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Legal Certainty of Islamic Banking Investment Products Under POJK No. 4 of 2026: A Sharia Economic Law Perspective

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Abstract

This study examines the legal certainty issues surrounding Islamic banking investment products before and after the enactment of Financial Services Authority Regulation No. 4 of 2026 on the Implementation of Islamic Banking Investment Products. The primary issue is the lack of a clear distinction between investment and deposit products, which may lead to misunderstandings about the status of funds, returns, risk-sharing arrangements, and banks' responsibilities. This study aims to analyze the regulation of Islamic investment products under POJK No. 4 of 2026 and assess its legal certainty in light of Gustav Radbruch's theory and its compatibility with the principles of Islamic economic law. This research employs a normative legal method, using statutory, conceptual, and analytical approaches, and draws on primary and secondary legal materials analyzed qualitatively. The findings indicate that POJK No. 4 of 2026 establishes an investment legal relationship distinct from fund collection activities by regulating investor customers, underlying assets, a two-stage contract structure, returns based on investment performance, the segregation of investment funds from Third-Party Funds, and obligations relating to governance, risk management, transparency, and investor protection. This regulation strengthens normative clarity, risk predictability, and the limits of banks' liability, while remaining consistent with the principles of justice, trustworthiness, transparency, risk sharing, and hifz al-mal. Nevertheless, its effectiveness remains dependent on banks' compliance, investor literacy, information transparency, and regulatory supervision.

Keywords: Islamic Banking Investment; Legal Certainty; POJK No. 4 of 2026; Profit and Loss Sharing; Sharia Economic Law.

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Kepastian Hukum Produk Investasi Perbankan Syariah dalam POJK 4/2026: Perspektif Hukum Ekonomi Syariah

Abstrak

Penelitian ini mengkaji problematika kepastian hukum produk investasi perbankan syariah sebelum dan setelah berlakunya Peraturan Otoritas Jasa Keuangan Nomor 4 Tahun 2026 tentang Penyelenggaraan Produk Investasi Perbankan Syariah. Permasalahan utama terletak pada belum tegasnya pembedaan antara produk investasi dan produk simpanan, yang berpotensi menimbulkan kesalahpahaman mengenai kedudukan dana, imbal hasil, pembagian risiko, serta tanggung jawab bank. Penelitian ini bertujuan untuk menganalisis pengaturan produk investasi syariah dalam POJK Nomor 4 Tahun 2026 serta menilai kepastian hukumnya berdasarkan teori Gustav Radbruch dan kesesuaiannya dengan prinsip hukum ekonomi syariah. Penelitian ini menggunakan metode hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan analitis, melalui bahan hukum primer dan sekunder yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa POJK Nomor 4 Tahun 2026 membentuk hubungan hukum investasi yang berbeda dari penghimpunan dana melalui pengaturan nasabah investor, aset yang mendasari, dua tahap akad, pengembalian berdasarkan kinerja investasi, pemisahan dana investasi dari Dana Pihak Ketiga, serta kewajiban tata kelola, manajemen risiko, transparansi, dan perlindungan investor. Regulasi ini memperkuat kejelasan norma, prediktabilitas risiko, dan batas tanggung jawab bank, serta selaras dengan prinsip keadilan, amanah, transparansi, risk sharing, dan hifz al-mal. Namun, efektivitasnya tetap bergantung pada kepatuhan bank, literasi investor, transparansi informasi, serta pengawasan regulator.

Kata Kunci: Hukum Ekonomi Syariah; Investasi Perbankan Syariah; Kepastian Hukum; POJK Nomor 4 Tahun 2026; Profit and Loss Sharing.

INTRODUCTION

Profit and Loss Sharing (PLS) is a fundamental characteristic of Islamic banking in which profits and risks of a business are assumed to be inherent to the legal relationship between fund providers and fund managers. Under the mudharabah and musyarakah contracts, the profits are distributed according to the mutually agreed profit-sharing ratio (nisbah) and the actual business performance; thus, the right to earn profits is inseparable from the willingness to bear risks (Ben Amar & Abdel, 2023; Saleem et al., 2024). However, the implementation of PLS still encounters several challenges, such as moral hazard, information asymmetry, monitoring costs, and relatively high financial risks (Ibrahim et al., 2022; Robiatun et al., 2024; Salman, 2023)

Legal issues are caused by the existence of Islamic banking investment and deposit products that were not operationally differentiated prior to the enactment of POJK No. 4 of 2026. Mudharabah deposit products and investment products both used the mudharabah contract and the term “profit sharing”, but differed in the sources of returns, risk structure, and

legal consequences. Deposit products are mainly for the purpose of attracting Third-Party Funds. Investment products should, on the other hand, be linked to specific productive assets, the returns and risks of which are determined by the performance of those underlying assets.

Lack of clarity may give rise to customers misinterpreting the legal status of funds, the certainty of repayments of principal, returns, and the responsibilities of banks. The client may think of investment products as similar to deposits with a fixed return. In contrast, PLS-based investments do not guarantee returns and involve risks of the underlying asset performance. This is particularly important since investors do not have the same ability as banks to monitor the application of funds and the quality of investment assets. Therefore, disclosure of information is an important tool for reducing information asymmetry and protecting the investors' interests (Grassa et al., 2021; Saidani et al., 2021).

Meanwhile, POJK No. 4 of 2026 was issued to differentiate investment products and deposit products. The regulation covers investor customers, underlying assets, a two-stage contractual structure, profit distribution based on investment performance, segregation of investment funds from Third-Party Funds, governance, risk management, transparency, and investor protection. Banks are therefore not just fund-collecting institutions but also investment managers with prudential principles and fiduciary duties to comply with.

This research uses the theory of legal certainty by Gustav Radbruch, namely clarity of norms, regulatory consistency, predictability of legal consequences, and protection and enforcement of the law in POJK No. 4 of 2026 (Manullang, 2022). In addition, Islamic economic law principles are used as parameters in assessing the conformity of the regulation, such as justice, trustworthiness, transparency, mutual consent, risk sharing, and the protection of property (hifz al-mal). These principles also reaffirm the relation between profit and risk, as shown in the maxims al-ghunmu bi al-ghurmi and al-kharaj bi al-dhaman.

In the past studies, PLS was generally studied from the perspective of financing, governance, risk disclosure, and Islamic bank performance. Ibrahim et al. (2022), Salman (2023), and Robiatun et al. (2024) analyzed the determinants and efficiency of profit-sharing-based financing. This includes the building of two-tier mudharabah Ben Amar & Abdel (2023) and the significance of disclosure for investment account holders (Grassa et al., 2021; Saidani et al., 2021). Sharia governance has also been studied by Ben Abdallah & Bahloul (2021) and Abdul Rahim et al. (2024). However, there is limited research that specifically examines POJK No. 4 of 2026 as an instrument for building an investment legal

relationship between sharia banks and investor customers.

Based on this background, this study aims to analyze the problems of legal certainty on Islamic investment products before the enactment of POJK No. 4 of 2026, analyze the regulatory framework for investment products under the regulation, and analyze the conformity of the regulation with the theory of legal certainty and the principles of Islamic economic law. This study is novel in that it normatively analyzes the separation of investment products and deposit products as a basis for investor protection in the Islamic banking system.

RESEARCH METHODS

The research design used in this study is normative-doctrinal legal research, with a statutory, conceptual, and analytical approach. This design is used because this research is oriented towards the legal norms of Islamic banking investment products, especially the legal relationship between banks and investor customers to POJK No. 4 of 2026 (Dr. Kristiawanto, S.H I., & dan Eko Widianto, 2022; Hosnah et al., 2021). The research is based on secondary data, namely primary legal materials, such as Law No. 21 of 2008 amended by Law No. 4 of 2023, POJK No. 4 of 2026, the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah), and DSN-MUI Fatwas; secondary legal materials in the form of books and journal articles; and tertiary legal materials, such as legal dictionaries and encyclopedias. Legal materials were retrieved from the library using techniques of inventory and classification of relevant legal sources.

Data were analyzed qualitatively by interpreting the provisions of POJK No. 4 of 2026 systematically and conceptually. Then an assessment of the provisions was made using Gustav Radbruch's theory of legal certainty and the principles of Islamic economic law (Al-Fatih, 2023; Wiraguna, 2024). This study does not use statistical variables but qualitative analytical parameters. Legal certainty is characterized by the clarity of norms, their consistency, predictability, and the protection and enforcement of the law. The criteria of conformity with Islamic economic law are justice, trustworthiness, transparency, mutual consent, risk sharing, and hifz al-mal. The research process starts with the identification of legal issues, then an inventory of legal materials, analysis of the provisions of POJK, analysis of legal certainty, assessment of Sharia compliance, and formulation of conclusions.

RESULTS AND DISCUSSION

Legal-Certainty Issues in Islamic Investment Products Before POJK No. 4 of 2026

The issue of Islamic investment products by the time of the issuance of POJK No. 4 of 2026 was not caused by the complete absence of legal regulation. The Islamic Banking Law, the Compilation of Sharia Economic

Law (Kompilasi Hukum Ekonomi Syariah), and DSN-MUI Fatwas regulated mudharabah and musyarakah contracts, fund collection, and profit-sharing principles. But the regulations did not clearly distinguish operationally between Islamic banking investment products and deposit products. The legal status of funds, distribution of risks, the characteristics of the return, and the limits of the liability of banks have not been clearly formulated (Law No. 21 of 2008 as amended by Law No. 4 of 2023; Elucidation of POJK No. 4 of 2026).

This lack of clarity came from the fact that mudharabah contracts and the term "profit sharing" can be applied to both deposit and investment products. A mudharabah deposit is a tool for collecting funds from third parties, while an investment product is used to allocate customer funds to certain assets or business activities. The difference lies in the source of returns and the risk involved: deposits are intended to raise funds for banks, while investments depend on the performance of the assets backing them. Studies on profit-sharing financing show that third-party funds, non-performing financing, efficiency, and banks' financial conditions influence financing practices and profit-sharing levels in Islamic banking (Ibrahim et al., 2022; Riyadi et al., 2021; Salman, 2023).

The term "profit sharing" might lead to the impression that the nisbah is a fixed return. In fact, the nisbah only specifies the proportion of profits to be shared if the business or the underlying asset makes profits. Therefore, investors should know that investment returns can vary depending on the performance of the assets, which is different from the return expectations similar to those of deposits. The two-tier mudharabah structure also indicates that banks work between fund providers and recipients of financing, so that investment relationships have more complex risks and agency problems than ordinary deposit relationships (Aulia & Saputri, 2021; Ben Amar & Abdel, 2023).

The problem is more serious when the customers are not properly informed about the difference between the business risks and the losses arising from the misconduct of banks. Under the profit-sharing and loss-sharing principle, investors may incur reasonable business risks. Still, losses resulting from negligence, misappropriation of funds, breach of contract, and failure of risk management shall be borne by the bank. However, the potential for moral hazard and information manipulation by fund managers comes from information asymmetry and the inability of investors to monitor fund management (Saidani et al., 2021; Syauqiyah, 2025)

The lack of a clear demarcation also created uncertainty about the legal status of the funds, namely, whether they should be treated as third-party funds, as bank liabilities, or as investment funds linked to particular assets. This uncertainty impacted the accounting treatment of funds, the basis for calculating returns, principal

repayment, and risk allocation. Investments are subject to the risk of depreciation of value depending on the state and performance of the underlying assets. Customers may expect the same protection for the investments as for a deposit.

Thus, the main problem of POJK No. 4 of 2026 was the unclear legal framework in the relationship between banks and investor customers in profit and loss sharing products. The uncertainty applied to the legal status of funds, the basis of investment returns, the distribution of risk, and the limits of banks' liability. Therefore, POJK No. 4 of 2026 was needed to distinguish investment funds from third-party funds, to position customers as investors, and to clarify banks' obligations on transparency, prudential conduct, and investor protection.

Table 1: Legal-Certainty Issues in Islamic Investment Products Before POJK No. 4 of 2026

Aspect	Main Issue	Legal Implication
Product classification	Investment products were not clearly distinguished from *mudharabah* savings or deposit products.	The legal status of customers as investors or depositors was unclear.
Returns and risks	Profit-sharing ratios (*nisbah*) could be understood as fixed returns; the boundary between business risk and bank negligence was not clearly defined.	Potential disputes concerning fund repayment and the party responsible for bearing losses.
Legal status of funds	Investment funds were not specifically segregated from third-party funds.	Problems relating to fund accounting, fund protection, and principal repayment.
Liability and disclosure	Standards for transparency, product suitability, and risk management were not specifically regulated.	Customers might not adequately understand the underlying assets, risks, and banks' responsibilities.

Source: Prepared by the author based on Law No. 21 of 2008, Law No. 4 of 2023, and relevant literature.

Analysis of the Regulation of Islamic Investment Products under POJK No. 4 of 2026

POJK No. 4 of 2026 introduces a new legal relationship for Islamic banking investment products, which is separate from third-party fund collection. Article 1, points 7-10, defines Investment as funds provided by investors to a bank under a mudharabah contract or another Sharia contract to be allocated to underlying assets, with the investment risk borne by the investors. Thus, not only are the depositors of funds the customers, but also the investors. Banks are the managers and intermediaries of investment funds.

Article 2, paragraph (3) stipulates that investment products constitute restricted investment products. This means that the type of business,

underlying assets, and investment period must be determined or agreed upon when the contract is entered into. Article 2, paragraph (4) further requires investment funds to be recorded separately in the bank's statement of financial position. This provision confirms that investment funds cannot be equated with deposit funds or ordinary bank liabilities.

Article 3, paragraph (1) provides for a two-step contractual framework: a contract on placing funds between the bank and the investor customer and a contract on channeling funds into the underlying assets. Such assets may be in the form of financing facilities or Islamic securities. This structure implies a layered investment relationship where investors contract with the bank, which then channels funds to the financing recipients or issuers of Islamic securities. This model is consistent with the idea of two-tier mudharabah, where the bank is an intermediary between fund providers and the financed business activities (Ben Amar & Abdel, 2023).

Profits, losses, or returns on the underlying assets determine the mechanism of investment return. Therefore, investment returns should not be considered as fixed returns guaranteed by the bank. POJK also requires that the amount and tenor of investment funds be consistent with the underlying assets. This stipulation creates a matching principle so that investor funds are not used for the general liquidity needs of the bank or for assets that are not known to investors (POJK No. 4 of 2026, Article 3 paragraph (1)).

As to risk, investor clients are subject to the ordinary commercial risks of the underlying assets. However, losses cannot be passed to investors where they are due to bank errors, negligence, breach of contract, or illegal actions. Thus, POJK separates the risk of investment from loss due to improper management of the bank. The difference is important because profit and loss sharing financing is associated with higher financing risks, monitoring costs, and information asymmetry than non-profit and loss sharing financing (Hamidi et al., 2025; Ibrahim et al., 2022).

Article 3 also affirms that investment funds must be managed separately from bank liabilities, are not insured by the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan), and that proceeds from the settlement of underlying assets may only be used to return investment funds to investor customers. Consequently, investors cannot equate investment products with deposits or savings accounts. Banks are required to explain that the investment value and returns depend on the performance of the underlying assets.

Articles 5-7 place the duty on banks to implement sound governance, risk management, and prudential principles and to comply with fiduciary duties to protect investors. Banks shall act professionally, transparently, and in

good faith, and shall avoid conflicts of interest. They must also perform suitability checks, provide information, identify underlying assets, provide periodic communication, and segregate investment-fund records from third-party funds. These requirements are required because investors do not have the same capacity as banks to directly supervise fund management (Grassa et al., 2021; Saidani et al., 2021).

Articles 10 and 11 strengthen investor protection by means of transparency obligations and administrative sanctions. Banks that violate such provisions may be subject to written warnings, fines, bans on launching new products, suspension of certain activities, or restrictions on business expansion. Thus, POJK No. 4 of 2026 also regulates the form of investment products and investment legal relationships in which investors bear business risks, while banks are still responsible for prudence, information disclosure, and compliance with contract obligations.

Table 2: Analysis of the Regulation of Islamic Investment Products under POJK No. 4 of 2026

Aspect	POJK 4/2026	Legal Consequence
Status of funds and customers	Article 1 points 7–10	Customers are positioned as investors, rather than merely as fund depositors.
Restricted investment products	Article 2 paragraph (3)	The agreed assets, purposes, and investment periods bind banks.
Recording of funds	Article 2 paragraph (4)	Investment funds are segregated from the bank's liabilities and equity.
Contractual structure	Article 3 paragraph (1) letters a–d	Investor funds must be linked to underlying assets.
Investment returns	Article 3 paragraph (1) letter e	Returns are based on asset performance rather than fixed returns.
Investment risk	Article 3 paragraph (1) letter i	Investors bear business risks, while banks remain liable for negligence or breaches of contract.
Funds not insured by LPS.	Article 3 paragraph (1) letter k	Investment products cannot be equated with deposits or savings products.
Governance and risk management	Articles 5–7	Banks must apply prudential principles, fiduciary duties, and fund segregation.
Transparency and suitability	Articles 6 and 10	Investors are entitled to adequate information and products appropriate to their risk profiles.
Sanctions	Articles 4 and 11	Violations may result in fines and restrictions on banking activities.

Source: Prepared by the author based on POJK No. 4 of 2026.

Distinction between Investment Products and Deposit Products

POJK No. 4 of 2026 makes a distinction between investment products and deposit products in Islamic

banking. Deposit products are products in which third-party funds are collected, and the customer is the fund depositor. Investment products, however, are funds placed by investor customers under a mudharabah contract or other Sharia contracts and invested in the underlying assets. Thus, investment products not only forge a fund-deposit relationship but an investment relationship based on specific contracts, assets, and risks (POJK No. 4 of 2026, Article 1, points 7-10; Article 2, paragraph (3)).

The principal distinction is in the features of the gains and risks. In the case of mudharabah deposits, profit sharing is the compensation for the collection of funds, and the calculation of which depends on the performance of the bank. But in the case of investment products, the return is derived from the profits, losses, or returns made by the underlying assets. Thus, the investor customers cannot consider the nisbah as a promise of fixed profit because the return on investment depends on the performance of the assets underlying the placement of the fund Aulia & Saputri, 2021) as stipulated in Article 3 paragraph (1) letter e of POJK No. 4 of 2026.

With regard to risk, investment products portray customers as parties who accept reasonable business risks of the underlying assets. Where losses are due to error, negligence, breach of contract, or conduct contrary to legal provisions on the part of banks, such risks may not be transferred to investors. Deposit products do not expose customers directly to the risks of particular underlying assets, as is the case with investment products. This distinction is important because profit-and-loss-sharing financing entails higher financing risks, monitoring costs, and information asymmetry than ordinary fund-collection arrangements (Farihana & Rahman, 2020; Ibrahim et al., 2022).

POJK also distinguishes the obligations of banks under these two types of products. In the case of investment products, banks are required to connect investor funds with the assets underlying the investments, apply prudential principles, separate investment funds from third-party funds, disclose relevant information, and ensure products are compatible with the investor's risk profile. Also, the Indonesia Deposit Insurance Corporation does not insure investment funds. Thus, the protection of investors is mainly based on transparency, good governance, the separation of funds, and the fulfillment of fiduciary duties by banks (POJK No. 4 of 2026, Article 3 paragraph (1), Article 5-7, and Article 10).

Legal risks arise when investment products are marketed as being similar to deposits in terms of return. Such practices may lead to mis-selling, create expectations of fixed returns, and obfuscate the principle of risk-sharing. Investors may be misled into believing that the principal and investment return are protected in the same way as

deposits. In contrast, LPS does not insure investments, and the value of investments is dependent on the performance of the underlying assets. In investment relationships, information disclosure is essential because investors do not have the same rights or ability as banks to directly supervise fund management (Saidani et al., 2021).

Thus, the separation of investment products and deposit products is a key element of investor protection and dispute prevention. This distinction clarifies the legal status of customers, origin of returns, risk allocation, and the limits of banks' responsibilities. Banks should be able to demonstrate that there are underlying assets, how the money is being used, how investment returns are calculated, and why there are losses. This clarity ensures that investment funds are not treated as disguised deposits and maintains the nature of profit and loss sharing in Islamic banking (Ghani & Mohd Shafie, 2025; Robiatun et al., 2024).

Table 3: Distinction between Islamic Deposit Products and Islamic Investment Products

Aspect	Islamic Deposit	Islamic Investment
Customer status	Fund depositor	Investor customer
Purpose of funds	Collection of third-party funds	Placement of funds in underlying assets
Returns	Profit sharing according to the characteristics of deposit products	Based on the performance of investment assets
Risk	Customers do not directly bear asset-related risks	Investors bear business risks in accordance with the contract
Bank obligations	Manage and return funds according to the nature of the deposit product	Manage investments prudently, transparently, and in accordance with the contract
Protection	Subject to applicable deposit and deposit-insurance provisions	Disclosure, suitability assessment, fund segregation, and consumer protection
Potential disputes	Profit-sharing ratio, service quality, or fund withdrawal	Investment losses, misinformation, or contractual breaches

Source: Prepared by the author based on POJK No. 4 of 2026.

Legal-Certainty Assessment of POJK No. 4 of 2026 Based on Gustav Radbruch's Theory

Legal certainty is one of the basic values of law in the theory of Gustav Radbruch. In this study, the legal certainty of POJK No. 4 of 2026 is measured using four indicators, namely clarity of norms, consistency of norms, predictability, and legal protection and law enforcement. It is important to use these indicators so that the assessment does not just say that the regulation provides legal certainty. Rather, it specifies in concrete terms the forms of certainty given to banks and investor customers (Manullang, 2022).

First, about the clarity of norms. In POJK No. 4 of 2026, the definition of

investment, investor customers, Islamic banking investment products, underlying assets and mudharabah contracts are clearly stated in Article 1 . Article 3 also sets forth the basic characteristics of investment products such as two-tier contractual structure, types of underlying assets, mechanisms of return on investment, consistency between the amount and tenor of investment funds and their underlying assets, investment risks, fund segregation, and exclusion of LPS insurance. “These provisions make clear that investment products are not deposit products but are asset-based investment instruments in which investors bear the risks.

Second, in terms of the consistency of norms, POJK is consistent with the principles of Islamic banking in Law No. 21 of 2008, as amended by Law No. 4 of 2023, especially in the differentiation between deposit and investment products. This regulatory framework also follows the principle of mudharabah in the Compilation of Sharia Economic Law and DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000. Where the profit is distributed based on the agreed nisbah and business losses are borne by capital providers, as long as they are not caused by negligence or breach of contract by the manager. This alignment reinforces risk sharing as a distinctive feature of Islamic investment products over deposit-based fund-collection products (Barau et al., 2023; Ben Amar & Abdel, 2023).

Third, in terms of predictability, POJK provides the basis for banks and investors to know the legal consequences from the date of the signing of the contract. Articles 2 and 3 require investment products to be based on underlying assets, with the same tenor as the investment and with performance based on the underlying asset. The article also obliges banks to conduct suitability assessments and disclose information on risk profiles, investment objectives, financial capacity, investor experience, and characteristics of the underlying assets. Consequently, investors bear the investment risks and returns, while banks have more defined limits on their obligations in the offering and management of investment products (Grassa et al., 2021; Saidani et al., 2021).

Fourth, Legal protection and enforcement: Banks are required to observe sound governance and risk management, to observe prudential principles, to separate investment funds from third-party funds, and to separate the underlying assets from other productive assets. Article 5, paragraph (4) states expressly that banks are to act in a fiduciary capacity on behalf of investor clients. This protection is further improved by transparency and product suitability obligations under Articles 6 and 10 and administrative sanctions under Articles 4 and 11. Such sanctions can include written warnings, fines, limits on the issuance of products, suspension of certain activities, and

restrictions on the expansion of bank business. These provisions imply that the obligations of the banks are not voluntary but legally enforceable (Abdul Rahim et al., 2024; Ben Abdallah & Bahloul, 2021).

However, the legal certainty of POJK still needs to be strengthened in its implementation. The success of investor protection hinges on the quality of information disclosure, the reliability of risk-profile assessment, the independence of governance mechanisms, OJK supervision, and banks' capacity to show that losses were truly the result of business risks and not negligence or mismanagement. Therefore, POJK No. 4 of 2026 has strengthened legal certainty normatively, but the effectiveness still depends on the compliance of banks and law enforcement in practice.

Table 4: Legal-Certainty Assessment of POJK No. 4 of 2026

Indicator	POJK 4/2026	Legal-Certainty Analysis
Clarity of norms	Articles 1, 2, and 3	Definitions of investment, investors, underlying assets, contracts, risks, and return mechanisms are formulated more clearly.
Consistency of norms	Articles 1–3 and Sharia principles	Consistent with the Islamic Banking Law, the Financial Sector Development and Strengthening Law, KHES, and DSN-MUI Fatwas on *mudharabah*.
Predictability	Articles 2, 3, and 6	Banks and investors can identify underlying assets, investment tenor, risks, returns, and their respective rights and obligations from the time of contracting.
Legal protection and enforcement	Articles 5–7, 10, and 11	Governance, fiduciary duties, disclosure, fund segregation, consumer protection, and sanctions strengthen investors' position.

Source: Prepared by the author based on POJK No. 4 of 2026, the Islamic Banking Law, KHES, and DSN-MUI Fatwas.

Conformity with Islamic Economic Law and Implementation Challenges

POJK No. 4 of 2026 is substantially in accordance with the principles of Islamic economic law by treating the investment as a partnership relationship, based on profit sharing and risk sharing. The regulation of underlying assets, profit-sharing mechanisms, and investment risks borne by the investor customers is an embodiment of the principles of justice (al-'adl) and proportionality. Investors are entitled to investment returns when the underlying assets generate profits, but they also have to bear reasonable business risks. This construction follows the principle of al-ghunmu bi al-ghurmi, which means that the right to profit is linked to the willingness to undertake risk, and al-kharaj bi al-dhaman, which suggests that the right to returns is related to the responsibility for the risks involved in the opportunity (Ben Amar & Abdel, 2023; Saleem et al., 2024)

The principle of trustworthiness (amanah) is reflected in the obligation of banks to manage the underlying assets in a professional, prudent, and Sharia-compliant manner. Article 5 of POJK No. 4 of 2026 states that banks are fiduciary holders, which must be conducted in good faith, transparently, and without any conflict of interest. Therefore, losses arising from bank errors, negligence, or breach of contract may not be passed on to investors. This provision strikes a balance between the legitimate risk of investments and the duties of banks as fund managers.

The requirement to conduct suitability assessments, disclose relevant information, and communicate periodically with investors applies the principles of transparency (al-shafafiyyah) and mutual consent (al-ridha). The substantive validity of investor consent can only be assumed if it is predicated upon an adequate knowledge of the underlying assets, risks, investment period, expected yields, and potential loss. Such transparency is important to reduce information asymmetry because investors do not have the same ability as banks to monitor the fund management (Grassa et al., 2021; Saidani et al., 2021).

Moreover, the segregation of investment funds from third-party funds, the segregation of underlying assets from other productive assets, the application of risk management, and the imposition of administrative sanctions are forms of property protection (hifz al-mal). These arrangements ensure that investor funds are not commingled or used outside of the agreed contract, and avoid evidentiary difficulties in the case of disputes. Sharia governance and proper information disclosure also have an important role to play in increasing bank accountability and monitoring of investment management (Abdul Rahim et al., 2024).

The implementation of POJK is normatively in line with the principles of Islamic economic law, but it still encounters several problems. First, there is the risk of moral hazard and information asymmetry between banks and investors, and between banks and beneficiaries of financing. Second, investors may still be limited in their understanding of the difference between investment products and deposit products, particularly with respect to the risk of loss and the fact that deposits are not insured. Third, the public's familiarity with relatively stable returns may generate expectations of fixed returns that are inconsistent with the nature of Profit and Loss Sharing. The fourth is the effectiveness of supervision, which can be influenced by the ability of banks, the role of Sharia Supervisory Boards, internal controls, and the consistency of OJK's enforcement (Ibrahim et al., 2022; Pinasti & Achiria, 2024; Yuslem et al., 2023).

Thus, POJK No. 4 of 2026 has normatively strengthened the legal certainty of Islamic investment products through provisions on risk sharing,

transparency, governance, fund segregation, and protection of investors. But its success still depends on the disclosure of authentic information, banks' adherence to fiduciary obligations, higher literacy among investors, and continued regulatory vigilance.

Table 5: Conformity of POJK No. 4 of 2026 with Islamic Economic Law and Implementation Challenges

Principle	POJK 4/2026	Implementation Challenge
Justice (*al-'adl*)	Returns and risks are linked to the performance of underlying assets.	Investors may mistakenly regard investment products as products offering guaranteed returns.
Trustworthiness (*amanah*)	Banks must apply prudential principles, sound governance, and fiduciary duties.	Risks of negligence, conflicts of interest, or mismanagement of assets.
Transparency (*al-shafafiyyah*)	Disclosure, suitability assessments, and periodic communication are mandatory.	Technical information may be difficult for investors with limited financial literacy to understand.
Mutual consent (*al-ridha*)	Fund placements are based on contracts and disclosure of investment risks.	Consent may be merely formalistic, with investors not genuinely understanding the risks.
Risk sharing	Investors bear reasonable business risks in accordance with the contract.	Moral hazard and information asymmetry in the management of assets.
Protection of property (*hifz al-mal*)	Fund segregation, risk management, consumer protection, and sanctions are provided.	Effectiveness depends on banks' internal systems and regulatory supervision.

Source: Prepared by the author based on POJK No. 4 of 2026 and relevant literature.

CONCLUSION

The study results indicate that the difference between Islamic investment products and deposit products was not clearly formulated prior to the enactment of POJK No. 4 of 2026. This situation created uncertainty as to the legal status of funds, the source of returns, the distribution of risks, and the limits of banks' liability. POJK No. 4 of 2026 later explained that investment products are the placement of investor customer funds into the underlying assets, with the returns to be determined by investment performance, and business risks are borne by investors in accordance with the contract. However, banks remain liable for losses arising from error, negligence, breach of contract, or management that is not in accordance with the prudential principles.

Based on Gustav Radbruch's theory of legal certainty, POJK No. 4 of 2026 improves the clarity of norms, consistency with Islamic banking principles, predictability of the rights

and risks of the parties, and investor protection through governance, transparency, fund segregation, risk management, and administrative sanctions. These provisions are based on the principles of justice, trustworthiness, transparency, mutual consent, risk sharing, and hifz al-mal. These provisions are in light of the maxims al-ghunmu bi al-ghurmi and al-kharaj bi al-dhaman. However, the effectiveness of POJK No. 4 of 2026 still depends on sufficient disclosure of information, banks' compliance with fiduciary duties, improved investor literacy, and effective regulatory supervision to ensure that investment products are not misunderstood or marketed as deposits with guaranteed returns.

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