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Legal Protection Of Investors In Mutual Fund Investment: Contract Model And Legal Settlement

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ABSTRACT
The development of digital technology and economic growth has encouraged the increasing interest of Indonesian people in investment, especially through online-based mutual funds. Mutual funds are attractive investment instruments because they are managed by professional investment managers, offer portfolio diversification, and have high accessibility. Nevertheless, this investment still carries risks, both from market fluctuations and potential abuse of authority by the manager, such as manipulation of financial statements. Therefore, legal protection for investors is an important aspect to create certainty and security in investing. This research aims to analyze the forms of legal protection available to mutual fund investors based on Indonesian laws and regulations, as well as identify legal remedies that can be taken in the event of losses due to negligence or fraud by investment managers. Through normative studies, it is found that although there are regulations governing investor protection, such as Law Number 8 of 1995 concerning Capital Markets, there is still a need to strengthen supervision and assertiveness in sanctioning to increase the effectiveness of such protection. This study emphasizes the importance of strengthening regulations and public education to encourage the growth of healthy, fair, and sustainable mutual fund investment in Indonesia.

Keywords: *legal protection, mutual funds, legal settlement*

1. Introduction

In facing the era of industrialization and rapid economic development, Indonesian people are increasingly encouraged to participate in the dynamics of modern life, one of which is through asset investment in various financial instruments that are considered capable of providing high returns. Investment has a central role in the economic sector, especially in developing countries such as Indonesia. Without adequate investment, economic growth and improved national welfare are difficult to achieve.

Rapid advances in information technology and the internet have driven a transformation in the world of investment, with the widespread use of digital platforms or online investment. Through this internet-based investment, people can invest more efficiently using only digital devices connected to the internet network, so that transactions can be carried out flexibly, anytime and from anywhere. Despite this convenience, the level of involvement of Indonesians in investment is still relatively low when compared to developed countries. One of the contributing factors is the assumption that investment activities are the exclusive domain of certain groups, especially those with large capital. However, this paradigm is beginning to shift, thanks to the emergence of various investment applications designed to reach middle to low income earners, offering easier access and affordable fees. In the realm of capital markets, based on Law No. 8/1995 on Capital Markets, capital markets are defined as all activities related to the public offering, trading of securities, as well as the activities of institutions and professions related to these securities. One of the main instruments that play a role in the capital market is mutual funds, which are collective means to raise funds from investors which are then invested by investment managers into various types of securities portfolios in order to optimize potential profits.

Mutual funds are one of the most popular investment instruments, mainly because they are managed by experienced investment managers who have obtained a license from the official authority, namely the Capital

Market and Financial Institutions Supervisory Agency, which is currently under the authority of The Financial Services Authority. However, it is important to realize that every investment activityis inseparable from risk. Generally, the greater the profit opportunity promised by an investment, the higher the potential loss, and conversely, investments that offer low risk tend to provide smaller returns. In the Indonesian legal context, as stipulated in Article 18 paragraph (1) of Law Number 8 of 1995 concerning Capital Markets, there are two types of mutual funds, namely mutual funds incorporated as a Company and mutual funds in the form of Collective Investment Contracts. Although these two forms have differences in their organizational structure and management methods, they are both designed to provide safe and affordable investment options for the general public.

In its operation, mutual funds are based on the principle of trust that connects three main parties, namely investors, investment managers, and custodian banks. The legal relationship that binds the three parties is outlined in a contract, which must adhere to the principle of good faith, which prioritizes honesty, integrity, and loyalty in fulfilling agreed rights and obligations. Enforcement of this principle is crucial to ensure that investors' rights remain protected from potential irregularities. However, behind this system built on trust, there are a number of legal risks to be aware of, such as fraud or manipulation of financial statements by investment managers, which can have a detrimental impact on investors. can have a detrimental impact on investors. One example that caught the public's attention was the Narada Aset Manajemen case in 2020. In this case, the investment manager failed to return customer funds due to a lack of transparency in portfolio management.

The threat is becoming more significant as the number of new investors surges. Based on data from the Indonesian Central Securities Depository, it was recorded that by the end of December 2024, the number of Single Investor Identification had reached 14.87 million, a growth of 22.21% compared to the previous year. The phenomenon of increasing investor participation, especially from the younger generation, reflects a shift in financial culture in a society that is now more open to the world of investment. However, this growth also brings new challenges, namely the need to strengthen legal instruments to provide effective protection. In practice, many investors face major obstacles in demanding compensation for their losses, mainly due to the limitations and inadequacies of the current regulations.

2. Research Methods

The scope of disputes discussed in this article is limited to civil disputes. In addition, this article is the result of research using the normative juridical method, which is legal research that examines legal principles, laws and regulations, and comparative law through an inventory of positive law, with an analytical descriptive approach. Research conclusions are drawn using a qualitative normative analysis method based on the data that has been collected. Normative legal research, or often called library research, is conducted by reviewing various literatures, including primary, secondary, and tertiary legal materials. The legal materials are then arranged systematically, analyzed, and conclusions are drawn related to the problem under study. Literature study in this case includes an inventory of legal materials from various sources. According to Sunaryati Harotono, legal research is a routine activity for legal scholars. Normative legal research in particular can only be done by legal scholars because they have expertise in understanding and mastering the discipline of law. In addition, it is also mentioned that normative research methods can be combined with social research methods to obtain more comprehensive results.

3. Results and Discussion

3.1 Results

3.1.1 Legal Protection of Investors in Mutual Fund Investments in Indonesia

In Indonesia, legal protection for mutual fund investors is regulated through various instruments of legislation designed to ensure the safety of investing as well as maintaining and enforcing investor rights. This regulatory framework aims to create an investment climate that is transparent, fair, and reliable, so that people can participate in investment activities without worrying about potential violations of their rights.

One of the main legal bases is Law No. 8 of 1995 on Legal Capital Markets. This law includes provisions governing the capital market as a whole, including mutual funds. In this law, there are rules governing the mechanism of public offerings, securities transactions, as well as the role of related institutions and professions in providing protection to investors. Article 90 of the Capital Market Law, for example, requires investment managers and custodian banks to act in good faith, transparently, and responsibly. This is so that funds invested by the public can be managed properly and investors are not harmed by negligence or abuse of authority.

In addition, the Financial Services Authority, abbreviated and hereinafter referred to as OJK rules as a capital market supervisory and regulatory institution, has a number of more detailed regulations. One of them is OJK Regulation Number 10/POJK.04/2018 on the implementation of good governance for investment managers. This regulation regulates the obligation of investment managers to maintain transparency, carry out good risk management, and disclose necessary information to investors in a clear and honest manner. With this regulation, investors are expected to make more informed and safe investment decisions. OJK also has the authority to follow up on reports of violations committed by market participants, including investment managers.

In addition to regulations set by the Financial Services Authority (OJK), the existence of a Collective Investment Contract (CIC) also has a vital role in ensuring legal protection for mutual fund investors. KIK serves as a legal basis that regulates the legal relationship between investment managers, custodian banks, and investors. It sets out the obligations for the parties to act professionally, in good faith, and conduct their activities transparently. Fund managers, in particular, are obliged to maintain trust and integrity in managing the funds entrusted by investors, and are fully responsible for the management of the investment portfolio.

In the legal framework of agreements, the principle of good faith holds a central position in regulating contractual relationships between parties. This principle requires all parties to act honestly, transparently, and responsibly in implementing the agreements that have been made. In the context of mutual funds, the application of the principle of good faith is the foundation to ensure that investment managers and other related parties do not abuse their authority or neglect the rights of investors.

In addition, a number of capital market supporting institutions such as the Indonesia Stock Exchange (IDX), Indonesia Securities Guarantee Clearing House (KPEI), and Indonesia Central Securities Depository (KSEI) also play an important role in strengthening investor protection. The IDX is tasked with regulating and supervising the course of securities transactions in the capital market, KPEI ensures the security and certainty of transaction settlement, while KSEI plays a role in maintaining the safe storage of funds and securities belonging to investors. The collaboration of these three institutions greatly contributes to creating a stable, transparent and reliable capital market, so that investors can carry out investment transactions with a sense of security and comfort.

With the existing legal framework, mutual fund investors in Indonesia are protected through various regulations that govern from the obligations of investment managers to institutions involved in the capital market. This protection ensures that every investment decision made by investors is done in a secured environment, with high transparency and strict supervision.

Diversified investments, such as owning different types of stocks, bonds and other financial instruments, are considered safer than holding only one type of stock. This can reduce the risk of loss, as a diverse portfolio can balance out market fluctuations.

According to Article 8 of Law No. 1 of 1995 on the Capital Market, mutual funds are a means to raise funds from the public that are managed by investment managers and allocated to a securities portfolio. This portfolio consists of various financial instruments that are professionally managed. Mutual funds can be allocated to the money market, capital market, or both, and can be focused on specific sectors such as manufacturing or finance, offering flexibility for investors.

1. Types of mutual funds include:
   - Fixed Income Funds, where more than 80% of the fund is invested in debt securities.
   - Equity Funds, where more than 80% of the funds are allocated to stocks.
   - Balanced Funds, which combine stocks and debt securities.

- Money Market Mutual Funds, which invest their funds in short-term debt securities.
2. The form of a mutual fund can be:
    - Corporate Type Mutual Funds, which raise funds through the sale of shares.
    - Collective Investment Contract (CIC) Mutual Funds, which involve an agreement between an investment manager and a custodian bank to professionally manage and hold funds.
3. Risks of mutual funds include:
    - Risk of NAV decline due to fluctuations in securities instrument prices.
    - Market Risk related to changes in economic conditions, markets, and political policies.
    - Liquidity Risk if the instruments in the portfolio are difficult to liquidate.
    - Risk of Interest Rate Changes that may affect the value of securities.
    - Risk of Changes in Taxation Rules, which may affect investment returns.
    - Risk from the Investment Manager if it is not competent in management.

The mutual fund formation procedure begins with a Collective Investment Contract (CIC) between the investment manager and the custodian bank. The custodian bank is responsible for settling transactions, storing securities, calculating NAV, and recording investor ownership data. Once investors transfer funds, they obtain participation units, which reflect their ownership in the mutual fund managed by the fund manager.

3.2 Discussion

3.2.1. Legal Remedies that Investors Can Take if They Experience a Dispute.

The dispute resolution mechanism chosen by the parties involved should provide maximum benefits and minimal losses for them. The parties need to plan the dispute resolution strategy well in order to achieve an optimal solution through careful calculation. In general, dispute resolution can be done through litigation (through official courts) and non-litigation (outside official courts), each of which has different characteristics.

In the opinion of Efa Laela Fakhriah, dispute resolution in the business world can be reviewed based on the path taken. There are two main approaches, namely through litigation, namely dispute resolution using formal legal procedures before the court, and through non-litigation, which is carried out outside the court without strictly using formal legal mechanisms. From a decision-making point of view, dispute resolution can be pursued adjudicatively, where the final decision is left to a third party with full authority; consensually or compromise, which is reached based on voluntary agreement between the parties; or quasi-adjudicatively, which is a combination of adjudicative and consensual elements.

In the litigation approach, disputes are resolved based on the provisions of civil procedural law which functions as formal law or procedural law. Meanwhile, in non-formal, non-litigation settlements, various alternative methods are available, such as mediation, arbitration, negotiation and conciliation, which have been widely recognized and applied in both legal theory and modern business practice. These alternative approaches offer flexibility and efficiency, often better suited to the needs of a dynamic business world.

In the legal literature, two main models of dispute resolution are recognized, namely binding adjudicative procedures and non-binding adjudicative procedures. The fundamental difference between these two models lies in the legal force of the resulting decision: in a binding procedure, the decision must be implemented by the parties to the dispute, whereas in a non-binding procedure, the decision is only binding. non-binding procedure, the decision is only recommendatory and still requires the consent of each party to be enforced. Although different in terms of the power of execution, the two procedures have a fundamental similarity in that they both aim to provide a settlement or decision on the dispute.

Within the framework of civil procedural law, there is the concept of a direct legal relationship between the litigants, and the principle of initiative applies strictly, meaning that the process of resolving a case can only be initiated at the will or request of certain parties who have a direct interest, be it an individual or a group of people. This emphasizes the passive character of civil procedural law for the court and active for the litigants. In civil law, individuals or groups who feel their rights have been violated are known as plaintiffs or plaintiffs. Although a violation of the law obviously causes harm to someone, a dispute is only considered to be born when the aggrieved party actively takes steps to claim his rights through legal channels. Without the filing of a lawsuit or the initiative to initiate a judicial process, a legal dispute will never be created and, by itself, there will be no mechanism for resolution. Therefore, civil cases always begin with the registration of a lawsuit in the district court as the court of first instance. The course of legal proceedings in the district court is generally divided into three main stages: the preliminary or preparatory stage which includes case registration and notification, the trial stage which includes the examination of evidence and proof, and the execution stage when the decision has obtained permanent legal force. Each of these stages has an important role in ensuring the achievement of justice for the parties to the dispute.

According to the existing provisions, the Capital Market Law formally defines the capital market as "activities related to the Public Offering and Trading of Securities, Public Companies related to the Securities they issue, as well as institutions and professions related to Securities." The capital market itself is a place for various tradable long-term financial instruments, such as debt securities (bonds), equities (stocks), mutual funds, derivative instruments, and others. The capital market serves as a source of funding for companies and other institutions (e.g. government, private sector, etc.) as well as a means to invest. Thus, the capital market facilitates various facilities and infrastructure for buying and selling activities and other related activities. Financial instruments traded in the capital market are long-term instruments (more than one year) such as stocks, bonds, warrants, rights, mutual funds, and various derivative instruments such as options and futures. One of the government's policies is to activate and encourage capital market activities in Indonesia in order to further develop as one of the pillars of economic success indicators, in addition to banking and other direct investments.

The Capital Market Law states that the goal of national development is to create a just and prosperous society based on Pancasila and the 1945 Constitution. The capital market has a strategic role in national development as one of the sources of financing for the business world and a means of investment for the public. To support the development of the capital market, a strong legal basis is needed to ensure legal certainty for all parties involved in capital market activities and protect the interests of the investor community from harmful practices. Thus, regulation and law enforcement in the capital market aims to achieve legal certainty and support national development.

As explained earlier, although the capital market is a highly regulated field, it still has a high potential for violations. This is due to the fact that capital market activities are always related to investment transactions that have great economic value. The players in the capital market have their own business interests that can sometimes clash and harm other parties.

Capital market law regulates a number of violations that occur in the capital market sector under the Capital Market Law, which include:

1. Sanctions for administrative offenses as stipulated in Article 102 of the UUPM;
2. Sanctions for criminal offenses listed in Article 103 through Article 110 of the UUPM; and
3. Civil violations described in Article 111 of the UUPM.

Article 111 of the UUPM states that any individual who suffers a loss due to a violation of the UUPM or its implementing regulations has the right to claim compensation, either individually or collectively with other parties who have similar claims, against the party responsible for the violation. This provision is in line with the regulation on unlawful acts in Article 1365 of the Civil Code, which states that any unlawful act that causes loss to another person requires the guilty party to compensate for the loss. In the context of the capital market, anyone who feels legally aggrieved can file a civil lawsuit.

In the realm of civil law, disputes can arise not only due to unlawful acts as stipulated in Article 111 of the Capital Market Law (UUPM) in conjunction with Article 1365 of the Civil Code (KUHPerdata), but also due to default, namely the failure of one party to fulfill the obligations agreed upon in an agreement, whether made in writing or orally. Although the capital market is a highly regulated sector with various regulations to maintain integrity and investor confidence, violations of civil law still have the potential to occur. The complexity of financial transactions, rapid market dynamics, and the drive to achieve large profits can encourage market participants to take unlawful actions, including defaults. However, in practice, although there are cases that harm many investors, there is often no record of filing a lawsuit or dispute resolution efforts by aggrieved investors. This can be due to various factors, such as a lack of understanding of the law, high litigation costs, or distrust of the effectiveness of the judicial system in resolving capital market disputes.

To overcome this, it is important for relevant authorities and dispute resolution institutions, such as the Indonesian Capital Market Arbitration Board (BAPMI), to improve the socialization and accessibility of available dispute resolution mechanisms. Thus, investors who feel aggrieved can more easily claim their rights and obtain adequate legal protection.

4. Conclusion

In facing the era of industrialization and rapid economic development, Indonesians are increasingly encouraged to invest in various financial instruments that offer high profit potential. Investment has an important role in improving the economy, especially in developing countries such as Indonesia, where without adequate investment, economic growth and national welfare are difficult to achieve. Although the investment participation rate of Indonesians is still low, the emergence of investment applications that are friendly to middle to lower income earners is starting to change that perception. The capital market is regulated by Law Number 8 of 1995, which covers various aspects related to public offerings, securities transactions, and investor protection. One of the main instruments in the capital market is mutual funds, which are managed by professional investment managers and offer a safe investment alternative. However, investment always involves risks, and it is important for investors to understand those risks, including potential losses due to negligence or abuse of authority by fund managers.

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