



## Case Study on Mutual Funds PT. Falcon Asia

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### Article Info

#### Article history:

Received 1 January 2021  
Received in revised form 12 February 2021  
Accepted 24 February 2021

#### Keywords:

Small and Medium Enterprises  
Community Services Management Strategy

### Abstract

to ascertain the reasons investors lost money with the PT Falcon Resources Management report. to provide sanctions and liability for investors who have lost in mutual funds This report uses the law technique. The second strategy was a conceptual. Secondary data are obtained by identifying and gathering data already released books, newspapers, magazines, journals, and internet portals. This result demonstrates that if an investor will demonstrate that the manager has defaulted or has violated the rule, he or she will be liable for compensation. Accountability is carried out in compliance with the rules and legislation in place. as a result of regulatory penalties, PT Falcon lost its business license. For criminal penalties, the offense will be punished under article 104 of the Capital Market Law with a sentence of ten years and a fine of fifteen billion credits. Meanwhile, the PT Falcon Manager will be charged in civil court on the grounds of Act Against the Law, and the investor will be rewarded if victorious.

## Introduction

Indonesia's independence in 1945 necessitated infrastructure growth in all sectors, including the development. One of the efforts of the Indonesian government in the era was to have sought assistance from donors who had interests in the Inter-Governmental Group on Indonesia (IGGI), Japan, and the Consultative Group on Indonesia (CGI). Around the same time, the government argues that loans from overseas were inappropriate for nations where growth lags. Using the potential of Indonesian government funds is an efficient way of doing business.

In the primary capital market for businesses, it endeavors to increase capital for them by selling shares to the capital market; secondary capitals serves to increase overall production capacity; and focus public attention on increasing income; and tertiary capital represents the overall state of the country, capital market's goal of boosting the country's citizens' supply (Bhutta & Suleman 2017; Booth et al., 1997). Thus, a rule was made in the market Law Number 8 of 1995.

For the government's attempt to interest in stimulating public interest in participating in the stock market, since 1995 there is an Article 1,27 Law on mutual funds, which provides information on them. mutual funds are a way for investors to pool their money to be allocated to Securities Portfolios (Chang et al., 2012; Renneboog et al., 2008). Thus it can be inferred that the first mutual funds are a kind of investment fund (collection of funds), the second are investing in a selection of investments (an investment instrument run by investment managers), the third are medium to long-term investment funds, and the fourth are long-term investment funds. since mutual funds may be invested on a wide range of different scales, all investors can invest, even those who have a small amount of capital Furthermore, it is possible to obtain the greatest profits with low payments.

Mutual funds, on the other hand, have inherent risks in practice. Unlike mutual funds that are not under government regulation, if anything is to go wrong the investors will lose their investment capital, but the second risk is that they won't have control of the marketable securities that the mutual fund would purchase or sell these stuff. the third risk is that investors would not be able to directly evaluate the increase of assets, profits, ledgers, and financial statements of a mutual fund. The next concern is that the Investment Advisor would have the investors with excess cash on hand, but not enough to spend it, and thus fail to generate profits.

Following the Regulation Law of 2011 that all financial sector activities be performed in an orderly, transparent, and accountable manner, sustainable manner, the Financial Authority was established with the express purpose of protecting the interests of consumers and the community. Article 1 of the OJK (FSA) describes the Financial Authority as a separate from political control and free from influence, which has the authority and duty to supervise, review, and prosecute roles to oversee, respectively, to perform as described in this law. The financial market and finance oversight formerly handled by the Capital Market and Financial Services Agency (Bapeam-LK) have been shifted to a new entity called the Financial Services Authority after the passage of Law Number 21 of 2011.

As in the case of PT Falcon Asia Resources Management, an investment manager company that also involved a custodian bank, namely CIMB Niaga (Al Saedi 2018). 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, Bapeam-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 Bapeam-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.

## **Methods**

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.

## **Result and Discussion**

### **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. In the Company's 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.

### **Investment Manager**

Securities Manager (in the Article 11 of Law Number 8 of 1995) is described as a company whose operations include managing client or community portfolio investment funds that do not include insurance firms, pension funds, and financial institutions that follow their own guidelines.

The mutual fund manager maintains portfolios in either an institutional or an investment type. To protect both the individual investment funds and the investor's interests, the Investment Manager implements practices related to the investment portfolios.

Article 27 of the Capital Market Law No. 8 specifies the duties of the Investment Manager, in detail: In the event the commitments are not carried out, the Investment Manager is liable for all damages and breach of trust.

As per the Chairman of the Capital Market and Financial Institution Supervisory Committee's decision # K47/2009, individuals and organized financial products as well as set forth in mutual fund management regulations, as those found in the Regulation of the Capital Market and the Mutual Fund Supervisory System, such as stocks, equity mutual funds, equity mutual funds, etc., will organize portfolio management relationships on an exchange basis of agreement as mutual; those identified by the Chairman of the Capital Market and Financial Supervisory Committee in K Banking and Securities as defined by the mutual framework rules in Regulation of the mutual fund system, securities mutual system, mutual funds, such as securities mutual mutual funds, securities mutual funds, etc., can organize mutual fund portfolios; other than those set forth in the decision by the Chairman of the Capital Market and Financial Super

According to BAPAMR Number 3, repurchasing or hiring out of mutual funds can be done through the custodian bank or sales representatives. According to the law of trust principles, Investment managers cannot be delegated unless required by statute or judicial decisions. and the degree specified in the laws and regulations are adhered to are allocated by the Investment Manager

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.

## **Investors**

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

Investors are individuals or economic units who invest their savings in the form of assets with the hope of obtaining returns in the future (Sharpe 2011; Lintner 1975). Meanwhile, according to Nasarudin & Surya (2007), Investors are individuals or institutions that invest their funds in certain company securities.

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. 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.

## **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 (Mesken et al., 2002). In the Capital Market Law, there are two types of technical violations. 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.

It is prohibited to make statements in Securities trading activities with the intention of deceiving others or without disclosing material facts so that those facts are not misleading or to do harm; and also, it is forbidden to participate in fraud in the overall Capital Market.

penalties imposed under the Capital Markets Law, such as regulatory and criminal penalties Administrative penalties found in Article 102 subsection (2) of the Capital Market Laws may take the form of a written notice, or fines, or the requirement to pay a certain sum of money, or even suspension of business operations.

Article 103 sets out the various criminal sentences from 1 year to fines and incarceration in the capital market laws.

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

## 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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