



FUND OWNERSHIP OF SHARIA BANKING ACCORDING TO ISLAMIC ECONOMIC POLITICAL PERSPECTIVE

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ABSTRACT

The ownership of Islamic bank funds that are used as business capital comes from customer deposits from investors. This has an influence on the ownership status of the fund. Therefore, this study will describe the ownership of Islamic bank funds according to the perspective of Islamic political economy. This article uses a descriptive literature research method taken from various factual references with a focus on using a normative juridical approach. This type of research is a qualitative research using data analysis through several steps such as focusing the data, presenting funds and drawing conclusions. The results of this study reveal the fact that the ownership rights of funds in Islamic banking come from the first party funds as the bank's founder, the second party funds as shareholders and third party funds as investor customers. Ownership of these funds cannot be separated from the contract mechanism used, especially in the use of third party funds. So that the contract used is the cause of Islamic banks having ownership rights to the use of these funds for business activities guaranteed by laws and regulations. The guarantee shows the role of Islamic economic politics through regulations governing the operational system of Islamic banking. This provides legal implications and certainty for Islamic banks in using investor funds for business activities through the mechanism for channeling funds and services.

Keywords: Funds, Islamic Banks, Legal Protection, Islamic Economic Politics

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INTRODUCTION

Individual ownership of assets is one of the main discussions in the economic system of a country. Because the economic system of a country is based on the extent to which ownership institutions run along with the role of policy makers that underlie all economic activities (Danupranata, 2006). The economic system that is used as the basis is also one of the determinants of the nature of individual ownership whether or not the government can recognize it as the organizer of state power.

The Pancasila economy is the economic system adopted by Indonesia. All economic activities are based on the values of Pancasila as the basis and ideology of the state (Rinawati, 2020). So that the economic system is oriented to the application of religious moral ethics in every economic activity (first principle), a system that is not about exploitation or extortion (second principle), prioritizing the application of the principles of togetherness and kinship (third principle), prioritizing the economic life of the people in fulfilling people's lives. (fourth principle) and is oriented towards realizing justice that can be felt not only by individuals but the life of the entire nation and state community (Pranoto, 2018).

Individual ownership is recognized by the state as long as its use does not conflict with the public interest. The potential and creativity of every citizen get free space. So that people are given the freedom to choose jobs according to their will in order to get the right to meet the needs of a decent life. That's according to Akbar and Ghufroon, (2019) shows that the Pancasila economic system is in accordance with the spirit of Islamic economics and has a common goal in the context of realizing social justice that leads to community welfare.

The political spirit of Islamic economics in Indonesia is marked by the establishment of Islamic banking as the first financial institution to run its operational system based on sharia principles (Nurjaman dan Ayu, 2021). That is, the entire mechanism of its activities is carried out by taking into account norms that are not contrary to Islamic sharia such as usury, gambling (speculation), containing elements of *gharar* and *dharar* as well as other prohibited activities. The function of Islamic banks is the same as the function of conventional banks, namely providing service facilities in bringing together the real sector with the financial sector (Raharjo & Elida, 2015). So that the service mechanism of Islamic banks cannot be separated from the function of banks in general, namely to collect funds, distribute funds and provide services.

When Islamic banks provide credit/financing to customers who need funds. So the funds provided by Islamic banks are funds resulting from carrying out the function of raising funds through savings products, current accounts and deposits

or called third party funds. In addition, funds given to customers who apply for financing also come from funds from shareholders and also funds from bank founders or referred to as second party funds and first party funds. Especially according to Ilyas (2018) third party funds are the largest funds compared to first party funds and second party funds. Indirectly, Islamic banks use a lot of customer funds in the mechanism for channeling funds through such financing. So that Islamic banks have three sources of funds that can be used as capital in running a profit-oriented business through the mechanism of channeling funds (financing) and other services. This is as Ro'ikayah & Laila, (2021), stating that the use of third party funds and the amount of financing provided have a significant influence on Islamic banks to earn profits.

According to the concept of ownership in Islamic economics, if a person or legal entity has the right to own property, then he may use it according to his will. That is, it can be sold, given to other people, used as business capital, used as collateral or used as it pleases as long as it does not conflict with the public interest (Sahrani & Abdullah, 2011). When a customer's funds are deposited with a sharia bank, then the sharia bank uses the deposited funds to provide business capital to other customers in the mechanism of channeling funds (financing). Then it will affect the position of ownership of the customer's fund status.

As with previous research, when looking at third party funds, which are the largest funds and are widely used by Islamic banks for the mechanism of channeling funds through financing instruments. So this study will reveal the authority of Islamic banks on the use of third party funds that are used as funds in the financing mechanism. Then what if the use of investor customer funds in the mechanism for distributing funds to customers using financing facilities for business capital experiences losses. Who is responsible for the integrity of the customer's funds and how does the legal umbrella provide guarantees for the financing mechanism that uses the customer's funds? Based on previous research gaps, this study will discuss the concept of Islamic banking fund ownership according to the perspective of Islamic economic politics. So that this research is expected to be able to provide legal certainty to the concept of ownership of funds in Islamic banking according to the perspective of Islamic economic politics.

LITERATURE REVIEW

The Nature of Islamic Economic Politics

In relation to Islamic economic politics, there are several equivalent words as an integrated unit and have become widely used equivalents, namely the equivalent of legal politics, economic politics and Islamic economics. Legal politics is interpreted as a mechanism for drafting legal provisions and their implementation can be built and enforced so that it shows a measurable direction in achieving goals

(Hasnita, 2017). The directions and objectives set through the preparation of legal provisions can be used as a foothold or basis in pursuing and making law a mechanism for achieving state goals. Legal politics can also simply be interpreted as an answer to a question about where the law will be directed in the perspective of state government in order to realize the goals to be achieved (Irawan, 2018).

In other words, legal politics is a policy step for implementing state power to justify something related to the process of forming, implementing and also enforcing the law (Isharyanto, 2016). Legal politics has a position as a mechanism for formulating the direction of the development of the legal order, both from the legal position that has been and is being applied (*ius constitutum*), as well as the legal position that will be enforced (*ius constituendum*) (Hakim, 2011). Looking at some of the definitions above, Mahfud MD said that legal politics has two inseparable sides, namely First, as a direction for lawmakers (state institutions) to formulate and formulate legal provisions. Second, as a tool for assessing and criticizing the extent to which the laws that have been established are in accordance with legal norms and rules in achieving state goals.

Meanwhile, political economy is defined as the goal to be achieved by the legal provisions that are used as the basis in order to solve the problems that govern human beings (Sumar'in, 2017). From this definition, there are several steps that need to be considered, namely what goals the government of a country wants to achieve for the economy and which legal provisions are used as the basis for this achievement. So that some of these steps are expected to determine the solution to the economic problems faced.

Islamic economics is defined as a science that helps humans in realizing prosperity for themselves through the allocation and distribution of scarce resources in accordance with the goals set based on the principles of Islamic law (Prasetyo, 2018). Islamic economics is often referred to as sharia economics and can also be interpreted as a business activity carried out by individuals or legal entities in the context of meeting human needs, both commercial and non-commercial, both on a micro scale and macro scale and these activities are carried out based on economic principles. sharia.

So based on the explanation of the equivalent words above, Islamic economic politics is interpreted as a guarantee for the fulfillment of all primary needs of each person as a whole, and encourages the fulfillment of secondary and tertiary needs in accordance with their needs as individuals who live in the community. There are two provisions that need to be underlined regarding the above definition: First, the fulfillment of the primary needs of every citizen which has implications for

increasing the standard of living of the community. Second, the use of Islamic law which is the basis for all economic activities.

Indirectly, Islamic economic politics provides guidelines for achieving economic prosperity and prosperity for individuals and positions religious values as a reference that must be upheld. As an illustration of political economy, Islam positions itself as a way of how an individual fulfills the primary needs of his life by paying attention to his culture and environment. When an individual is not able to meet the needs of his life, then his closest relatives or neighbors are required to help meet his needs. As for when relatives and neighbors do not help, the state must be present to provide guarantees for the necessities of life. Thus, Islamic economic politics stands on a concept, namely carrying out all economic activities based on Islamic legal norms that must be firmly held by each individual and carried out by the state as an authority that has the authority to provide legal certainty in ensuring the primary needs of its people.

Ownership in Islamic Economic Political System

The capitalist economic system assumes that humans have the right to control the universe, so that humans are free to exploit economic resources according to their interests. Even though the control of these economic resources is contrary to the public interest (Effendi, 2019). As for the socialist economic system, humans do not have the right to control economic resources, so ownership is the right of state intervention. In other words, there is a significant difference between the two economic systems regarding property rights, where capitalists uphold individual rights while socialists respect the collective rights of society or within the scope of state power.

Seeing this, the position of the Islamic economic system is in the middle in looking at the concept of ownership, both individual ownership and collective ownership. That is, the Islamic economic system gives freedom to each individual to own property without limiting the form and type of business carried out as well as the amount of wealth owned. However, Islamic economics only provides limits on how an individual acquires wealth and uses it, which must remain within the corridor of sharia provisions (A. Akbar, 2012). An individual in obtaining property is given freedom freely with limitations that must not conflict with the public interest and even oppress the rights of other individuals. In addition, the way to obtain assets is not something that is prohibited by sharia, such as committing state money laundering, committing theft, carrying out liquor business activities and even becoming a drug dealer and all other business activities that are prohibited by sharia.

Like wise in using property ownership, an individual is given the freedom to use it freely. But again, Islamic law provides a limit that in using assets, it should

not be wasteful and even should not be stingy and that in every property we have, there are actually other people's rights inherent in it, whether distributed through zakat, infaq and alms or distributed for public purposes such as waqf. and grants.

Indirectly, the Islamic economic system positions itself in view of the concept of ownership for individuals that can be carried out freely but still within reasonable limits and in accordance with sharia provisions. This shows that Islamic economics pays great attention to providing justice, equity and efforts to liberate everyone from social and economic inequalities through the wise use of natural resources and providing benefits for everyone (Arwani, 2017).

The basic law states that legal property is owned by a person or legal entity unless the property is prepared for use in the public interest. So in Islamic economics, there are two kinds of ownership, namely (Leli, 2019): First, perfect ownership. That is, ownership of an asset as well as the right to use it. For example, if someone owns a house, then apart from having ownership of the house, they are also allowed to use it. Second, ownership of the benefits only. That is, a person has the right to an asset but only the right to use it. For example, if someone rents a house, then he only has the benefits of the house, not the right to own the house.

The property owned by each individual is actually not absolute. This means that the property owned is only limited to ownership rights in terms of spending and utilization. Although the owner of the property can exclusively restrain other people from using the property without his permission, but essentially everything on this earth belongs to Allah SWT (Antonio, 2018). Islamic economics positions humans as representatives (caliphate) of people's lives in utilizing their assets. This will affect the existence of limits or controls in the concept of property ownership (Arif, n.d.). So that Islamic economics in viewing the concept of ownership will not be separated from the social dimension as described above. When society wants it, then humans as representatives must be able to put personal interests above the public interest. This is also in accordance with the opinion of Abu Ubaid, a Muslim scholar who spoke about the concept of justice in terms of ownership (Nurjaman & Danil, 2020).

In Islamic economics, there are reasons for ownership, including (Ghazaly, Ihsan & Shidiq, 2018): First, *ihraz al-mubahat*, mastery of property ownership that has not been owned by other people from a public place. For example, someone looks for firewood in the forest, collects stones and sand in the river, catches fish in the sea and so on. When he brought the firewood, stones, sand and fish to his house, they became his property. Second, *al-khalafiyah*, mastery of property ownership upon the death of a person. For example, getting an inheritance from his heirs who died. Third, *al-tawallud min al-mamluk*, mastery of property ownership over the

proliferation of property owned. For example, a person has profits from trading, has fruit from a planted tree, has children of livestock from his mother and so on. Fourth, *al-uqud*, mastery of property ownership through transactions. For example, owning a house by buying and so on.

Based on the explanation of the causes of ownership above, basically the concept of ownership in Islamic economics will narrow down to three aspects (Sirajuddin & Tamsir, 2018): First, work that will give birth to control of assets through transactions on the results of the work done. Second, the assets given by others through the distribution of zakat, alms infaq, grants, waqf and so on. Third, the assets given by the state for the results of the management and development of assets of a general nature. Either distributed in the form of public facilities, educational services, health or in the form of cash assistance to those who are entitled to receive it.

As for when it is narrowed down again, then work is the only factor that causes someone to get ownership of property. Because waiting for the results of the gifts of others and the state is not continuous, while humans must fulfill their needs. Then, gifts made by other people are actually because they have excess assets over the results of their efforts as well as the state. Thus, when working as a way for someone to get ownership of property, the political economic position of Islam on the concept of ownership is through how legal provisions bridge a person in doing work in order to fulfill his life needs by owning property for the results of the work done.

Then, when politics is interpreted as a way to realize the expected goals. While the concept of ownership is interpreted as a person's mastery of something in the form of property which is nothing but to fulfill his survival for the fulfillment of his primary needs and even his secondary and tertiary needs. So the position of Islamic economic politics on the concept of ownership becomes an integrated unit in the form of a person's work activities to fulfill his life needs.

METHODOLOGY

This study uses a descriptive method of literature. Because the object of research is included in the type of qualitative research. The purpose of this study is to analyze the ownership of Islamic bank funds according to the perspective of Islamic political economy. This will explain the extent to which regulations are drawn up based on political events (formation of regulations) regarding the object of research, namely the authority of Islamic banks in using customer funds for business activities.

The data sources in this study consisted of two, namely primary data sources and secondary data sources. The primary data of this research was obtained in the form of laws and regulations in accordance with the hierarchy of the national legal

system in Law Number 12 of 2011 concerning the formation of laws and regulations. This primary data is organized into several regulations, namely Laws, Financial Services Authority Regulations (POJK), Bank Indonesia Regulations (PBI) and DSN/MUI fatwas which are legitimized by these laws and regulations. That is, the substance of the fatwa is used as a reference in the formation of related laws and regulations, so that it has a binding position for all sharia economic actors, including Islamic banks. Therefore, this study uses a normative juridical approach, which is an approach that focuses on principles and rules that are conceptualized as legal norms originating from legal sources (Handayani, 2020). The secondary source data comes from various supporting literature such as books, scientific articles (journals, theses, theses and dissertations) and other literature related to the object of research to be studied.

The next step is to analyze the data through three stages, namely (Handayani, 2020): 1). Reducing data, which is a process of focusing and narrowing the raw data that has been obtained into meaningful information. After the data regarding the ownership of Islamic banking funds were obtained, the authors conducted data selection. 2). Presenting data, which is a process of placing or presenting data from the selection process in the form of tables, matrices, graphs, narratives and other forms. In this case, the author presents the data in a descriptive narrative so as to make it easier for the author to carry out the analysis at the next stage. 3). Concluding data, which is a process of taking the essence of the data presentation process into a common thread as a conclusion that is the result of this research. The conclusion is expected to become a new idea in the form of an integrated narrative in a statement that has substance in the form of facts and explanations.

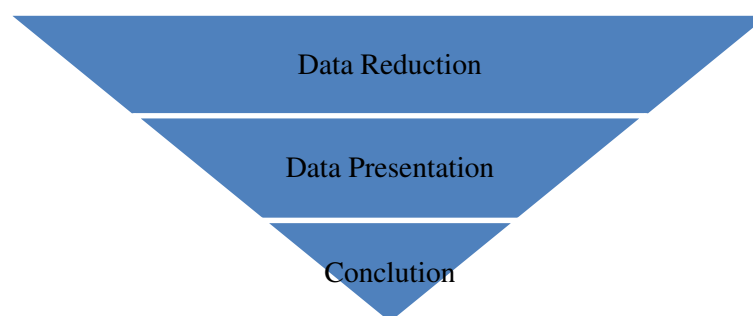


Figure 1

Research Data Analysis Process

RESULT

Islamic Banking Fund Ownership and Use

Islamic bank as a financial institution with a legal entity, conducts business activities in order to gain profit. Islamic banks as legal entities can be owned by Indonesian citizens (WNI), either individuals or legal entities or a combination of Indonesian citizens and foreigners or owned by local governments. This is in accordance with Article 9 of Law Number 21 of 2008 concerning Islamic Banking. In the business activities carried out, of course, Islamic banks have funds that are used as capital in developing their business. The capital must of course come from halal sources and in accordance with sharia principles. Because Islamic banks are financial institutions that have special legal rules and procedures as a form of commitment to implementing sharia principles in each of their operational systems (Muhammad, 2014).

In addition, funds that are used as capital must not be mixed with other funds that are haram according to sharia. So according to the Decree of the Board of Directors of BI No. 32 of 1999 and SEBI No. 9 of 2009 states that in the process of applying for approval in principle, a statement letter is required from the shareholders of the bank in the form of a Limited Liability Company (PT), Regional Company or member of a bank in the form of a cooperative, requiring the initial capital deposit not to come from loans or financing facilities in any form from the bank or other parties. other funds and also funds that do not come from the results of money laundering practices. In other words, bank funds come from the first party as the founders of the bank and also the second party as the shareholders.

Mudharabah or musyarakah contracts are the principles of contracts that are generally carried out between the founders and shareholders. According to article 2 (2) of POJK Number 56 of 2016 regarding share ownership in commercial banks, the minimum limit for share ownership varies. For example, letters a, b and c of the article state that the minimum limit of share ownership of bank capital is 40% for LKS companies, both banks and non-banks, 30% for companies other than LKS and 25% for individuals.

The Islamic bank funds do not only come from these two sources. In general, Islamic banks are the same as other banks, which have three main functions, including: the function of raising funds, the function of channeling funds and the function of providing services (Harahap, Wirosso & Yusuf, 2010). In this fund-raising function, Islamic banks get funds as their business capital. The fund raising products attached to each bank, especially Islamic banks are fund raising products in the form of savings, current accounts and time deposits. These sources of funds are also known as third party sources of funds. Third-party funding sources are the largest source of funds compared to first-party and second-party funding sources.

The principles used in raising these funds consist of *wadi'ah* and *mudharabah* principles (Anwar, 2007). With regard to the principle of *wadi'ah*, more emphasis is placed on the principle of *wadi'ah yad dhamanah* (Desminar, 2019). So that the bank can use the customer's funds for other purposes, such as developing business capital. The consequence of this principle is that the funds used by Islamic banks for business development do not provide benefits for customers, so that the profits obtained by Islamic banks from developing their businesses become the property of Islamic banks. Meanwhile, Islamic banks may provide intensive or partial benefits to customers on condition that the nominal amount is not agreed upon at the time of the contract. In this case, the bank is required to be responsible for the integrity of the customer's funds, so that whenever the customer needs the money, the bank must be ready to provide the deposited funds. Likewise, the risk of loss due to the use of funds intended for business development is the responsibility of Islamic banks.

The *mudharabah* principle is not much different from the *wadi'ah* principle as described above. The *mudharabah* principle is more emphasized on the *mudharabah mutlaqah* principle. So that the bank can freely use customer funds without any conditions (Mubarak & Hasanudin, 2017). The consequence of this principle is that the profits generated from business development carried out by Islamic banks will be divided in half with the customer as the owner of capital. Profits are divided according to the profit-sharing percentage agreed at the time of the contract. As for the risk of loss, there are two provisions: First, if the loss on business development carried out by Islamic banks is caused without any element of negligence, the loss is borne by the customer. Second, on the contrary, if the risk of loss on business development is caused by an element of negligence on the part of the bank, the loss is the responsibility of the Islamic bank (Anwar, 2007). As for the business development of Islamic banks can be done in the mechanism of the second bank function, namely the function of channeling funds through financing. Both financing using the principle of buying and selling, leasing, cooperation and financing with other principles.

Based on the explanation, the use of third party funds from fund raising products through savings, current accounts and deposits from investor customers can only be used for investment activities through financing mechanisms carried out by Islamic banks. So that there are benefits obtained by Islamic banks for the use of these funds which will affect the profit-sharing mechanism for the use of customer funds using *mudharabah* contracts and the provision of bonuses for the use of customer funds using the *wadi'ah* principle. However, this bonus is not mandatory in accordance with the will of Islamic banks.

Legal Status of Use of Customer Funds in Islamic Banking

The status of funds managed by Islamic banks is in the form of deposit funds. This is in accordance with the provisions of Article 1 (27) of Law Number 21 of 2008 concerning Islamic Banking which states that the safekeeping of funds is carried out by the depositor (investor customer) to the bank, both BUS and UUS and may not be recognized as property rights.

With regard to first-party funds and second-party funds, apart from being used for investment, they are also widely used as reserve funds if, in the distribution of funds, the cooperation between the Islamic bank and the customer receiving the facility suffers losses (Sari, 2016). While the Islamic bank is responsible for the loss. For example, funds originating from savings products that use *wadi'ah yad dhamanah* contracts, Islamic banks have the right to use investor customer funds for business activities in the fund distribution mechanism provided that the Islamic bank is responsible for the customer's funds by providing guarantees for the integrity of investor customer funds, if taken at any time. Meanwhile, the losses suffered from the use of these funds are the responsibility of the Islamic bank. So to provide guarantees for the integrity of the investor customer funds used, Islamic banks use first party funds or second party funds to replace the investor customer funds.

The largest Islamic bank ownership of funds is in the fund-raising mechanism. This applies especially to third party funds originating from the mechanism for raising funds through savings products, current accounts and time deposits. In raising funds using a *wadi'ah yad dhamanah* contract, Islamic banks may use the customer's funds for business activities or other activities. This is in accordance with the DSN/MUI fatwa regarding savings. Because the use of the deposited funds has no effect on the depositing customer (investor customer). The point is that if the use of the customer's funds is not for business activities, the Islamic bank only guarantees the integrity of the fund if it is taken at any time by the investor's customer. Meanwhile, if the funds are used as capital for business activities and generate profits. Then the profit becomes the ownership of the Islamic bank in its entirety. As for the provision of bonuses for the use of the investor's customer funds, it is only limited to the will of the Islamic bank whether or not to give it.

Meanwhile, the collection of funds using *mudharabah mutlaqah* contracts must be used by Islamic banks for business activities. This is in accordance with the DSN/MUI fatwa regarding demand deposits and deposits, because if they are not used for business activities, it will affect the position of Islamic banks on the contracts made. That is, the position of Islamic banks on the contract is as *mudharib* (fund manager). So Islamic banks must use investor customer funds for business activities in the mechanism of channeling funds or services. If the investor's funds

are not used by the Islamic bank for business activities, the Islamic bank is in default of the investor's customer and no profits can be shared with the investor's customer.

Indirectly, DSN/MUI as an independent institution authorized to issue fatwas related to products that use certain contracts. The provisions in the fatwa issued become the basic material law in the preparation of the substance of the legislation in this case, in particular the PBI, POJK and the sharia banking law. So that these laws and regulations become the legal umbrella for Islamic banks regarding the permission to use investor customer funds for business activities.

Thus, previous research has focused more on sources of third-party funds which are the largest sources of funds for Islamic banks and are used as funds or capital in the financing mechanism. Meanwhile, this study finds facts regarding the status of funds used by Islamic banks that are bound to the provisions of the contract used in the mechanism of raising funds through savings products, current accounts and time deposits. This is the cause of Islamic banks getting ownership rights over the utilization and use of investor customer funds to be used as business capital in the mechanism for distributing funds and services. So for the contract used, Islamic banks have legal certainty to take advantage of investor customer funds with consequences based on the contract used.

CONCLUSION

The ownership of Islamic bank funds comes from three main sources, namely first party funds as the founders of the bank, second party funds as shareholders and third party funds as investor customers. The three sources of funds have different functions from one another. First party funds and second party funds, apart from being used for investment, are also devoted to sharia bank reserve funds to guarantee the integrity of the use of investor customer funds in overcoming losses. Meanwhile, third party funds must be used for business activities based on the contract mechanism used. The use of these sources of funds is guaranteed by a law whose material legal substance is based on the substance of the fatwa issued by the DSN/MUI as an independent institution that has the authority to legitimize the use of contracts in a sharia bank product. This shows that the Islamic economic politics contained in the legal umbrella governing the mechanism of the Islamic banking operational system, especially the ownership rights to the use of investor funds, provides clear legal certainty that Islamic banks are legally allowed to use the investor's customer funds for business activities in the mechanism of channeling funds and services to customers who use facilities.

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