

The Optimization of Sharia Mutual Fund as an Investment Means to Promote Financial Inclusion in Indonesia

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Abstract : Sharia mutual fund can be used as an investment alternative for investors, especially for small investors or retailers. The excess of sharia mutual funds that can be reached by all groups shall be a means to promote financial inclusion in Indonesia. Based on data released by the Bank of Indonesia (BI), in 2018, financial inclusion or access to financial institutions of the Indonesian citizens is only 49% (forty-nine percent). Therefore, we need a concrete strategy to promote financial inclusion in Indonesia in which one of the strategies that can be applied is by optimizing sharia mutual funds as an investment means. This study aims to find out the regulation and legal protection of investors in implementing sharia mutual fund investments in the marketplace. The method used was a normative juridical emphasizing on legal research literatures or secondary data. The results showed that sharia mutual funds can be one of the means in promoting financial inclusion program as it can be reached by all groups, especially small investors or retailers. The optimization of sharia mutual funds can be done by utilizing advanced technology in which one of them is the implementation of sharia mutual fund investments through the marketplace. Sharia mutual fund investment in the marketplace has the potential to develop as it can be done easily, quickly, and cheaply. However, the implementation of sharia mutual fund investments in the marketplace still requires strengthening regulations to provide legal certainty and legal protection for its users.

Keywords: Investment, Optimization, Sharia Mutual Funds.

Optimalisasi Reksadana Syariah sebagai Sarana Investasi dalam Rangka Memajukan Keuangan Inklusif di Indonesia

Reksadana syariah dapat dijadikan salah satu alternatif investasi bagi investor, khususnya investor kecil atau ritel. Kelebihan reksadana syariah yang dapat dijangkau oleh semua kalangan dapat menjadi sarana dalam rangka memajukan keuangan inklusif di Indonesia. Berdasarkan data Bank Indonesia (BI) pada tahun 2018 inklusi keuangan atau akses terhadap lembaga keuangan masyarakat Indonesia hanya sebesar 49% (empat puluh sembilan persen). Oleh karenanya diperlukan strategi dan langkah-langkah konkrit guna memajukan inklusif keuangan di Indonesia yang salah satunya dapat melalui pengoptimalan reksadana syariah sebagai sarana investasi. Tujuan penelitian ini adalah untuk mengetahui bagaimana pengaturan dan perlindungan hukum investor dalam pelaksanaan investasi reksadana syariah di *marketplace*. Metode penelitian yang digunakan adalah yuridis normatif dengan menitik beratkan kepada penelitian hukum kepustakaan atau data sekunder. Hasil penelitian menunjukkan bahwa reksadana syariah dapat menjadi salah satu sarana dalam mendukung program keuangan inklusif dikarenakan dapat dijangkau oleh semua kalangan terutama investor kecil atau ritel. Optimalisasi reksadana syariah dapat dilakukan dengan cara memanfaatkan penggunaan teknologi secara muktahir, salah satunya yaitu pelaksanaan investasi reksadana syariah melalui *marketplace*. Investasi reksadana syariah di *marketplace* sangat berpotensi berkembang dikarenakan investasi reksadananya dapat dilakukan dengan mudah, cepat, dan murah. Namun pelaksanaan investasi reksadana syariah di *marketplace* tersebut masih memerlukan penguatan regulasi guna memberikan kepastian dan perlindungan hukum yang kuat bagi para penggunanya.

Kata kunci: Investasi, Optimalisasi, Reksadana Syariah

INTRODUCTION

The capital market is an alternative means for investing and financing. The implementation of the capital market in Indonesia is regulated in Law No. 8 of 1995 concerning The Capital Market (UUPM). This Law was created with the aim of encouraging, directing and controlling various

activities in the capital market. The capital market has a strategic role in national development as a financial institution for business and as a vehicle for public investment, including small, medium and large investors. One of the roles of the capital market, which is as a source of funding for businesses, causes the need for funds in the capital market to be continuously increased. Besides, there are various choices and types of investment instruments in the capital market so that the investors need special skill to be able to invest. In order to provide legal certainty to the complexity of the implementation of investments in the capital market, the UUPM was created. The establishment of this Law aims to accommodate the implementation of investments in which one of them is through mutual funds.

Mutual Fund can be used as an investment alternative for investors, especially for small investors and those who have less time and skill to count the risks of their investment.¹ According to Article 1 Paragraph 27 of UUPM, Mutual Fund is a means used to collect funds from the investors to be subsequently invested in a securities portfolio by an Investment Manager (IM). Mutual fund is created with the aim to be a vehicle for public who want to carry out investment activities but have limited knowledge and time. Mutual fund as a vehicle that manages public funds, in this case investors, invest the funds in investment instruments in the capital market by buying mutual fund participation units. This mutual fund is divided into several types, i.e. fixed income fund, stock market fund, and mixed mutual fund. In order to accommodate people who want to invest while still paying attention to the provisions of sharia, in its development, there are sharia capital market and mutual fund. In carrying out their management activities and investment policies, the sharia capital market and mutual fund must be based on sharia principles. Sharia capital market is a part of the Indonesian capital markets which has an important role as an alternative financing for business and government as well as a means for investors to obtain returns through investment instruments offered in the capital market.²

Sharia mutual fund and conventional mutual fund have different philosophical foundations and management methods. The main difference between conventional mutual fund and sharia mutual funds lies in the screening process. In the management of sharia mutual fund, there is a screening process as a part of asset allocation processes. Sharia mutual fund is only allowed to be placed on shares and other instruments in accordance with Islamic law.³ This difference has an impact on the allocation and composition of assets in its portfolio. Besides, sharia mutual fund carries out a cleaning process aiming at cleaning out income which is non-halal and is not in accordance with Islamic law. The management of sharia mutual fund must follow the legislations in the capital market sector concerning the guidelines for managing corporate mutual funds and Collective Investment Contracts (KIK).

The first legal foundation of sharia mutual fund in Indonesia is the *Fatwa* of the Indonesian Ulema Council (MUI) No. 20/DSN-MUI/IV/2001 concerning the Guidelines for Sharia Mutual Fund. In addition, positive legal regulations for sharia mutual fund are contained in several Financial Services Authority Regulations (POJK), including POJK No. 15/POJK.04/2015 concerning the Implementation of Sharia Principles in the Capital Market (PJOK on the Implementation of Sharia Principles in the Capital Market), POJK No. 19/POJK.04/2015 concerning the Issuance and Requirement of Sharia Mutual Funds (PJOK on the Issuance and Requirement of Sharia Mutual Funds), POJK No. 23/POJK.04/2016 concerning Mutual Funds in the Form of Collective Investment

¹ Cita Sary Djaakum, "Reksadana Syariah", *Jurnal Hukum Islam dan Bisnis*, Vol. 6, No. 1, 2014, 83-102.

² Lastuti Abubakar dan Tri Handayani, "Kesiapan Infrastruktur Hukum dalam Penerbitan Sukuk (Surat Berharga Syariah) sebagai Instrumen Pembiayaan dan Investasi untuk Mendorong Pertumbuhan Pasar Modal Syariah Indonesia", *Jurisprudence*, Vol. 7, No. 1, 2017, 1-14.

³ Bintang Pratama Buana Putra, "Perbandingan Kinerja Reksadana Syariah di Indonesia Menggunakan Metode Sharpe", *Jurnal Ekonomi Syariah Teori dan Terapan*, Vol. 3, No. 9, 683-698.

Contracts (PJOK on Collective Investment Contracts Mutual Funds), and POJK No. 53/POJK.04/2015 concerning Contracts Used in Sharia Securities Issuance in the Capital Market (POJK on Contracts in Sharia Securities Issuance).

Sharia mutual funds are mutual funds allocating all funds or portfolios into sharia instruments, such as sharia stocks, *sukuk*, and other sharia financial instruments.⁴ Based on Article 1 Paragraph 1 of POJK on the Issuance and Requirement of Sharia Mutual Funds, sharia mutual funds are mutual funds as referred to in the capital market law in which its management does not conflict with sharia principles in the capital market. In its management, sharia mutual funds use a *wakalah* contract. Different from conventional mutual funds, in sharia mutual funds, there are screening and cleansing processes, the Sharia Supervisory Board (DPS) as a supervisor, and contracts. The management of sharia mutual funds must be based on sharia principles both related to the contract as well as its management. The implementation of sharia mutual funds must not conflict with the existing sharia principles in the capital market as stipulated in POJK on the Implementation of Sharia Principles in the Capital Market. Concerning the contract, sharia mutual funds use *wakalah* contract in which *muwakkil* is the party that has the power to grant power to *wakil* as the party that receives the power to perform certain actions.⁵

In its implementation, the *wakalah* contract must be declared by the related parties as a will showing the existence of contract procurement. The Financial Services Authority (OJK) as a regulator continues to be committed to encourage the Sharia Mutual Funds industry to continue to grow as it is proved by the issuance of OJK regulations that can support and provide legal certainty on the implementation of sharia mutual funds. The excess of sharia mutual funds that can be reached by all groups shall be a means to promote financial inclusion in Indonesia. Based on Presidential Regulation of the Republic of Indonesia No. 82 of 2016 concerning the National Strategy for Inclusive Finance (Perpres SNKI), it is the right of everyone to have access and full services from financial institutions in a timely, comfortable, informative, and affordable manner with full respect for their dignity. Financial services are available to all segments of society, with special attention to the poor, productive poor, migrant workers, and residents in remote areas. Based on data released by the Bank of Indonesia (BI), in 2018, financial inclusion or access to financial institutions of the Indonesian citizens is only 49% (forty-nine percent).⁶

One of the ways to support financial inclusion in Indonesia is through sharia mutual fund investment. However, based on data released the Financial Services Authority (FSA), on April 2019, the number of sharia mutual fund products is only 11.67% (eleven point sixty seven percent) of the total number of mutual funds and the Net Asset Value (NAV) is only 6.92% (six point ninety-two percent) of the total NAV value of the mutual fund.⁷ Therefore, we need a concrete strategy to optimize sharia mutual funds as an investment vehicle in Indonesia.

The optimization of sharia mutual funds can be done by utilizing the use of advanced technology, one of which is the implementation of sharia mutual fund investments through the marketplace. Marketplace is an electronic vehicle for interactive business community providing a market where companies can take part in business to business in electronic commerce (e-commerce)

⁴ Andrian Sutedi, 2011, *Pasar Modal Syariah: Sarana Investasi Keuangan Berdasarkan Prinsip Syariah*, Jakarta: Sinar Grafika, 8.

⁵ Jeni Susyanti, 2016, *Pengelolaan Lembaga Keuangan Syariah*, Malang: Empat Dua, 202.

⁶ Benedicta Prima, "Inklusi Keuangan Baru 49%, Pemerintah Keluarkan Strategi Aksi Indonesia Menabung", *Kontan*, <https://nasional.kontan.co.id/news/inklusi-keuangan-baru-49-pemerintah-keluarkan-strategi-aksi-indonesia-menabung> (Accessed 31 May 2019).

⁷ Otoritas Jasa Keuangan, "Data Produk Reksadana Syariah", <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/reksa-dana-syariah/default.aspx> (Accessed 31 May 2019).

and/or electronic business (e-business) activities.⁸ Marketplace is a place or means for buyers and sellers to conduct business transactions using online media and electronic technology. Marketplace can be an electronic marketing tool that brings together many sellers and buyers to transact with one another. In its development, the function of the marketplace, which was originally as a means to bring together sellers and buyers in conducting business transactions, has turned into a means that can be used to invest. One investment accommodated by the marketplace is sharia mutual funds. Sharia mutual fund investment through the marketplace can be done easily, quickly and cheaply. The ease and fast access is a result of the use of advanced technology, while cheap is caused by the minimum amount specified in investing in sharia mutual funds which is very affordable as it is only 10.000 (ten thousand) rupiah. Sharia mutual funds in the marketplace are one of the products or features of the marketplace. Therefore, in organizing these investment facilities, the marketplace collaborates with IM and Mutual Funds Selling Agents (APERD).

Sharia mutual fund investment in the marketplace has the potential to develop as it can be done easily, quickly, and cheaply. However, the implementation of sharia mutual fund investments in the marketplace still requires strengthening regulations to provide legal certainty and legal protection for its users. Therefore, in order to provide legal certainty and protection for investors in the marketplace, special regulations are needed considering the shift in function of the marketplace as a means of buying and selling into an investment means. In addition, the existence of regulations that specifically regulate mutual fund investments in the marketplace is expected to attract investors to invest their funds. Based on the description, the problem discussed in this study is formulated into the following questions: How is the Juridical Review of Sharia Mutual Fund Investment based on Positive Law in Indonesia? What is the difference between Sharia and Conventional Mutual Funds? And How is the legal analysis of the optimization of sharia mutual fund investment through the marketplace as an effort to promote financial inclusion?

RESEARCH METHODS

This study is a descriptive analysis by using a normative juridical approach. The normative juridical approach is carried out by analyzing and interpreting theoretical reviews concerning principles, conceptions, doctrines and legal norms relating to the capital market, sharia mutual funds, financial inclusion, and e-commerce. Descriptive analysis is a method used to obtain a complete picture of legal condition in a particular place and time. This normative juridical research will focus on legal research literatures by analyzing library materials or secondary data, namely books, journals and related previous studies. Besides, this study will also use primary legal materials, namely legislations relating to the capital markets, sharia mutual funds, financial inclusion, and e-commerce.

RESULTS AND DISCUSSION

1. Juridical Review of Sharia Mutual Fund Investment Based on Positive Law in Indonesia

National economic development must be based on economic democracy.⁹ Sharia mutual fund is one of the means to create sustainable development and economic democracy. Sharia mutual fund or Islamic investment fund is an intermediary institution that helps *surplus* units to place funds for further reinvestment. In addition to aiming at providing an easy access for prospective investors to invest in the capital market, Sharia mutual fund also aims to meet the needs of investor groups who

⁸ Brunn Peter, Jensen Martin, dan Skovgaard Jakob, "e-Marketplaces: Crafting A Winning Strategy", *European Management Journal*, Vol. 20, No. 3, 2002, 286-298.

⁹ Teguh Tresna Puja Asmara, Isis Ikhwansyah, dan Anita Afriana, "Ease of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia", *University of Bengkulu Law Journal (UBELAJ)* Vol. 4, No. 2, 2019, 125-143.

want to benefit from clean investment mechanisms that can be accounted for in a sharia manner and are not in conflict with Islamic principles.¹⁰

In practice, sharia mutual funds as well as conventional mutual funds require a professional IM so that their investments can give benefits for investors. In carrying out sharia mutual fund investment, IM as an institution responsible for the sharia mutual fund investments must comply with the provisions as regulated in the Capital Market Law and other related legislations. IM is required to carry out the duties and obligations of managing sharia mutual funds in a good way. Sharia mutual funds consider both regulations related to mutual funds as well as regulations related to sharia. In the Capital Market Law, specifically in Article 1 Paragraph 27, it is stated that Mutual Fund is a means used to collect funds from the investors to be subsequently invested in a securities portfolio by an Investment Manager (IM). The first legal foundation of sharia mutual fund in Indonesia is the *Fatwa* of the Indonesian Ulema Council (MUI) concerning the guidelines of sharia mutual funds. Based on the MUI *Fatwa*, sharia mutual funds are mutual funds that operate in accordance with sharia principles, both in the form of contracts between investors (*shahib al-mal/rab al-mal*) and IM as *shahib al-mal* representatives, and between IM and users. As MUI *fatwa* is not a positive law in Indonesia, regulations that truly have legal force are needed. Positive regulations regarding sharia mutual funds are found in several regulations issued by the OJK. The OJK as an institution that functions as a supervisor and regulator in the capital market is required to be able to provide legal certainty for the implementation of sharia investments.

The first OJK regulation relating to sharia mutual funds is POJK on the Implementation of Sharia Principles in the Capital Market. This POJK is issued because the Capital Market Law does not accommodate sharia investment. As an option to invest in the capital market, a legal umbrella is needed to carry out sharia investment in the capital market. Article 1 Paragraph 2 of POJK on the Implementation of Sharia Principles in the Capital Market states that sharia principles in the capital market are the principles of Islamic law in sharia activities in the capital market which are based on the fatwa of the National Sharia Council - Indonesian Ulema Council (DSN MUI) as long as the fatwa does not contradict with OJK Regulations and/or other OJK regulations which are based on the DSN MUI fatwa. Collective Investment Contracts (KIK) Mutual Funds are regulated in PJOK on Collective Investment Contracts Mutual Funds. This regulation regulates both KIK mutual funds for conventional securities and KIK mutual funds for sharia securities. According to PJOK on the Collective Investment Contracts Mutual Funds, specifically in Article 1 Paragraph 13, sharia securities are securities as referred to in the Capital Market Law and other regulations in which its contract, management methods, business activities, assets related to the basis of the contract, and/or assets related to the securities do not conflict with the sharia principles in the capital market.

In issuing sharia mutual funds, related parties must comply with sharia principles. The procedure for the Issuance and Requirement of Sharia Mutual Funds are regulated in POJK on the Issuance and Requirement of Sharia Mutual Funds. Based on Article 1 Paragraph 1 of POJK on the Issuance and Requirement of Sharia Mutual Funds, sharia mutual funds are mutual funds as referred to in the capital market law in which its management does not conflict with sharia principles in the capital market.

Based on Article 3 of POJK on the Issuance and Requirement of Sharia Mutual Funds, it is explained that sharia mutual funds can be in the form of money market sharia mutual funds, fixed income sharia mutual funds, mixed sharia mutual funds, capital protected sharia mutual funds, index sharia mutual fund, collective investment contracts in which its investment units are traded on an exchange, and limited collective investment contract. Article 6 of the POJK states sharia mutual

¹⁰ M. Rasyid Ridha, Bismar Nasution, dan Mahmul Siregar, "Peranan Reksadana Syariah dalam Peningkatkan Investasi di Indonesia", *TRANSPARENCY Jurnal Hukum Ekonomi*, Vol. 2, No. 2, 2013, 1-11.

funds meet sharia principles if its contracts, management methods, and portfolios do not conflict with sharia principles in the capital market as stipulated in the Financial Services Authority Regulations (PJOK) on the implementation of sharia principles in the capital market. Article 5 of POJK on the Issuance and Requirement of Sharia Mutual Funds notes that each party issuing shares and/or units of sharia mutual fund must comply with the provisions of sharia principles in the capital market as stipulated in POJK on the Implementation of Sharia Principles in the Capital Market and legislations in the capital market sector regulating sharia mutual funds and conventional mutual funds. In addition, Article 7 of POJK also states that IM managing sharia mutual funds must have a Sharia Supervisory Board (DPS).

The operational mechanism implemented in sharia mutual funds is a *wakalah* contract. Article 1 Paragraph 6 of POJK on Contracts in Sharia Securities Issuance describes that *wakalah* contract is a contract between the party giving the power of attorney (*muwakkil*) and the party receiving the power of attorney (*wakil*) in which the party giving the power of attorney (*muwakkil*) gives the authority to the party receiving the power (*wakil*) to perform certain actions. In this case, the *wakalah* contract is conducted between IM and investor. With this *wakalah* contract, investors give a mandate to IM to carry out investments for the investors' benefit. The investors who have given or entrusted their funds will get a guarantee that all funds will be stored, safeguarded, and supervised by the Custodian Bank. Investors will get proof of ownership in the form of Sharia Mutual Fund Participation Unit. In contrast, IM and investment users use a *mudharabah* contract. Article 1 Paragraph 4 of POJK on Contracts in Sharia Securities Issuance states that *mudharabah* contract is a partnership contract between the investors (*shahib al-mal*) and the business manager (*mudharib*) in which the investors give their funds and the business manager manages the funds in a business. IM as a representative of investors can invest funds collected in sharia financial instruments, including instruments that have gone through a public offering and the dividend distribution which is based on the level of operating profit, and long-term debt instruments in accordance with sharia principles. In sharia mutual funds, IM must conduct investment transactions based on prudential principle and is prohibited/not allowed to do speculation which contains *gharar*.

2. The Comparison between Sharia Mutual Funds and Conventional Mutual Funds

The main difference between sharia mutual funds and conventional mutual funds is that sharia mutual funds have a policy that all investment activities must not conflict with sharia principles. In implementing their investment activities both related to the contract, management method, and portfolio, Sharia Mutual Funds must be based on sharia principles and may not conflict with sharia principles as regulated in POJK on the Implementation of Sharia Principles in the Capital Market. In its implementation, Sharia mutual fund must fulfill its function, namely as one of investment alternatives for small investors or retailers who want to benefit from investment while still paying attention to the provisions and principles of sharia and can be accounted for sharia. Mutual funds which is based on sharia principles, especially for Indonesian society who are predominantly Muslim, have a special attraction compared to conventional mutual funds. The existence of sharia mutual funds can accommodate Muslim investors in investing while still paying attention to sharia principles. Sharia mutual funds will provide a broader alternative for Muslim investors to invest. This investment activity is also a form of *muamalah* worship activities.¹¹

Sharia mutual funds as a trust institution cannot be separated from trust and prudential relations in performing their investments. As a trust institution, sharia mutual funds have the main element, namely the delegation of authority from investors to IM and custodian banks. The investor gives the

¹¹ Putriana, "Reksadana Syariah vs Reksadana Konvensional: Analisis Pertumbuhan dan Perkembangan Tahun 2010-2016", *Jurnal Al-Iqtishad*, Vol. 13, No. 2, 2017, 78-92.

power of attorney to IM to manage their funds in order to get profit which is based on good faith. In carrying out its duties, IM as a representative of investor must carry out the management of sharia mutual fund optimally and effectively guided by the prudential principle. In Islamic economic law, the concept of representation contained in the sharia mutual fund is known as the principle of *wakalah*. Basically, the principle of *wakalah* means the handover of a job to another party, in this case investment. The concept of *wakalah* can also be interpreted as a delegation of authority from the investor to IM to replace himself in investment activities. The authority of IM as a representative is limited to things that have been authorized. In its capacity as an institution, the existence of sharia mutual funds can be equated with *mudharabah* principle. Technically, *mudharabah* is defined as a partnership contract between two parties in which one party will provide funds and the other party will manage the funds. Sharia mutual funds will act as managers (*mudharib*) who are obliged to manage the funds. The management is carried out by reinvesting the funds in various investment instruments that are in accordance with sharia values, including instruments that do not contain usury, illicit elements, gambling elements (*masyir*) and speculative or risk elements (*gharar*). By implementing this pattern, the *mudharabah* principle applied in sharia mutual funds is often referred to as multilevel *mudharabah*. This is because sharia mutual funds are not pure *mudharib* which only reinvest investors' funds in real sectors.

Article 2 Paragraph 1 of POJK on the Implementation of Sharia Principles in the Capital Market notes that business activities that are contrary to sharia principles in the capital market include usury financial services, buying and selling risks containing uncertainty elements (*gharar*) and/or gambling (*maisir*), and producing, distributing, trading and/or providing illicit goods or services and those which can be morally damaging and harmful. Further, Article 2 Paragraph 2 of the POJK also describes various transactions that are contrary to sharia principles in the capital market, including trading or transactions with fake offers, trading or transactions that are not accompanied by the delivery of goods and/or services, buying or selling securities by using or utilizing information from issuers or public companies, margin transactions on sharia securities containing interest (usury), trading or transactions with the purpose of hoarding (*ihtikar*), trading or transactions containing bribery elements (*risywah*), and other transactions that contain elements of speculation (*gharar*), deception (*tadlis*), and attempts to influence other parties by providing wrong information (*taghrir*).

In general, the difference between sharia mutual funds and conventional mutual funds is presented in the following table:

No	Elements	Sharia Mutual Funds	Conventional Mutual Funds
1	Contract	<i>wakalah</i> and <i>mudharabah</i> contracts	Conventional contracts
2	Operational	There is <i>screening</i> and <i>cleansing</i> processes	There is no <i>screening</i> and <i>cleansing</i> process
3	Investment Portfolio	Can only be invested in sharia securities	Can be invested in both sharia and conventional securities
4	Supervisor	OJK and DPS	OJK

The contract or agreement in sharia mutual funds is divided into two types, namely *wakalah* contract which is a contract between investor and IM (granting authority/power of attorney) and *mudharabah* contract which is a contract between IM with investment user (contract between the capital owner and the investment manager). It is different from conventional mutual funds that only use ordinary contract.

Then, in sharia mutual funds, there must be a screening and cleansing process. Issuers' business activities shall not be in conflict with sharia principles, for example gambling, usury financial services, and risk buying and selling containing uncertainty elements and gambling. Shares that have passed the screening process will be included in the List of Sharia Securities (DES) and periodically issued by the OJK at the end of May and November each year. The screening process is done to determine whether the issuer does not have interest-based debt greater than its assets (maximum 45% of assets) and the total non-halal income is a maximum of 10%. Conventional mutual funds portfolios can invest in both non-sharia and sharia instruments, including sharia shares, sukuk and etc. Meanwhile, sharia mutual funds are only allowed to invest in sharia securities regulated by the OJK. Besides, in implementing these sharia principles, investment managers involved in sharia investment are supervised by the OJK and DPS. In the capital market sector, the OJK has the task of organizing a system of regulation and supervision that is integrated with all activities in the financial services sector, both conventional and sharia. Meanwhile, the DPS is the board responsible for providing advice as well as supervising the implementation of sharia principles in the capital market.

3. Legal Analysis of the Optimization of Sharia Mutual Fund Investment through the Marketplace as an Effort to Promote Financial Inclusion

Currently, the information technology in Indonesia is rapidly growing.¹² In the field of trading, the development of information technology has created a new trend in which sellers and buyers do not meet face to face, but only through electronic media and the internet network. The use of internet technology in economic field is often referred to as electronic commerce (e-commerce). E-commerce is a business model that uses the internet as a place to buy and sell any goods and services.

The electronic transaction is regulated in Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law). Article 1 No. 10 of the ITE Law describes electronic transaction is a legal act that is committed by the use of computers, computer networks and/or other electronic media. Therefore, buying and selling transactions conducted electronically can be categorized as electronic transactions as referred to in the ITE Law. In e-commerce, the parties that buy or sell goods or services are bound in a legal relationship as outlined in the agreement. The agreement was made electronically and referred to as an electronic contract. In ITE Law, it is regulated that the utilization of technology as a means of conducting e-commerce transactions must fulfill several principles. The principles that must be fulfilled in the transaction are the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology. It is intended that the use of the internet as a means in e-commerce transactions can provide maximum benefits for users and the wider society. Electronic transactions does not only happen in ordinary buying and selling transactions, but also in the realm of investment. Nowadays, investing can be done anywhere and anytime in a relatively fast time. Investments accommodated by technology have resulted in an easy and fast investment, including mutual funds, both conventional and sharia mutual funds. One of the means to invest sharia mutual funds that is practical, easy, fast, and cheap is through the marketplace.

The function of the marketplace, which was originally as a means to bring together sellers and buyers in conducting business transactions, has turned into a means that can be used to invest. One investment accommodated by the marketplace is sharia mutual funds. Sharia mutual fund investment through the marketplace can be done easily, quickly and cheaply. The ease and fast access is a result of the use of advanced technology, while cheap is caused by the minimum amount specified in

¹² Suwari Akhmaddhian dan Asri Agustiwi, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Secara Elektronik Di Indonesia" *Jurnal Unifikasi*, Vol. 3, No. 2, 2016, 40-60.

investing in sharia mutual funds which is very affordable as it is only 10.000 (ten thousand) rupiah. Sharia mutual funds in the marketplace are one of the products or features of the marketplace. Therefore, in organizing these investment facilities, the marketplace collaborates with IM and Mutual Funds Selling Agents (APERD). Based on POJK No. 39/POJK.04/2014 concerning Mutual Funds Selling Agents (APERD), an investment manager (IM) is a person other than an insurance company, pension fund or bank with respect to its own lawful activities, that, as a business, manages Securities Portfolios or collective investment portfolios for clients or group of clients. Meanwhile, APERD is the party that sells mutual fund based on a partnership contract with IM as mutual funds manager.

Further, based on APERD POJK, Mutual Funds Selling Agents (APERD) can be conducted by securities companies, insurance companies, mortgage companies, finance companies, and pension fund companies. With technology and partnership with e-commerce companies, investment becomes easy, fast and cheap. Besides, there are a lot of marketplace users and most of them already have electronic money (e-money). The excess of sharia mutual funds that can be reached by all groups supported by the use of technology are able to promote financial inclusion in Indonesia. According to the Consultative Group to Assist the Poor (CGAP-GPFI), financial inclusion is:

“state in which all working age adults have effective access to credit, savings, payments, and insurance from formal service providers. Effective access involves convenient and responsible service delivery, at a cost affordable to the customer and sustainable for the provider, with the result that financially excluded customers use formal financial services rather than existing informal options”¹³

Based on the definition, it can be concluded that financial inclusion refers to the number of people who are customers or users of financial services in a country. The financial services can be in the form of savings, payments, loans, investments and insurance. Basically, financial inclusion policies take the form of financial service deepening targeting lower middle class people. There are several indicators or indices that are the basis for measuring the level of financial inclusion, namely the Financial Inclusion Index (IKI). The IKI consists of three main variables, namely access, usage and quality. In this case, financial inclusion is considered capable of supporting increased economic growth and community welfare as well as reducing inequality and poverty. The optimization of sharia mutual funds as a means of promoting financial inclusion can be done by utilizing the marketplace. However, there is a need to socialize and strengthen the regulations to implement sharia mutual fund investments in the marketplace. It aims to provide legal certainty and legal protection for investors who want to invest in sharia mutual funds and are indirectly expected to attract more investors.

CONCLUSION

In implementing their investment activities both in terms of the contract, management method, and portfolio, sharia mutual funds must not conflict with sharia principles in the capital market. Regulations related to sharia mutual funds in Indonesia are contained in the MUI Fatwa on Sharia Mutual Funds and positive laws issued by the OJK, including PJOK on the Implementation of Sharia Principles in the Capital Market, PJOK on the Issuance and Requirement of Sharia Mutual Funds, PJOK on Collective Investment Contracts Mutual Funds, and POJK on Contracts in Sharia Securities Issuance. Sharia mutual funds can be used as an alternative investment for people who want a return from a clean and accountable source of sharia. In general, the main difference between sharia mutual funds and conventional mutual funds is that sharia mutual funds have a policy that all investment

¹³ Bank Indonesia, “Keuangan Inklusif”, <https://www.bi.go.id/id/perbankan/keuanganinklusif/Indonesia/Contents/Default.aspx> (Accessed 31 May 2019).

activities must not conflict with sharia principles, both in terms of contracts, management methods, and portfolios. In addition, the supervision in sharia mutual funds is not only carried out by OJK, but also by DPS. The optimization of sharia mutual funds can be done by utilizing advanced technology in which one of them is the implementation of sharia mutual fund investments through the marketplace. Sharia mutual fund investment in the marketplace has the potential to develop as it can be done easily, quickly, and cheaply. The excess of sharia mutual funds that can be reached by all groups supported by the use of technology are able to promote financial inclusion in Indonesia.

SUGGESTION

Based on the description, there is a need to socialize and strengthen the regulations to implement sharia mutual fund investments in the marketplace. It aims to provide legal certainty and legal protection for investors who want to invest in sharia mutual funds considering the shift in function of the marketplace as a means of buying and selling into an investment means. Besides, it is expected that the existence of regulations that specifically regulate mutual fund investments in the marketplace is able to attract investors to invest their funds.

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