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Legal Protection for Investors in Share Transactions with Repurchase Agreement Rights According to DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014

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ABSTRACT

The DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014 serves as an Islamic legal guideline to ensure that REPO transactions are conducted based on valid, transparent, and fair contracts. This study aims to analyze the forms of legal protection for investors in stock transactions with REPO rights according to the fatwa and review its compliance with the capital market legal system in Indonesia. The research method used is normative juridical with a statutory approach and sharia fatwas. The results show that this fatwa provides strong legal protection for investors through the regulation of the contract structure, the prohibition of transfer of benefits during the REPO period, and dispute resolution provisions that comply with sharia principles. This protection is strengthened by the role of the Financial Services Authority (OJK) and the Sharia Supervisory Board in supervising and implementing sharia REPO transactions. Thus, this fatwa is an important instrument in realizing safe and just sharia capital market transactions.

ABSTRAK

Fatwa DSN-MUI No. 94/DSN-MUI/IV/2014 hadir sebagai pedoman hukum Islam untuk memastikan bahwa transaksi REPO dilakukan berdasarkan akad yang sah, transparan, dan adil. Penelitian ini bertujuan untuk menganalisis bentuk perlindungan hukum bagi investor dalam transaksi saham dengan hak REPO menurut fatwa tersebut, serta meninjau kesesuaiannya dengan sistem hukum pasar modal di Indonesia. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan fatwa syariah. Hasil penelitian menunjukkan bahwa fatwa ini memberikan perlindungan hukum yang kuat bagi investor melalui pengaturan struktur akad, larangan pengalihan manfaat selama masa REPO, dan ketentuan penyelesaian sengketa yang sesuai dengan prinsip syariah. Perlindungan ini diperkuat oleh peran OJK dan Dewan Pengawas Syariah dalam pengawasan dan pelaksanaan transaksi REPO syariah. Dengan demikian, fatwa ini menjadi instrumen penting dalam mewujudkan transaksi pasar modal syariah yang aman dan sesuai dengan nilai-nilai keadilan.

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INTRODUCTION

The Islamic capital market is one of the essential instruments in the Islamic financial system, aiming to foster fairness and transparency in investment activities. Among the instruments developed in the capital market is the share transaction mechanism known as Repurchase Agreement (REPO), which refers to a sale and purchase agreement of securities with a promise to repurchase them at a predetermined time and price. Within the framework of Sharia, this instrument requires strict supervision to ensure compliance with Islamic principles, particularly the prohibitions against riba (usury), *gharar* (uncertainty), and *maisir* (speculation).

To regulate the implementation of repo transactions in the Islamic capital market, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) issued Fatwa No. 94/DSN-MUI/IV/2014 concerning Repurchase Agreement (REPO) Transactions of Sharia Shares in the Islamic Capital Market. This fatwa outlines the Sharia provisions governing repo share transactions, including the pillars and conditions of the contract, the objects of the transaction, as well as the prohibitions that must be observed to ensure the transaction remains in accordance with Sharia principles (Pujiyanti & Abubakar, 2018).

In the context of this article, the research seeks to examine a case that occurred with PT. Sekawan Inti Pratama (PT. SIAP). The origin of the REPO share default case involving PT. SIAP began when a shareholder of PT. SIAP obtained a loan from an investor under the pretext of financing the company's new venture into the mining sector, using PT. SIAP's shares as collateral. This arrangement can be categorized as a REPO share transaction. The case developed into a serious issue when the original shareholder (the REPO seller) was unable to return the funds, forcing the REPO holder to conduct a forced sale of PT. SIAP shares to a third party. Consequently, the REPO holder could not fulfill the obligation to resell the shares to the original owner upon the agreed maturity date. Although the repo transaction was documented in a written agreement, it still carried significant risks of default, manipulation, or fraud, which ultimately harmed investors. Therefore, in cases of this nature, legal protection for investors in share transactions specifically REPO shares is necessary, based on Law No. 8 of 1995 concerning the Capital Market and DSN-MUI Fatwa No. 94 of 2014 (Prastiwi, 2020).

Previous studies relevant to this research include the work of Arief Hidayat (2018) entitled *"Analisis Transaksi Repo Saham dalam Perspektif Hukum Islam dan Hukum Positif."* The findings of this study indicate that repo transactions in the Islamic capital market remain vulnerable to elements of gharar (uncertainty) and therefore require further supervision to prevent deviations from Sharia principles. The second study was conducted by Anita Rachmawati (2021) under the title *"Perlindungan Investor dalam Mekanisme Transaksi Efek Syariah: Studi Kasus pada Transaksi Repo"* This research highlights that, in practice, investors do not always fully understand the structure and risks associated with REPO transactions, and that legal protection is still considered weak since contracts have yet to regulate dispute resolution mechanisms effectively. The third study, by Nurul Hidayah (2020), entitled *"Analisis Hukum Islam terhadap Pelaksanaan REPO Saham Syariah di Pasar Modal Indonesia,"* concludes that repo transactions in the Islamic capital market must be based on clear contracts (such as *bay'* [sale-purchase] and *wa'd* [promise]) and must be free from elements of *riba* (usury) and *gharar* (uncertainty).

What distinguishes this research from previous studies is its focus on legal protection for investors, rather than merely on the validity of contracts or Sharia compliance. This study also provides a comparison between the provisions of DSN-MUI Fatwa No. 94 and positive regulations such as the Capital Market Law and regulations issued by the Financial Services Authority (OJK), employing normative legal research. This case is urgent to examine because, in practice, the implementation of share transactions with REPO rights often raises legal issues concerning investor protection, particularly in instances of default, non-payment, or loopholes in contractual arrangements that may disadvantage investors as capital providers. Such transactions are vulnerable to misuse by issuers or other parties holding stronger bargaining positions in negotiations, creating an imbalance that threatens the security of investments. In light of these challenges, this study aims to investigate in greater depth the mechanisms of legal protection for investors engaged in such transactions, while also assessing whether the provisions of DSN-MUI Fatwa No. 94 adequately ensure certainty and protection. Therefore, the central questions to be addressed are how the mechanisms of legal protection for investors are implemented in share transactions with REPO rights, and to what extent DSN-MUI Fatwa No. 94 provides sufficient certainty and safeguards for investors. The specific emphasis of this research is on the forms of legal protection available to investors, rather than solely on the validity of contracts or the Sharia aspects of such transactions.

RESEARCH METHOD

This research employs a normative juridical method, which focuses on the analysis of legal norms contained in statutory regulations, the DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014, and relevant legal literature. This approach is intended to identify, interpret, and critically analyze the legal provisions governing the protection of investors' rights in share transactions with repurchase agreement (repo) rights, as well as to assess the extent to which the DSN-MUI Fatwa provides effective legal safeguards in such transactions.

The data for this study consist of both primary and secondary legal materials. The primary legal sources include DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014 on share transactions with repo rights, as well as statutory regulations and related provisions under Indonesian capital market law, particularly those issued by the Financial Services Authority (OJK), that regulate investor protection. The secondary legal sources comprise scholarly articles, academic journals, legal commentaries, and expert opinions that discuss legal protection for investors in share transactions.

These sources were gathered through library research, focusing on authoritative and up-to-date references that could support the legal analysis. The collected data were then analyzed using a qualitative normative juridical approach, emphasizing the interpretation and systematic comparison of legal norms. This analysis involved examining the substantive provisions of the DSN-MUI Fatwa in relation to existing statutory regulations and evaluating their implications for investor protection. Furthermore, the process included identifying the strengths and weaknesses of the legal safeguards afforded by the fatwa and relevant laws, with the ultimate objective of determining whether the regulatory framework provides adequate certainty and protection for investors engaged in repo-based share transactions.

RESULT AND DISCUSSION

Sharia REPO Mechanism According to DSN-MUI Fatwa

A Repurchase Agreement (REPO) is essentially a sale and purchase agreement of securities, commonly shares, under the condition that the seller will repurchase the securities at a predetermined time and price. In the context of the Islamic capital market, REPO serves as an important liquidity instrument; however, it must be conducted in accordance with Sharia principles to avoid elements of *riba* (usury), *gharar* (uncertainty), or *maysir* (speculation). In conventional practice, REPO transactions are problematic because they usually involve *riba*, particularly when the repurchase is made with an additional payment regarded as interest. Therefore, specific regulations are required to ensure that REPO transactions in the Islamic capital market align with the principles of *fiqh muamalah* (Islamic commercial jurisprudence) (Pasaribu, 2020).

According to DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014, a Sharia-compliant REPO transaction is structured using two main contracts. First, the *bai'* (sale-purchase) contract, in which the seller sells shares to the buyer on a cash basis. Second, the *wa'd* (promise) contract, where the seller makes a unilateral promise to repurchase the shares in the future at an agreed price. The fatwa further establishes certain conditions for validity, including that the shares traded must comply with Sharia principles, the transaction must be free from *riba*, *gharar*, or speculative practices that may harm either party, and the agreement must be carried out transparently with valid legal documentation. Additionally, the benefits attached to the shares may not be transferred to the buyer during the REPO period.

Legal Analysis of the PT. SIAP Default Case

Despite the regulatory framework, problems in REPO implementation have occurred in practice. A notable example is the case involving PT. Sekawan Inti Pratama (PT. SIAP), a listed company on the Indonesia Stock Exchange with the trading code SIAP. PT. SIAP's shares were actively traded through various mechanisms, including sale-purchase transactions, REPO, and other share-related arrangements. The origin of PT. SIAP's REPO default can be traced back to a shareholder who obtained a loan from an investor under the pretext of financing the company's entry into the mining sector, using PT. SIAP shares as collateral. This arrangement effectively fell within the category of a REPO transaction.

In this structure, the REPO buyer was obligated to provide funds to purchase the shares and return them if the seller repurchased the shares at maturity. Conversely, the REPO seller had the duty to transfer the shares

and subsequently repurchase them at the agreed maturity date. The legal issue emerged when the REPO reached maturity, and the original shareholder was unable to fulfill their obligation to repurchase the shares due to lack of funds, resulting in a default. Consequently, the REPO holder was compelled to sell PT. SIAP shares on the market in order to recover their rights. However, by that time, the market value of the shares had declined significantly, largely due to financial and managerial issues surrounding PT. SIAP, including the REPO default itself. This situation illustrates the inherent risks of default, manipulation, or fraud in REPO transactions, which can ultimately result in substantial financial losses for investors, despite the existence of formal written agreements.

Forms of Investor Legal Protection in National Regulations

The Indonesian capital market framework provides several regulatory instruments to ensure investor protection, particularly in transactions such as REPO. The Financial Services Authority (OJK) has issued various regulations aimed at safeguarding investors from unfair practices, default risks, and fraudulent schemes. These regulations emphasize transparency, disclosure of material information, and the obligation of issuers and intermediaries to act in good faith in financial transactions. Furthermore, capital market laws stipulate that any transaction that potentially harms investors must be subject to monitoring and enforcement mechanisms, thereby strengthening the legal position of investors as capital providers.

In the case of REPO transactions, national regulations aim to minimize risks by enforcing compliance with contractual obligations, allowing legal recourse for defaults, and ensuring that securities used as collateral are traded under fair and transparent conditions. However, gaps remain in the enforcement stage, particularly in cases where issuers or shareholders are in a stronger bargaining position compared to individual investors, leaving the latter vulnerable to financial loss.

The Role of the DSN-MUI Fatwa in Investor Protection

DSN-MUI Fatwa No. 94 plays a critical role in bridging Sharia principles with practical capital market operations. By structuring REPO transactions through *bai'* and *wa'd* contracts, the fatwa ensures that such agreements do not involve prohibited elements such as *riba*, *gharar*, or *maysir*. This provides a framework of ethical and religious legitimacy for Muslim investors who participate in capital markets. Furthermore, the fatwa emphasizes transparency and proper legal documentation, which contribute to safeguarding investors from potential abuse or manipulation.

Nevertheless, the fatwa functions primarily as a normative guideline and lacks direct enforcement power. Its effectiveness in protecting investors ultimately depends on its integration with national capital market laws and the supervisory role of the OJK. While the fatwa establishes principles for fair and Sharia-compliant transactions, without robust enforcement mechanisms and investor remedies under positive law, its capacity to provide certainty and protection remains limited.

LEGAL PROTECTION FOR INVESTORS

In REPO transactions, investors occupy two key positions: As sellers, who are obliged to repurchase the shares at a specified time. As buyers, who are entitled to reclaim their funds or shares in accordance with the agreement. Legal protection for investors is governed through several instruments:

a) National Law (Capital Market Law and OJK Regulations)

Law No. 8 of 1995 on the Capital Market serves as the primary legal foundation for investor protection in the capital market. Several forms of protection under this law include:

1. Disclosure Obligation (Disclosure Principle):
   Issuers are required to provide accurate, complete, and timely information to the public. This is intended to prevent investors from suffering losses due to asymmetric or misleading information.
2. Prohibition of Insider Trading and Market Manipulation: Articles 95–98 prohibit the use of insider information and market manipulation practices that could harm investors.
3. Registration and Licensing Obligations: All market participants including issuers, underwriters, investment managers, and brokers must obtain official licenses, thereby allowing them to be supervised and held legally accountable in cases of violation.

Meanwhile, in OJK Regulation No. 9/POJK.04/2015 concerning Guidelines for REPO Securities Transactions, Article 5 paragraph (1) stipulates that *"every written agreement as referred to in Article 4 paragraph (1) must apply the Indonesian GMRA issued by the Financial Services Authority or another party recognized by the Financial Services Authority."* GMRA, or the Global Master Repurchase Agreement, is the international standard for REPO agreements issued by the International Capital Market Association, as defined in Article 1

point 2 of OJK Regulation No. 9 of 2015. For the Indonesian version of GMRA, which is a translation of the international GMRA, the OJK has issued an appendix through OJK Circular Letter No. 33 of 2015 concerning the Indonesian Global Master Repurchase Agreement (GMRA Indonesia). In cases of default by the REPO seller where the seller fails to repurchase the shares upon maturity the seller is deemed to have breached their obligations as stipulated in the REPO transaction agreement itself. In such situations, according to Article 3 paragraph (3) of OJK Regulation No. 9 of 2015, for Financial Services Institutions, if an Event of Default occurs in a REPO transaction, the parties are obliged to settle their obligations in accordance with the procedures for resolving such events, along with the associated rights and obligations, as set forth in the agreement (Sumarna & Kadriah, 2023).

In the Indonesian GMRA, under Section 10 concerning *Events of Default*, it is stated that: *"if the buyer fails to pay the purchase price on the applicable purchase date, or the seller fails to pay the repurchase price on the applicable repurchase date, and the non-defaulting party delivers a notice of default to the defaulting party,"* then subparagraphs (b) through (d) shall apply. Specifically, Subparagraph (b)(2) provides that: *"The repurchase date for each transaction under this agreement shall be deemed to occur immediately, and subject to the following provisions, all cash margin (including accrued interest receivable) must be promptly repaid and equivalent margin securities must be immediately delivered. Where this subparagraph applies, the performance of each party's obligations regarding the delivery of securities, the payment of the repurchase price for equivalent securities, and the repayment of cash margin shall only be enforced in accordance with the provisions of subparagraph (c) below."* Subparagraph (c) further states that: *"The market value of equivalent securities and equivalent margin securities to be transferred, the amount of cash margin (including accrued interest receivable) to be transferred, and the repurchase price payable by each party shall be determined by the non-defaulting party for all transactions on the repurchase date."*

In the standard Indonesian GMRA agreement, it is clearly stipulated under the *Event of Default* clause that if the seller fails to pay the repurchase price on the applicable repurchase date, then the repurchase date for each transaction under the agreement shall be deemed to occur immediately. Consequently, all cash margin (the funds representing the REPO transaction value) must be promptly repaid, and the equivalent margin securities (the shares serving as the REPO object) must be immediately delivered. Following the conclusion of a REPO transaction between the seller and the buyer, Article 3 paragraph (1) of OJK Regulation No. 9 of 2015 on Guidelines for Repurchase Agreement Transactions for Financial Institutions provides that: *"each REPO transaction must result in a transfer of ownership of the securities."* Based on this provision, once a REPO share transaction agreement has been executed, the ownership of the securities subject to the REPO is transferred from the seller to the REPO buyer. Therefore, in the event of default by the seller where the seller is unable to fulfill the obligation to repurchase the securities the buyer, as the legitimate owner of the shares, has the right to sell or transfer the securities to a third party as a means of securing the fulfillment of their rights, which the REPO seller has failed to honor.

However, although the buyer has the authority to transfer or sell the securities that are the object of the REPO to a third party as a means of fulfilling rights that the REPO seller has failed to honor, the Indonesian GMRA does not clearly regulate the accountability of the REPO seller in situations where, at maturity, the value of the securities held by the buyer is insufficient to cover the amount that should have been repaid by the seller at the repurchase date. The Indonesian GMRA merely stipulates the obligation of securities companies acting as arrangers or designated parties in executing REPO transactions to ensure that the value of the securities held by the REPO buyer remains above the repurchase price owed by the seller. Nevertheless, it does not provide specific provisions on what should occur if, approaching maturity, the securities' value suddenly declines due to abnormal circumstances, such as corporate scandals or internal problems, which cause a drastic drop in share prices. Thus, the accountability of the REPO seller remains insufficiently regulated under the current Indonesian GMRA standards. Looking ahead, it is expected that the Financial Services Authority (OJK), as the regulator and supervisor of the capital market, will establish clearer regulations on this matter to prevent any party from being unfairly disadvantaged in REPO transactions (Dewi et al., 2021).

Moreover, a REPO transaction constitutes an obligation arising from an agreement. The distinction between obligations arising from an agreement and those arising from statutory provisions lies in the element of consent. In every agreement, the parties are bound by a legal relationship established through mutual consent, whereas obligations arising from statutory provisions are not based on such agreement. In the case of a defaulted share REPO transaction, the seller fails to fulfill their contractual obligation namely, the promise to repurchase the securities (shares) that are the object of the REPO at maturity. Such failure constitutes a breach of contract (wanprestasi). Under these circumstances, the REPO buyer, as the aggrieved party, may seek legal remedies against the seller for the breach of contract. These remedies include: Specific performance (demanding fulfillment of the agreement), Termination of the agreement, or Compensation for damages caused by the seller's default (Suardana et al., 2020).

Compensation may cover actual expenses incurred as well as losses arising from the breach of contract, including interest. Such compensation is grounded in Article 1243 of the Indonesian Civil Code (KUHPer), which stipulates: *"Compensation for costs, losses, and interest due to the non-fulfillment of an obligation shall be required if the debtor, notwithstanding having been declared in default, continues to fail to perform the obligation, or if the object to be delivered or the act to be performed can only be delivered or performed after the stipulated time has passed."* In addition, Article 1236 of the Civil Code provides: *"The debtor is obliged to compensate the creditor for costs, losses, and interest if he has placed himself in a condition of being unable to deliver his property, or if he has failed to exercise proper care to preserve it."* Thus, in the context of a defaulted REPO transaction, the seller as the breaching party may be held liable not only for the repayment of the principal obligation but also for additional expenses, damages, and interest suffered by the buyer due to the seller's default.

Therefore, if the REPO seller fails to fulfill the obligation to repurchase the shares that are the object of the REPO transaction and remains in default even after being given a formal notice, the REPO buyer may file a breach of contract lawsuit before the District Court to claim compensation. As the REPO share purchaser, the investor may demand material damages, namely a sum of money equivalent to the amount that should have been received at maturity in accordance with the agreement, as well as immaterial damages, including future profits that should have been obtained. This is in accordance with Article 1246 of the Indonesian Civil Code (KUHPer), which stipulates: *"The costs, losses, and interests which the creditor may claim as compensation generally consist of the losses already suffered and the profits which ought to have been enjoyed, without prejudice to the exceptions and modifications to be mentioned below."*

DSN-MUI Fatwa No. 94/DSN-MUI/IV/2014

The DSN-MUI Fatwa does not possess direct legal force equivalent to statutory law; however, it is normatively adopted by the Financial Services Authority (OJK) and integrated into the regulatory framework of the Indonesian Islamic capital market. For instance, OJK regulations and contractual provisions in *syariah* REPO agreements consistently refer to this fatwa. The DSN-MUI Fatwa serves as a substantive legal source that provides guidance for: Islamic issuers, investment managers, investors, and supporting institutions within the capital market.

The process of implementing or incorporating fatwas into regulations plays a central role in the development of the Islamic capital market industry in Indonesia. The application of DSN-MUI fatwas as guidance for *sharia* principles is not limited to their formal absorption into regulations, but in essence, these fatwas have already been integrated into the Financial Services Authority (OJK) regulations. An example is OJK Regulation No. 15/POJK.04/2015 concerning the application of *sharia* principles in the capital market.

With respect to legal protection for investors in shares under a Repurchase Agreement, it is stipulated in DSN-MUI Fatwa No. 94 of 2014. In a legal relationship, the right of one party necessarily constitutes the obligation of the other. Based on this principle, in a sale and purchase with a repurchase right, the seller's right to repurchase constitutes the buyer's obligation to resell the asset to the seller. When the seller exercises this right, the buyer is obliged to resell and deliver the asset to the seller. An obligation, in this context, refers to a duty imposed or established by law to perform or refrain from a particular act. Therefore, if the buyer fails to fulfill the obligation to resell the relevant asset, the buyer, as the bearer of the obligation, will be subject to specific legal consequences as stipulated in the agreement between the parties. Consequently, once the parties to a share REPO transaction sign the contract, it creates binding legal force that obligates each party to execute the terms contained therein.

Therefore, DSN-MUI Fatwa No. 94 of 2014 stipulates that, in order to protect the interests of both parties, particularly investors, a REPO transaction contract must be established, containing provisions on the repurchase of shares at an agreed time and price. Such an agreement consequently serves as binding law for each party to fulfill their obligations. In the event of default (*wanprestasi*), sanctions shall be imposed on the breaching party (Bhasudeva et al., 2022).

The sanctions applicable to parties committing default are classified into three types under the Capital Market Law:

1. Administrative Sanctions, which are penalties or legal measures imposed by an administrative body or regulator (e.g., OJK, Bappebti, Kominfo, etc.) on an individual or legal entity violating administrative provisions, without going through civil or criminal judicial proceedings.
2. Civil Sanctions, which aim to restore or compensate for losses arising from unlawful acts, default, or violations of civil rights.
3. Criminal Sanctions, which are penalties imposed by a criminal court on an individual found guilty of committing a criminal offense (crime or violation) as prohibited under criminal law.

In the case of a default in a share repurchase agreement (REPO) transaction, several parties may fail to fulfill their respective obligations, which directly or indirectly results in the occurrence of such default. These parties are consequently subject to juridical consequences, or legal liabilities, arising from the default event, namely:

1) The Arranger

In a share repurchase agreement (REPO) transaction that results in default by the seller against the buyer, the securities company acting as the arranger also bears legal consequences. This is because the arranger has failed to ensure the availability of funds from the seller to repurchase the securities from the buyer upon maturity. In such circumstances, the arranger is also subject to juridical consequences arising from the default, in accordance with the prevailing regulations, with the Financial Services Authority (OJK) holding the authority to impose sanctions ranging from investigation, dispute resolution, to the imposition of penalties. The sanctions imposed by OJK are multi-layered and applied progressively, namely:

a) Written Warning. If a complaint is lodged by one of the parties concerning a failure or *Event of Default* (such as a payment default), the initial sanction imposed is a written warning. This aims to mitigate the risks arising from the event, as stipulated under Article 6 paragraph (1) letter f of OJK Regulation No. 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Institutions. Financial institutions are obliged to establish risk management mechanisms to address risks arising from REPO transactions. Thus, the arranger also bears responsibility to assist in resolving such issues.

b) Suspension of Business Activities. If such events occur repeatedly and the securities company fails to address them, the arranger may be subject to a suspension of its business activities for a certain period. This sanction arises because the arranger, as the intermediary in such transactions, is obligated to ensure the availability of both funds (from the seller) and securities (from the buyer) to fulfill obligations and rights under the REPO agreement upon maturity.

c) Revocation of Business License. This sanction may be imposed if the securities company is frequently involved in REPO transactions with recurring *Events of Default*, particularly payment defaults. Such cases undermine public trust in REPO transactions, especially among potential buyers who transact through the arranger. At this stage, the securities company will be blacklisted, which prevents it from re-registering as a securities firm authorized to operate in Indonesia's capital market.

2) The Seller in a Share REPO Transaction

The seller in a REPO transaction can be considered the party most responsible in the event of default, as the seller fails to fulfill the obligation to repurchase the shares that are the object of the REPO at the agreed maturity date, thereby causing the payment default. In such cases, the seller has neglected the contractual obligation to provide the necessary funds to repurchase the shares, which consequently harms the buyer, who has duly performed the contractual obligation to retain the shares under their possession for return to the seller upon the REPO's maturity.

Since the seller's actions cause losses to the counterparty namely, the REPO buyer—there are legal consequences or juridical implications imposed on the seller, including:

a) Written Warning from OJK. The Financial Services Authority (OJK), as the regulator and supervisory authority of the capital market, may issue a written warning to the seller as the defaulting party. This sanction serves as an initial step to compel the seller to promptly fulfill their obligations under the REPO contract, namely to deliver what is contractually owed to the buyer. Such written warnings are preliminary measures imposed before further legal actions such as investigation, examination, or the imposition of additional sanctions.

b) Civil Sanctions

In the event that the REPO seller continues to fail to fulfill the obligation to deliver what is rightfully owed to the REPO buyer, civil sanctions may be imposed. Any violation that causes losses to another party whether arising from actions directly related to the capital market or otherwise may give rise to a civil lawsuit initiated by the aggrieved party against the party responsible for the loss. Specifically, with respect to legal acts associated with the capital market, potential civil claims may arise on the following juridical grounds:

1. Claims based on capital market regulations;
2. Claims arising from unlawful acts as stipulated in Article 1365 of the Indonesian Civil Code;
3. Claims arising from breach of contract (wanprestasi) in relation to a contractual agreement.

In cases where the REPO seller remains unable to fulfill the obligation to pay the repurchase price, the Financial Services Authority (Otoritas Jasa Keuangan, OJK) holds the authority to impose sanctions. Such sanctions may include placing the REPO seller on a blacklist, thereby prohibiting the party from conducting any further activities within the Indonesian capital market. In addition, monetary penalties are stipulated under Government Regulation of the Republic of Indonesia (PP RI) No. 12 of 2004, which amends PP RI No. 45 concerning the Misuse of Activities in the Capital Market Sector. Specifically, transactions involving conflicts of interest are subject to fines amounting to IDR 100,000,000 (one hundred million rupiah) for individuals found guilty of violations, while non-individual entities face significantly higher fines of IDR 500,000,000 (five hundred million rupiah). Legal protection is crucial in this regard, as such issues concern the interests of both investors

and the broader public, necessitating oversight from the OJK as a public authority. The institution not only acts as a safeguard but also serves as the frontline enforcer of capital market legal norms.

The principle most relevant to analyzing Sharia-compliant REPO transactions is *la darar wa la dirar*, which means that there should be no harm and no reciprocating harm in any transaction. From the perspective of fiqh muamalah, a contract that results in foreseeable or disproportionate loss to one party cannot be justified, even if it appears formally Sharia-compliant. DSN-MUI Fatwa No. 94 attempts to minimize potential harm to investors by prohibiting elements of *riba*, *gharar*, and *maysir*. The structure it prescribes, which combines a genuine *bai'* (sale) with a unilateral *wa'd* (promise) to repurchase, is designed to prevent the misuse of repos as disguised interest-bearing loans. In principle, this reflects the fiqh concept of *sadd al-dhara'i*, or closing the means that could lead to prohibited outcomes, and is intended to protect investors from exploitation.

However, while the fatwa removes one source of harm, namely riba, it creates the possibility of new forms of harm due to its reliance on a unilateral promise. In theory, the *wa'd* avoids turning the transaction into a binding loan, but in practice it may weaken the position of the repo buyer. If the promise is not recognized as enforceable in national law, or if remedies for breach are unclear, the investor who has provided liquidity may be left without adequate legal protection in the event of default. From the perspective of maqasid al-shariah, particularly the principle of *hifz al-mal* or preservation of wealth, this uncertainty exposes investors to a significant risk of financial loss. Legal uncertainty in itself becomes a form of *dharar* because it encourages opportunistic behavior and leaves investors vulnerable when the seller refuses or is unable to fulfill the repurchase promise.

The fatwa also stipulates that the economic benefits of the shares should not be transferred to the buyer during the repo period. This provision aims to prevent the transaction from being used to gain dividends or voting rights that might disguise it as a loan with benefits. Yet this arrangement also creates an imbalance, as the buyer carries the price risk of the shares without enjoying any of the associated rights. If this imbalance is not fairly compensated or if the valuation of shares is not transparent, the transaction may lead to losses that are both foreseeable and avoidable. In this sense, while the rule protects against riba, it may introduce another kind of harm by placing an unequal burden on the investor. From a fiqh perspective, any contract that causes *dharar al-mal*, or unjustifiable loss of property, contradicts the principle of justice and fairness in muamalah.

The default case involving PT. SIAP illustrates how *dharar* can manifest in practice. When the seller failed to repurchase the shares at maturity, the investor was forced to sell them in the market at a much lower value. This outcome shows that even if a transaction is documented in writing and structured in line with the fatwa, the risk of default can still result in substantial harm. According to fiqh muamalah, remedies should not only enforce contractual obligations but also minimize harm and restore fairness. The fatwa emphasizes documentation and transparency, but these measures are not enough to prevent damage when default occurs. Additional safeguards, such as fair valuation mechanisms, notice periods before liquidation, and procedures for selling collateral that prevent market dumping, are necessary to ensure that enforcement itself does not become another source of harm.

A further concern is the possibility of misusing the form of the fatwa to replicate conventional repo practices under the guise of Sharia compliance. Even though the fatwa seeks to eliminate riba, parties may still design contracts that replicate the same outcomes through legal formality. In fiqh, this problem is addressed by the principle of *sadd al-dhara'i*, which requires closing off avenues that may lead to harm or prohibited practices. For this reason, supervision by Sharia boards, oversight by the Financial Services Authority (OJK), and the use of standardized contracts are critical to ensuring that the protective purpose of the fatwa is achieved in practice.

From the perspective of maqasid al-shariah, particularly the protection of wealth and prevention of harm, DSN-MUI Fatwa No. 94 provides a necessary foundation for fair repo transactions. However, its effectiveness is limited without supporting mechanisms in positive law and market regulation. Fiqh muamalah requires not only the removal of riba and gharar but also the establishment of practical safeguards that protect both parties from unfair loss. These may include compensation for losses based on *ta'widh*, escrow arrangements to secure repurchase funds, Sharia-compliant insurance instruments such as takaful to cover extreme risks, and penalties for breach that are directed toward charitable purposes to avoid resemblance to interest. Such measures would strengthen the fatwa's role in preventing *dharar* while remaining consistent with Sharia principles.

In conclusion, DSN-MUI Fatwa No. 94 represents an important effort to align repo transactions with Sharia values and protect investors from prohibited elements. Yet from a fiqh muamalah perspective, the fatwa addresses only part of the problem of harm. Unless its provisions are integrated with effective enforcement mechanisms, procedural safeguards, and market regulations, investors remain exposed to default risk, unfair losses, and potential misuse of contracts. The fatwa therefore provides necessary but not sufficient protection against *dharar*, and its application must be complemented by practical legal and institutional measures to achieve the objectives of justice, fairness, and preservation of wealth in the Islamic capital market.

CONCLUSION

Legal protection for stock investors in REPO transactions, as this study demonstrates, rests on both positive law and Sharia-based principles. Under Indonesian law, agreements made between parties are binding according to Article 1338 of the Civil Code, and defaults in repurchase obligations are categorized as breaches of contract that require compensation. This is further reinforced by OJK Regulation No. 9/POJK.04/2015 and the GMRA Indonesia, which explicitly regulate default procedures and impose obligations on the defaulting party to fulfill financial liabilities, thereby ensuring certainty in dispute resolution. From the perspective of Islamic law, DSN-MUI Fatwa No. 94 offers additional investor protection by requiring Sharia REPO transactions to avoid elements of riba, gharar, and maysir, and to be structured through akad bai' and wa'd with full transparency in documentation. Taken together, these frameworks demonstrate that both civil law and fiqh muamalah recognize the principle of preventing dharar (harm) to investors by mandating fairness, clarity, and enforceability in REPO arrangements.

The findings confirm that DSN-MUI Fatwa No. 94 does not merely validate the Sharia compliance of REPO transactions but also provides substantive legal protection aimed at preventing investor losses due to default, fraud, or exploitative contractual terms. This fatwa complements state regulations by embedding ethical safeguards within financial practices, thereby strengthening investor confidence in the Islamic capital market.

The implication of this research is that while legal protection exists, its effectiveness depends on the consistent enforcement of both contractual obligations and Sharia principles. Regulators, financial institutions, and investors must therefore ensure that REPO transactions are not only compliant in form but also in substance, preventing the misuse of contracts as mere formalities to conceal conventional practices.

Based on these conclusions, the study recommends three key actions. First, regulators such as the OJK should strengthen oversight mechanisms to minimize default risks and ensure alignment with Sharia principles. Second, financial institutions should provide greater transparency and investor education on REPO structures to mitigate information asymmetry. Third, the DSN-MUI should continuously update its fatwas to address evolving practices in the Islamic capital market, ensuring that Sharia-compliant financial instruments remain both protective and competitive.

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