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Implementation of the Prudential Principle (Al-Ihtiyathi) on Investment Manager Regulations in Managing Sharia Mutual Funds in Indonesia

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ABSTRACT

Sharia mutual fund investment carries risks so that the investment manager in carrying out the task of managing investor funds in addition to maximizing returns is also obliged to ensure that the benefits received by the customer are truly in line with sharia rules. The implementation of investment transactions in sharia mutual funds must be carried out according to the prudential principle (al-ihtiyathi) based on the rules set out in Fatwa No. 20/DSN-MUI/IV/2001 about Investment Implementation Guidelines for Sharia Mutual Funds. Whereas in POJK No. 24/POJK.04/2014 about Guidelines for Implementation of Investment Manager Functions, it is stated that the application of prudential principles is carried out by taking into account investment risks and the clear division of authority in determining the no. of transactions. Then mentioned in POJK No. 61/POJK.04/2016 about the Application of Sharia Principles in the Capital Market to Investment Managers that the application of sharia principles is carried out in two ways, the establishment of sharia investment managers and sharia investment management units. The application of this prudential principle is not explicitly explained in the regulation so that it contains an element of uncertainty related to being in force of prudential principles in the application of sharia principles. This research is a normative juridical analysis of how the prudential principle implemented in sharia mutual fund investment managers. Based on the results of the research that the application of the prudential principle (al-ihtiyathi) must be applied to start from the institutions, management methods, and services including sharia compliance obligations and laws.

***Keywords**: prudential principle (al-ihtiyathi), sharia mutual fund, investment manager*

1. INTRODUCTION

The Sharia finance industry in Indonesia continues to grow. Supported by the majority of the Muslim population, the presence of Sharia financial instruments has its own potential. According to the Sharia Capital Market Director of the Financial Services Authority (OJK) Edy Setiadi in the discussion of Sharia Capital Market Contributions on the Indonesia Stock Exchange said Indonesia had the opportunity to become the center of Sharia finance in the world. One of the sharia financial instruments that also contribute to the assets of the Sharia financial industry is Sharia mutual funds.[1] Referring to the law in force in Indonesia, conventional mutual funds are regulated in Act No. 8 of 1995 concerning the Capital Market. At present, there are two mutual fund models operating in Indonesia, namely conventionally operating mutual funds and mutual funds that operate by implementing Sharia principles, known as sharia mutual funds. The legal foundation of Sharia mutual funds refers to the National Shari'ah Council DSN Fatwa No. 20 /DSN-MUI/IV/2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds and several regulations issued by OJK, one of which is POJK No. 19 /POJK.04/2015 concerning Issuance and Requirements of Sharia Mutual Funds. The development of these regulations experienced a significant change in the regulation of Sharia mutual funds so that there was a dualism of mutual fund law in Indonesia. The presence of OJK regulations related to Sharia mutual funds provides a more solid legal basis for the existence of mutual fund investment activities based on sharia principles.

According to the OJK, Sharia Mutual Funds are one of the collective investment containers managed by Investment Managers by investing in managed funds to Sharia securities in the form of Sharia stocks, sukuk, or other sharia instruments. [2] Different from conventional mutual funds with Sharia mutual funds, in addition to the Custodian Bank and Investment Manager, there is also a Sharia Supervisory Board (DPS). In terms of investors, Sharia mutual funds can be purchased by anyone, whether Muslim or not. In terms of management, basically conventional mutual funds and Sharia mutual funds are the same. Similarly, the way to purchase and transaction. In terms of performance, Sharia mutual funds can offer diversification because they focus more on the property sector, infrastructure, manufacturing commodities, and trade services with a lower risk of default because they avoid companies with large debt ratios.[3] Mechanically, Sharia mutual funds operate according to

Sharia sharia principles, both in the form of contracts between investors as property owners (sahib al-mal / Rabb al-Mal) with investment managers as representatives of shahibul al-mal, or between Investment Managers as shahibul al representatives -mal with investment users.[4]

Investment through mutual funds carries risks. The task of managing investor funds is certainly not an easy matter for investment managers. The Investment Manager is authorized to manage the collective investment portfolio while the Custodian Bank is authorized to carry out collective safekeeping, carry out administrative functions and transfer agents.[5] As candidates for Participation Unit Holders, they must read and understand the Prospectus before deciding to invest through mutual funds.[6] The management of Sharia mutual funds by Investment Managers is required that these investment funds must be managed in accordance with sharia principles. In addition to maximizing returns, investment managers are also required to ensure that the benefits received by customers are truly in line with applicable sharia rules and avoid things that are prohibited in sharia provisions.

In this regard, Fatwa No. 20 / DSN-MUI / IV / 2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds Article 9 point 1 concerning Types of Prohibited Transactions state that the selection and implementation of investment transactions must be carried out according to the principle of prudence prudential management / ihtiyath), and are not allowed to speculate that contains elements of gharar. This means that investment managers must apply sharia principles and the principle of prudence in carrying out their business activities away from things that are contrary to that principle. The fatwa has a connection between prudential principles and sharia principles so that it can be understood as the provision of sharia compliance (shariah compliance) in Sharia Banking that investment managers become objects subject to the supervision of compliance with sharia principles. Both are equally important where failure in the application of either of them will have legal consequences.

The investment manager will get a bad rating because he does not carry out the prudential principle. There are a no. of conditions for mutual fund investment risk which can be a factor in the good or bad management of funds, namely, first, the reduced Net Asset Value (NAV) is the risk arising from the decline in the price of assets in an Investment Fund portfolio. Second, default risk is a risk that arises because the parties involved in a Mutual Fund transaction cannot fulfill the obligations stated in the contract to other related parties, thus potentially causing loss of investment value. Third, liquidity risk is a risk arising from the payment of the results of the resale of a Mutual Fund participation unit that cannot be paid by the Investment Manager. [7]

While the provisions of sanctions imposed on investment managers stipulated in POJK regarding the function of investment managers, governance and requirements and the issuance of Sharia mutual funds only involve the sanctions of the code of ethics and criminal sanctions in the capital market in general. The provision does not clearly state sanctions in terms of not implementing sharia principles. The fulfillment of compliance with sharia principles is the duty of the Sharia Supervisory Board. If in Malaysia the country has implemented a two-tier compliance test, namely the sharia compliance test and the existence of sharia audit practices, while in Indonesia, in its audit practice it still uses conventional audits, then the practice of sharia auditing does not have provisions that accommodate this in Indonesia. [8]

Seeing the rapid development of increasingly diverse and complex Sharia mutual fund products and services, the application of the prudential principle in sharia mutual fund investment activities is increasingly urgent and relevant. The prudential principle is a principle that must exist in investment manager activities, but in regulation and practice, it has not been comprehensively interpreted, which is only associated with the obligation of investment managers to be careful in risk management and clear division of authority in determining the number of transactions. Therefore, this paper intends to produce a juridical study of what the prudential principle applies to and its application in the regulations of Sharia mutual fund investments.

2. RESEARCH METHODS

This research is library research in the form of retrieval of data derived from literature or scientific writings relating to the object under study. This type of research is normative legal research and descriptive in nature with a normative juridical approach. This research refers to the Act and describes systematically, factually and accurately to a situation that is the object of research by basing research on normative legal provisions. The data used are primary and secondary data. Primary data is obtained through applicable legislation and secondary data obtained through library materials consisting of secondary data both from books, research journals, online data, and legal encyclopedias.

3. RESEARCH RESULTS AND DISCUSSION

3.1. *Relationship between the Implementation of Prudential Principles and Sharia Principles in Sharia Mutual Fund Investment*

The definition of investment in legislation is not found, it can be sought the views of experts in the legal dictionary. One of them according to Fitzgerald, investment is an activity that is related to efforts to attract resources (funds) that are used to hold capital goods at the present time and with capital goods to be produced in the future stream of new products.[9] In legislation, only the term "investment" is found but has a meaning that almost represents the exact intention of the investment mentioned in Law No. 25 of 2007 concerning Investment that investment is all forms of investment activities, both by domestic investment and foreign investment to conduct business in the territory of the Republic of Indonesia.

In Arabic investment, it is called *istitsmar* [10] which means "to make fruit, grow and increase in number. Investment in Islam is part of muamalah fiqh, the rule applies" the law of origin in all forms of muamalah is permissible unless there is an argument that forbids it."[11] Investment is the planting of funds or capital participation for a particular business sector whose business activities do not conflict with sharia principles, both the object and the process.[12] According to the hadith of Bukhari and Muslim, it is stated that something halal is clear and the forbidden is clear. And between them, there are doubts/mutants (mutasyabihat) so that most people do not know. So whoever keeps himself from a questionable thing means that he has cleansed his religion and honor. And whoever falls in a doubtful thing has fallen into an unlawful matter. The quote of the hadith implies the importance of the prudential principle (al-ihtiyati) in deeds. So that in the context of investment in Sharia mutual funds, the hadith provides wisdom for relevant institutions in their authority to determine policy. As authority holders, they have a moral responsibility to make certain regulations (al-hukm al-ijrai) which provide legal certainty on how to apply the principles of halal-haram (al-hukm al-tasyri'). [13] Then the implementation of mutual fund investments must be based on sharia principles.

The Prudential Principle or Principle contained in the DSN MUI fatwa of the National Syari'ah Council No. 20/DSN-MUI/IV/2001 concerning Investment Implementation Guidelines for Shari'ah Mutual Funds Article 9 point 1 concerning Types of Transactions Prohibited from mentioning that it is mentioned that the implementation of investment transactions must be carried out according to the principle of prudence (prudential management / ihtiyath). This confirms that the management of Sharia mutual funds must be in accordance with Sharia law. Relating to Sharia Mutual Investment in Indonesia has been issued and confirmed by various other regulations that accommodate and regulate the implementation of Sharia mutual fund investment transactions in the capital market including the National Shari'ah Council DSN Fatwa No. 20/DSN-MUI/IV/2001 about Investment Implementation Guidelines for Syari'ah Mutual Fund, Financial Services Authority Regulation No. 15 /POJK.04/2015 Concerning the Implementation of Sharia Principles in the Capital Market, POJK No. 61/POJK.04/2016 about Application of Sharia Principles in Capital Markets to Investment Managers and others.

The principle of sharia investment is that all forms of muamalah can be done until there is a proposition that prohibits it, namely if found illegal activities in a business activity, both objects (products) and business activities that contain haram, gharar, maysir, ribā, tadlīs rukbān, ghabn, ḍarar, rishwah, maksiat and ẓulm. In investment, there are sharia rules regarding what contracts are allowed, what is prohibited, and risks that arise as an integral part of investment activities. [14] These principles are used as a basis for consideration in carrying out investments based on sharia law.

The first principle is the halal principle, which is everything that can be done or eaten. This principle states that everything that can be done is like an investment as long as it does not conflict with something that is prohibited or the argument that forbids it. Halal principles can be correlated with the provisions regarding Sharia mutual funds in regulating portfolio contents, namely the difference in conventional mutual fund portfolios in addition to investing in non-sharia securities can also invest in sharia instruments including sharia stocks, sukuk and others, while for sharia mutual funds are only allowed to invest in sharia securities which have been categorized as halal and the provisions have been regulated by the FSA in line with the recommendations of the DSN-MUI fatwa.

The second principle is the principle of mashlahah, which is all things that benefit individuals, their families and their environment and avoid all evil and destructive things, both to their personal, family and community. Maslahah in the context of investments made by someone should be able to benefit the parties who make transactions and must also be felt by the community in general.[15] This element of maslahah can be seen that with the fatwa of the MUI which allows investment in Sharia mutual funds in addition to long-term benefits, it also provides peace for the community to invest plus OJK contributes to overseeing and even investing through various online mutual fund marketplaces that make it easier for among anyone.

The third principle is the principle of avoiding prohibited investments. Forbidden investment is divided into two, namely investment that is subhat and investment that is unclean. Syubhat investment is interpreted as something that is mixed (between halal and haram), but it is not known for certain whether he is something that is lawful or unlawful and whether he is right or vanity.[16] Illegal investment is all behavior (services) or goods (securities, commodities and goods) that are prohibited in Sharia law, if done get a sin and if left will get a reward. Investments that are prohibited based on the Qur'an, Al-Hadith and the opinions of experts in Sharia law are divided into two groups, which are prohibited because of their substances (li dzatihi), and are prohibited because they are not or a substance (li ghairihi).[17]

The principle of avoidance of prohibited investment can be found in its implementation in regulating Sharia mutual funds, which is related to mutual fund managers or investment managers must have a Sharia Supervisory Board licensed by a Sharia Capital Market Expert (ASPM) and must establish a sharia investment management unit based on Article 3 POJK No.61/POJK.O4/2016 concerning Application of Sharia Principles in Capital Markets to Investment Managers.

The fourth principle is haram because tadlis is something that contains elements of fraud. [18] This principle can be found in the provision of a Custodian Bank, which is to maintain investment security in mutual funds because all customer funds and wealth assets from mutual funds are securely stored at the custodian bank. The Custodian Bank is also in charge of overseeing investment managers so they do not take policies that deviate from collective investment contracts. The Custodian Bank is responsible for carrying out the administrative process and recording all the instruments it stores. The recording process is carried out including the sale and purchase of shares, delivery of confirmation letters for sale-purchase transactions, transfer and calculation of units, disbursement of deposits, and sending monthly reports and announcing the value of NAV/UP to the media. For services provided by the Custodian Bank, a fee is collected at an average of 0.1% - 0.25% per annum of the funds deposited. [19]

In addition, mutual funds are strictly regulated by laws and regulations that aim to protect investors from the risk of mismanagement or in other words, investors' money is not taken away by irresponsible parties. Investors buy mutual funds in accordance with existing regulations because it will be one of the requirements to get protection from the PT Indonesia Securities Investor Protection Program (P3IEI) or the Securities Investor Protection Fund (SIPF), details of protection of up to Rp. 100 million / investor can be seen at https: //www.indonesiasipf.co.id/. [20]

The fifth principle is forbidden because gharar means uncertainty which is doing something arbitrarily without having sufficient knowledge of something that is done or taking the risk of an action that contains risks without knowing exactly what the consequences or entering the risk without thinking of the consequences. [21] The application of illegitimate principles because gharar is contained in the operational provisions of Sharia mutual funds, namely POJK No. 35/2017 states that there are several criteria for shares in the List of Sharia Securities by conducting Business Screening, namely the issuer's business activities do not conflict with Sharia sharia or halal categories. Stocks that pass the screening will be included in the Sharia Securities List (DES) and Financial Screening, namely the issuer has no interest-based debt greater than its assets (maximum 45% of assets) and the total non-halal revenue portion is maximum 10% of total revenue. [22]

The sixth principle is the principle of defense, meaning easy and paired with the word qimar, which is interpreted as any form of the game containing gambling (gambling). [23] Portfolio assets and ways of Sharia mutual fund transactions in accordance with sharia. Sharia money market funds, for example, mostly contain money market products such as deposits, provided that deposits are not contained in riba but use a profit sharing scheme so that assets meet the sharia requirements and avoid gambling. [24]

The seventh principle is the illegitimate principle because usury means ziyadah means additional and growing, namely taking extra from basic assets or capital vanity.[25] Usury principles in Sharia mutual funds related to the fund management mechanism, namely the location of differences with conventional mutual funds that sharia mutual funds after the screening process will be followed by a cleansing process (portfolio purification process for non-halal assets, either issuing zakat or other charitable expenses).

Purification is an activity of cleaning a portfolio of income received but not in accordance with sharia principles. The purification program carried out by the investment manager who manages the investment portfolio is guided by the Fatwa of the National Sharia Council (DSN) No. 20 / DSN-MUI / IV of 2001 concerning Guidelines for Investment Implementation for Sharia Mutual Funds. In the eleventh article in the regulation, the investment proceeds distributed by the Investment Manager to customers must be free from non-halal elements, so that the Investment Manager must separate the portion of income that contains non-halal elements from income that is believed to be halal.[26] In addition, the existence of the Sharia Supervisory Board, namely the board that oversees the fulfillment of sharia principles in a mutual fund, ensures that investment must be in accordance with DES and Cleansing. This board is an independent party that is an expert on the capital market and sharia law and can provide recommendations on the distribution of cleansing funds.[27]

The eighth principle is to avoid ihtikar and an-najasy. Ihtikar means dzalim, persecution and social destruction that is an effort to stockpile merchandise to waiting for a surge in prices, ihtikar is the same as a monopoly that is collecting or holding goods circulating in the market in order to act as they wish in the circulation of goods, or control something offered and demand goods with the aim of managing excessive profits. Whereas an-najasy is toying with prices that is the buyer bidding in a purchase with the intention that other people bid higher. [28] This principle, based on fatwa No.: 20 / DSN-MUI / IV / 2001 states that there is a prohibition on buying and selling najsy such as short selling, insider trading and investing in companies which at the time of the transaction rate are more dominant than their capital.

3.2. Obligations of Investment Managers in Managing Sharia Mutual Funds in Implementing the Prudential Principle

The prudential principle requires investment managers to always be careful in carrying out their business activities, always consistent in implementing laws and regulations in the field of capital markets based on professionalism and good faith. The fatwa of the National Syari'ah Council No.: 20 / DSN-MUI / IV / 2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds Article 9 point 1 concerning Types of Prohibited Transactions states that the selection and implementation of investment transactions must be carried out according to the principle of prudence (prudential management / ihtiyath). This provision recommends investment managers to manage Sharia mutual funds by applying prudential principles to avoid actions that are contrary to sharia principles. The action referred to is explained in Article 9 point 2 states that the intended action includes najsy, which is to make a false offer, bai al-ma'dum which is selling goods that are not owned (short selling), insider trading which is disseminating misleading or using information inside information to get the benefits of prohibited transactions and invest in companies that at the time of the transaction level (ratio) the debt is more dominant than the capital.

Most investment managers in Indonesia still manage two products, namely conventional mutual funds, and Sharia mutual funds managed simultaneously in one company. OJK has issued a regulation to do a spin-off for investment managers who manage sharia mutual funds based on POJK No. 61 the Year 2016 concerning Application of Sharia Principles in Capital Markets to Investment Managers. The Spin-Off Provisions are stated in Article 2 letter (a) POJK No. 61 of 2016 stating that the application of sharia principles in the capital market to investment managers must be carried out by establishing sharia investment managers. In Indonesia today there is only one MI that specifically manages sharia portfolios, namely Paytren Asset Management, while others are conventional.

However, the spin-off provisions are not mandatory so that there are other provisions to accommodate conventional Investment Managers who manage sharia mutual fund products, OJK regulates that investment managers are obliged to establish a Sharia Investment Management Unit (UPIS) as stipulated in Article 2 letter (b) POJK No. 61 In 2016, the application of sharia principles in the capital market to investment managers must be carried out by establishing a Sharia Investment Management Unit. The existence of these two obligations is an adjustment to the development of the Sharia financial industry and the regulation absorbs the DSN-MUI fatwa which states the importance of applying the prudential principle (al-ihtiyathi) in implementing investments based on sharia principles.

The Sharia Investment Manager and the Sharia Investment Management Unit have the obligation to have a Sharia Supervisory Board that has a Capital Market Sharia Expert License (ASPM) Article 3 POJK No. 61 of 2016.

Furthermore, in the explanation 18 it states the following duties and responsibilities of the Sharia Investment Management Unit:

a. compiling standard operating procedures related to the management of Sharia investment products;

b. monitor and ensure sharia investment products are managed based on Sharia Principles in the Capital Market;

c. develop sharia investment management products; and

d. marketing sharia investment management products.

Based on this in practice, the standard operating procedure (SOP) of mutual fund management is made in written form, namely the articles of association of the company in accordance with Article 5 point (2) that the Sharia Investment Manager must state in the articles of association that activities and types of business; the services provided are based on Sharia Principles in the Capital Market. Then the investment manager must submit annual activity reporting in the form of periodic financial reports, activity reports, and public accountant reports on annual adjusted net working capital to OJK in accordance with Article 49 POJK No. 10 of 2018. This is done by making an annual business plan, Business Plan explained in Article 1 of the Financial Services Authority Regulation No. 10 /POJK.04/2018 concerning the Implementation of Investment Manager Governance point (11) states that a business plan is a written document that describes the Investment Manager's business plan within a period of 1 (one) year, including plans to improve business performance, as well as strategies for realizing the plan in accordance with the target and time set, while still paying attention to compliance with prudential provisions and the application of risk management.

Preparation of an investment manager's business plan is carried out and is the responsibility of the Board of Directors, which is a step to determine the direction of investment and as a means to control the risks associated with the investment manager's business activities. Typically, Investment Managers take the form of PT, so that Act No. 40 of 2007 concerning Limited Liability Company (PT Law) as lex generalis applies. Under Article 92 of the PT Law, the obligation to ensure compliance with regulations, including applying the prudential principle of investment managers is in the hands of the Directors as a corporate organ that is responsible for managing the Company in the interests of the Company in accordance with the Company's objectives and fiduciary duty or trustworthiness.[29] Sharia Investment Manager Directors are required to have at least one member of the board of directors who has the minimum knowledge and work experience in the Sharia finance sector for one year according to Article 6 letter (b) POJK No. 61 of 2016.

Another obligation of investment managers in accordance with Article 7 POJK No. 61 of 2016 is the existence of a sharia investment committee in determining the investment universe. Periodically, analysts and investment managers will hold internal meetings to discuss the direction of mutual fund investment going forward. In the process, investment managers also get input from other parties such as the Sharia investment committee, external analysts and company management. The Sharia investment committee is the team whose task is to direct and supervise the Sharia Investment Management Team in carrying out investment policies and strategies that do not conflict with Sharia Principles in the Capital Market. Usually, they consist of a board of directors and commissioners of investment managers, can also be representatives of parent companies abroad if the investment manager is in the form of foreign investors whose shares are owned by foreign companies.[30] Then the investment manager is also required to have a Sharia Investment Management Team in the process of establishing a mutual fund portfolio, namely an investment management team tasked with managing a Sharia Securities Portfolio or a collective investment portfolio that does not conflict with Sharia Principles in the

Capital Market.[31] The obligation of investment managers in managing Sharia mutual funds in applying the prudential principle can be concluded that the application of the prudential principle concerns the institutional investment manager, namely the division of authority of each organ that has the responsibility of implementing sharia principles.

3.3. Application of Prudential Principles (Al-Ihtiyathi) Investment Managers in Complying with Shariah Compliance

Sharia compliance is part of the obligation of the investment manager to carry out business activities in order to fulfill certainty regarding the suitability of the implementation of investments in legislation. In carrying out the compliance function, duties and responsibilities are given to one member of the Board of Directors or member under the Board of Directors who is coordinator of one work unit must have an investment manager representative from the OJK and have an assignment of responsibility through the Board of Commissioners its duty to ensure compliance with the investment manager's function. With regard to sharia compliance, it is the duty of the Sharia Supervisory Board to oversee the implementation of sharia principles in the entire implementation of investments by means of findings and recommendations from the Sharia Supervisory Board. The findings and recommendations are the responsibility of the Commissioners and Directors to submit to the FSA. Directors who follow up on these cases are in accordance with Article 29 POJK No. 10 /POJK.04/2018 concerning Implementation of Investment Manager Governance in points (1) and (2) stating that in the event that the Investment Manager manages sharia investment products, the Board of Commissioners must ensure that the Directors follow up findings and recommendations from the supervision of the Sharia Supervisory Board.

The obligation to ensure compliance with regulations, including applying the prudential principle of investment managers is in the hands of the Board of Directors as a corporate organ that is responsible for managing the Company in the interests of the Company in accordance with the purposes of the Company entrusted to it based on fiduciary duty based on Article 92 of Act No. 40 In 2007 concerning Limited Liability Company (PT Law) as lex generalis. This obligation provides legal protection for all parties. The Fiduciary duty of the Investment Manager is also mentioned in Article 27 paragraph (1) of the Capital Market Law, which is obligatory in good faith and responsibly to carry out its duties as best as possible solely for the benefit of Mutual Funds. The Fiduciary duty is a duty of care and diligence from the Investment Manager. [32]

However, there are provisions that the authors reduce and limit the role and authority of the Sharia Supervisory Board in carrying out oversight of sharia compliance for MI based on Article 37 No. 10 /POJK.04/2018 concerning the Implementation of Investment Manager Governance that members of the Sharia Supervisory Board are prohibited from misusing their authority for the benefit of personal, family, and/or other parties that can harm or reduce the profits of the Investment Manager where the Sharia Supervisory Board member is in office. This article looks contradictory and has meaning that can reap a variety of interpretations so that the prohibition does not support the implementation of DPS in the application of prudential principles, especially sharia compliance in supervisory roles and duties. Then, The Sharia Supervisory Board as the supervisory authority for sharia compliance (sharia compliance), has responsibilities that are regulated through strict legal provisions. The position of the DPS determines the creation of sharia compliance (sharia compliance) which is the main element in the existence and continuity of business for the Sharia finance industry. [33]

4. CONCLUSION

The application of the prudential principle stipulated in POJK relating to investment managers is more about institutions, namely the existence of a special obligation to oversee the course of Sharia investment by establishing a sharia investment manager or Sharia investment management unit in which there is a sharia investment committee and Sharia investment management team. The application of prudential principles is the responsibility of the Sharia investment management unit organ because it is the organ that makes standard procedure (SOP) operations, the articles of association with the preparation of business plans for sharia securities portfolios in the mechanism of making one-year mutual fund investment activities front.

This is done by the investment manager by having confidence in the ability and good faith to run a business and act in the interests of the customer. It can be understood that certainty about the application of prudential principles in these institutions can be provided by a good corporate governance system. Its system provides effective protection to shareholders and stakeholders. Then the Investment Manager must have a governance standard that is equivalent to other financial service institutions. As a sharia investment management unit in Sharia mutual funds, the prudential principle applied to sharia compliance through supervision by the DPS.

REFERENCES

[1] https://investasi.kontan.co.id/news/hingga-agustus-aset-pasar-modal-dari-reksadana-syariah-mencapai-rp-32-triliun

[2] Taufik Hidayat, "Smart Book of Islamic Investment", print. 1st, Jakarta: Mediakita, 2011, p. 98

[3] Rudiyanto, "Investment Guide Series: Mutual Funds for Beginners", Jakarta: PT. Elex Media Komputindo, 2016, p. 56

[4] https://www.ojk.go.id/id/kanal/syariah/tentang-syariah/pages/pasar-modal-syariah.aspx

[5] Taufik Hidayat, "Smart Book of Islamic Investment", p. 99

[6] http://www.sucorinvestam.com/document/October2018/Prospektus%20RD%20Sharia%20Money%20Market%20Fund.pdf

[7] https://mandiri-investasi.co.id/id/belajar-investasi/pusat-info/risiko-berinvestasi-di-reksa-dana/

[8] Syamsul Hadi, Audit and Governance of Islamic Financial Institutions, Az-Zarqa ', Vol. 9, No. 2, December 2017 See: Qonita Mardiyah, Sharia Audit Practices in Indonesian Islamic Financial Institutions, Accountability, Vol. VIII, No. 1, April 2015

[9] Salim and Budi Sutrisno, Investment Law in Indonesia, Jakarta: Rajawali Press, 2008, p. 31

[10] Bank Indonesia, Sharia Financial and Banking Terms Dictionary, p. 30. See: Sakinah, Investment in Islam, Iqtis al-hadia Ihkâm, vol. 1 No. December 2, 2014, p. 250

[11] Elif Pardiansyah, Investment in Islamic Economic Perspective: Theoretical and Empirical Approach, Economica: Journal of Islamic Economics - Volume 8, Number 2 (2017): 337 - 373, p. 339

[12] Elif Pardiansyah, Investment in Sharia Economic Perspective: Theoretical and Empirical Approach, Economica: Journal of Sharia Economics - Volume 8, No. 2 (2017): 337 - 373, p. 339-340 See: http://journal.walisongo.ac.id/index.php/economica

[13] Burhanuddin S, Sharia Capital Market (Legal Review), Yogyakarta: UII Press, p. 135

[14] Elif Pardiansyah, Investment in Sharia Economic Perspective: Theoretical and Empirical Approach, Economica: Journal of Sharia Economics - Volume 8, No. 2 (2017): 337 - 373, p. 337

[15] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, Jakarta: Kencana, 2009, pp. 205-206

[16] Ibid. p. 208

[17] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, pp. 208-209

[18] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, p. 210

[19] https://www.infovesta.com/index/article/articleread;jsessionid=BF6C80AD3E3D1850ADBE3E1C9568AEB7.NGXB/6ca4a6c8-a991-4f34-9669-e0f89e5ac7ba

[20] https://www.infovesta.com/index/article/articleread/8a260d2e-18b3-4110-b545-d7a7298b545d

[21] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, p. 213

[22] Online Flyer: Spring Smart, A member of Prudential pic (UK), PT. Eastpring Investment, October 2017 Edition

[23] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, p. 214

[24] https://m.bareksa.com/id/text/2015/05/15/dua-syarat-ini-tegaskan-reksa-dana-syariah-masuk-kategori-investasi-halal/10514/reksa%20dana

[25] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, p. 216

[26] https://investasi.kontan.co.id/news/mengenal-cara-manajer-investasi-mempurifikasi-reksadana-syariah

[27] Rudiyanto, "Investment Guide Series: Mutual Funds for Beginners", p. 52-55

[28] Abdul Manan, Legal Aspects in Organizing Investment in the Indonesian Sharia Capital Market, p. 218

[29] Lastuti Abubakar and Tri Handayani, "Juridical Review of the Implementation of Bank Prudential Principles in Indonesian Banking Activities", De Lega Lata, Volume 2, Number 1, January - June 2017, p. 81

[30] https://money.kompas.com/read/2015/12/23/060800626/Bagaimana.Cara.Manajer.Investasi.Mengelola.Reksa.Dana.?page=all.

[31] Article 1 point 9 POJK Number 61 /POJK.04/2016 concerning Application of Sharia Principles in Capital Markets to Investment Managers

[32] M. Rasyid Ridha, Bismar Nasution, Mahmul Siregar, "The Role of Sharia Readies in Increasing Investment in Indonesia", Transparency, Journal of Economic Law, June 2013 Volume II Number 2, p. 10

[33] Luqman Nurhisam, "Sharia Compliance (Sharia Compliance) in the Sharia Financial Industry", Legal Journal Ius Quia Iustum No. 1 vol. 23 January 2016: 77 - 96, p. 93-94