

**SANCTIONS AND FORMS OF RESPONSIBILITY FOR INVESTMENT MANAGERS:
CASE STUDY ON MUTUAL FUNDS PT. FALCON ASIA**

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Abstract: *This research aims to examine the PT Falcon Asia Resources Management case which caused losses to investors. Also to find out Sanctions and forms of responsibility for Investment Managers to investors who suffer losses in mutual funds. The first method employs in this research was the statute approach or the statutory approach. The second method used was a conceptual approach. The data collection used in this article is secondary data collection by finding and collecting data that has already been published in books, newspapers, magazines, journals, online portals about mutual funds. The finding shows that on PT. Falcon Asia case, if the investor can prove that the Investment Manager has defaulted or acted against the law in accordance with the suit, then the Investment Manager is obliged to compensate for the losses suffered by the investor. The form of accountability of the Investment Manager is in the form of sanctions in accordance with the prevailing laws and regulations. Due to administrative sanctions, PT Falcon had its business license revoked by Bapepam. For criminal sanctions, it can be subjected to article 104 of the Capital Market Law with a penalty of 10 years and a fine of 15 billion. Meanwhile, in civil terms, PT Falcon's Investment Manager can be sued on the basis of Act Against the Law and default, so that if the sued is granted, the investor is entitled to give compensation.*

Keywords: *Sanction, Form of Responsibility, Investor, Investment Managers*

1. Introduction

Indonesia needed infrastructure development in all fields, especially in the development sector after celebrating Indonesian independence in 1945. One of the efforts of Indonesian government at that time was to borrow funds from European donor countries that are incorporated of the Inter-Governmental Group on Indonesia (IGGI), (Posthumus, 1972) then the Consultative Group on Indonesia (CGI), Japan, and the United States. However, the government deems that loans from abroad are not the right way to catch up with the development lags of other countries. By optimizing the potential of Indonesian public funds is an effective way (Nasarudin, 2014).

In carrying out its functions, namely the capital market as a means of increasing capital for businesses through the sale of shares to the capital market, as a means of income equalization, (Widiatmodjo, 2015) as a means of increasing production capacity, as a means of creating labor, as a means of increasing state income, as economic indicators of the country, then the government strives to attract public interest to invest in order to create development and advancement in the field of capital market. Hence, a regulation was made in Law Number 8 of 1995 concerning the Capital Market.

In the government's effort to attract public interest in investing, through one of the articles set forth in the Law Number 8 of 1995 concerning the capital market, namely article 1 number 27, explains mutual funds. Mutual funds are a platform used to collect funds from the investor community to be invested in Securities Portfolios by the Investment Manager. (Arathy et al., 2015) So it can be concluded about its elements, namely the first mutual funds are a collection of funds and owners (investors), the second is invested in securities known as investment instruments, the third mutual funds are managed by an investment manager, and the fourth mutual funds are medium and long term instruments. (Cordier & Santeramo, 2020) Mutual funds as a platform to invest, meaning that everyone has the right to invest, even though investors invest small funds, but because of their broad nature and applies to anyone, after the funds are collected by the Investment Manager, they can be used to invest on a large scale and spread. Moreover it is possible to get maximum income with minimal fees (Fahlevi, 2018).

However, it does not mean that mutual funds do not have risks in practice. (Spiegel & Zhang, 2013) Similar to the nature of mutual funds that are not regulated by the government, so that if something goes wrong (force majeure), (Golec & Starks, 2004) the investor will suffer losses and even lose their funds, the second risk is that the investor does not have control over the marketable securities that the mutual fund will buy or sell, however, the control rests with the Investment Manager, this is linked to abuse of authority by the Investment Manager. The third risk is that investors cannot directly analyses the growth in income, balance sheets, or financial statements included in the investors' mutual fund portfolios. Moreover the next risk is that the Investment Manager always prepares large amounts of cash for liquidity needs and withdrawals of funds by investors, in this case it is feared that the investment manager will use too much funds for this so as not to invest it, and cause investors to lose the opportunity to make a profit. In Indonesia, one of the efforts made to supervise the financial service system, then the Financial Services Authority was formed through Law Number 21 of 2011 with the aim that all activities in the financial services sector are carried out in an orderly, fair, transparent and accountable manner; able to realize a financial system that grows in a sustainable and stable manner; and able to protect the interests of consumers and community. According to article 1 number 1 of the OJK Law, the Financial Services Authority is an independent institution and free from interference from other parties, which has the functions, duties and authority to regulate, supervise, examine and investigate as referred to in this Law. The duties of bank supervision that was previously at Bank Indonesia, as well as the duties of capital market supervision which was previously under the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) have been transferred to OJK as a new supervisory institution since the enactment of Law Number 21 of 2011 concerning the Financial Services Authority.

As in the case of PT Falcon Asia Resources Management, an investment manager company that also involved a custodian bank, namely CIMB Niaga. PT Falcon Asia is considered to have violated several applicable provisions, the first is that the mutual fund under management does not reach 25 billion, and has not been dissolved. Falcon is also proven to have given written instructions to the custodian bank, namely CIMB Niaga, so that the Reksa Dana Falcon Asia Optima Plus (RD FAOP) resale confirmation letter (repayment) is sent to PT Falcon Asia Resources Management first to be submitted to investors and customers, so that this has an impact on the losses of customers and investors. The next violation that was committed by Falcon was misuse of the deposit of funds for the Medium Term Notes (MTN) fund

management contract, a PT where PT Falcon did not keep it in the Custodian Bank but was kept alone, Falcon also did not own or keep any investment management records for each portfolio it managed. For reasons that were detrimental and violating the Capital Market Law, Bapepam-LK (now OJK) on November 14th, 2012 revoked the business license of a securities company as an Investment Manager of PT Falcon Asia Resources Management through the decision of the Chairman of Bapepam-LK Number: KEP-06/BL/MI/S.5/2012.

Based on the case above, the researchers are interested in discussing the PT Falcon Asia Resources Management case which caused losses to investors. Also to find out Sanctions and forms of responsibility for Investment Managers to investors who suffer losses in mutual funds.

2. Research Method

The first method in this research was the statute approach or the statutory approach. The statute approach is a research that places the statutory approach as an approach in the form of legislation and regulation. The second method used was a conceptual approach. These views and doctrines were used to find out the solution. The conceptual approach connects existing concepts with economic issues. The data collection used in this article is secondary data collection. By looking and collecting data that has already been published in books, newspapers, magazines, journals, online portals about mutual funds.

3. Results and Discussion

3.1. Mutual Funds

In accordance with the provisions in Law Number 8 of 1995 concerning the Capital Market, regarding the meaning of mutual funds in article 1 number 27, is a platform used to collect funds from the investor community to be invested in the Securities Portfolio by the Investment Manager.

According to article 18 of the Capital Market Law, Mutual Funds can be in the form of a company or a collective investment contract. A PT of mutual fund in the form of a Company that has obtained a business license from Bapepam, the form is a PT but is different from the usual PT. The difference is that a PT has organs of Directors and a Commissioner, but in a Mutual Fund in the form of a Company there is Directors but no Commissioner (Widjaja, 2003). In the Company which has mutual funds, it can be open or closed. Mutual fund management, whether in the form of a collective investment contract or a Company, can only be managed by an investment manager based on a contract.

Regarding contracts on mutual funds, it is regulated in article 21 paragraph (2) and paragraph (3) of the Capital Market Law. The Directors and the Investment Manager make a contract for managing a Mutual Fund in the form of a Company. Meanwhile, an open Mutual Fund management contract in the form of a collective investment contract is made between the Investment Manager and the Custodian Bank.

3.2 Investment Manager

Investment Manager in article 1 number 11 of Law Number 8 of 1995 concerning Capital Market, is a Party whose business activities are to manage Securities Portfolios for customers or manage collective investment portfolios for a group of customers, except for insurance

companies, pension funds, and banks which carry out their own business activities based on the prevailing laws and regulations.

The investment manager is the party that manages mutual funds both in the form of a company or a collective investment contract. To minimize the risks that occur when managing investments, then in managing investments, the Investment Manager carries out portfolio activities both in the form of securities portfolios and collective investment portfolios.

The obligations of the Investment Manager are regulated in article 27 of Law Number 8 of 1999 concerning the Capital Market, namely:

- 1) The Investment Manager is obliged in good faith and full of responsibility to carry out the best possible duties solely for the benefit of the Mutual Fund.
- 2) In the case that the Investment Manager does not carry out his/her obligations as referred to in paragraph (1), the Investment Manager is obliged to be responsible for any losses arising from his/her actions.

According to general provisions in the Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number: KEP-479/BL/2009, an Investment Manager can carry out business activities in the form of:

- 1) securities portfolio management for the interest of certain customers based on bilateral and individual fund management agreements drawn up in accordance with Bapepam and LK regulations;
- 2) collective investment portfolio management for the interest of a group of customers through the platforms or products regulated in Bapepam and LK regulations; and/or
- 3) other activities in accordance with the provisions stipulated by Bapepam and LK.

BAPEPAM Regulation Number IV. A. 3 point 17 states that "the sale or buyback of shares (repayment) of open mutual funds can be carried out through the Custodian Bank or selling agents appointed by the Investment Manager". According to the principle of Duty not to delegate the trusts, Investment Managers should be prohibited gives the obligations that are charged to other parties, except in accordance with statutory provisions or court decisions. The Investment Manager can provide delegations but only to the extent stated in the laws and regulations and carried out in good faith.

Investment Manager prohibitions are contained in article 42 of the Capital Market Law, namely Securities Companies acting as Investment Managers or affiliated parties are prohibited from receiving compensation in any form, either directly or indirectly, which may influence the Investment Manager concerned to buy or sell Securities for Mutual Fund.

3.3 Investors

Capital market investors can be classified into several categories, one of which is investors, both domestic investors and foreign investors, both individual investors and institutional investors (Fuady, 1996).

According to SiswantoSudomo, investors are individuals or economic units who invest their savings in the form of assets with the hope of obtaining returns in the future (Depdikbud, 1995). Meanwhile, according to M. Irsan Nasarudin, Investors are individuals or institutions that invest their funds in certain company securities (Nasarudin, 2014)

The purpose of investing is to obtain capital gains and dividends. This means that capital gain is profit that investors obtain from the sale and purchase of shares, in the form of the

difference between the higher selling value compared to the lower purchase value (Anoraga & Pakarti, 2001). If the selling price is lower than the purchase price of the shares, the investor will suffer a capital loss. Meanwhile, what is meant by dividend is a portion of the company's profits distributed to shareholders (Anoraga & Pakarti, 2001).

4 Violations and Sanctions in Capital Market Law

Violations in the Capital Market are regulated in article 25 - article 29 of the Capital Market Law from an administrative nature relating to the obligation to submit certain reports or documents to BAPEPAM and/or the public. The report is in a form of a periodic report or incidental report containing material information or facts that are important and relevant regarding events or incidents related to capital market activities.

The next violations are violations of a technical nature, namely concerning issues of licensing, approval and registration. In the Capital Market Law, there are two types of technical violations. (Imaniyati & Wiyanti, 2000) The first is securities guarantor representative, securities intermediary traders' representative, or an investment manager representative who is engaged in capital market activities but does not have a license from BAPEPAM. And the second, Investment Manager or its affiliated parties do not receive compensation in any form, either directly or indirectly, which can influence the Investment Manager concerned or buy or sell securities for Mutual Funds.

One of the prohibitions in the Capital Market Law is regarding Fraud as regulated in article 90, that in Securities trading activities, each Party is prohibited directly or indirectly:

- a. deceive other Parties by using any means and or other ways;
- b. participate in cheating or deceiving other Parties; and
- c. make false statements regarding material facts or do not disclose material facts so that the statements made are not misleading about the circumstances that occur when the statements are made with the intention of benefiting or avoiding harm to themselves or other Parties or with the aim of influencing other Parties to buy or sell Securities.

Related to sanctions in the Capital Market Law, in the form of administrative sanctions and criminal sanctions. Administrative sanctions according to Article 102 paragraph (2) of the Capital Market Law can be in the form of:

- a. Written warning;
- b. Fines, namely the obligation to pay a certain amount of money;
- c. Restrictions on business activities;
- d. Suspension of business activities;
- e. Revocation of business license;
- f. Cancellation of business licenses;
- g. Cancellation of approval; and
- h. Cancellation of registration.

Criminal sanctions in the Capital Market Law are regulated in 103 to article 110 which apply different threats ranging from 1 to 10 years imprisonment and fines.

Sanctions that are applied in the Capital Market Law are administrative sanctions as set forth in article 102, and criminal sanctions that are applied in articles 103 – article 110 of Law Number 8 of 1995 concerning the Capital Market. However, investors can also file a civil suit if they have suffered losses in capital market activities.

The administrative sanction aimed at PT Falcon is in the form of revoking the business license, this is because the mutual fund company cannot meet the minimum investment fund limit of 25 billion. Hence, Bapepam gives a decision to revoke the business license.

Meanwhile, criminal sanctions in the Capital Market Law threaten every party who is proven to have committed a crime in the capital market with imprisonment varying from 1 to 10 years. In the case above, PT Falcon Asia Resources Management violated the provisions in article 90 that the company/manager in securities trading activities, either directly or indirectly deceives other parties, in this case are investors by giving written instructions to the custodian bank, namely CIMB Niaga so that Reksa Dana Falcon Asia Optima Plus (RD FAOP) resale confirmation letter (repayment) is sent to PT Falcon Asia Resources Management first and then submitted to investors. So the actions of the PT Falcon Investment Manager can be subjected to article 104 of the Capital Market Law with a maximum imprisonment of 10 years or a maximum fine of 15 billion rupiah.

As for civil sanctions, the injured investor can file a suit against the Investment Manager of PT Falcon, the first on the basis of Act against the law (article 1365 of the Civil Code) that according to the provisions of article 111 of the Capital Market Law that every party who suffers a loss as a result of a violation of the this Law and or its implementing regulations may claim compensation, either individually or jointly with other Parties who have similar claims, against the Party or Parties responsible for the violation. In this case, it is hoped that mutual fund managers and managers in capital market activities can carry out their duties professionally and responsibly.

The second civil suit that the injured investor can file is based on default. Default suit requires an agreement that is violated by the other party, in this case the Investment Manager. As for the elements of default:

- a. Not carry out what he/she was supposed to do
- b. Carry out what he/she promised, but not as promised
- c. Carry out what was promised, but too late
- d. Carry out something that is according to the agreement should not be done.

4. Conclusion

On PT. Falcon Asia case, if the investor can prove that the Investment Manager has defaulted or acted against the law in accordance with the suit, then the Investment Manager is obliged to compensate for the losses suffered by the investor. The form of accountability of the Investment Manager is in the form of sanctions in accordance with the prevailing laws and regulations. Due to administrative sanctions, PT Falcon had its business license revoked by Bapepam. For criminal sanctions, can be subjected to article 104 of the Capital Market Law with a penalty of 10 years and a fine of 15 billion. And in civil terms, PT Falcon's Investment Manager can be sued on the basis of Act Against the Law and default, so that if the suit is granted, the investor is entitled to give compensation.

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