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Sharia Pension Fund

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Abstract:*Pension Fund is a legal entity that manages and runs a program that promises pensionbenefits. The increasing development of sharias transactions in the financial industry in Indonesia allows pension funds to be managed according to sharia. The purpose of this paper is to determine the basis of fiqh for the development and management of pension funds.*
Pension Funds are generally regulated in Law no. 11 of 1992. The difference between conventional pension funds and Islamic pension funds is the investment management system carried out to avoid usury and interest-based conventional financial investments.
Keywords: *fund, pension, fiqh.*

INTRODUCTION

National Development is carried out in the context of developing the whole person and all Indonesian people in a sustainable manner from young to old. Indonesian society is known as an agrarian society. With the development and growth of the economy, an economic structure with a core of industrial strength with the support of the agricultural sector becomes the goal. Thus there was a shift in the era, namely the "Agrarian Era" to the "Industrial Era".
shift in the values of people's lives and patterns of life and behavior certainly, which implies the hope for a better welfare of the community. Everyone not only thinks about welfare at work but also thinks about welfare in old age or retirement.

Since the first, even now many people want to become civil servants because they want a pension when they are not working. The perception of the Indonesian people in general shows that only civil servants or the TNI will receive pensions. However, since the advent of Law No. 11 of 1992, retirement is not only the right of civil servants or the TNI, but also open to all workers, be it private companies or individual jobs or independent work. Through the law, it is emphasized that the formation of the Employment Pension Fund (DPPK) and the Financial Institution Pension Fund (DPLK), in essence the pension program can create work peace for employees because welfare in old age will be guaranteed, which in turn will make them more loyal to the company. and will be more productive.

In the view of Islam, there is no prohibition on any activity that can give birth or increase the benefit. This is proven to be supported by the birth of Sharia-based Pension Fund institutions. Where the birth of this sharia pension fund is in the midst of conventional pension fund institutions which of course have different systems, performances and instruments. So that the main discussion of the article is the fiqh view of Pension Funds in terms of legal aspects, of course, the object of the study comes to the discussion of Sharia and Conventional Pension Funds from the aspect of legal differences.

The Development of Pension Funds in Indonesia

Before the Pension Fund Law was enacted, in the community a form of savings had developed, namely the Pension Fund and Old Age Savings (THT) which were formed by many companies, both private and government. This form of savings has characteristics, namely as long-term savings whose results are enjoyed after retirement. Where the implementation is carried out in a program, namely a pension program, which seeks pension benefits for its participants through a system of fund fertilization. The purpose of this programming is to protect employees against the risk of loss of income due to layoffs due to old age, accidents resulting in permanent and total disability, death, death in service, and so on.

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Almost all pension programs implemented before Law no. 11 of 1992 is in the form of a Pension Fund Foundation. However, the weakness in the form of this Pension Fund foundation, one of which is the form of a legal entity that is accepted from practice based on habits, is engaged in social activities only (not taking profit), does not have the proper members, therefore, this foundation is not appropriate to be used as a forum. pension administration. From Law No. 11/1992, there were two types of Pension Fund institutions that were approved by the Minister of Finance, namely the Employer Pension Fund (DPPK) and the Financial Institution Pension Fund (DPLK).

Financial of Institution Pension Funds (Banks) are managed in a system where more than 70% of pension fund investments are placed in time deposits, certificates of deposit, and SBI. The reason is that apart from being safe and liquid, time deposits, certificates of deposit and SBI are able to provide stable and adequate returns. With an investment map that is dominated by banking products like this, the utilization of pension fund wealth as development capital will certainly depend on the recovery process of the banking intermediation function. However, Pension Fund Institutions do not always invest their funds in SBI, due to fluctuations in interest rates for time deposits and certificates of deposit which show a significant downward trend, this causes pension fund managers to start looking for and studying investments other than time deposits that can provide adequate returns for pension fund. Long-term debt securities and bonds began to be eyed by pension fund managers. The attractiveness of bonds increased after the government at the end of 2002 issued bonds or T-bonds or officially called Government Bonds (SUN).

As the trend of the investment climate in Pension Funds changes to better stages, it is estimated that pension fund managers will shift their investment to investment instruments such as bonds, stocks and mutual funds by looking at higher returns.

In the midst of the growth of pension funds with instruments where interest rate trusts are expected as one of the investment benefits. The Syari'ah pension fund was born along with the rapid development of Islamic financial institutions. The difference is that conventional pension funds are based on interest, but sharia pension funds are based on profit sharing. It is known that until the end of 2006, there were 23 units of Islamic Banks and 105 Sharia BPR in Indonesia. The asset value of the national Islamic Bank continues to grow, where as of December 2006 it has reached Rp 26.72 trillion. Through various policy formulations and acceleration programs, BI has also targeted the market share of Islamic banks in 2008 to reach five percent. In addition, there are 36 sharia insurance units that have been operating. The total value of Islamic bonds issuance listed on the capital market as of July 2006 was 17 products with a capitalization value of Rp 2.21 trillion. Meanwhile, sharia mutual funds in the same period recorded a Net Asset Value (NAV) of Rp 566.8 billion.

Of course, the growth of Islamic financial institutions, slowly but surely will also encourage the development of Islamic pension funds. At this time, only a few companies that manage Islamic pension funds include; Bank Muamalat Indonesia (BMI), Manulife (Principal Indonesia) and Allianz. The slow growth of sharia pension funds is due to several factors, including; limited regulations, investment instruments, unclear governance models of sharia pension funds and lack of socialization and education about the importance of sharia pension funds.

Sharia Pension Fund Regulatory Needs

It must be admitted that the development of Islamic Pension Funds is relatively lagging behind when compared to other Islamic finance industries. This situation occurred partly due to the lack of strategic and regulatory support. This can be seen in several ways:

First, in the context of industrial development strategy. When banking, insurance and Islamic capital markets already have and are included in the road map for the development strategy of each industry, Islamic pension funds have not been touched in the slightest in the Policy and Strategy for the Development of the Pension Fund Industry for 2007-2011.

Second, in the context of regulation. If banks, insurance, bonds and sharia mutual funds already have many regulations and also support the DSN-MUI fatwa, then there are no supporting regulations and fatwas for sharia pension funds. So that the regulation as an operational framework for sharia pension funds only refers to general pension fund regulations and MUI fatwas which are also general, not specific.

Third, investment provisions directly in Law No.11/1992 concerning Pension Funds. So far, Sharia Financial Institution Pension Funds (DPLK) have complained about bound investment products (mudharabah muqayyadah/restricted investemnet) which have great potential, cannot be entered by Sharia DPLK.

The mudharabah muqayyadah is a sharia bank product in the form of investment in property or infrastructure with a very large project value. So far, Islamic banks have had difficulty financing the project because they collided with the Maximum Lending Limit (BMPK). This is an attractive investment opportunity for Sharia DPLK. If a sharia pension fund enters, the potential for profit sharing reaches 20-30% of the return on this type of investment.

Unfortunately, the provisions of Law No.11/1992 concerning Pension Funds consider these products as direct investments. So that sharia pension funds are required to create subsidiaries when they want to enter into investments like this. For Islamic pension funds, this would be too difficult and would cost a lot of money. Whereas with its distinctive character, Islamic pension funds should be able to cooperate with Islamic banks to work on these investments. In this collaboration, Islamic pension funds can be further involved in analyzing the feasibility study of the project.

All the time, the managers of Sharia DPLK have asked the government to include regulations on investment instruments for sharia pension funds in the revision of the Pension Fund Law. Sharia DPLK requires this regulation to expand investment instruments according to its character. The limitations of this investment instrument have resulted in the fact that the managed funds of Islamic pension funds are mostly invested in sharia deposits, both rupiah and foreign exchange, as well as bonds, stocks, and sharia mutual funds only. Whereas with the great potential of the Muslim community and with a very wide open market, of course, Islamic pension funds have hopes for a bright future.

Sharia Pension Fund Governance and the Law from a Fiqh Perspective

In order to meet the provisions of Bapepam-LK as a pension fund to prepare as well as implement the Guidelines and Governance of Pension Funds since January 1, 2008, the sharia pension fund industry needs to immediately prepare itself.

In the context of developing Sharia Pension Funds, important actions must be taken to strengthen the institutions. The most basic action is to enforce Good Islamic Pension Fund Governance (GIPFG). Without an effective GIPFG, it is unlikely to strengthen Islamic pension funds and allow them to expand rapidly and carry out their role effectively. This need will become more serious in line with the expansion of these institutions. In addition, if these governance issues are not resolved immediately, the problems will become increasingly complex, and in the long term, will undermine their ability to respond successfully to industry challenges.

To build an effective governance system for Islamic pension funds in the current Indonesian context, there are a number of pillars that must be upheld in the GIPFG mechanism. Some of these basic pillars include:

1. The strategic role of the Sharia Supervisory Board. DPS has a central role and responsibility through its working mechanism to provide confidence that all transactions carried out by the company do not violate sharia principles. This is very important because, among the most crucial responsibilities of a sharia pension fund is to create confidence to all its stakeholders that the operations of the institution are truly in accordance with sharia principles. To realize this goal, it is necessary to encourage the independence of the Sharia Supervisory Board (DPS) while strengthening its role, while also meeting the availability of the number of DPS human resources and at the same time improving its quality. In addition, sharia audits and internal shariah reviews need to be established.
2. Sharia pension funds must also have a strong internal control and risk management system. With this system, sharia pension funds can detect and avoid the occurrence of mismanagement and fraud as well as system and procedure failures at sharia pension fund institutions. The existence of an effective internal control system is very important to maintain the safety and feasibility of sharia pension funds. Such systems can help ensure the realization of an institution's objectives and improve its long-term profitability. Internal control is also important to ensure oversight of management and develop a healthy corporate culture within the institution.

This is a must in an effort to identify and assess risks, detect problems within the institution, and correct deficiencies. In addition, good risk management will be very useful in identifying, measuring, monitoring and controlling all risks properly and then managing them effectively;

3. Increasing the transparency system of sharia pension fund management. Market transparency and discipline will play an important role in improving the functioning of Islamic pension funds and enabling stakeholders to protect their interests. But this will happen only if all parties involved have access to sufficient qualitative and quantitative information about all activities of Islamic pension funds to enable them to make informed judgments. Such information will enable pension fund participants to decide whether or not they will remain in the institution's pension plan. It will also help the board of directors to know whether management is doing its job well. It is also beneficial for external auditors to provide accurate reports, and supervisors provide corrective action suggestions, which will help the institution maintain its performance. Without this information, any interested party cannot assess the performance of the institution, and the management can easily cover up the problems that occur. Experience has shown that the most common causes of bankruptcy of pension funds are poor investment quality and ineffective investment risk management. Thus, adequate disclosure about investment quality and risk management is necessary to ensure that the institution has achievedsufficient level of transparency to strengthen market discipline and minimize the possibility of bankruptcy. Appropriate accounting standards, standard formats and measurement of disclosures are very important for the above purposes.

4. The wider role of external auditors. External auditors not only play a role in providing an opinion that the financial statements of Islamic pension funds have been presented fairly in accordance with applicable accounting standards, but also have to cooperate and correlate their work with the DPS and internal auditors to gain confidence that the presentation of financial statements

has a level of disclosure and adequate transparency.

5. Transforming Islamic corporate culture and improving the quality of human resources. This must be a commitment for the management of Islamic pension fund institutions. In addition, it is important to immediately realize the representation of pension fund participants as stakeholders in the structure and mechanism of work and institutions of Islamic pension funds.
6. Laws and regulations from Bapepam-LK that are in accordance with the characteristics of sharia pension funds. This is a prerequisite for the creation of a healthy monitoring and governance climate for Islamic pension funds in the country. For associations, this then needs to be followed up to immediately formulate the GIPFG code of ethics for sharia pension funds.

In managing the pension program, it requires the commitment of the founders and managers to manage participant funds prudently, minimizing all possible moral hazard for the benefit of certain parties that have nothing to do with efforts to improve the welfare of participants. In addition, it also requires the commitment of the Founder to fulfill his obligations, both due to past employment, as well as funding for the long term in order to achieve sufficient wealth to pay the pension which is carried out through the process of collecting and managing funds by ensuring that the investments made are appropriate at the most efficient cost possible.

The Capital Market and Financial Institution Supervisory Agency (Bapepam-LK) has required all pension fund institutions to formulate and implement Guidelines and Governance of Pension Funds since January 1, 2008. This decision is stated in the Chairman's Decree Number KEP-136/BL/2006 with the aim of encouraging preparation of guidelines for good governance in the pension fund environment as well as providing references to the founders, employers, management and supervisors of pension funds. It is hoped that the Pension Fund Governance Guidelines will be prepared based on the principles covering transparency, accountability, responsibility, independence, and equality and fairness.

There are several key players in the enforcement of GCG for Islamic financial institutions. The key players in terms of developing the concept of Good Islamic Pension Fund Governance (GIPFG) for Sharia Pension Fund Institutions include; The regulators and supervisors (in the Indonesian context represented by Bapepam-LK), the National Sharia Council (DSN), shareholders, individual participants, institutional participants, and other stakeholders such as employees, customers, the environment and the surrounding community.

Pension Fund in Jurisprudence Perspective

Actually, what is done by the Pension Fund of conventional financial institutions is quite good and is indeed very helpful. Especially as a private or public employee who usually does not have a pension, with this program, you can say that you already have preparations for the future. Maybe this form can be a good solution again, if it is managed professionally and of course in accordance with sharia principles. The problem is, from a sharia perspective, this program still needs to be evaluated.

One of the hardest things is the deposit system in particular and other instruments that still use the usury system. The concept of fiqh, especially for the problem of usury, all scholars agree on the severity of the sin for the perpetrator, even to Allah SWT. declare war. Rarely is there a sin that makes Allah swt. furious to invite war.

Therefore, as a good solution, replace the investment and deposit system with one that uses the sharia program. Perhaps if it can be examined carefully, there may already be enough sharia-based financial institutions that are the best in using profit-sharing-oriented instruments.

The prohibition against giving and taking usury is clear and unequivocal in Islam. Therefore, Islamic banks must be free and clean from the element of usury. There are several opinions in explaining usury, but in general there is a common thread that emphasizes that usury is an additional taking of the principal property or capital in a vanity manner.

In savings and loan transactions, conventionally, the lender takes additional interest in the form of interest without any balance received by the borrower except for the opportunity and time factor that occurs during the lending process. What is unfair here is that the borrower is obliged to always, never fail, always, absolutely, and definitely profit in using the opportunity.

According to Smith, interest is the compensation paid by the debtor to the creditor in return for the profits obtained from the loan money. These economists believe that the accumulation of money capital as a result of savings, where these savings cannot be carried out without expecting a reward for their sacrifices. That's why interest as a reward or a savings stimulant.

While Keynes's approach to the theory of interest is often known as the stock approach, Keynes argues that it is not the interest rate, but the level of income that guarantees to equate the saving rate with the investment rate.

Then, in the Islamic value system, the Islamic Financial Institution Pension Fund provides the protection of the rights of all stakeholders fairly, regardless of whether they own shares or not being emphasized. The Islamic concept provides a value system framework that gives maximum priority to the realization of justice and fairness without any interest. So that there will be no doubt about the unfair protection of the interests of all parties. The most important stakeholder in Islamic finance, including Islamic pension funds, is Islam itself. If the Islamic pension fund does not operate properly, the public will think that the Islamic system is no longer relevant to the modern world, and they will blame Islam for the poor performance of the institution even though Islam itself has nothing to do with it. The portion to pay attention to the interests of shareholders is clear

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But apart from that, pension fund participants whose interests are also at stake, generally don't get much attention in conventional companies. Meanwhile, participants in sharia pension funds have invested and taken part in the profit or loss in the sharia system, so their interests must be protected. Employees also have an interest. Their contribution to the efficient performance of Islamic pension funds and their rewards are both determined by the company's incentive structure.

Until mid-2005, the limited choice of Islamic investment is still one of the obstacles for Islamic pension funds. Whereas like insurance and sharia banking, sharia pension funds must also manage and invest their funds in a portfolio of sharia instruments. There are several types of Islamic investment instrument portfolios that are already available.

First, mudharabah deposits. Is a type of sharia investment issued by a sharia bank in the form of a mudharabah contract. In this transaction, the customer acts as shâhib al-mâl or the owner of the funds, and the bank acts as the mudhrib or fund manager. In its capacity as mudharab, banks can carry out various kinds of business that do not conflict with the principles of sharia and develop them, including doing mudharabah with other parties. Capital is in the form of cash and not receivables and the amount must be stated. Profit sharing is stated in the form of a ratio and stated in the account opening contract.

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Second, Islamic stocks. Sharia shares are proof of ownership of a company that meets sharia criteria, and does not include shares that have special rights. Sharia stocks can be accessed in the Jakarta Islamic Index (JII) group. JII is an index board for 30 stocks that have been categorized as shariah compliance or not against sharia. Usually JII is reviewed every six months. However, it is not only shares that enter JII that are in accordance with sharia provisions. Because JII only accommodates the 30 best shares that are sharia-compliant. Apart from JII, there are still stocks that we can categorize as stocks that comply with sharia principles, and it seems that in the near future a new sharia index will be drawn up.

There are at least two conditions to state that a share can be categorized as not violating sharia provisions, namely: (1) The company does not conflict with Islamic law. What is meant by a company that does not conflict with Islamic law is a company whose business and management fields do not conflict with sharia, and have halal products. Liquor producing companies or conventional financial companies certainly do not fit into this category; and (2) All shares issued have the same rights.

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Shares are proof of ownership of a company, so the role of each shareholder is determined by the number of shares he owns. However, in reality there are companies that issue two kinds of shares, namely ordinary shares and preferred shares which do not have voting rights but have the right to get a fixed dividend. Of course, this is against the sharia rules regarding profit sharing. So shares that are in accordance with sharia are shares whose owners have the same rights and are proportional to the number of shares they own.

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Third, sharia mutual funds. Is a Mutual Fund that operates according to the provisions and principles of sharia, both in the form of a contract between the investor as the owner of the assets (shâhib al-mâl/rabb al-mâl) and the Investment Manager as the representative of the Shahib almal, as well as between the Investment Manager as the representative of the shâhib al-mâl with investment users. Currently, many sharia mutual funds have been offered and are categorized into fixed income mutual funds and mixed mutual funds. Fixed income mutual funds are mutual funds whose portfolio composition is mostly in fixed income securities such as; Sharia Bonds, SWBI, Mudharabah Deposit Certificates, Interbank Mudharabah Investment Certificates and similar securities. This type of sharia mutual fund includes; BNI Dana Syariah (since 2004), Dompet Dhuafa-BTS Syariah (2004), PNM Amanah Syariah (2004), Big Dana Syariah (2004) and I-Hajj Syariah Fund (2005). Meanwhile, mixed mutual funds are mutual funds whose portfolio composition is mostly placed in equity securities such as sharia shares (JII) with a mixture of several other non-stock investment instruments that provide relatively higher returns. Included in these mutual funds are: PNM Syariah Mutual Funds (since 2000), Balanced Syariah Funds (2000), Syariah Limits (2003), BNI Dana Plus Syariah (2004), AAA Syariah Funds (2004) and BSM Investa Berimbang (2004).

Fourth, Islamic bonds. Is a long-term securities based on sharia principles issued by companies (issuers) to sharia bond holders that require issuers to pay income to sharia bond holders in the form of profit sharing/margin/fees and repay bond funds when they mature. Currently, there are at least two types of Islamic bonds that are being developed in Indonesia: Mudharabah and Ijarah bonds.

The existence of these investment instruments is still considered insufficient. Manulife, for example, cannot choose sharia corporate bonds for reasons of liquidity risk and others. They tend to choose sharia government bonds, but unfortunately until now there are no state bonds with a sharia scheme. Thus, it is very necessary to have the state's Islamic bonds. The existence of state Islamic bonds is very important for the development of the Islamic finance industry.

In addition, the provisions of Law Number.11/1992 concerning Pension Funds which consider mudharabah mukayyadah products as prohibited direct investments, need to be reviewed. With the demands of a typical sharia contract scheme, according to its khitah, willy nilly, sharia pension funds do require a means to make direct investments. So that the investment choices of Islamic pension funds are wider and can get high profit sharing from this type of investment return.[1]

This is where the fiqh approach is actually expected in the discussion of pension funds in accordance with its shari'ah principles, namely avoiding usury, prioritizing justice (the benefit of the people) and being able to generate moral values based on Ilâhiyyah.

[1] www.muamalat.com

Closing

Management of pension funds in accordance with Islamic teachings will have many benefits for the community, especially people who are loyal to sharia. The Koran itself teaches its people not to leave weak offspring and prepare for a better tomorrow. This teaching can be interpreted as the importance of saving some wealth for the future. This is very important, considering that after retirement, humans still have basic needs that must be met. With these reserves, when someone enters a less productive period, they still have a source of income

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