uncertainty or fraud (*gharar*) in financial transactions (Firdaus, 2025). Non-halal income does not contribute to the financial performance or health level of Islamic banks because of its incompatibility with sharia principles. Non-halal income is used solely for charitable activities, not directly improving operational performance or financial health (Darmawan & Wandirah, 2025). In supporting these activities, the practice of legal *istinbat* is needed in the fatwas issued by DSN MUI, given the characteristics of the rule itself, which is expressed in a short narrative but has a broad scope of meaning, so that the Ulama are facilitated in determining a law on the problem of non-halal income (Bianda & Wibowo, 2025).

The universal rules that must be adhered to regarding the treatment of funds derived from non-halal activities include some of the following matters. First, funds sourced from non-halal activities are any income whose source is from transactions that violate the sharia. Second, scholars agree that this income is a non-halal asset. Conversely, the portion of capital or loans (*ashlul qurudh*) is halal. Third, non-halal income should not actually be used as a source of savings or deposits but must be cleaned by giving it for social purposes. Fourth, if it is used inappropriately, then the consequence is sin. The financial institution that receives and manages it does not know it is not sinful, but if the financial institution knows it, it must be channeled for social purposes (Maulidha & Bayyinah, 2014).

Initially, the concept of non-halal funds or the operations of financial institutions is often also termed “benevolent funds” or non-halal income. Regulations related to the management of non-halal funds are only limited to not violating sharia principles either theoretically or practically as contained in the relevant DSN fatwa. The presentation and reporting of non-halal funds have previously been regulated in PSAK 101 and 109. As previously discussed, non-halal funds must be disclosed specifically and must be designated for social interests. However, there is no specific regulation that can regulate the extent of management of non-halal assets in LKS, whether it can be called income, and what the technicalities are.

TBDSP funds are still quite new or even less familiar in the community. These funds were more often labeled as social funds, non-halal funds, or non-halal income. Regulations related to non-halal funds are only limited to the concept that they must then be used for social purposes. However, there are no clear and specific provisions regarding the method of obtaining or the source of these funds, to what extent they are managed, and what the conditions are for their distribution. Fatwa No. 123 of 2018 concerning the use of TBDSP funds can mean that the concept of non-halal funds should not be considered as income for Islamic financial institutions. So that through the DSN-MUI fatwa, the term non-halal funds is more accurately referred to as TBDSP funds.

The utilization of non-halal funds, which is actually not the income of Islamic financial institutions, is formulated and formalized through DSN fatwa no. 123/DSN-MUI/XIII/2018 on the basis that LKS, in carrying out its business, needs some guidelines for using these funds. No less urgent because there are no technical rules regarding

dhawabith (provisions) and *hudud* (limits) related to the management of TBDSF funds. Based on these considerations, after that, DSN felt the need to formulate a fatwa on the matter. Given that the creation of DSN institutions is inseparable from efforts to realize the aspirations of Muslims in Indonesia regarding economic matters and synergize in applying the essence of finance in accordance with shari'a guidance.

Islamic financial institutions in carrying out business activities, in fact, cannot be separated from the existence of gharar funds, whose status and legal validity are still debatable (Pamuji et al., 2022). So many LKS still get income that has gharar character, such as from interest on funds deposited in non-sharia bank accounts, as well as funds from fines for late payments. One of the non-halal sources of funds obtained by LKS is the interest received from savings or giro deposits on depositing funds in non-sharia bank accounts that do not use sharia contracts (Zuki et al., 2025). Departing from this fact, managing these funds requires high attention from DSN to formulate it in the form of a fatwa. The regulation is a reaction to the unrest of some parties who hope for specific limits and rules regarding the use of non-halal funds in the scope of the Islamic economy.

Non-halal funds of Islamic financial institutions are sourced from the following revenues, including interest income (*riba*) from conventional financial institutions, Islamic economic activities and activities that do not meet the limits and conditions, sanction funds (penalty) due to non-fulfillment of obligations on an agreement, and funds whose owners are unknown or the owner is known but cannot be found, or the owner is known but the cost of returning it is much more.

The existence of bank interest derived from deposits in conventional banks is actually something that most of the operational arrangements have not been able to stay away from Islamic financial institutions. The interest obtained by the LKS actually cannot be included in the income but must be allocated to the benevolent fund. As emphasized in the PSAK, the benevolent fund may be used for donations, productive benevolence, and the benefit of the people. This matter can also be strengthened by the provisions of the Qur'an, which prohibit the practice of *riba* as contained in the following fragment of verse: (Departemen Agama Republik Indonesia, 2016)

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَاَ

Meaning:

..., but Allah has justified buying and selling and forbidden usury.. (Q.S. *Al-Baqarah* (2): 275)

One of the non-halal funds also comes from funds whose owners are unknown, or the owners exist but have not been found, or the owners are known but the cost of returning them is much more. These funds can be categorized as funds that are *syubhat* (unclear) because the owner is unknown. Islam in viewing things that are haram, halal, and *shubhat*, can be described through the following hadith: (Asqalani, 2011)

عَنْ أَبِي عَبْدِ اللَّهِ النُّعْمَانِ بْنِ بَشِيرٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ يَقُولُ : إِنَّ الْحَلَالَ بَيْنَ وَإِنَّ الْحَرَامَ بَيْنَ وَبَيْنَهُمَا أُمُورٌ مُشْتَبِهَاتٌ لَا يَعْلَمُهُنَّ كَثِيرٌ مِنَ النَّاسِ فَمَنْ اتَّقَى الشُّبُهَاتِ فَقَدْ اسْتَبْرَأَ لِدِينِهِ وَعَرْضِهِ وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ كَالرَّاعِي يَرَعَى حَوْلَ الْحِمَى يُوشِكُ أَنْ يَرْتَعَ فِيهِ أَلَا وَإِنَّ لِكُلِّ مَلِكٍ حِمَى أَلَا وَإِنَّ حِمَى اللَّهِ تَحَارِمُهُ أَلَا وَإِنَّ فِي الْجَسَدِ مُضْغَةً إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ وَإِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ أَلَا وَهِيَ الْقَلْبُ - رَوَاهُ الْبُخَارِيُّ وَمُسْلِمٌ

Artinya:

Indeed, what is lawful is clear, just as what is unlawful is clear. In between there is something doubtful that most people do not know about. Whoever avoids the doubtful matters has saved his religion and honor. Whoever falls into doubtful matters may fall into haraam matters. (*HR. Bukhari 2051 dan Muslim 1599*)

In addition, regarding the issue of non-halal funds, we must also pay attention to the following rules. First, all forms of muamalah activities are basically permissible unless there is evidence that forbids it. Second, any debt that brings benefits to the debtor is a form of usury if required at the beginning and has become a custom or habit. Third, wherever there is benefit, there is Allah's law.

The issue of TBDSF funds for Islamic financial institutions also cannot be separated from the review of rules relating to the aspect of separating halal and non-halal assets, namely at-tafriq bainal halal wal-haram. This rule is also one of the considerations of DSN in formulating a fatwa, especially in answering the debate on non-halal funds for Islamic financial institutions in Indonesia. Indeed, wealth or money, according to fiqh, is not a haram object because of its substance or 'ainiyah, but it is haram because of the way it is obtained that is not in accordance with sharia, or identically called lighairih. Therefore, the mixed assets should be able to separate the halal and haram aspects in terms of how to obtain them. So that the consequences of halal funds will be recognized as legitimate income, while non-halal or haram funds must be devoted separately, while the allocation is intended for the public interest (Amin, 2017).

This statement can be strengthened as a basis for referring to the explanation of Ibn Shalah as quoted by as-Suyuthi, which essentially reveals that if lawful money is mixed with unlawful money and cannot be distinguished, then the solution is to separate the unlawful portion and utilize the remaining lawful part. Meanwhile, the unlawful portion that is removed, if the owner is known, must be returned, or if not, it must be given as charity (As-Suyuthi, 2006, p. 254). Ibn Taymiyyah also expressed a similar view, stating that if a person's lawful property is mixed with unlawful elements, then the value of the unlawful portion must be removed, and the remaining part is considered lawful (Taimiyyah, n.d., p. 273).

DSN uses the theory of *tafriqul halal 'an al-haram* in its fatwas on the basis that Islamic financial activities or transactions in Indonesia cannot be completely separated from the partnership with the conventional financial system that first existed (Renie et al., 2022). The relationship is created because Islamic financial institutional elements are still closely related to conventional financial institutions both in terms of product development and capital or profit investment (Fakhruddin et al., 2024). Likewise, related to non-halal funds, in its operation it will definitely continue to go hand in hand in the aspect of managing institutional income. So it becomes a necessity that funds sourced from the non-halal sector must be separated separately from the institution's income and must be channeled for social purposes.

Based on the description of several considerations and arguments above, the actual non-halal funds in the LKS cannot be recognized as an institution's income because non-halal funds come from haram and shubhat funds. Therefore, its management and distribution must be fully directed for the benefit of the ummah or social welfare. These funds must be designated and utilized for the benefit of Muslims or the public interest directly. So that Islamic financial institutions are not allowed to use these funds for the purposes of zakat, waqf, and other institutional activities.

The mention of non-halal funds as a fund that cannot be recognized as income (TBDSP funds) is actually due to the fact that the use of non-halal funds for Islamic finance has not been able to represent the shari'a mission, so that there is no misinterpretation in the ZISWAF area and these funds can in principle be used for certain things; in other words, non-halal funds are not completely haram without being able to be used. As the concept of TBDSP funds is funds obtained or owned by LKS, LBS, and LPS, they may not be recognized as wealth or income of the institution. This means that the position of TBDSP funds must be separated from the general income of the institution. The transformation of the provisions of non-halal funds towards the concept of TBDSP funds as stipulated in DSN fatwa No. 123/2018 is undeniably aimed at presenting an element of legal certainty and serves to translate the values and principles of Islamic shari'a to the economic aspects of Muslims in Indonesia as a whole. This implies that the existence of fatwa number 123 of 2018 related to TBDSP funds provides answers and positive responses from DSN to the need for a change in the regulation of non-halal funds in Islamic financial institutions.

A regulation in the legal system will always be dynamic, which has the potential to undergo certain changes. Issues surrounding non-halal funds for Islamic financial institutions are also inseparable from the regulations related to them. The regulation in PSAK then followed up with the making of the DSN-MUI Fatwa on TBDSP funds, which is part of the changes caused by the need in terms of regulating the management of provisions and limits as well as distribution. So that Islamic financial institutions in allocating non-halal funds must be adjusted to the DSN-MUI Fatwa. The renewal of the regulation in the fatwa proves that a rule of law can change based on social change. As Ibn Qayyim emphasized, legal changes, according to Ibn Qayyim's perspective, occur due to changes in a fatwa. On the one hand, changes in a fatwa itself arise because of the transformation of the joints that surround a law (Tahir, 2024). While the change in fatwa or the emergence of different laws is due to place, era, intention, situation, and custom.

The regulation of non-halal funds into TBDSP funds has the consequence that funds sourced from transactions that are contrary to the permissibility of sharia' must be separated and cannot be recognized as LKS income. The changes in the above arrangements are essentially always based on the purpose of shari'a, which always emphasizes the benefit of the people. Shari'a was presented to humans because the Prophet Muhammad, SAW, Saw the aim of creating justice, benefit, and virtue. So consequently, in every rule or regulation, if it does not fulfill the elements of justice, it can be said that it violates the nature of the shari'a.

The establishment of the fatwa on TBDSP funds is part of the National Sharia Council of MUI's goal to create clarity of legal rules for the management of non-halal funds for Islamic financial institutions so that it will be able to create legal certainty. Given that a rule of law made by the regulator must at least be based on the principle of legal certainty. The issue of legal certainty will be closely related to the principle of legal positivism. The connection lies in its purpose, namely to provide a firmness to positive law. As law in the positivistic area requires the existence of regularity and certainty to encourage the performance of the legal system in a structured and effective manner. Therefore, legal certainty in this case must be realized to be used as a means to protect the public interest. On the other hand, the existence of legal certainty also functions as a vital driver of efforts to uphold the justice of its society, the trust of its citizens, and the dignity of its government.

CONCLUSION

The issuance of fatwa DSN-MUI Number 123 of 2018 indicates a need for transformation in the management practices of non-halal funds within Islamic financial institutions, which may not have previously had guidelines as clear and comprehensive as those outlined in this fatwa. Non-halal funds for Islamic financial institutions are revenues derived from sources that contradict the principles of muamalah. Non-halal funds should not be recognized as income for the institution because they originate from funds that are haram or syubhat. Therefore, their management and distribution must be directed entirely for the benefit of the community or social welfare. The concept of TBDSP funds is then introduced, which refers to funds acquired or owned by Islamic financial institutions, but should not be recognized as income or wealth of the institution. The funds must be separated from the general income of the institution as stated in the Fatwa DSN No. 123/DSN-MUI/XI/2018. The transformation of the management of non-halal funds in Islamic financial institutions following the issuance of the fatwa DSN No. 123/DSN-MUI/XI/2018 indicates an effort toward adaptation and implementation of the principles of Islamic economic law in separating and distributing such funds. Nevertheless, uniform implementation and a comprehensive understanding of the concept of TBDSP funds still require strengthening across various Islamic financial institutions.

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