

J-HES

Jurnal Hukum Ekonomi Syariah

Volume 06 | Nomor 02 | Desember 2022
p-ISSN: 2549-4872 | e-ISSN: 2654-4970

Analysis of Islamic Mutual Funds Development in Indonesia and Legal Protection Urgency for Its Unit Participation Holders

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Abstrak

Reksadana syariah merupakan salah satu produk investasi yang paling diminati oleh masyarakat. Hal ini dapat dilihat dari perkembangan yang cukup menjanjikan dengan aset sebesar Rp39,71 triliun per Agustus 2021. Meski demikian, perkembangan reksadana syariah masih tertinggal jika dibandingkan dengan sektor keuangan konvensional. Selain itu, reksadana memiliki risiko tinggi dan imbal hasil tidak terjamin. Tujuan penelitian ini adalah menganalisis perkembangan reksadana syariah dibandingkan reksadana konvensional sejak tahun 2010 hingga Agustus 2020 serta urgensi perlindungan hukum bagi pemilik unit penyertaan. Penelitian ini menggunakan metode penelitian kepustakaan yang bersumber dari berbagai jurnal ilmiah, buku dan informasi yang bersumber dari Peraturan Otoritas Jasa Keuangan (OJK) serta Peraturan Bapepam terkait reksadana. Jumlah reksadana dan Nilai Aktiva Bersih (NAB) digunakan sebagai parameter pembandingan dari kedua jenis reksadana. Berdasarkan data, jumlah reksadana syariah tumbuh cukup baik dari tahun 2010 hingga Agustus 2021. Begitu pula dengan NAB reksadana syariah yang cenderung meningkat dari tahun 2010 hingga Agustus 2021, meskipun pada Agustus 2021 NAB reksadana syariah turun menjadi 7,32% dari seluruh dana kelola reksadana. Beberapa faktor yang menjadi penyebab lambatnya perkembangan reksadana syariah di Indonesia antara lain rendahnya pengetahuan dan kepercayaan masyarakat terhadap reksadana syariah, serta kurangnya dukungan pemerintah dan regulasi investasi syariah. Salah satu upaya yang dapat dilakukan untuk meningkatkan kepercayaan masyarakat terhadap reksadana syariah ialah adanya jaminan dan perlindungan hukum terhadap aset yang diinvestasikan. Perlindungan hukum dapat dicapai dengan memastikan bahwa setiap tahapan proses investasi, meliputi tahap pra kontrak, tahap kontrak, maupun tahap pasca kontrak, telah sesuai dengan peraturan yang berlaku di Indonesia.

Kata Kunci: Nilai aktiva bersih; Nilai aset kelola; Pemegang unit penyertaan; Perlindungan hukum reksa dana

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Abstract

Sharia mutual funds are one of the most in-demand investment products for the public in Indonesia. This can be seen from the promising development with assets of 39.71 Rupiah trillion as of August 2021. However, the development of Islamic mutual funds is still lagging compared to the conventional financial sector. In addition, mutual funds carry high risk and unguaranteed returns. The purpose of this study is to analyze the development of sharia mutual funds compared to conventional mutual funds from 2010 to August 2020 and the urgency of legal protection for owners of investment units. This study is based on the literature study which originates from various scientific journals, books and information obtained from the Financial Services Authority (OJK) Regulations and Bapepam Regulations related to mutual funds. Based on data, the number of sharia mutual funds grew well from 2010 to August 2021. Likewise, the NAV of sharia mutual funds tends to increase from 2010 to August 2021. Several factors have contributed to the slow development of Islamic mutual funds in Indonesia, including low public knowledge and trust, as well as the lack of government support and regulation of Islamic investments. One of the efforts that can be made to increase public trust in sharia mutual funds is the guarantee and legal protection of the assets invested. Legal protection can be achieved by ensuring that every stage of the investment process, including the pre-contract stage, contract stage, and post-contract stage, complies with the regulations in force in Indonesia.

Keywords: *Application unit holder; Asset under management; Legal protection; Mutual funds; Net asset value*

INTRODUCTION

Global Islamic finance has experienced a promising increase in the last ten years. Based on data reported by the Global Islamic Report, in 2019 there was an increase of 14% from year to year with a total of 2.88 trillion (GIFR, 2019). The Islamic banking sector provides the largest contribution to total global Islamic financial assets. This sector experienced growth of 14% in 2019 or equivalent to 1.99 trillion USD in global assets. Indonesia, as the country with the highest Muslim population in the world (Hapsari, 2018), occupies the second position after last

year being able to beat Malaysia's dominance since 2011 (Yuzi et al., 2012). Based on data compiled from the OJK, until July 2021 the financial assets of the banking sector in Indonesia reached Rp 616.08 trillion. Meanwhile, the Islamic Non-Bank Financial Industry recorded assets of IDR 116.5 trillion in August 2021. From the various Islamic finance sectors offered, Islamic mutual funds are one of the products that are most in demand by the public, especially for beginners who want to try investing. Sharia mutual funds also show promising growth when viewed from the assets achieved

(Agussalim et al., 2017). In August 2021, sharia mutual funds recorded assets of Rp 39.71 trillion out of 291 sharia mutual funds. However, when compared to the development of conventional financial institutions, the Islamic finance sector is still far behind (Sari et al., 2018). In fact, when compared to other countries, Indonesia is still lagging behind in the development of Islamic finance. In terms of assets, Indonesia is in seventh place compared to other countries with total Islamic financial assets of US\$ 99 billion. In first place is Iran with an asset value of US\$ 698 billion.

On the other hand, as one of the capital market investment instruments, mutual funds are very risky investment instruments and the rate of return is not guaranteed (Hartanto, 2014). There are several aspects that mutual funds risky including (1) funds obtained from the public are invested in a securities portfolio consisting of various investment instruments both in terms of characteristics and duration. (2) The securities portfolio varies greatly so that each instrument has a different rate of return. (3) the cash flow difference between incoming and outgoing funds in mutual funds, which fluctuates, affects the portfolio. (4) investment manager expertise factor (Manurung, 2008).

Various cases of violations in the mutual fund industry in Indonesia have shown to the public that potential mutual fund investors do not fully understand the applicable mutual fund

regulations. Based on data compiled from the press release of BAPEPAM LK in October 2010 regarding the determination of administrative sanctions in the form of revocation of business licenses for securities companies and individual licenses, at least there are several securities companies whose business licenses have been revoked related to mutual fund management which is ADI company that places customer funds in the name of company and not on behalf of the customer concerned and promises certain returns in offering mutual fund management services. In addition, EPS company as the mutual fund investment manager purchases DART shares and company EPS as the broker sells DART shares without customer orders and EPS as the investment manager promises returns to customers.

The same case also occurred in November 2019, Minna Padi Investama company (Minna Padi) which is a securities company listed on the Indonesia Stock Exchange and manages mutual fund investments. The company was dissolved by the OJK on November 21, 2019 because it offered definite returns which is contrary to OJK Regulation No. 39/POJK.04/2014 regarding mutual fund selling agents. The dissolution caused losses for the customer because Minna Padi only offered a refund of 20-30% of customer funds, while 30-40% would be returned in the form of shares. Most of the shares offered to customers by Minna Padi are illiquid trading shares. In fact, the prices

of these stocks have fallen to their lowest point. This certainly raises concerns for the parties because they can no longer sell these shares.

Therefore, this study focuses on analyzing the development of Islamic mutual funds compared to conventional mutual in 2010 to August 2021. In addition, this study also reviews the urgency of legal protection for unit participation holders of mutual fund in Indonesia.

RESEARCH METHOD

This study was based on the literature review and qualitative method. The primary data were obtained from Indonesia Financial Service Authority (OJK) and BAPEPAM regulation about mutual funds. The secondary data were obtained from articles and books which are related to the mutual funds development and regulation in Indonesia.

RESULT AND DISCUSSION

Development of Islamic Mutual Funds in Indonesia

The development of the capital market in Indonesia has led the increase of public interest to invest in various capital market instruments (Suprihati and Pradanawati, 2020). One of the capital market instruments that is currently in demand by various groups is mutual funds. Since the enactment of Law No. 8 of 1995 on Capital Market (Mayangsari, 2020), mutual funds have continued to increase and become one

of the favorite choices for people to invest (Hartanto et al., 2010). The analog phenomenon is shown by sharia mutual funds, since were launched on June 25, 1997, it has experienced very significant growth and development. However, when compared to conventional mutual funds, the development of mutual funds is still quite low.

Based on data compiled by the Financial Services Authority (OJK) regarding statistics on sharia and conventional mutual funds in the period of 2010 until August 2021 as shown in Figure 1, it can be seen that in general the number of sharia and conventional mutual funds has increased significantly from 2010 to August 2021. In 2010, there were 48 sharia mutual funds are operating, while conventional mutual funds are 564. In the three-year intervals, which is 2013, the increase in sharia mutual funds did not occur significantly, where the number of sharia mutual funds in 2013 only reached 7.90% of the total number of mutual funds operating both sharia mutual funds as well as conventional (Yudanto, 2017). Meanwhile, in the same year there were 92.15% conventional mutual funds. Furthermore, in six-year intervals, which is 2016, sharia mutual funds experienced a fairly good increase where there were 9.54% of sharia mutual funds from the total operating funds. The latest data for August 2021 shows that there are 291 (13.18%)

sharia mutual funds operating. It can be seen that sharia mutual funds have increased every year, but the increase is still quite low when compared to the development of conventional mutual funds, which until August 2021 reached 1917 (86.82%) conventional mutual funds.

Furthermore, 291 Islamic mutual funds operating in August 2021 consist of nine types of Islamic mutual funds including capital protected funds (CPF), exchanged trade funds (ETF), money funds (MF), fixed income funds (IMF), mixed asset funds (MAF), global funds (GF), sukuk based funds (SBF), index fund (IF), and islamic ETF (I-ETF). Each of these types of sharia mutual funds experienced fluctuating developments when compared to 2020

as shown in Table 1. According to data shown on the table, there is 0.69% increase of Islamic mutual funds number in August 2021 compared to the end of 2020. Global fund (GF) is observed as the Islamic mutual funds with the highest growth Year to Date (YtD) followed by money fund (MF) and fixed income fund (FIF) which reached 38.46, 3.23, and 2.63% YtD, respectively. In addition, Four of Islamic mutual funds type including mixed asset funds (MAF), sukuk based funds (SBF), index fund (IF), and Islamic-ETF (I-ETF) exhibited constant YtD growth. On the other hand, capital protected fund (CPF) and exchange traded fund (ETF) showed negative YtD growth which are -4.35 and -4.55% YtD, respectively.

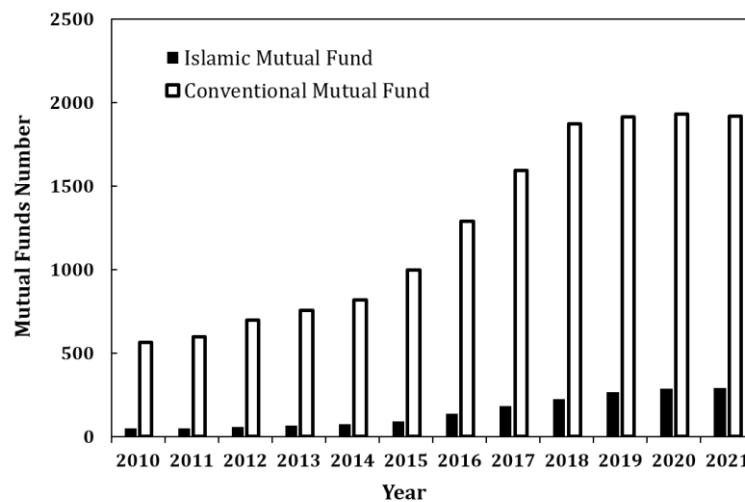


Figure 1: The Development of Islamic and Conventional Mutual Funds

Table 1. Development of Islamic Mutual Funds Based on The Type

Types	December 2020	August 2021	Growth YtD
Capital protected fund (CPF)	69	66	-4.35%
Exchange Traded fund (ETF)	66	63	-4.55%
Money fund (MF)	62	64	3.23%
Fixed income fund (FIF)	38	39	2.63%
Mixed asset fund (MAF)	23	23	0.00%
Global fund (GF)	13	18	38.46%
Sukuk based fund (SBF)	9	9	0.00%
Index Fund (IF)	6	6	0.00%
Islamic-ETF (I-ETF)	3	3	0.00%
TOTAL	289	291	0.69%

Moreover, if observed deeply, it can be seen that from the total number of Islamic mutual funds by type, the highest proportion is achieved by CPF which reaching 22.68% while the lowest proportion is achieved by I-ETF around 1.03% as shown on the Figure 2. Currently, CPF has become one of the investment instruments that is quite widely eyed because it is considered to have a relatively lower risk when compared to other investment instruments. When investing in a protected mutual fund, the invested funds are fully protected until maturity. As a safe investment instrument, the majority of funds in protected mutual funds will be invested by Investment Managers to purchase rating A bonds (Ahmad et al., 2019). Real yield conditions in the Indonesian bond market are higher than conditions in

2013 encouraging the performance of protected mutual funds to have the opportunity to continue to move in positive numbers due to the contribution of bond coupons which are still very attractive in Indonesia (Nursanti et al., 2021). In addition, protected mutual funds with a bond basis offer measurable returns with relatively small risk as long as investors can invest for a minimum of 2 years. This is because bonds in protected mutual funds still provide periodic coupons.

In addition, the development of Islamic and conventional mutual funds can be observed from the comparison of the Net Asset Value (NAV) achieved by those types of mutual funds as shown in Figure 3. Based on the data presented in Figure 3, it can be seen that the NAV of sharia mutual funds in 2010 reached 5.2

trillion rupiah or about 3.51% of the total NAV of sharia and conventional mutual funds. As for conventional mutual funds, NAV in 2010 reached 143.8 trillion rupiah or around 96.49%. Over time, the NAV of Islamic and conventional mutual funds has increased quite well. The highest increase achieved by sharia mutual funds was 74.36 trillion rupiah or around 12.97% of the total NAV in 2020. Similar to sharia mutual funds, the highest NAV increase for conventional mutual funds occurred in 2020, reaching 499.17 trillion Rupiah.

However, sharia mutual funds experienced a decline in performance in 2021, which only reached 39.71 trillion rupiah or only 7.32% of the total value of managed funds (asset under management/AUM) in August 2021. The AUM value of sharia mutual funds in August 2021 was lower if compared

to the AUM value obtained in July 2021, which was 40.12 trillion Rupiah. If observed more deeply, the downward trend in the AUM value of sharia mutual funds began to occur in May 2021, the AUM value of sharia mutual funds decreased by 47.53% on a monthly basis to 40.67 trillion Rupiah from 77.51 trillion Rupiah at the end of April 2021. The decline in AUM value also led to a decrease in the share of the sharia segment in the mutual fund industry in total. The portion of the sharia segment only reached 7.45 at the end of July even though in March 2021, the portion of the sharia segment still reached 14.04%. The data on the AUM value for each Islamic and conventional mutual funds month-to-month in 2021 can be seen in Figure 4.

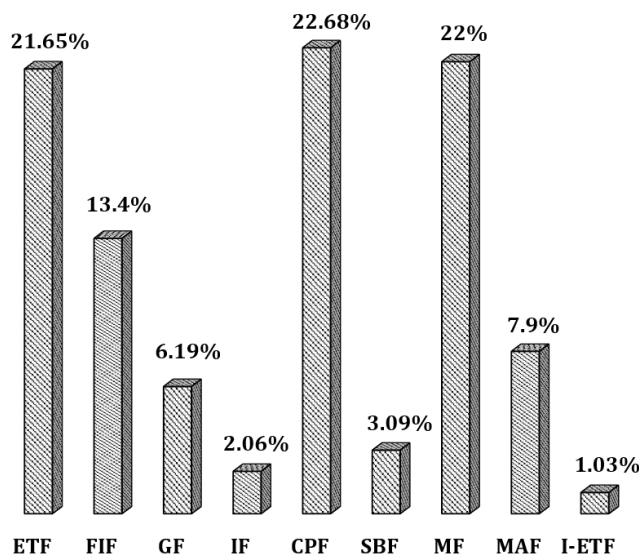


Figure 2: Proportion of Islamic Mutual Funds Number by The Type

Based on the data shown in Figure 4, it can be seen that in contrast to the AUM value of sharia mutual funds, the AUM value of conventional mutual funds actually increased in 2021. OJK recorded that the AUM value of industrial mutual funds reached 542.54 trillion Rupiah in August 2021. However, if compared to the position at the end of 2020 which reached 573.54 trillion Rupiah, the AUM value of conventional mutual funds was still corrected by 4.6% year-to-date (YtD).

The decline in the value of AUM in sharia mutual funds was probably caused by the decision of the Hajj Financial Management Agency (BPKH) to withdraw investment funds. This is related to the income tax incentive (PPh) of bond interest for investors, which was originally 15% to 10%. Therefore, most institutions prefer to manage their own funds compared to depositing funds through sharia-protected mutual funds.

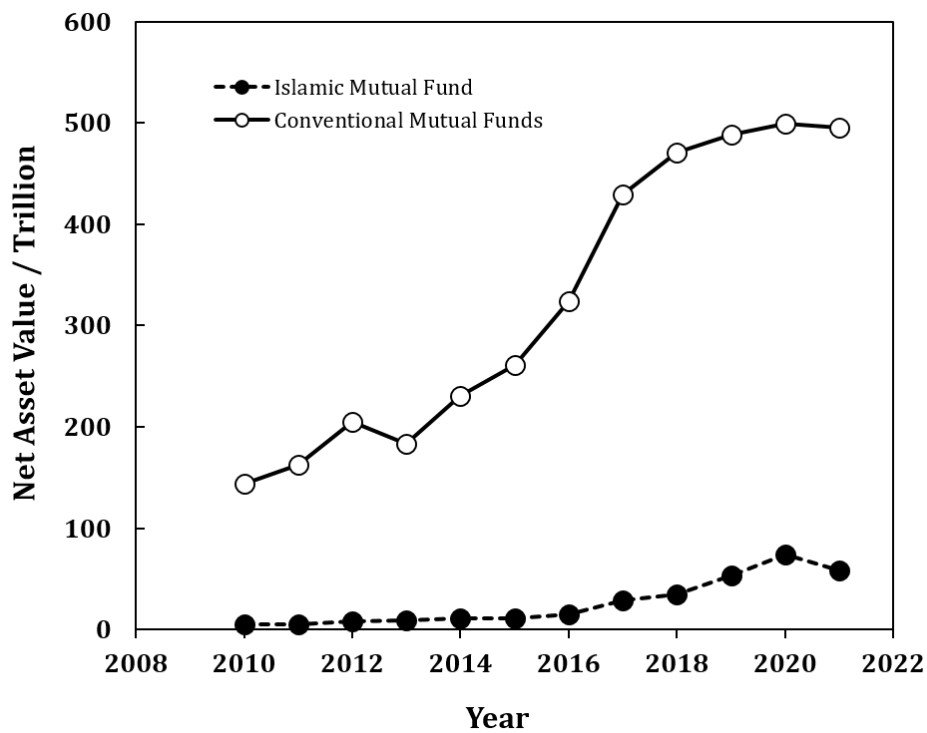


Figure 3: Net Asset Value Development of Islamic and Conventional Mutual Funds

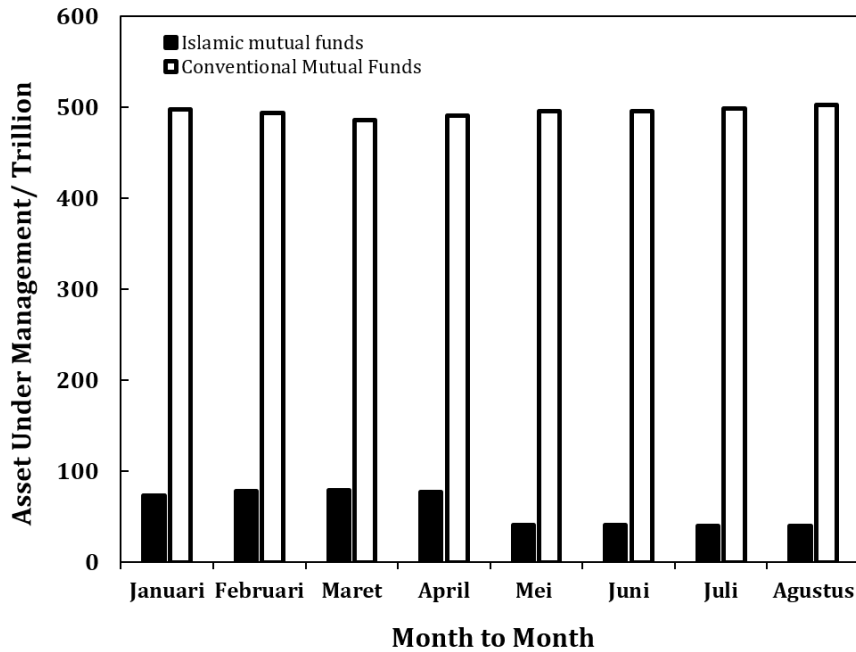


Figure 4: AUM of Islamic and Conventional Mutual Funds in 2021

According to the type, the Net Asset Value (NAV) of sharia mutual funds experienced a very significant year to date decline of 46.7% as shown in Table 2. Based on Table 2, a very sharp decline was observed in CPF which reached 95.94% if compared to 2020. The decrease in NAV was also observed in five other types of sharia

mutual funds including MF, MAF, IF, FIF, and ETF which reached 24.2, 15.38, 6.25, 1.60, and 0.52%, respectively. Meanwhile, the increase in NAV occurred in two types of sharia mutual funds, namely SBF and GF which increased to 33.71 and 24.3%, respectively.

Table 1. Growth Years to Date of NAV of Islamic Mutual Funds by Type

Types	December 2020	August 2021	Growth YtD
Capital protected fund (CPF)	37.17	1.51	-4.35%
Exchange Traded fund (ETF)	5.81	5.78	-4.55%
Money fund (MF)	10.13	7.68	3.23%
Fixed income fund (FIF)	5.62	5.53	2.63%
Mixed asset fund (MAF)	1.04	0.88	0.00%
Global fund (GF)	12.65	15.72	38.46%
Sukuk based fund (SBF)	1.75	2.34	0.00%
Index Fund (IF)	0.16	0.15	0.00%
Islamic-ETF (I-ETF)	0.04	0.04	0.00%
TOTAL	74.28	39.63	-46.7%

Based on the number and value of net assets (NAV), it can be seen that the development of sharia mutual funds is still quite promising even though in 2021 there will be a significant decline in net asset value (NAV). However, the development of Islamic mutual funds is still lagging behind compared to conventional mutual funds. Various factors are the reasons for the low development of Islamic mutual funds including (1) limited knowledge of people about the Islamic mutual funds and the products which are offered. The new investors only know about ETF, while other products such as IF, I-ETF, MAF, FIF, SBF, MF, GF, and CPF are not well known. (2) People are doubtful about the transaction and trade on the Islamic capital market whether it is free from *riba*, *maysir*, *gharar* which are not in accordance to Islamic rules. (3) The lack of government support and regulation. The main factor that determines the development of Islamic financial institution is government support and regulation as shown in Malaysia and Iran (Hadi and Fatihin, 2020). Malaysia and Iran have 100% Islamic banking systems which are supported by the government (Bitar et al., 2018). The government regulation that pro to Islamic system will create good atmosphere for Islamic financial institution to grow.

Legal Protection for Unit Participation Holders of Mutual Funds

The development of mutual funds in Indonesia, as explained in the previous section, shows a fairly good increase, although there is a decline in August 2021. However, until now, both sharia and conventional mutual funds are still one of the promising instruments in the framework of long-term investment. However, mutual funds are one of the investment instruments that are vulnerable in terms of security. Various cases of default occurred in mutual funds, starting from the case of Antaboga Deltasekuritas Indonesia company which occurred due to violations in the field of mutual fund licensing, ADI company which abused its authority by placing customer funds using the name of the company instead of the customer's name, then the latest case that occurred in 2019 namely Minna Padi company which promises definite profit sharing to customers. This default causes losses to the customer because most of the customers do not get their rights. Therefore, legal protection for unit participation holders must be carried out in order to help the customer obtain their rights.

According to Hartanto (2014), in order to realize the fulfillment of the rights of unit participation holders in mutual funds, there are three stages that must be carried out which are pre-contractual stage, contractual stage, and post-contractual stage. Pre-contractual stage is the stage prior to the agreement

between the prospective unit holder and the investment manager and custodian bank. Furthermore, the contractual stage is the stage after the agreement between the unit holder and the investment manager and custodian bank is reached. Meanwhile, the post-contractual stage is the stage after the legal relationship between the unit holder and the investment manager and custodian bank has ended. At the pre-contractual stage, the prospective holders have rights including:

1. Legality of investment manager and custodian bank licensing

Every investment manager who will set up a mutual fund business must attach a license as an investment manager and approval from the OJK regarding the appointment of a custodian bank.

2. Legality of collective investment contract

The legality of the collective investment contract between the investment manager and the custodian bank is the main document that must be fulfilled and act as an absolute requirement. Based on Bapepam and LK Regulation No IV.B.2, collective investment contracts must at least contain the names and addresses of the investment manager and custodian bank, the composition of the diversified portfolio of securities in the money market and capital

market, the allocation of costs borne by the investment manager, mutual funds and investors. , the circumstances that allow the Investment Manager to refuse to repurchase (repayment), the composition of the mutual fund securities portfolio, the limits on mutual fund investment, and prohibited actions for the investment manager, the obligations and responsibilities of the investment manager, the obligations and responsibilities of the custodian bank, dissolution of mutual funds, replacement of investment Manager or custodian bank in collective investment contracts, rights of participation unit holders, procedures for processing requests for purchase and redemption of participation units, procedures for determining the Net Asset Value (NAV) of mutual funds, submission of annual financial reports of mutual funds, circumstances beyond the ability of the investment manager and/or custodian bank which causes the parties to be unable to carry out or carry out their duties and obligations, dissolution and liquidation of mutual funds, treatment of liquidated funds that have not been taken by the participating unit holder and/or there are funds remaining, the party responsible for costs for the

dissolution and liquidation of mutual funds, as well as the appointment of the Indonesian Capital Market Arbitration Board (BAPMI), or other alternative dispute resolution institutions as institutions to settle disputes and civil disputes between investment managers and custodian banks.

3. Mutual Fund Legality

After the collective investment contract is agreed upon by the investment manager and custodian bank, the next step that must be taken to support the fulfillment of the rights of the participating unit holder is to submit a registration statement in the context of a public offering of mutual funds in the form of a collective investment contract to the Financial Services Authority (OJK). Investment Managers are prohibited from advertising the sale of shares or mutual fund participation units before obtaining an effective statement from the OJK. Examination of the application for an effective statement is the first effort carried out by OJK as a supervisor in ensuring the regulation of rights for mutual funds participation unit holders as stipulated in the collective investment contract.

4. Legality of Mutual Fund Selling Agent or Mutual Fund Selling Agent Representative

In the event that the sale of mutual funds is not carried out directly by the investment manager, the selling agent of the mutual funds must obtain a permit as the selling agent of the mutual funds. Likewise, if the sale of mutual funds is through an agent representative, the prospective participation Unit holder also needs to ensure the legality of the licensing of the mutual fund selling agent representative.

5. Legality of Mutual Fund Marketing/Advertising

At the marketing stage of the mutual fund, there are obligations for the investment manager and selling agent or mutual fund selling agent representative. The process of advertising for mutual funds must refer to the decree of the chairman of Bapepam No. Kep-19/PM/2004 concerning Mutual Fund Advertising Guidelines where one of the provisions is that advertisements for a mutual fund are prohibited from containing words or sentences that give the impression that investors will not lose or profits will be guaranteed.

Furthermore, the fulfillment of the rights of the Mutual Fund unit holders at the contractual stage includes the fulfillment of rights as described in Bapepam and LK Regulation No IV.B.2 concerning Guidelines for Mutual Fund Contracts in the form of collective

investment contracts. The rights that must be obtained by the unit holder are as follows:

1. Have proof of ownership

Each participation unit holder is entitled to receive a participation unit holder sign. In addition, the holder of the participation unit is entitled to receive a confirmation letter from the custodian bank containing the ownership of the number of participation units.

2. Obtaining Financial Statements

Based on Bapepam Regulation No. XD 1, the participation unit holder is entitled to receive a report from the custodian bank no later than the 12th day of the following month if there is a mutation in the number of participation units owned by the participation unit holder and no later than the 12th day of January represents the position of the account as of December 31.

3. Obtaining a report about NAV

Based on Bapepam and LK Regulation Number IV.C.3, custodian bank of open mutual funds is required to calculate the Exchange Net Asset Value of the mutual funds per participation unit every day. The report is submitted to Bapepam and OJK no later than 10.00 WIB on the following exchange day.

4. Right to Resell and Transfer Part or All of the Participation Units

The holder of the participation unit of the mutual fund has the right to resell and transfer part or all of their participation units before the maturity of the mutual fund.

Meanwhile, in the post-contractual stage, the fulfillment of the rights of the mutual fund participation unit holder includes the fulfillment of the right to obtain a share of the liquidation proceeds. Based on Bapepam and LK Regulation No IV.B.1, the investment manager is required to ensure that the proceeds from the liquidation of mutual funds must be divided proportionally according to the composition of the number of participation units owned by each participation unit holder.

CONCLUSIONS

Islamic capital market is one of sectors that give a crucial contribution for islamic financial development in Indonesia. As the one of the instruments which is offered by islamic capital market, islamic mutual funds becomes a best choice for the beginner to invest. Islamic mutual funds showed an increase year by year. However, the growth and development of Islamic mutual funds are lower than conventional mutual funds for both number and net asset value (NAV). According to the literature review, three main factors that caused the low of islamic financial institution are limited

knowledge of people about the islamic mutual funds and the products which are offered, people are doubt about the transaction and trade on the islamic capital market, and the lack of government support and regulation.

The emergence of various default cases in mutual funds in Indonesia indicates that there is a need for socialization and legal protection for prospective unit holders so that they do not make the wrong choice of

investment managers and mutual fund products offered. Unit holders, investment managers, and custodian banks have an important role in realizing an honest and fair investment culture. The investment manager must provide honest information regarding the investment products offered. In addition, the investor as the holder of the participation unit has the right to obtain legal protection against possible violations in mutual fund investment.

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