

## Sharia Mutual Funds: Protection Study For Investors **abstrak**

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### ***Abstract***

*Mutual funds are an alternative investment because of the opportunity to get better investment returns within a certain period of time. All investments including mutual funds are inseparable from violations and crimes, so the purpose of this paper is to find out about legal protection for investors as consumers. This paper was compiled using normative research, data related to this research were obtained from literature studies, and analysis was carried out by referring to documents related to the discussion. The results of this paper show that the operational mechanism between investors and Investment Managers of Islamic mutual funds uses the wakalah and mudharabah systems. Legal Protection for Investors According to Law Number 8 of 1995 concerning Capital Markets contained in article 100 paragraph 2 and article 101 paragraph 3, Bapepam-LK has the right to carry out inspections and investigations, this is a process of supervisory activities aimed at providing protection and legal certainty for among investors. According to UUPM has the authority to give administrative sanctions and criminal sanctions. Apart from that, legal protection for investors According to Law Number 21 of 2011 concerning the Financial Services Authority in Article 28, Article 29, and Article 30, aspects of protection for capital market investors are under the authority of the OJK. Provisions related to providing information on financial products and assisting consumers in filing lawsuits in court to fulfill consumer rights.*

***Keywords: Sharia Mutual Funds, Risk, Legal Protection, Investors***

### **Abstrak**

Reksa Dana merupakan alternatif investasi karena kesempatan untuk mendapatkan hasil investasi yang lebih baik dalam jangka waktu tertentu. Semua investasi termasuk reksa dana tidak terlepas dari pelanggaran dan kejahatan, maka tujuan dari tulisan ini untuk mengetahui perlindungan hukum bagi investor sebagai konsumen. Tulisan ini disusun menggunakan penelitian normatif, data-data terkait dengan penelitian ini diperoleh dari studi pustaka, analisis dilakukan dengan merujuk kepada dokumen yang terkait dengan pembahasan. Hasil dari tulisan ini menunjukkan Mekanisme operasional antara investor dengan Manajer Investasi reksa dana syaria'ah menggunakan sistem *wakalah* dan *mudharabah*. Perlindungan Hukum Bagi Investor Menurut Undang-Undang Nomor 8 Tahun 1995 Tentang Pasar Modal tertuang dalam pasal 100 ayat 2 serta pasal 101 ayat 3, Bapepam-LK berhak melakukan pemeriksaan dan penyidikan, hal tersebut merupakan proses kegiatan pengawasan yang bertujuan memberi perlindungan dan kepastian hukum bagi kalangan investor. Menurut UUPM memiliki kewenangan untuk memberikan sanksi administrative maupun sanksi pidana. Selain itu Perlindungan Hukum Bagi Investor Menurut Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan dalam Pasal 28, Pasal 29, dan Pasal 30, aspek perlindungan terhadap investor pasar modal menjadi kewenangan OJK. Ketentuan-ketentuan terkait

pemberian informasi atas produk keuangan serta mendampingi konsumen dalam pengajuan gugatan di pengadilan guna pemenuhan hak konsumen.

**Kata kunci:** Reksa Dana Syariah, Risiko, Perlindungan Hukum, Investor.

## Introduction

One of the economic activities, namely investment, is currently in great demand by people in developed countries and has now expanded to developing countries such as Indonesia. Investment is the activity of placing several funds to get profits in the future. Investment can also be interpreted as a form of delaying the expenditure of assets for current consumption activities, to then be used for the benefit of production activities effectively and efficiently and within the desired timeframe.

The investment provides various advantages, *first*, the rate of return. The rate of return is obtained from the interest rate of the invested capital. *Second*, the capital will increase. The capital that will increase is obtained from the difference in the purchase price which is lower than when selling investment vehicles. Apart from functioning as the main capital in the development of a country, these public funds also have a positive impact on reducing the country's level of dependence on foreign loans originating from an international financial organization or other foreign countries.

Idle public idle funds will be able to provide valuable benefits if the said funds are productive. In this regard, three targets can be used as alternatives for idle fund owners to be able to make their funds productive through banking institutions, direct investment, and capital markets (Soemitra, 2020).

The capital market has a very strategic role as a source of financing for the business and investment world. As an activity in a public offering and securities trading of a public company, it is a financing institution or a vehicle for seeking funds for the company. One of the instruments in the capital market is mutual funds.

Mutual funds are a place to collect funds from the investor community for further investment in securities portfolios by investment managers. An investment manager is a party that manages securities portfolios for customers or manages investment portfolios to manage customer groups, except for companies that do their own business such as insurance and pension funds. Mutual funds can be in the form of companies or collective investment contracts that are open or closed. Mutual fund managers are only investment managers based on contracts, while those who run mutual funds are

companies that have obtained permits from the Capital Market and Financial Institution Supervisory Agency (Bapepam (Affendi, 2020). Mutual funds are mixed investments combining stocks and bonds in one product.

Article 1 DSN-MUI Fatwa No: 20/DSN-MUI/IX/2000 Concerning Guidelines for Investment Implementation for Sharia Mutual Funds explains that mutual funds can be in the form of companies or collective investment contracts and are open or closed. Along with the development and proliferation of financial institutions with sharia principles, starting from the banking sector, it also influences other financial institutions, such as microfinance institutions known as *bait maal wat tamwil* (BMT), sharia insurance or takaful to the sharia capital market and its products, namely mutual funds sharia funds.

The rise of the phenomenon of sharia-compliant capital markets, including sharia mutual funds, requires policies that are directed at proper and proportional considerations. The policy in question can originate from the Financial Services Authority as the supervisory authority for capital and securities markets, in the context of laws and the regulation of sharia mutual funds by the DSN-MUI in the form of a fatwa. The principle of Islamic capital market refers to the principles of Islamic law in capital market activities based on the fatwa of the National Sharia Council (DSN-MUI), both the DSN-MUI fatwa stipulated in Bapepam and LK regulations and the DSN-MUI fatwa that was issued before the enactment of this regulation. Thus, shari'ah mutual funds are an easy way for investors to invest because they are managed by professional management, there is investment diversification, information transparency, and liquidity, and more importantly, they are managed based on sharia principles.

In addition to policies, monitoring factors are also very necessary in the process of implementing policies that have been made. Especially in Islamic mutual funds as an institution that manages funds from investors to be invested in legal activities, and must always comply with sharia principles. based on Law no. 10 of 1998 concerning amendments to Law No.7 of 1992 concerning Banking.

Sharia principles are rules of agreement based on Islamic law between banks and other parties to deposit funds and or finance business activities, or other activities declared by sharia, including financing based on the principle of profit sharing (*mudharabah*) (Andriani, 2020). The operational mechanism in Islamic Mutual Funds is

between investors or financiers and Investment Managers using the *wakalah* system, and between Investment Managers and investment users/*mudharib* using the *mudharabah* system.

The emergence of these mutual funds was driven by the desire to apply profit sharing in the profit-sharing mechanism. Sharia mutual funds are included in intermediary institutions by investors in placing funds to be reinvested to those who need it as additional working capital.

Amid the rise of sharia-labeled investment instruments, it is also necessary to pay close attention that the lack of legal regulations that cover every sharia activity and or transaction in the capital market is also felt as an unclear aspect of protection for investors or customers in the context of sharia-labeled investments. From the background of the problems described above, a formulation of the problem can be put forward: "What is the form of legal protection for investors in investing through Islamic Mutual Funds? To get the results from the previous problem formulation, this paper was prepared using normative research methods, data related to this research were obtained from literature studies, and analysis was carried out by referring to documents or literature related to the discussion.

## **Discussions**

### **Sharia mutual funds**

Sharia mutual funds are a forum for collecting public funds which are then managed by legal entities commonly known as investment managers, the funds that have been collected are then invested in a portfolio of securities by the principles and provisions of Islamic law (OJK, 2020). The establishment of sharia mutual funds in the form of Collective Investment Contracts was based on Law No. 8 of 1995 concerning the Capital Market, which was stated in deed Number 24 dated June 12, 1997, made before Notary Djedjem Wijaya, S.H. in Jakarta between PT Danareksa Fund Management as investment management and Citibank N.A. Jakarta as a Custodian Bank (Ariswanto, 2020).

PT. Danareksa in 1997 became the spearhead in the issuance of sharia mutual funds in Indonesia. This mutual fund became the first capital market instrument to operate in sharia and was the first step in the birth of the sharia capital market. Then Bapepam as the supervisor in this case began to take the initiative to accommodate

Muslim investors. So in 1997 a sharia mutual fund product was introduced, named Danareksa Syariah. Exactly three years after the birth of sharia mutual funds, PT. Danareksa presents a new sharia instrument, namely the Jakarta Islamic Index, which is a sharia stock index body that trades selected company shares provided that their operational principles do not conflict with Islamic religious provisions (Manan, 2012).

Fatwa of the National Sharia Council Number: 20/DSN-MUI/IX/2001 states that what is meant by sharia mutual funds are mutual funds that are run according to Islamic sharia principles, both in contracts between investors as property owners (*sahib al-mal*) and investment managers as representative *sahib al-mal*, as well as between investment managers as representatives of *sahib al-mal* and investment users. So that it can be understood that Islamic mutual funds are a means used for activities to collect funds from the public which will then be invested in several securities portfolios assisted by investment managers as managers. The securities portfolio can be in the form of Sukuk, money market instruments, stocks, or a combination of several of them (MUI, 2003). Sharia mutual funds are also a place for investors who want to invest but do not have the time and knowledge about investments, so investors can entrust their funds to investment managers (Andriani, 2020).

### **Principles of Islamic mutual funds**

Sharia mutual funds are a financial product that refers to the Islamic financial system by relying on the provisions of Islamic teachings which in their business activities may not be placed in stocks and bonds from companies whose products are contrary to Islamic law, such as beverage or food factories that contain pork, alcohol, cigarettes, entertainment business that contains immorality and contrary, other things. On the other hand, the National Sharia Council also must provide direction to investment managers so that investment activities in Islamic mutual funds remain on the right track, avoiding *gharar* and *maysir*.

Conventional mutual funds and Islamic mutual funds have similarities, in terms of their nature and characteristics (Haerisma, 2014). It's just that the difference is in the management of the investment portfolio that applies Islamic sharia principles and operational principles. The basic principle of operating Islamic financial institutions in Sharia Mutual Funds is that between investors and Investment Managers is carried out

using the *wakalah* system, and between Investment Managers and investment users/*mudharib* is carried out using the *mudharabah* system (Inayah, 2020)

Profit sharing between investors (*sahibul-mal*) represented by the Investment Manager and investment users is based on the proportion agreed upon by both parties through the Investment Manager as a representative and there is no guarantee for certain investment returns to investors. Investors only bear the risk of the funds that have been provided and the Investment Manager as a representative does not bear the risk of loss on the investment made as long as it is not due to negligence.

Funds collected at the Investment Manager can only be invested in types and Investment Instruments according to the provisions. Investments can only be made in financial instruments that comply with Islamic Sharia. Fatwa of the National Sharia Council (DSN) No. 20/DSN-MUI/IV/2001, Concerning Sharia Mutual Fund Investment Guidelines, Article 7 The intended financial instruments include:

1. Share instruments that have gone through a public offering and distribution of dividends are based on the operating profit level;
2. Placement in deposits at Islamic Commercial Banks;
3. Long-term debentures by Sharia principles. Investment returns received in joint assets owned by investors in Sharia Mutual Funds will be distributed proportionally to investors.

Investment income that can be received by Syari'ah Mutual Funds is from shares which can be in the form of dividends, which are profit-sharing distributed from the profit generated by the issuer, either paid in cash or the form of shares; then Rights, which are rights to pre-order securities provided by issuers and Capital gains, which are profits obtained from buying and selling shares on the capital market (Aini, 2022).

Comparing Islamic mutual funds with conventional mutual funds, the two do not have much difference. The fundamental difference lies only in the management method and investment policy principles applied. The investment policy for sharia mutual funds is based on investment instruments with halal management methods in line with DSN-MUI Fatwa Fatwa No. 20/DSN-MUI/IV/2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds.

Sharia, mutual funds are mutual funds that operate according to the terms and principles of Islamic sharia, both in the form of contracts between investors as property

owners (*sahib al-mal*) and investment managers as representatives of *sahib al-mal*, as well as between investment managers as representative *sahib al-mal* with investment users. Thus, sharia mutual funds are mutual funds whose management and investment policies refer to Islamic sharia. Sharia mutual funds will not invest their funds in bonds from companies whose management or products are contrary to Islamic law, for example, alcoholic beverage factories, the pig-raising industry, financial services that involve usury in their operations, and businesses that contain immorality (Soemitra, 2009).

The cooperative relationship between investors, investment managers, and Custodian Banks certainly has its rights and obligations. The investment manager as the representative of the *shohibul maal* is obliged to provide the funds to be invested. Investors are obliged to provide wages or fees to investment managers and Custodian Banks because they have tried to develop investors' funds and the Bank acts as a treasurer that accommodates and stores investors' funds.

The operational mechanism in Islamic mutual funds is between investors/financiers and investment managers using the *wakalah* system, and between investment managers and investment users/*mudharib* using the *mudharabah* system (Pratiwi, 2017). With a *wakalah* contract, the investment manager acts as a representative of the investor to carry out the investment for the benefit of the investor. *Mudharabah* contract is a contract or system in which a person gives his property to another person to be managed with the condition that the profits obtained (from the results of such management) are shared between the two parties, by the conditions agreed upon by both parties, while the loss is borne by the *sahib al-mal* as long as there is no negligence from the *mudhari*.

The operational mechanism between investors (investors) and Investment Managers of Islamic mutual funds uses the *wakalah* system. In the *wakalah* contract, the investor gives a mandate to the investment manager to carry out the investment for the benefit of the investor by the provisions stated in the prospectus. Investments are only made in instruments that comply with Islamic law.

The principle of *mudharabah* in this shari'ah mutual fund has several characteristics, namely:

1. Investors such as *shahib al-mal* share the risk of losses experienced by investment managers as 'amil.
2. The investment manager as 'amil does not bear the risk of loss on investment if the loss is not caused by negligence.
3. profits are shared between the investor and the investment manager by the proportion agreed by both parties.

By these operational principles, the implementation of investments made by investment managers as mutual fund managers and investment users uses the *mudharabah* principles with transactions that must not conflict with shari'ah principles. Transactions prohibited by Islamic law include transactions that contain elements of *gharar* (unreasonable risk) and *najsy* (false offers).

Investment selection and implementation, types, and investment instruments have provisions Investments can only be made in financial instruments that comply with Islamic law. The financial instruments referred to include:

- a. Share instruments that have gone through a public offering and distribution of dividends are based on the level of operating profit.
- b. placement in deposits at Islamic commercial banks.
- c. Long-term debt securities by sharia principles.

### **Profit And Risk in Sharia Mutual Funds**

The advantages obtained by investors or investors when investing through Islamic mutual funds are. *First*, investors who do not have large enough funds to invest can diversify their investment in securities to minimize risk. Islamic mutual funds aim to be able to help instruments in the money market and capital market. *Second*, make it easier for investors to invest in the capital market freely. Investors who have a good understanding of investors will find it easier to determine good stocks to buy. *Third*, time efficiency. Investors do not need to monitor performance all the time (Firmansyah, 2020).

As with other investment products, besides bringing various profit opportunities, Islamic mutual funds also contain various risk opportunities for investors who invest. Risks in investing in mutual funds can be caused by several factors, including:

1. Risk of Decreasing Participation Unit Value



The Net Asset Value (NAV) of the relevant Mutual Fund can affect the change, either increase or decrease in the value of each Participating Unit of the Mutual Fund. Changes in securities prices and portfolios can be one of the causes of a decrease in the Net Asset Value (NAV) of each Participation Unit. The decline in NAV was due to the deteriorating performance of the stock market and issuers (Nursetho, 2021).

2. Default Risk

The Investment Manager will try to achieve the best investment results to be given to Participation Unitholders. However, if extraordinary conditions occur (as stipulated in the Law), the securities issuer or Investment Manager and other parties related to the Investment Manager may default in fulfilling their obligations (Pariela, 2018).

3. Credit risk

This risk is caused by the failure of the count part to fulfill its obligations. This risk arises from bank activities such as lending, and trade financing services and comes from bad debtor performance so that it fails to carry out the obligations agreed in the contract (Wijayanti, 2020).

4. Changes in Economic and Political Conditions at Home and Abroad Indonesia's economy adheres to an open economic system which causes turmoil in economic conditions abroad that can affect economic conditions in Indonesia. This also includes the Indonesian political system which is affected if there is a change in world political conditions.

5. Liquidity Risk

Liquidity is defined as the disbursement of investor funds, if there is a high rate of resale of securities in a short period by the Participation Unit Holders, the disbursement of investor funds may be delayed and in some cases, payment delays occur for months with no clarity on payment. However, if extraordinary conditions (force majeure) occur or events that are beyond the control of the Investment Manager, by OJK regulations, Resale can be stopped (Mehri, 2015). This risk arises due to the bank's inability to pay its obligations at maturity.

6. Risk of Regulatory Changes

The rate of return and return on investment to be received by the Investment Manager may be affected if there is a change in regulations in the field of macroeconomics relating to Government Bonds/Debt Instruments. Changes in government regulations and policies in the field of taxation can also affect investment returns.

#### 7. Risk of Dissolution

By OJK Regulation NUMBER 23/POJK.04/2016 concerning Mutual Funds in the Form of Collective Contracts, so that mutual funds are not dissolved, there are two minimum managed fund provisions that must be met by Investment Managers. The first provision for new mutual funds is that they must have managed funds of at least 10 billion Rupiah within 90 trading days from the date they are declared effective, if they fail to fulfill these obligations, they must be dissolved. The second provision, for mutual funds that are already running, is if the managed funds are below IDR 10 billion within 120 consecutive working days, then the mutual fund must be dissolved.

### **Legal protection for Sharia Mutual Fund investors**

According to Satjipto Raharjo, legal protection can be interpreted as an effort to protect human rights that have been violated by other people and given to the community so that they can enjoy the rights granted by law. This form of legal protection has two characteristics, namely preventive and punitive (Sumiati, 2021). The form of protection is the existence of law enforcement institutions such as courts, police, and dispute resolution institutions outside the court.

If there are legal issues that are considered detrimental to investors, then legal protection for investors in sharia mutual fund investments are stipulated in the Capital Market Law and also the Financial Services Authority Law. To protect investors in this matter owned by Bapepam and LK, namely: The precautionary measure taken by Bapepam-LK is to stipulate that securities prospectuses are prohibited from containing misleading content or untrue information about material facts or presenting information about the advantages and disadvantages of the securities being offered. In addition to legal protection by Bapepam and LK, there is also a central supervisory agency that performs legal protection, this institution is the OJK.

The forms of legal protection provided by the OJK for consumers are preventive and sanctioning or repressive in nature, bearing in mind that the OJK's task is to carry out the regulatory and supervisory functions of the financial services sector. In terms of legal protection for investors carried out by the OJK, it is contained in articles 28 and 29 and Article 30 of the Financial Services Authority Law. In article 28 of the Law, the OJK has the authority to ask Financial Services Institutions to stop their activities if these activities have the potential to harm society (Kowanda, 2021).

1. Legal Protection for Investors According to Law Number 8 of 1995 concerning the Capital Market

In Article 4 of Law Number 8 of 1995 on the Capital Market, it is stated that "Development, regulation, supervision as referred to in Article 3 are carried out by Bapepam to realize the creation of regular, fair and efficient Capital Market activities as well as protect the interests of investors and the public." Law Number 8 of 1995 Concerning Capital Markets (hereinafter referred to as UUPM) determines and regulates that the authorized authority over the capital market is Bapepam-LK. This authority is under the Ministry of Finance to foster, regulate, and supervise the capital market. In its activities, Bapepam-LK is under and responsible to the Minister of Finance. It is Bapepam-LK that has the authority to carry out preventive and repressive capital market legal protection.

In UUPM, Bapepam-LK is an institution to restore public confidence in the market which has been depressed since the emergence of the financial crisis in several Asian countries. In the end, it was this financial crisis that contributed to the formation of the OJK as a financial service supervisory institution in Indonesia. In carrying out its functions, Bapepam-LK has the authority to:

- a. Granting business licenses to Stock Exchanges, Clearing Guarantee Institutions, Depository and Settlement Institutions, Mutual Funds, Securities Companies, Investment Advisors, and Securities Administration Agencies; granting licenses to individuals for Underwriter Representatives, Broker-Dealer Representatives, and Investment Manager Representatives; and approve the Custodian Bank.
- b. Requires registration of Capital Market Supporting Professionals and Trustees
- c. Determine the requirements and procedures for nominating and temporarily dismissing commissioners and or directors and appointing temporary

management of the Securities Exchange, Clearing Guarantee Institution, and Depository and Settlement Institution until a new commissioner and or director is appointed.

- d. Determine the requirements and procedures for a Registration Statement and declare, postpone or cancel the effectiveness of a Registration Statement.
- e. Conduct examination and investigation of each Party in the event of an incident that is suspected of being a violation of this law and or its implementing regulations.
- f. Requiring each Party to stop or improve advertisements or promotions related to activities in the Capital Market; or take the necessary steps to overcome the consequences arising from the advertisement or promotion in question.
- g. Examine every Issuer or Public Company that has or is required to submit a Registration Statement to Bapepam; or Parties required to have a business license, individual license, approval, or professional registration based on this law.
- h. Appoint other parties to carry out certain inspections in the framework of implementing Bapepam's authority as referred to in letter g.
- i. Announcing the inspection results
- j. Freezing or canceling the listing of a Security on a Stock Exchange or stopping an Exchange Transaction on certain Securities for a certain period in order to protect the interests of investors.
- k. To stop Stock Exchange trading activities for a certain period in the event of an emergency.
- l. Examine the objections submitted by the Party that is subject to sanctions by the Stock Exchange, Clearing Guarantee Institution, or Depository and Settlement Institution and issue a decision to cancel or strengthen the imposition of the said sanction.
- m. Determine fees for licensing, approval, registration, inspection, and research as well as other costs in the context of Capital Market activities.
- n. Take the necessary actions to prevent losses to society as a result of violations of provisions in the field of Capital Market activities.

- o. Provide a further explanation of the technical nature of this law or its implementing regulations.
- p. determine other instruments as securities, other than those specified in Article 1 number 5.

To protect investors, issuers who will sell securities in a Public Offering must provide an opportunity for investors to read the prospectus regarding the securities issued, before placing an order or at the time the order is placed. In the end, Bapepam-LK pays attention to the completeness and clarity of the issuer's documents to conduct a Public Offering to comply with the principle of capital market openness. This is important considering the achievement of securities is the initial door and time to consider for investors whether to decide to buy or not a security. The next preventive action taken by Bapepam-LK is to stipulate that the securities prospectus is prohibited from containing misleading content or untrue statements about material facts or presenting information about the advantages and disadvantages of the securities being offered.

In practice, Bapepam-LK prepares a standard prospectus for the securities to be offered. This protective measure begins when Bapepam-LK grants permit to SROs, Mutual Funds, securities companies, and other supporting professions to carry out activities in the capital market. In addition to preventive measures, Bapepam-LK is also authorized to carry out inspections and investigations. This is a consequence of the oversight function given by law to Bapepam-LK. Investigation activities are carried out on all parties suspected of having committed, are attempting to commit or order, participate in, induce, or assist in violating the capital market law and its implementing regulations:

- a. Request information and or confirmation from parties suspected of committing or being involved in violations of this law and or its implementing regulations or other parties if deemed necessary.
- b. Obliging parties suspected of committing or being involved in violations of this law and or its implementing regulations to carry out or not carry out certain activities.
- c. Examine and or make copies of records, books, and or other documents, both belonging to the Party suspected of committing or being involved in violations

of this law and or its implementing regulations or other parties if deemed necessary;

- d. Establish conditions and/or permit parties suspected of committing or being involved in violations of this law and/or its implementing regulations to take certain actions necessary to settle losses that have arisen.

If Bapepam-LK thinks that the violation of the capital market law and its implementing regulations resulted in losses in the capital market service industry and endangered the interests of investors' rights, then Bapepam-LK determines the commencement of investigative action. This investigation was carried out by certain Civil Servant Officials within Bapepam-LK and was given the authority to:

- a. Receiving reports, notifications, or complaints from someone regarding criminal acts in the Capital Market sector.
- b. Conduct research on the veracity of reports or information regarding criminal acts in the Capital Market sector.
- c. Research parties suspected of committing or being involved in criminal acts in the capital market sector.
- d. Summoning, examining, and requesting information and evidence from any Party suspected of committing, or as a witness in a crime in the capital market sector.
- e. Examining books, records, and other documents relating to criminal acts in the capital market sector.
- f. Carry out inspections at certain places where it is suspected that there is evidence of books, records, and other documents as well as confiscate goods that can be used as evidence in criminal cases in the Capital Markets sector.
- g. Blocking accounts at banks or other financial institutions of parties suspected of committing or being involved in criminal acts in the capital market sector
- h. Requesting expert assistance in carrying out the duties of investigating criminal acts in the Capital Market sector.
- i. State when the investigation was started and stopped.

Bapepam-LK's actions in the form of inspections and investigations are a process of supervisory activities aimed at providing protection and legal certainty for investors. In terms of providing repressive legal protection, according to UUPM, it has the

authority to impose administrative sanctions in the form of written warnings, fines, restrictions on business activities, suspension of business activities, revocation of business licenses, cancellation of approvals, and cancellation of registration. In addition, UUPM also provides criminal sanctions against perpetrators of violations and/or crimes in the capital market services sector.

According to Article 104 of the Capital Market Law, Investment Managers who commit violations can be subject to administrative and criminal sanctions. The legal consequence is the temporary suspension of the investment manager's operations which has the effect of freezing investors' funds so that funds cannot be withdrawn. Investors also experience material losses due to the lack of transparency of information. If there is no good faith from the Investment Manager who commits negligence, then the investor has the right to demand accountability and replace all losses suffered by the investor (Kowanda, 2021).

## 2. Legal Protection for Investors According to Law Number 21 of 2011 concerning the Financial Services Authority

One of the duties of the OJK is to uphold the protection of consumers of financial services in Indonesia. Consumer protection in the capital market will hereinafter be referred to as capital market investor protection because consumers in the capital market sector are investors or investors. Therefore, the aspect of protecting capital market investors falls under the authority of the OJK. Regarding consumer protection, it is stated in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions that explicitly regulate consumer and public protection for the financial services industry. The forms of legal protection provided by the OJK for consumers are preventive and sanctioning or repressive in nature, bearing in mind that the OJK's task is to carry out the regulatory and supervisory functions of the financial services sector. Article 28 of the OJK Law provides legal protection like preventing losses to consumers and the public which is carried out by the OJK:

- a. Providing information and education to the public on the characteristics of the financial services sector, its services, and products.
- b. Requesting Financial Services Institutions to stop their activities if these activities have the potential to harm the community; and

- c. Other actions deemed necessary by the provisions of laws and regulations in the financial services sector.

In article 29 of the OJK Law, the OJK conducts consumer complaint services which include, *First*, preparing adequate tools for serving consumer complaints that have been harmed by actors in financial service institutions. *Second*, create a mechanism for consumer complaints that have been harmed by actors in financial service institutions. *third*, Facilitating the resolution of consumer complaints that have been harmed by actors in financial service institutions by laws and regulations in the financial services sector.

Specifically, Article 29 of the OJK Law states that OJK provides consumer complaint services by ordering or taking certain actions to Financial Services Institutions to resolve consumer complaints that have been harmed by the said Financial Services Institution.

As well as filing a lawsuit to recover the assets belonging to the aggrieved party from the party causing the loss, whether under the control of the party causing the said loss or under the control of another party in bad faith; and/or to obtain compensation from parties causing losses to consumers and/or Financial Services Institutions as a result of violations of laws and regulations in the financial services sector.

The philosophical foundation that OJK institutions provide legal protection are the principles that underlie OJK in carrying out its duties and authorities, namely:

- a. The principle of independence, namely being independent in making decisions and implementing the functions, duties, and authorities of the OJK while remaining by the applicable laws and regulations.
- b. The principle of legal certainty, namely the principle of a rule of law that prioritizes the basis of laws and regulations and justice in every policy of the implementation of the Financial Services Authority.
- c. The principle of public interest, namely the principle that defends and protects the interests of consumers and society and promotes the general welfare.
- d. The principle of openness, namely the principle of being open to the public's right to obtain correct, honest, and non-discriminatory information regarding the operation of the Financial Services Authority, while taking into account the



protection of personal and group human rights, as well as state secrets, including secrets as stipulated in laws and regulations -invitation.

- e. The principle of professionalism, namely the principle that prioritizes expertise in carrying out the duties and authorities of the Financial Services Authority, while still being based on the code of ethics and provisions of laws and regulations.
- f. The principle of integrity, namely the principle of adhering to moral values in every action and decision taken in the administration of the Financial Services Authority.
- g. The principle of accountability, namely the principle that determines that every activity and the final result of every activity in the implementation of the Financial Services Authority must be accountable to the public.

Consumer protection in the financial services sector under OJK covers the entire financial services sector, including bank financial institutions and non-bank financial institutions. The unification of consumer protection regulations in the financial services sector which has so far been scattered is intended to improve the system and cover substantial deficiencies. Regarding consumer protection, it is stated in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions regarding the provision of information on financial products, ordering the settlement of consumer complaints about the intended financial product, and accompanying consumers to file lawsuits in court in fighting for their rights. right.

## **Conclusion**

The growing development of Islamic mutual funds in Indonesia is currently able to meet the needs of investors who wish to invest according to Islamic law. The development of Islamic mutual funds also has promising prospects for the economic sector in the future if the performance system is running well and the government provides more adequate regulation regarding Islamic investment in the capital market. The selection and implementation of investment transactions must be based on the principle of prudence, and it is not permissible to carry out speculation which contains elements of *gharar*. The operational mechanism between investors (investors) and

investment managers of Islamic mutual funds uses the *wakalah* system. In the *wakalah* contract, investors give a mandate to investment managers to carry out investments for the benefit of investors by the provisions stated in the prospectus. While the implementation of investments made by investment managers as mutual fund managers and investment users uses the *mudharabah* principle.

Legal Protection for Investors According to Law Number 8 of 1995 concerning Capital Markets contained in article 100 paragraph 2 and article 101 paragraph 3, Bapepam-LK has the right to carry out inspections and investigations. investors. UUPM has the authority to provide administrative sanctions as well as criminal sanctions. Legal Protection for Investors According to Law Number 21 of 2011 concerning the Financial Services Authority, aspects of protection for capital market investors falls under the authority of the OJK. Regarding consumer protection, it is stated in Article 28, Article 29, and Article 30 of the OJK Law, which are provisions related to providing information on financial products and assisting consumers in filing lawsuits in court to fulfill consumer rights.

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