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## Investor Protection Fund: A Sharia Economic Law Study on Management, Returns and Guarantees

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### Abstract

Pasar modal syariah sedang mengalami pertumbuhan pesat, yang menyoroti pentingnya Dana Perlindungan Investor (DPI) sebagai mekanisme perlindungan bagi para investor. Secara khusus, hal ini berkaitan dengan kejelasan kontrak wakalah terkait imbalan dalam pengelolaan dana oleh DPI, pembagian imbalan (ujrah) antara DPI dan perusahaan sekuritas, serta proporsi kafalah dan wakalah. Penelitian ini dilakukan melalui penelitian hukum normatif, yang melibatkan tinjauan komprehensif terhadap literatur, fatwa dari Dewan Syariah Nasional, dan peraturan yang relevan. Metode ini memprioritaskan penerapan aturan fiqh muamalah modern terhadap praktik DPP. Penelitian ini menemukan bahwa meskipun konsep DPP dapat diterima berdasarkan hukum positif, konsep tersebut harus disesuaikan kembali dalam konteks syariah. Mekanisme jaminan untuk memastikan kepatuhan harus didasarkan pada prinsip kafalah atau tabarru', sementara pengelolaan dana dan remunerasi harus didasarkan pada kontrak yang sah seperti wakalah bil ujah. Penyesuaian ini sangat penting untuk menjaga integritas dan kepercayaan investor, serta untuk mendukung pertumbuhan pasar modal syariah yang adil dan berkelanjutan.

Kata kunci: *Dana Perlindungan Investor, Wakalah bil Ujah, Kafalah, Hukum, Syariah.*

### Abstract

The Islamic capital market is experiencing rapid development, thereby highlighting the importance of the Investor Protection Fund (DPP) as one of the safeguarding mechanisms for investors. Specifically, this concerns the clarity of the Wakalah contract with remuneration in the management of funds by the DPP, the distribution of remuneration (Ujah) between the DPP and the Securities Company, as well as the proportion of Kafalah and Wakalah. This research was conducted through normative legal research, involving a thorough

examination of literature, fatwas from the National Sharia Council, and relevant regulations. This method emphasises the application of modern muamalah fiqh rules to DPP practices. The study found that whilst the DPP concept is acceptable under positive law, it must be adapted within the Sharia framework. The guarantee mechanism to ensure compliance is based on the principles of kafalah or tabarru, and fund management and remuneration must be based on a valid contract such as wakalah bil ujah. This adaptation is crucial to maintaining the integrity and trust of investors and supporting the fair and sustainable growth of the Islamic capital market.

Keywords: *Investor Protection Fund, Wakalah bil Ujah, Kafalah, Law, Sharia.*



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## Introduction

The Capital Market is a venue for the trading of various long-term financial products known as securities. Under Law No. 8 of 1995 on the Capital Market, securities are defined as negotiable instruments, namely debt instruments, commercial papers, shares, bonds, debt certificates, units of participation in collective investment schemes, futures contracts on securities, and derivatives of securities.<sup>1</sup> The capital market is an important indicator for gauging the economic condition of a country and serves as a platform where investors and securities firms conduct transactions involving such securities. Parties engaging in these transactions include individuals, private companies, and government institutions.<sup>2</sup>

The capital market has two functions: to raise business funding from

investors and to provide investment opportunities for investors. The primary participants in the capital market are investors—those who purchase assets from issuers or public companies through securities firms.<sup>3</sup> In addition to the primary participants mentioned above, there are other capital market participants who play a vital role in the operation of this market, such as the Indonesia Stock Exchange (IDX) as the venue for the trading of securities, KSEI (Central Securities Depository of Indonesia) which acts as the designated custodian for the safekeeping of securities and other assets related to securities, and SIPF (Securities Investor Protection Fund) as the institution responsible for specifically guaranteeing investor protection funds for investors.<sup>4</sup>

<sup>1</sup> “Law No. 8 of 1995 on the Capital Market,” accessed 27 September 2025, <https://www.ojk.go.id/id/kanal/pasar-modal/regulasi/undang-undang/Pages/undang-undang-nomor-8-tahun-1995-tentang-pasar-modal.aspx>.

<sup>2</sup> Karmila and Ida Ernawati, *Capital Markets*, ed. Fiki Puspitasari and Listiana Setyaningrum (Indonesia: KTSP, 2018).

<sup>3</sup> “Issuers and Public Companies,” accessed 27 September 2025, <https://ojk.go.id/id/kanal/pasar-modal/Pages/Emiten-dan-Perusahaan-Publik.aspx>.

<sup>4</sup> Ryan Ozora Hendrawan, Lastuti Abubakar, and Nun Harrieti, “Analysis of the Securities Investor Protection Fund (Securities Investor Protection Fund) as a Means of Legal Protection for Investors in the Capital Market,” *Jurnal Ilmiah Penegakan Hukum* 10, no. 1 (June

Looking at KSEI data on Indonesian Capital Market Statistics, last updated in August 2025, it is evident that the number of capital market investors has increased year on year. In 2022, there were 10,311,152 capital market investors, which then rose by approximately 18.1% in 2023 to 12,168,061, further rising to 16,997,534 in 2024, and most recently, in August 2025, there was a significant increase to 18,018,947 capital market investors.<sup>5</sup> As shown by the statistical data published by KSEI, which is updated monthly, the number of investors has been steadily increasing over time and year on year.

With the growing number of capital market investors, concerns have arisen regarding the need for proper protection of funds to ensure they are handled in accordance with the law. Consequently, the Indonesia Securities Investor Protection Fund (SIPF) was established in December 2012; this is an institution with a protection programme for investors' assets, regulated under POJK Regulation No. 49/POJK.04/2016 on the Investor Protection Fund, and is the sole institution authorised to manage the investor protection fund in accordance with Article 2 of – 50/POJK.04/2016 on Investor Protection Fund Administrators, namely that the parties authorised to conduct business activities as investor protection fund administrators are limited liability companies that have obtained a business licence from the Financial Services Authority.<sup>6</sup>

2023): 50–59, <https://doi.org/10.31289/jiph.v10i1.8736>.

<sup>5</sup> “PT Kustodian Sentral Efek Indonesia - KSEI Statistical Data,” accessed 27 September 2025, [https://web.ksei.co.id/publications/Data\\_Statistik\\_KSEI?setLocale=id-ID](https://web.ksei.co.id/publications/Data_Statistik_KSEI?setLocale=id-ID).

<sup>6</sup> Ryan Ozora Hendrawan, Lastuti Abubakar, and Nun Harrieti, “Analysis of the Investor Protection Fund (Securities Investor Protection Fund) as a Means of Legal Protection for Investors in the Capital Market,” *Jurnal Ilmiah Penegakan Hukum* 10, no. 1 (June 2023): 50–59, <https://doi.org/10.31289/jiph.v10i1.8736>.

In the capital market, there is a possibility of generally unforeseen risks such as market risk, default risk (the issuer failing to pay interest or principal on the asset), inflation risk (a decline in the real value of assets due to inflation), currency risk (a decline in the value of assets due to a depreciation in the exchange rate of the currency used for the asset), and political risk (a decline in the value of assets due to policy changes).<sup>7</sup> However, as the number of investors and the volume of assets entering the market increase, there is a possibility of losses beyond market risks, namely those resulting from legal violations or fraud. For example, Article 90 of Law No. 8 of 1995 concerning capital market crimes, such as fraud, market manipulation, and insider trading, which lead to the loss of investors' securities due to negligence.<sup>8</sup> In the compensation of investors' assets, losses that are guaranteed and will be compensated by the SIPF only apply in cases of fraud, deception, or misuse of funds by a securities firm (broker) or by a custodian that is a member of the SIPF.<sup>9</sup> Such compensation cannot be provided directly; rather, the first step is to await a circular issued by the Financial Services Authority (OJK) as the body overseeing the capital market to ensure that the loss claim is indeed eligible for compensation by the SIPF from the investor protection fund.<sup>10</sup>

<sup>7</sup> Agustinus Prajaka Wahyu Baskara, “Legal Aspects of the Securities Investor Protection Fund and the Disgorgement Fund from the Perspective of Capital Market Investor Protection,” *Journal of* 7, no. 2 (August 2022): 50–68, <https://doi.org/10.25170/paradigma.v7i2.3621>.

<sup>8</sup> “Law No. 8 of 1995 on the Capital Market.”

<sup>9</sup> “Publications |,” Indonesia SIPF, accessed 16 October 2025, <https://indonesiasipf.co.id/materi-publikasi>.

<sup>10</sup> Maria Veronika Napitupulu, “The Role of the Securities Investor Protection Fund (SIPF) as a Capital Market Investor Protection Institution,” *Syntax Idea* 5, no. 10 (August 2023):

Despite the existence of both OJK Regulations No. 49 and No. 50 of 2016, which serve as implementation guidelines, they have not provided a comprehensive explanation regarding the funds received by the Investor Protection Fund (PDPP), with the distribution of these funds remaining unclear and ambiguous. SIPF, as the PDPP, is stipulated in POJK Regulation No. 49/POJK.04/2016 as obtaining funds from member contributions, investment returns, and a 10% share of net investment returns.<sup>11</sup> However, in this case, there is no explanation regarding the distribution of proceeds for SIPF, particularly concerning the 10% share of net investment returns, as the regulations concerning investor protection funds only explain the receipt of funds.<sup>12</sup>

This may lead to legal uncertainty; the absence of clear legal application could give rise to doubts or result in inconsistent application of the applicable rules.<sup>13</sup> Fatwa No. 157/DSN-MUI/VII/2024 establishes the application of Sharia principles in the protection of capital market investors' assets, specifically in the fifth and sixth provisions, stating that the contracts used in this investor protection fund are the 'wakalah bil ujah' and 'kafalah' contracts through an investment scheme. 'Wakalah

bil ujah' can be interpreted as the 'delegation' or 'transfer' of authority by one person to another.<sup>14</sup> Kafalah is a guarantee provided by the guarantor, in this case the SIPF, to the party being guaranteed, namely the investor, as a result of negligence on the part of DPP members (custodians and securities brokers).<sup>15</sup> The previous conditions, which lacked clarity, may indicate that they were not yet fully in line with the application of the Sharia contracts of wakalah bil ujah and kafalah, which require clarity regarding the source and distribution of remuneration.

Therefore, given the legal uncertainty regarding the distribution of remuneration within the investor protection fund, this research aims to address how Sharia contracts are applied in the management of the DPP and whether the remuneration structure aligns with the principles of justice and transparency. The three main issues discussed by the researcher are: (1) Clarity of the Wakalah contract with remuneration in fund management by the PDPP; (2) The distribution of remuneration (Ujah) between the PDPP and the Securities Company; (3) The proportion of Kafalah as a guarantee and Wakalah as representation with remuneration. It is hoped that these three key areas of focus will provide recommendations for contract improvements so that the DPP meets Sharia compliance, ensures transparency

1787–99, <https://doi.org/10.46799/syntax-idea.v5i10.2925>.

<sup>11</sup> "OJK Regulation No. 49/POJK.04/2016 of 2016," Regulations Database | JDIH BPK, accessed 28 September 2025,

<http://peraturan.bpk.go.id/Details/128387/peraturan-ojk-no-49poj042016-tahun-2016>.

<sup>12</sup> "OJK Regulation No. 50/POJK.04/2016 of 2016," Regulations Database | JDIH BPK, accessed 12 October 2025, <http://peraturan.bpk.go.id/Details/128414/peraturan-ojk-no-50-pojk042016-tahun-2016>.

<sup>13</sup> Syaiful, "Legal Uncertainty in Public Administration: Implications and Strategies for Resolution," *UMA Law Faculty Ranked Best in North Sumatra*, 28 November 2023, <https://hukum.uma.ac.id/2023/11/28/ketidaktanian-hukum-dalam-administrasi-negara-implikasi-dan-strategi-penyelesaiannya/>.

<sup>14</sup> Zedy Ardiana, "The Wakalah Bil Ujah and Qard Contracts in the Application of Goods Purchase Contracts," *"Dharmasisya" Journal of the FHUI Master of Law Programme 2*, no. 2 (December 2022), <https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/15>.

<sup>15</sup> M. Syaikhul Arif Siti Halilah, "KAFALAH FROM AN ISLAMIC PERSPECTIVE," *Siyasah: Journal of Constitutional Law 2*, no. 2 (December 2019), <https://ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/122>.

of ujah, and integrates kafalah that is not profit-oriented.

This study employs a normative method, namely legal research often referred to as doctrinal (teaching) or dogmatic (systematic) legal research, which is a type of research conducted within the field of legal science itself.<sup>16</sup> This type of research is typically a literature review, as it focuses on the analysis of various legal sources such as legislation, court decisions, agreements or contracts, legal theories, and the opinions of legal experts.<sup>17</sup> Using fiqh muamalah analysis, fiqh muamalah consists of two terms, namely fiqh and muamalah. Fiqh refers to the science that discusses practical Sharia laws, derived from clear evidence, whilst muamalah reflects various activities carried out by individuals or groups in an effort to meet their respective needs through social and economic interaction.<sup>18</sup>

The first focus of this research is to examine Regulation No. 49/POJK.04/2016, Regulation No. 50/POJK.04/2016, the accompanying text to DSN-MUI Fatwa 157/2024, and fiqh literature to identify relevant contracts (wakalah bil ujah, kafalah, and tabarru). Secondly, to analyse the management practices of DPPs by PDPPs and securities companies, covering contributions, investment allocation, the calculation of the 10% fee, and the distribution of returns. Thirdly, drafting a contract model that combines wakalah bil ujah or a type of contract where the

process is delegated in return for remuneration (<sup>19</sup>) (for fund and investment management), kafalah, which is a guarantee held in the responsibility of another party so that it can be handed over to the party entitled to receive it (<sup>20</sup>) (for asset replacement guarantees), which is based on the element of tabarru (the intention to help one another). The materials used can generate data and broaden the scope of knowledge and information that is useful for this research.

## Discussion

### Clarity of the Wakalah Contract with Remuneration in Fund Management by PDPP

Linguistically, the word *wakalah* (الوكالة) means 'representation', 'delegation', or 'transfer of authority'. In fiqh terminology, *wakalah* is defined as the transfer of authority from one person (*al-muwakkil*) to another (*al-wakil*) to perform specific legal acts that may be delegated.<sup>21</sup> If the *wakalah* contract is accompanied by the payment of a fee or remuneration, it is referred to as *wakalah bi al-ujrah*. Thus, *wakalah bi al-ujrah* is a representation contract accompanied by compensation in the form of ujah (remuneration) for the work performed by the agent.<sup>22</sup> In the context of Islamic economics and finance, *wakalah bi al-ujrah* is widely used

<sup>19</sup> Sayyida Amalina and Muhammad Akmal Nur Rafi, "An Exploration of Sharia-Compliant Wakalah Bil Ujah Investments in Mutual Funds," *Al-Masraf: Journal of Financial Institutions and Banking* 8, no. 2 (January 2024): 241, <https://doi.org/10.15548/al-masraf.v8i2.835>.

<sup>20</sup> Roudotul Jannah, "AN ANALYSIS OF KAFALAH IN THE QUR'AN AND HADITH, AND ITS IMPLEMENTATION IN FINANCIAL INSTITUTIONS," *Rabbani Economics Journal* 2, no. 2 (November 2022): 304–11, <https://doi.org/10.53566/jer.v2i2.122>.

<sup>21</sup> Muhammad Yunus, Muhamad Maulana Darsono, and Mohamad Anton Athoillah, "The Wakalah Bil Ujah Contract in the Compilation of Sharia Economic Law, DSN-MUI Fatwas and Qanun," *Journal for Islamic Studies* 6, no. 3 (2023).

<sup>22</sup> Muhammad Akmal Nur Rafi and Sayyida Amalina, "Analysis of the Wakalah Bil Ujah Contract in Sharia Mutual Funds via the Barekasa Investment Platform," 1, no. 1 (2023).

<sup>16</sup> Prof. Dr. Sugiyono, *Quantitative, Qualitative, and R&D Research Methods* (Bandung: Alfabeta, CV, 2013).

<sup>17</sup> Dr. Muhaimin, *Legal Research Methods* (Mataram-NTB: Mataram University Press, 2020), <https://www.uptpress.unram.ac.id>.

<sup>18</sup> Mustakim Heru Setiawan, "THE DISTINCTIVE FEATURES OF FIQH MUAMALAH/THE ISLAMIC ECONOMIC SYSTEM COMPARED TO OTHER," *Al-Mizan: Journal of Islamic Economics* 3, no. 1 (June 2020): 78–98.

in financial institutions such as Islamic banks, Islamic insurance companies, zakat institutions, and public fund managers.<sup>23</sup> These institutions act as agents on behalf of clients or the public to manage funds in accordance with Sharia principles and receive remuneration as agreed.<sup>24</sup>

The *wakālah bi al-ujrah* contract has a strong legal basis in the Qur'an, Hadith, and Ijma' Ulama, including:

#### The Qur'an

Allah SWT states:

فَأَبْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ

"So send one of you with this money of yours to the city..."

(QS. Al-Kahfi [18]: 19)

This verse indicates the permissibility of delegating financial or transactional matters to another person.

From 'Aishah RA:

"The Messenger of Allah (peace be upon him) once purchased food from a Jew on deferred payment and offered his armour as collateral." (Narrated by al-Bukhari and Muslim)

This hadith demonstrates that the Prophet Muhammad (peace be upon him) once delegated a matter to another party, a form of the practice of *wakālah*. The scholars agree that the contract of *wakālah* is permissible, as humans cannot handle all their affairs alone.<sup>25</sup> This principle aligns with the principle of mutual

assistance (*ta'awun*) in Islam. Furthermore, Fatwa DSN-MUI No. 10/DSN-MUI/IV/2000 states that *wakālah* may be conducted with or without remuneration. If remuneration is involved, the contract is termed *wakālah bi al-ujrah* and must be clearly agreed upon from the outset.<sup>26</sup>

In fiqh muamalah, the elements of the *wakālah bi al-ujrah* contract include: (1) **Muwakkil** (الموكل) → the principal, for example, the owner of the funds.<sup>27</sup> (2) **Wakil** (الوكيل) → the agent who carries out the tasks, for example, a sharia financial institution. (3) **Muwakkal bih** (الموكل به) → the work or matter being delegated, such as managing, channelling, or investing funds. (4) **Sighat** (الصيغة) → the statement of offer and acceptance between the two parties, whether verbal, written, or implied. (5) **Ujrah** (الأجرة) → the remuneration paid to the agent for their work.

According to DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000, the agent is obliged to perform their duties in accordance with the agreement and is liable for negligence or wilful breach "739-745," n.d. . If a loss occurs through no fault of the agent, the risk is borne by the principal. The remuneration (*ujrah*) must be agreed upon at the outset of the contract and may not be altered without the consent of both parties. The contract may be concluded in writing or orally in accordance with prevailing custom.

<sup>23</sup> Ghozali, Mohammad, Adinda Muftiviany Nur Jamilah, Mulyono Jamal, and Iman Nur Hidayat. "Application of the Wakalah Bi Al-Ujrah Contract in Various Banks, Insurance Companies, and Sharia Mutual Funds in Indonesia According to Wahbah Zuhaili." *Al-Iktisab: Journal of Islamic Economic Law* 5, no. 1 (June 2021): 50. <https://doi.org/10.21111/al-iktisab.v5i1.6204>

<sup>24</sup> Citra Kirana Astika Putri et al., "Analysis of the Wakalah Contract in Sharia Financial Technology Transactions," *Al-bank: Journal of Islamic Banking and Finance* 3, no. 1 (January 2023): 51, <https://doi.org/10.31958/ab.v3i1.7963>.

<sup>25</sup> Nur Hisamuddin and Delon Wira Tri Manggala, "Implementation of Wakalah Bil Ujrah Contract Accounting in Sharia Insurance Companies Based on PSAK 108: A Study at PT Asuransi Takaful Keluarga," 8, no. 1 (2014).

<sup>26</sup> Haryono Hadi Kuswanto and Ahmadiyah Rajalih Jawab, *Implementation of Wakalah and Wakalah Bil Ujrah in Sharia Financial Institutions*, 2023.

<sup>27</sup> M Ziqhri Anhar Nst and Andri Soemitra, *THE APPLICATION OF THE WAKALAH BIL UJRAH CONTRACT IN ISLAMIC BANKING: A QUALITATIVE STUDY OF POSTGRADUATE STUDENTS' PERCEPTIONS*, 8, no. 2 (2023).

PDPP (*Education and Training Fund Manager* or *Civil Servant Pension Fund Manager*) is an institution that manages public funds based on Sharia principles.<sup>28</sup> In practice, the PDPP acts as an agent (*wakil mudārabah*) to manage funds belonging to participants or clients (*muwakkil*). The relevance of the *wakālah bi al-ujrah* contract within the PDPP's fund management system can be explained as follows: (1) Compliance with the Principles of Trust and Sharia: The PDPP is tasked with managing funds in a trustworthy and professional manner, free from any element of *riba*. The *wakālah bi al-ujrah* contract supports this principle as it ensures transparency and fairness between the institution and the fund owners. (2) Transparency of Management: The amount of *ujrah* (service fee) is set from the outset, so that participants clearly know how much management fees are deducted from investment returns. (3) Accountability and Periodic Reporting: The PDPP is obliged to report the results of fund management to the principal periodically, so that the principle of *mas'uliyah* (accountability) can be applied.<sup>29</sup> (4) Efficiency and Professionalism: This contract allows the PDPP to manage large funds more efficiently because all tasks have been legally delegated and have a legal basis. (5) Legal Protection for Both Parties: As the contract is clear and Sharia-based, both the PDPP and the fund owner have legal certainty in every transaction. (6) Maintaining Economic Justice: With the *ujrah* system, the institution does not take excessive profits. The remuneration received is commensurate with the

services provided, thereby creating distributive justice.

To clarify the application of this concept, here are some real-world examples from Islamic finance practice in Indonesia: *Firstly*, Islamic Banks. In sharia financing card products (debit cards or financing cards), the bank acts as the customer's agent to conduct transactions with third parties Indra and Sari. . The bank receives *ujrah* in the form of a monthly administration fee in accordance with DSN-MUI Fatwa No. 54/DSN-MUI/X/2006.

*Second*, Sharia Insurance (Takaful). In Sharia insurance, the company acts as the participant's agent to manage the contribution funds (*tabarru'*). Remuneration in the form of *ujrah* is provided to cover operational and fund management costs in accordance with DSN-MUI Fatwa No. 52/DSN-MUI/III/2006. *Thirdly*, Zakat and Waqf Institutions. The National Zakat Agency (BAZNAS) and Zakat Management Institutions (LAZ) also utilise the *wakālah bi al-ujrah* contract. They act as representatives of the muzakki (zakat giver) to distribute zakat to the mustahik, and receive *ujrah* in the form of *amil* fees (maximum 1/8 of the total zakat, QS. At-Taubah: 60). *Fourth*, PDPP Fund Management. In the context of PDPP, participants delegate the management of pension or education funds to the institution. The PDPP then invests the funds in Sharia-compliant instruments such as sukuk, Sharia-compliant deposits, or productive financing.<sup>30</sup> The *ujrah* is received by the PDPP as a management service fee.

<sup>28</sup> Nst and Soemitra, *THE APPLICATION OF THE WAKALAH BIL UJRAH CONTRACT IN ISLAMIC BANKING: A QUALITATIVE STUDY OF POSTGRADUATE STUDENTS' PERCEPTIONS*.

<sup>29</sup> Novalia Indra and Vivi Puspita Sari, "The Application of the Wakalah Bil Ujrah and Tabarru' Contracts at PT. Asuransi Takaful Umum,

<sup>30</sup> Fadhila Sukur Indra et al., "The Application of the Al-Wakalah Bil Ujrah Contract on Unit-Linked Insurance According to DSN-MUI Fatwa No. 52 2006: A Case Study of PRUlink Syariah Generasi Baru," *Journal of Islamic Economics Lariba* 8, no. 1 (October 2022): 242–54, <https://doi.org/10.20885/jielariba.vol8.iss1.art15>.

### Distribution of Remuneration (Ujrah) between the PDPP and the Securities Company

In the terminology of fiqh muamalah, *ujrah* refers to the remuneration or fee paid for a service rendered or a benefit received.<sup>31</sup> In the context of modern Islamic economics, the concept of *ujrah* has evolved and is applied across various Sharia-compliant financial products and services, including investment and fund management. According to Mohamed et al. (2024), the application of service *ijarah* in Islamic finance must meet several fundamental criteria: the object of the service must be clear and identifiable; the benefit of the service must be realisable; the *ujrah* or fee must be clearly determined at the outset; and it must not contain elements of *riba*, *gharar*, or *maysir*.<sup>32</sup>

These principles are highly relevant in the context of the distribution of remuneration between PDPP and the Securities Company. In research conducted by the journal *Islamic Economics and Finance*, the concept of *ujrah* in Islamic financial services must take into account the principles of *al-adl* (justice) and *al-ihsan* (benevolence).<sup>33</sup> The distribution of remuneration must not be exploitative towards either party, but must reflect the value of the services provided in a proportionate manner. Fatwa DSN-MUI No. 157/DSN-MUI/VI/2023 regarding the *Wakalah bil Ujrah Contract* in the Management of Investor Protection Funds provides a strong Sharia foundation for the remuneration distribution mechanism in DPP

management.<sup>34</sup> This Fatwa affirms that: Firstly, *Wakalah bil ujrah* is a contract whereby one party (the principal) grants authority to another party (the agent) to perform a legal act in return for remuneration (*ujrah*); Second, in the context of the Investor Protection Fund (DPP), the Investor Protection Fund Manager (PDPP) acts as the agent managing the funds for the benefit of the investors (*muwakkil*); Third, the *ujrah* received by the PDPP must be determined at the outset, be clear, and contain no element of *gharar* (uncertainty); Fourth, the amount of *ujrah* may take the form of a fixed sum or a percentage of the assets under management, provided this is agreed upon at the outset. This fatwa provides a comprehensive Sharia justification that the distribution of remuneration between the PDPP and the securities company must adhere to the principles of fairness, transparency, and a clear agreement at the outset of the contract.

Furthermore, Law No. 8 of 1995 on the Capital Market mandates that investor protection must be a priority in the development of the Indonesian capital market.<sup>35</sup> Article 3 of the Capital Market Law states that the supervision, regulation, and day-to-day oversight of capital market activities are carried out by the Capital Market and Financial Institutions Supervisory Board (now the OJK) with the aim of ensuring the creation of a capital market that is orderly, fair, and efficient, as well as protecting the interests of investors and the public. Within this framework of protection, the mechanism for the distribution of remuneration between the PDPP and the Securities Company must be designed in such a way that it does not place an excessive burden on investors whilst still providing

<sup>31</sup> Islamiyah, I. N., & Sunandar, H. (2023). Interpretation of *Ijarah* and *Ujrah* Verses in the Application of *Muamalah*. *Enrichment: Journal of Multidisciplinary Research and Development*, 1(1), 14–21. <https://doi.org/10.55324/enrichment.v1i1.4>

<sup>32</sup> Mohamed, I., Junyuan, A., & Fasaaha, M. (2024). The Application of Service *Ijarah* in Islamic Finance. *International Journal of Management and Applied Research*, 11(1), 80–106. <https://doi.org/10.18646/2056.111.24-004>

<sup>33</sup> Batubara, H. (2020). *Maslahah Analysis: The Sharia Capital Market as an Investment Instrument in Indonesia*. *HUMAN FALAH: Journal of Islamic Economics and Business*, 7(2), 189–206. <http://dx.doi.org/10.30829/hf.v7i2.7246>

<sup>34</sup> National Sharia Council – Indonesian Ulema Council. (2023). DSN-MUI Fatwa No. 157/DSN-MUI/VI/2023 on the *Wakalah bil Ujrah Contract* in the Management of Investor Protection Funds. Jakarta: DSN-MUI. <https://dsnemui.or.id/kategori/fatwa/>

<sup>35</sup> Republic of Indonesia. (1995). Law No. 8 of 1995 on the Capital Market. Jakarta: State Secretariat. <https://share.google/V0qi6KOy5aDJqd1hU>

adequate incentives for the PDPP to perform its functions optimally.

### Remuneration Sharing Mechanism (Ujrah)

In accordance with applicable regulations, the Investor Protection Fund is sourced from:<sup>36</sup> Initial contributions from Self-Regulatory Organisations (SROs), namely the Indonesia Stock Exchange (IDX), PT Kliring Penjaminan Efek Indonesia (KPEI), and PT Kustodian Sentral Efek Indonesia (KSEI), each amounting to Rp15 billion, resulting in a total initial fund of Rp45 billion; An initial membership fee from Securities Companies administering client securities accounts of Rp100 million per member; An annual membership fee of 0.001% of the monthly average of the total value of Client Assets from the previous year held with the Securities Company; Subrogation funds from the Custodian as a substitute for the Investor; Investment returns from the Investor Protection Fund; Other sources as determined by the OJK.

The distribution of remuneration between the PDPP and Securities Companies must take several aspects into account:<sup>37</sup> *Firstly*, based on roles and functions; (1) PDPP (Indonesia SIPF): Responsible for managing and investing the DPP, administering claims, providing education to investors, and coordinating with regulators and other stakeholders. (2) Securities Companies: Act as contributors of membership fees (both initial and annual), administer client securities

accounts, and ensure compliance with investor protection regulations. *Second*, the Principles of Cost Recovery and Value Creation. From an Islamic economic perspective, *ujrah* must reflect the operational costs incurred (cost recovery) and the value added created (value creation).<sup>38</sup> PDPP incurs operational costs to carry out its functions, including costs for human resources, technology, administration, and coordination. Therefore, the remuneration received must be sufficient to cover these costs whilst maintaining efficiency. In accordance with the principles of good governance in the capital market, the remuneration distribution mechanism must be transparent and accountable.<sup>39</sup> The PDPP is obliged to report the use of funds and remuneration received to the OJK and relevant stakeholders on a regular basis.

### Fair Remuneration Models:

*First*, a Management Fee based on Assets Under Management (AUM). This model uses a percentage of the total assets under management as the basis for calculating the PDPP's remuneration. For example, if a management fee of 0.05%–0.1% per annum is set on the total DPP under management. This model provides an incentive for PDPPs to increase asset value through prudent investment. From a Shariah perspective, this model is permissible under the *wakalah bil ujrah* contract, whereby the agent (PDPP)

<sup>36</sup> Indonesia Securities Investor Protection Fund (SIPF). (2024). Investor Protection Fund. Jakarta: Indonesia SIPF. <https://www.indonesiasipf.co.id/dana-perindungan-pemodal>

<sup>37</sup> Widayanti, M., & Sari, N. (2019). A Study of the Sharia Capital Market's Influence on Economic Growth in Indonesia. *Ekonomikawan: Journal of Economics and Development Studies*, 19(1), 130–144. <https://doi.org/10.30596/ekonomikawan.v19i1.3236>

<sup>38</sup> Faishol, M., Shofiyah, Z., Abdillah, F., Zuhro, F., & Wahzulah, E. A. (2023). Analysis of the Sharia Capital Market Based on Fatwa No. 40/DSN-MUI/X/2002 of the National Sharia Council of the Indonesian Ulema Council. *Journal of Sharia Economic Law*, 7(2), 38–51. <https://doi.org/10.26618/j-hes.v7i02.7336>

<sup>39</sup> Baskara, A. P. W. (2022). Legal aspects of investor protection funds and disgorgement funds from the perspective of capital market investor protection. *Journal of Development Law Paradigm*, 7(2), 50–68. <https://doi.org/10.25170/paradigma.v7i2.3621>

receives *ujrah* based on a percentage of the assets under management.<sup>40</sup> However, this percentage must be agreed upon at the outset and may not be unilaterally altered.

*Secondly, Performance-based Fee.* An alternative model involves providing remuneration based on investment performance. The PDPP may receive additional remuneration if the DPP's investment returns exceed a specific benchmark (for example, the rate of return on Government Securities). This model encourages the PDPP to optimise investment returns whilst maintaining the principle of prudence. From a Sharia perspective, this model must be carefully designed so as not to resemble a *mudharabah* (profit-sharing) contract, as in *wakalah bil ujah*, the *ujrah* must be fixed or clearly defined from the outset. The solution is to establish a performance bonus as a policy of the *muwakkil* (in this case, the SRO and OJK) as a form of reward, rather than as part of the principal *ujrah*.

### **The proportion of Kafalah as collateral and Wakalah as agency with remuneration**

In the Islamic economic system, contracts (*akad*) form the primary foundation for every financial transaction. Contracts govern the rights, obligations, and responsibilities of the parties to ensure they align with the principles of justice, mutual assistance, and transparency. Two contracts widely used in Sharia financial institutions are *Kafalah* (guarantee) and *Wakalah* (agency). Both serve distinct functions yet complement one another.

<sup>40</sup> Prasanti, A. R., Zahrotunnisa, E., & Wahyu, M. F. (2023). The role of the Islamic capital market in driving economic growth in Indonesia. *Diponegoro Journal of Islamic Economics and Business*, 2(2), 105–115. <https://ejournal2.undip.ac.id/index.php/djieb/index>

*Kafalah* acts as a form of legal and moral guarantee, providing assurance to a third party that obligations will be fulfilled. *Wakalah* functions as an operational mechanism, whereby one person delegates the execution of a task to another, with or without remuneration (*ujrah*). In modern practice, such as in Islamic banks and *takaful* insurance, these two contracts are often combined to ensure both the security of transactions and the efficiency of their execution.<sup>41</sup>

Linguistically, *kafalah* means to bear or guarantee. According to *fiqh* terminology, *kafalah* is a contract in which a person (*kafil*) combines their responsibility with that of another person (*makful 'anhu*) to guarantee a right to a third party (*makful lah*).<sup>42</sup> Literally, *wakalah* means to act as an agent or to delegate a matter. In *fiqh* terminology, *wakalah* is the delegation of authority from one person (*muwakkil*) to another (*wakil*) to carry out a task that can be delegated.

The primary purpose of *kafalah* is to provide assurance of trust and security in transactions. In a modern context, *kafalah* is used for Sharia Bank Guarantees, project tender guarantees, and guarantees in *murabahah* or *ijarah* financing contracts.<sup>43</sup> *Wakalah* can also facilitate a person's affairs through a representative who is legally authorised under Sharia. In practice, *wakalah* is used for: financial and investment transactions, Sharia insurance

<sup>41</sup> Muhammad Syafi'i Antonio, "Islamic Banking from Theory to Practice, Jakarta: Gema Insani," *Arifin, Johan (2009) Islamic Business Ethics, Semarang: Walisongo Press, pp. 153 (2001).*

<sup>42</sup> Nurhidayati Nurhidayati, *Kafalah*, Faculty of Islamic Economics and Business – IAIN Lhokseumawe, 2022.

<sup>43</sup> Adiwirman Azwar Karim, *History of Islamic Economic Thought*, : Rajagrafindo Persada, 2016.

(wakalah bil ujah), and the payment of zakat, Hajj, and Umrah.<sup>44</sup>

Within the Islamic economic legal system, the kafalah and wakalah contracts are two distinct forms of agreement with different characteristics and functions; however, they are frequently used in conjunction as they complement one another.<sup>45</sup> Kafalah functions as a guarantee of liability, whilst wakalah serves as the granting of authority or representation to carry out a legal act or transaction. The combination of these two contracts enables a balance to be struck between legal security, trust, and the efficiency of transaction execution in Sharia-based economic activities.

Terminologically, kafalah is defined as a contract whereby a person (kafil) assumes the obligations of another party (makful 'anhu) towards a third party (makful lah) should the guaranteed party be unable to fulfil their obligations. Through this mechanism, kafalah fosters a sense of security and trust in a transaction as the third party's rights remain protected. This contract is of a *tabarru'* (mutual assistance) nature, as its primary purpose is not to generate profit, but rather to provide guarantees and social protection to another party.

Meanwhile, wakalah refers to the granting of authority by one party (muwakkil) to another (wakil) to perform a task or legal act on behalf of the principal. This contract aims to provide convenience and efficiency, particularly when a person is unable to carry out an activity directly. Wakalah may be carried out without remuneration (wakalah mutlaqah) or in return for a fee (wakalah bil ujah), provided this is clearly agreed

upon by the parties and does not involve elements of *riba*, *gharar*, or *maysir*.

In practice, kafalah and wakalah have complementary roles, meaning they mutually support one another within the transactional system. Kafalah is oriented towards guarantees and risk protection, whilst wakalah focuses on the professional execution of tasks. Kafalah provides certainty that obligations will be fulfilled in the event of default, whilst wakalah ensures that transactions are conducted correctly, effectively, and in accordance with Sharia principles.

For example, in a Sharia-compliant guarantee bank, the bank acts as a guarantor (kafil) providing a guarantee for the customer's obligations to a third party, such as in a construction project or trade transaction. On the other hand, the bank may also act as an agent (wakil) on behalf of the customer to handle administration, negotiations, or the execution of agreements in return for a specific fee (ujrah). In this context, the kafalah contract serves to provide legal assurance to the beneficiary of the guarantee, whilst the wakalah contract provides the basis for the execution of activities that are Sharia-compliant.

Conceptually, the relationship between kafalah and wakalah can be seen in the division of responsibilities. Kafalah is passive in nature, as it only comes into effect upon default by the guaranteed party, whereas wakalah is active, as its execution begins as soon as the contract is agreed. Thus, the two occupy distinct yet complementary positions: kafalah safeguards the security and trustworthiness of transactions, whilst wakalah ensures the execution and service delivery.

The balance between these two contracts is crucial within the Islamic financial system to ensure that every transaction is not only legally secure but also efficient and ethical. The collaboration between kafalah and

<sup>44</sup> Author Ascarya, "Contracts and Sharia Banking Products," *Jakarta: PT. Grafindo Persada* 99 (2011).

<sup>45</sup> M Ag Rozalinda, *Fiqh of Islamic Economics: Principles and Implementation in the Islamic Finance Sector – Rajawali Pers* (PT. RajaGrafindo Persada, 2017).

wakalah reflects the core principles of Islamic muamalah, namely amanah (trust), justice (‘adl), and mutual assistance (ta‘awun).<sup>46</sup> Both demonstrate how Islamic spiritual values can be implemented in modern economic activities in a professional, transparent, and responsible manner.

### Implementation Challenges

Although the kafalah and wakalah contracts are clearly regulated in fiqh muamalah and have been adopted in various modern Islamic financial products, their practical application still faces numerous challenges. These challenges arise from legal understanding, technical implementation, as well as regulation and supervision.

One of the main obstacles is the low level of literacy among the public and business operators regarding the concepts of Sharia contracts, particularly concerning the differences and interrelationships between kafalah and wakalah. Many still regard these two contracts as equivalent to the concepts of guarantee or agency in the conventional system, whereas in substance there are fundamental differences in their intent, mechanisms, and Sharia principles. In Islam, kafalah and wakalah must not contain elements of *riba*, *gharar* (uncertainty), or *maysir* (speculation), whereas in the conventional system, practices involving interest and guarantees based on fixed financial returns are frequently encountered.

Furthermore, the next challenge lies in risk management and the transparency of the contract. In modern financial practice, there is a potential for *gharar* to arise if the division of responsibilities, rights of recourse, and operational costs are not clearly outlined at the outset of the contract. For example, in sharia-compliant

bank guarantee products, if the roles of the guarantor (*kafil*) and the guaranteed party (*makful ‘anhu*) are not clearly defined, this may lead to confusion regarding legal liability. Therefore, the drafting of a comprehensive and detailed contract (*akad*) is crucial to ensuring legal validity and fairness between the parties.

From an institutional perspective, challenges also arise in the form of limitations in Sharia regulation and supervision. Although the National Sharia Council–Indonesian Ulema Council (DSN-MUI) has issued various fatwas regarding kafalah and wakalah contracts, such as Fatwa No. 10/DSN-MUI/IV/2000 on Wakalah and Fatwa No. 11/DSN-MUI/IV/2000 on Kafalah, their implementation in practice remains inconsistent. Each Sharia financial institution has different internal interpretations and policies regarding the implementation of these two contracts. This often leads to differing standards, whether in the drafting of contracts, the determination of *ujrah* (service fees), or the oversight mechanisms.

Furthermore, there are still limitations on the capacity of the Sharia Supervisory Board (DPS) in some institutions to conduct regular and in-depth sharia audits. In practice, the Sharia Supervisory Board does not yet have adequate resources to oversee the entire contract implementation process, from product design to risk assessment. Consequently, potential deviations from Sharia principles can still occur, whether due to administrative negligence or a lack of technical understanding on the part of those responsible for implementation.

Another challenge is the limited innovation in products based on kafalah and wakalah. In many financial institutions, these two contracts are often used only in their basic forms, for example for banking services (bank guarantees) or Sharia insurance (*wakalah bil ujah*). In fact, both have the potential to be

<sup>46</sup> Pane Ismail et al., *Contemporary Fiqh of Mu‘amalah*, Muhammad Zaini Publishing Foundation, 2021.

developed into new, more productive financial instruments, such as micro-enterprise guarantees, Sharia project financing, and even representative-based investment models. A lack of research and product development means that innovation based on kafalah and wakalah contracts has not yet reached its full potential.

In a social and economic context, the implementation of kafalah and wakalah contracts also faces moral and business ethical challenges. The principles of trust, justice and responsibility, which form the core spirit of these two contracts, are often not yet firmly internalised in the behaviour of economic actors. If these ethical values are not upheld, the essence of Sharia contracts will merely become a legal formality, failing to reflect the spirit of justice and mutual assistance (ta'awun) taught in Islam.

Consequently, the optimal implementation of kafalah and wakalah requires a comprehensive approach, namely by enhancing Sharia economic literacy, strengthening regulation and supervision, and instilling Islamic ethical values in modern business practices. Only in this way can these two contracts be executed professionally, fairly, and in accordance with the objectives of Sharia (maqasid al-shari'ah), namely the preservation of wealth (hifz al-mal), justice, and the public interest.

### Conclusion

Under Sharia, the PDPP, as the agent, has the authority to manage participants' (principals') funds through the *wakalah bi al-ujrah* contract, which guarantees the principles of trust, transparency, accountability, efficiency, and legal protection, whilst reflecting economic justice as remuneration is commensurate with services rendered. A remuneration model deemed fair includes an AUM-based *management* fee with a

percentage agreed upon from the outset and not subject to unilateral change, as well as a performance-based scheme treated as a discretionary bonus rather than a core fee to avoid resembling a mudharabah arrangement. In practice, the active wakalah contract (granting of authority) is combined with the passive kafalah contract (guarantee of liability), thereby creating efficiency, trust, and legal certainty. This is in line with DSN-MUI Fatwa No. 157/DSN-MUI/VII/2024, which stipulates the use of wakalah bil ujah for fund management and kafalah for asset replacement guarantees due to negligence, within the framework of an investment scheme containing elements of tabarru' as a form of mutual assistance.

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