

Legal Review of Sharia Mutual Fund Investment Unit Sales Through Online Application by Mutual Fund Selling Agent (APERD)

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ABSTRACT

The era that is all modern and easy to transact has influenced the pattern of people's lives in various aspects, one of which is the economic aspect. At present, various goods and services are traded through the application. Make an innovation to trade the Sharia Mutual Fund display effects through an online application. However, it relates to the application of sharia principles in the sale of Sharia Mutual Funds through the application. Related, this sales transaction can be a transaction that is in accordance with the approved sharia has applied sharia principles and principles. The method used in this study is juridical-normative using primary legal materials and secondary data in data usage. In addition, secondary data will also be supported by data from interviews with several speakers in 2 (two) cities, namely DKI Jakarta and Surabaya. This study discusses analyzing invitational regulations in Indonesia which discusses the sale of Sharia Mutual Funds through the application and analyzes using sharia principles in the sale of Sharia Mutual Funds through online applications.

Keywords: *Sharia Mutual Fund, Mutual Fund Selling Agent (APERD), online application*

1. INTRODUCTION

Today, the ease of buying an item or object is one of the things offered by various parties to meet the needs of today's society. Buying and selling transactions in the style of modern society are increasingly prevalent in Indonesian society. Ranging from primary goods to tertiary goods can be bought and sold through online applications that have been very easily accessed by everyone. In addition, the ease of accessing something with just a touch of a finger is one reason for the emergence of various innovations, especially in the economic field. So, a thought emerged to carry out buying and selling transactions of an effect through an online application. With this convenience, it is very helpful for investors to save more time and energy when compared to face-to-face transactions. One form of securities currently traded online is Sharia Mutual Funds. Transacting through online applications is seen as promising today. The high demand from the public related to Mutual Funds is in line with the principles and sharia in Islam which has led to companies that have collaborated and launched an innovation namely Islamic mutual fund products that can be easily obtained through online applications that are certainly accessible to everyone.

In Indonesia, Sharia Mutual Funds were first introduced in 1998 by PT Danareksa Investment Management, which at that time PT Danareksa issued a sharia-based product with a type of mutual fund called Danareksa Syariah. Islamic mutual funds have a legal basis, namely the Financial Services Authority Regulation (POJK) Number 19 /

POJK.04 / 2015 concerning Issuance and Requirements of Sharia Mutual Funds. In the POJK, mentioned in Article 1 of the first Islamic mutual funds are mutual funds as referred to in the Capital Market Law and their implementing regulations whose management does not conflict with sharia principles in the capital market. Islamic mutual funds are managed based on a fatwa issued by the National Sharia Council of the Indonesian Ulema Council (MUI) with number 20 / DSN-MUI / IV / 2001. The Indonesian Ulema Council stressed that the management of Islamic mutual funds must be in accordance with Islamic law.

For example, in March 2017, an online application market place company namely Bukalapak and Bareksa in collaboration with an investment management named Mandiri Manajemen Investasi, which has a license as a Mutual Fund Selling Agent (APERD), issued Islamic mutual fund products that can be purchased through one of the online applications. Based on the explanation above, the main problem in this study is: How do the laws in Indonesia regulate the sale of sharia mutual fund participation units through online applications in Indonesia? This research wants to know the laws and regulations related to the sale of Islamic mutual funds through online applications. In addition, this study also needs to analyze whether a sale transaction of a Sharia Mutual Fund by an Investment Fund Selling Agent through an online application has met the principles of sharia or not.

In This research will be conducted with a qualitative analysis method by analyzing primary sources and

secondary sources that have been obtained during the study. This research is normative juridical research. The data source that will be used is secondary data in the form of literature study results. The legal material to be examined is primary legal material, namely Law Number 8 of 1995 concerning Capital Markets and its implementing regulations such as the Financial Services Authority Regulation (POJK). In addition to secondary data, this study will also be supported by data from interviews with resource persons. The informants interviewed in this study included: Ms. Mas Rahmah (Universitas Airlangga Lecturer), Mr. Ahmad Zaki (Head of Compliance Department of PT Philip Sekuritas Indonesia), and Mr. Fajar (BEI Surabaya).

This study will apply the analytical method using secondary data, namely library research. However, to support data originating from secondary sources such as books, article magazines, and journals, primary sources are also used, namely interviews with resource persons. In collecting data, primary legal sources and secondary legal sources are used. The primary legal sources used include: Law Number 8 of 1995 concerning the Capital Market.

2. SHARIA MUTUAL FUNDS SALES REGULATIONS THROUGH ONLINE APPLICATIONS IN INDONESIA

2.1. Sharia Mutual Funds Sales Regulations and Regulations through Online Applications in Indonesia

Mutual funds are one of the investment products in the form of portfolios managed by investment managers. Mutual Fund assets can be in the form of stocks, bonds, and deposits. Not only conventional mutual funds, in the world of capital markets in Indonesia also known as sharia mutual funds. If you look back at the history of Mutual Funds, Mutual Funds first existed in 1870 in the United Kingdom. Mutual Funds is a form of collective investment that allows investors to invest in portfolios by investment managers. In English, Mutual Funds are known as "unit trusts", "mutual funds" or "investment funds". Meanwhile, Sharia Mutual Funds were introduced in Saudi Arabia in 1995 as Global Trade Equity. Basically, Sharia Mutual Funds are the same as conventional Mutual Funds which aim to collect funds from the public to be managed by the Investment Manager and invested in capital market instruments. [1]

Islamic mutual funds have a legal basis in the form of the Financial Services Authority (POJK) Regulation Number 19 / POJK.04 / 2015 concerning the Issuance and Requirements of Sharia Mutual Funds. However, for matters related to the sale of sharia mutual funds through online applications it has not been specifically regulated in the regulation. In Article 4 the regulation of the Financial Services Authority (POJK) Number 19 / POJK.04 / 2015 only states that public offerings for Islamic mutual funds

must follow the laws and regulations in the capital market sector which regulate various general provisions for submitting registration statements and various regulations in the capital market sector which regulates mutual funds, except for other regulated or specifically regulated.

In the regulations issued by the Financial Services Authority, it is stated that Islamic mutual funds can be in the form of: 1. Money market Islamic mutual funds; 2. Fixed income Islamic mutual funds; 3. Sharia mutual fund shares; 4. Mixed Islamic mutual funds; 5. Sharia mutual funds are protected; 6. Indexed Islamic mutual funds; 7. Foreign sharia-based sharia mutual funds; 8. Sukuk-based Islamic mutual funds; 9. Islamic mutual funds are in the form of collective investment contracts whose participation units are traded on the exchange; and 10. Islamic mutual funds in the form of collective investment contracts are limited.

Fatwa of the MUI National Sharia Council No.20/DSN-MUI/IX/2001 defines Sharia Mutual Funds as Mutual Funds which operate according to the provisions and principles of Islamic Sharia, both in the form of contracts between investors as property owners (Shahib al-mal / rabb al-mal) with Investment Managers as representatives Shahib Al-Mall and between Investment Managers as representatives of Shahib Al-Mall and investment users. The operational mechanism of Sharia Mutual Funds consists of: time between Investment Managers and investment users. In the case of the sale of Sharia Mutual Fund participation units through online applications, stick to the principle that Sharia Mutual Funds, which are one of the products of the capital market, are traded through intermediaries and managed by an Investment Manager. In the example of Bareksa and the Bukalapak application, the principle remains that Bareksa as a Mutual Fund Selling Agent represents (APERD) and is an intermediary of potential investors. Then, Sharia Mutual Funds are still managed by an Investment Manager.

Based on the results of the research and interviews conducted, it is known that the sale of Sharia Mutual Fund through online applications has not yet been regulated in detail in a statutory regulation. Therefore, matters related to the mechanism of the sale of Sharia Mutual Funds through online applications can be seen through several regulations relating to Sharia Mutual Funds namely the Fatwa of the MUI National Sharia Council Number 20 / DSN-MUI / IV / 2001 concerning Investment Implementation Guidelines Sharia Fund. In Chapter II Article 2 the fatwa of the National Sharia Council has been regulated regarding the activities of Sharia Mutual Funds.

Sharia mutual fund sales through online applications can also be included in e-commerce transactions. Online buying and selling is regulated in Law Number 11 of 2008. Online buying and selling transactions have no significant difference with direct transactions. In the online trading transaction used is an electronic contract. In Law Number 11 of 2008, it is explained that electronic contracts are agreements made through electronic systems whose manufacture is realized through real legal actions in the form of electronic transactions. In Islam, online buying and

selling transactions are permissible with me through legal and special methods and in accordance with Islamic law. In addition there is an element of trust from the buyer to the seller. Regarding the parties' trust in online transactions, in the Islamic legal agreement there is a trust principle. [2]

In this case, the Sharia Mutual Fund sales transaction through an online application implements an electronic contract system, that is, before the investor orders or buys the Sharia Mutual Fund, he will fill out the formulation in advance as well as approval in the Sharia Mutual Fund transaction.

2.2. Mechanism of Sharia Mutual Fund Sales Transactions Through Online Applications

Basically, the principle of the muamalah transaction according to Islamic law is allowed as long as it does not conflict with sharia and still adheres to the rules of fiqh. The conditions that apply in a contract are conditions that can be determined by the Muslims as long as they do not violate the teachings of Islam. In Sharia Mutual Funds, there are muamalah transactions that are permitted by Islam, namely buying and selling and the principle of profit sharing (*mudharabah / musyarakah*). The form of the contract used in the sale and purchase transaction of the Sharia Mutual Fund is the vice contract, namely the representative. In this case, the purchase of Sharia Mutual Funds from an investor is carried out not directly with the issuer of the Sharia Mutual Fund but can be through an Investment Manager or an Investment Fund Selling Agent or a Mutual Fund Securities Selling Agent Representative. Then, after that it is managed by an Investment Manager.

The fatwa of the MUI National Sharia Council Number 20 / DSN-MUI / IV / 2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds states that the management of Sharia Mutual Funds is in accordance with Islamic law. In that fatwa, it was also explained that Sharia Mutual Funds are one form of muamalah in the present. In addition, what is also important in sharia mutual fund trading is fulfilling all sharia principles in the capital market and contract, management methods, and its portfolio does not conflict with sharia principles on the capital market as stipulated in the Financial Services Authority Regulation on the Implementation of Sharia Principles. [3]

The mechanism of selling Sharia Mutual Funds through online applications is generally divided into several stages, namely:

1. In the first stage, an investor must have an account that has been registered with the application, specifically for registering investors who will buy Sharia Mutual Funds through the application additional registration is required by scanning the identity card. The additional registration is in the form of filling in the investor's personal data form. For example, the Bukalapak application requires a

scan of the Citizen Identity Card (KTP) to register as an investor who will buy a Sharia Mutual Fund;

2. Then, on some online applications, investors must add a signature that must be uploaded to complete the registration form. After the form is complete and registered, investors wait for the results of verification from the online application which is generally sent to investors via email;
3. After being verified as an investor who will buy a Sharia Mutual Fund, investors can immediately order and buy the desired Sharia Mutual Fund. Payment of Sharia Mutual Funds is also carried out through an online payment mechanism such as balances in the application or ATM transfers;
4. Investors can monitor the development of Sharia Mutual Funds that they have purchased through the online application. The online application will display the development of Sharia Mutual Funds that have been purchased by investors along with the Net Asset Value (NAV) of the Sharia Mutual Fund,
5. Through the online application, investors can also resell the Sharia Mutual Fund they already have.

In selling Sharia Mutual Fund participation units through an online application, please note that the online application is only an Investment Fund Selling Agent (APERD). The online application is only an intermediary for transactions between investors and securities companies or Custodian Banks.

2.3. The Role of Mutual Fund Selling Agents (APERD) in Sharia Mutual Fund Sales Through Online Applications in Indonesia

An Islamic mutual fund securities participation unit is managed by an Investment Manager. In Article 1 of 11 Law Number 8 of 1995 concerning Capital Markets, Investment Managers are parties whose business activities affect securities portfolios for customers or manage collective investment portfolios for a group of customers, except insurance companies, pension funds, and banks that conduct own business activities based on applicable laws and regulations. The Investment Manager is a representative acting for the benefit of the Board of Directors of the Syraiah Mutual Fund in the form of a company as the party represented by the authority to manage Sharia Mutual Funds. Matters relating to contracts, implementation portfolios, and how to manage Sharia Mutual Funds must not conflict with sharia principles in the capital market. To buy a mutual fund effect, it can be done either directly to the investment manager or through a mutual fund security agent (APERD).

The Investment Manager is a representative acting for the benefit of the Board of Directors of the Syraiah Mutual Fund in the form of a company as the party represented by the authority to manage Sharia Mutual Funds. Matters relating to contracts, implementation portfolios, and how to manage Sharia Mutual Funds must not conflict with sharia

principles in the capital market. To buy a mutual fund effect, it can be done either directly to the investment manager or through a mutual fund securities agent (APERD). Based on the Financial Services Authority Regulation Number 19 / POJK.04 / 2015, Investment Managers who manage Sharia Mutual Funds must be supervised by the Sharia Supervisory Board (DPS). The Sharia Supervisory Board must submit an annual supervision report to the Investment Manager. The report concerning compliance with sharia principles in Article Capital for supervised Sharia Mutual Funds. Then, the report received by the Investment Manager is returned to the Financial Services Authority with the same deadline as the submission of the Fund's annual financial statements.

2.3.1. DKI Jakarta

Based on the results of interviews conducted with speakers in Jakarta, it can be seen that the role of the Sharia Mutual Fund Selling Agent is as a party that helps market Sharia Mutual Funds from Investment Managers in collaboration with securities companies on the Stock Exchange. In this cooperation agreement, the Investment Manager and the Investment Fund Selling Agent will share fees in accordance with the agreement that has been made. So, in this case, investors can buy Sharia Mutual Funds through a Sharia Mutual Fund Selling Agent.

In the case of the role of the Sharia Mutual Fund Selling Agent through an online application, the Sharia Mutual Fund Selling Agent in online sales will work with the market place company or the company that manages an application. However, the Sharia Mutual Fund Securities Selling Agent is still responsible for conducting transactions with investors. Then, after the sale of the Sharia Mutual Fund transaction, it will then be managed by the Investment Manager.

2.3.2. Surabaya

Based on the results of interviews conducted with informants in Surabaya, it can be seen that in principle this Investment Fund Selling Agent can also be part of the Investment Manager. If there is a legal relationship between the investor and the securities company, then the legal relationship is mediated by a Sharia Mutual Fund Selling Agent. Investors buy Sharia Mutual Funds through a Sharia Mutual Fund Securities Selling Agent because the Agent can also act as an Investment Manager who may conduct securities buying and selling transactions on the condition that he must have a license from the Financial Services Authority (OJK). Regarding the sale of Sharia Mutual Fund participation units through online applications such as Bukalapak, it is a sale and purchase transaction of a Sharia Mutual Fund through an Investment Fund Selling Agent, Bareksa, which has obtained a license from the Financial Services Authority as a Mutual Fund Selling Agent.

Therefore, a regulation is established, namely OJK Regulation Number 39 / POJK.04 / 2014 concerning Mutual

Fund Selling Agents in the context of developing the Mutual Fund industry and expanding the distribution channel of Mutual Fund sales, increasing the domestic investor base, and increasing the capacity building of Mutual Fund Selling Agents . In Article 1 number 1 of the OJK Regulation Number 39 / POJK.04 / 2014 concerning Mutual Fund Selling Agents, APERD is the party that conducts the sale of mutual fund securities based on a cooperation contract with the Investment Manager who manages the mutual fund.

OJK Regulation Number 39 / POJK.04 / 2014 concerning Mutual Fund Selling Agents also regulates who can become a Mutual Fund Selling Agent, namely:

- a. The Company has obtained a business license from the Financial Services Authority as a Securities Company conducting business as an Underwriter and / or a Securities Trading Intermediary;
- b. Commercial banks, companies that carry out business activities in the post and gori field, management companies, insurance companies, finance companies, pension funds, and guarantee companies as long as they do not conflict with the laws and regulations and have obtained a Registered License from the Financial Services Authority as a Selling Agent Mutual Funds in accordance with laws and regulations;
- c. Securities Companies that conduct business activities as a Broker-Dealer that are specifically established to market Mutual Fund Securities, which have obtained a business license from the Financial Services Authority, based on a cooperation contract with the Investment Manager managing the Investment Fund.

Through an online-based application it is only one way to offer the Sharia Mutual Fund. a guideline in bidding through online applications is the principle that the party that sells the Sharia Mutual Fund must obtain permission from the Financial Services Authority as the party entitled to sell securities, whether it is an Investment Fund Selling Agent or a Mutual Fund Securities Selling Agent Representative. This as stated in Law Number 8 of 1995 concerning Capital Market in Article 70, is that the party that can make a public offer is only an Issuer who has submitted a registration statement to Bapepam to offer or sell securities to the public and the registration statement has been effective.

APERD must have a license as a Securities Company Representative and / or Investment Fund Selling Agent and receive special assignments in writing from APERD to act as a marketing force. APERD can take the form of brokerage companies, commercial banks, and other financial institutions that are capable of reaching the public to buy mutual funds. Apart from APERD, there are also other parties, namely the Investment Fund Selling Representative (WAPERD). WAPERD is an individual party that has obtained permission from BAPEPAM (Financial Services Authority / OJK) to act as a representative of a banking company or institution that is permitted to conduct mutual

fund sales. The function of WAPERD is that the APERD can provide an explanation regarding the opportunities of the mutual fund to be purchased and the risks of the mutual fund. One thing that might be a fundamental difference between APERD and WAPERD is that in general APERD is a legal entity that has the form of a company. Meanwhile, parties who become WAPERD can be individuals who work together to market mutual fund products that also have to obtain a permit.

3. IMPLEMENTATION OF SHARIA PRINCIPLES IN SHARIA MUTUAL FUNDS SALES THROUGH ONLINE APPLICATIONS

3.1. Application of Sharia Principles in the Sharia Mutual Fund Sales Mechanism through the Online Application

In the Fatwa of the National Sharia Council of the Indonesian Ulama Council (MUI) Number 20 / DSN-MUI / IV / 2001 it was explained that the operational mechanism in Sharia Mutual Funds consisted of:

- a. Between financiers and Investment Managers are carried out with a timeframe system, and
- b. Between Investment Managers and investment users are carried out with the mudhorobah system.

Wakalah contract is an act of someone who places another person in his place to do a legal action. Wakalah can also mean giving authority to something that can be done alone but can also be represented by someone else. The contract of wakalah has conditions and harmony, one of which is ijab and qabul. Ijab is a word from another person who states that he represents his business to do something to the representative. While qabul, qabul will also be carried out automatically by doing all the actions that have been represented. Qabul is not required in the form of a word, because time is giving permission and eliminating prohibitions from other people to do something. [5]. In a wakalah contract, one of the types of wakalah is known as wakalah bil ujah. The ujah bil Wakalah is the giving of power or authority whereby the person given the power of attorney will receive a fee in the form of a fee.

In the sale of Sharia Mutual Funds through online applications it has implemented the principles and principles of this wakalah contract. In the transaction, the sale of Sharia Mutual Funds is carried out through an intermediary, namely a Sharia Mutual Fund Selling Agent. Sharia Mutual Fund Selling Agent as representative and intermediary between investors and securities companies or Custodian Banks. A Mutual Fund Selling Agent that cooperates with an Investment Manager also means that there will be a sharing fee by both parties. Whereas if the Investment Fund Selling Agent is also an Investment Manager, then sharing fees are generally carried out with securities companies or

securities companies that work with the Investment Manager.

A contract is used in the sale of Islamic Mutual Funds, namely the mudhorobah contract. [6] There are several characteristics of the mudhorobah system, namely the distribution of profits between the owners of capital or assets represented by the Investment Manager and investment users based on the roles agreed by both parties through the Investment Manager as representatives and there must not be certain guarantees for the results of investments to the capital treasure. In addition, the owner of the property or financier can bear the risk as much as the assets he has spent. The Investment Manager who plays a role as a representative cannot bear the risk of losses on the investment he does as long as it is not due to his gross negligence.

Mudharabah contract is a contract that is widely known as a profit sharing contract. Mudharabah also means a form of cooperation between 2 (two) parties, in which one party is the owner of capital or assets and the other party acts as the manager of capital or assets of the capital owner. Managers of pure capital or assets only manage their capital without any additional capital from themselves. Both parties will then make an agreement to share profits with a profit sharing system. At the mudharabah contract, if there is a loss in the future, then the loss will be borne by the capital owner. Whereas, if there is profit in managing the property, it will be divided according to the agreement.

In Sharia Mutual Fund sales transactions through online applications can be analyzed and it is known that the transaction has applied the principles and principles of the mudharabah agreement. As previously known, investors buy and order securities in the form of Sharia Mutual Funds at an Investment Fund Selling Agent or directly to an Investment Manager to be managed by the Investment Manager. Investors as owners of capital entrust their capital to the Investment Manager to be managed. If there is a loss in the Sharia Mutual Fund transaction, then the loss will only be borne by the investor.

Through this principle, it is known that the sale of Sharia Mutual Funds through online applications is in accordance with the principles in the Islamic capital market, namely investors and issuers must not take risks through ability (maysir) which can cause doubts that cause losses. Maysir can also mean speculation. On the sale of Sharia Mutual Funds through an online application, before investors order and buy Sharia Mutual Funds, investors can see the prospectus that has been printed and consider whether to continue the purchase or not. Thus, in this case, investors can avoid doubts and obscurity of the buying and selling objects, namely Sharia Mutual Funds by looking, reading, and considering the prospectus of the Sharia Mutual Fund to be purchased.

This can also be a dilemma in Sharia Mutual Fund transactions through online applications, in which the transactions of the parties concerned cannot meet to discuss the prospect of profits that will be obtained if an investor

buys a certain Sharia Mutual Fund participation unit. Therefore, in the sale transaction of Sharia Mutual Funds through online applications it also has the potential to cause an object of sale and purchase to become unclear and uncertain (gharar). Because, investors can feel a loss if in the future the participation unit of Sharia Mutual Funds that they have bought does not bring profit because they feel they are not maximally consulted with a Mutual Fund Selling Agent or Investment Manager. The things that give rise to speculation and in it contain elements of gharar like this are prohibited. However, the sale and purchase transaction of Sharia Mutual Funds is permitted if it is carried out according to the provisions of Islamic law. These things can also be avoided by clearly informing the prospects related to Sharia Mutual Funds that will be purchased by investors. In addition, investors are also expected to inform investors who already know the risks of the Sharia Mutual Funds to be purchased. However, this can also be at high risk because there is no consultation with the Investment Manager who will manage it.

4. CONCLUSION

In fact, the regulation on invitations in Indonesia has not yet been regulated regarding the sale of Sharia Mutual Fund participation units through online applications. So, to find out its arrangements in Indonesia, it is done by looking at the laws and regulations as well as implementing regulations related to Law Number 8 of 1995 concerning Capital Market, Capital Market and Sharia Mutual Funds, including OJK Regulation number 39 / POJK.04 / 2014 Regulation of the Financial Services Authority Number 19 / POJK.04 / 2015, and Fatwa of the National Sharia Council of the Indonesian Ulema Council (MUI) Number 20 / DSN-MUI/IV/2001. Sharia mutual fund sales through online applications have generally implemented sharia principles in their implementation. Sharia Mutual Funds sale and purchase transactions are conducted online contracts between investors and Sharia Mutual Fund Securities Selling Agents. The contract applied in a Sharia Mutual Fund is a mudharabah contract, namely a sharing contract. The profit sharing referred to in this transaction is profit sharing between an Investment Fund Selling Agent and / or an Investment Manager with a securities company, as well as profit sharing between investors and a Mutual Fund Selling Agent. To avoid the gharar aspect of Sharia Mutual Fund trading transactions, through the application of information regarding prospectus from Sharia Mutual Funds through the online application.

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