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Reconstructing Islamic Bank Liability for Underlying Asset Determination in Investment Products under POJK No. 4/2026

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Abstract: This study examines and reconstructs the limits of Islamic banks' liability for underlying asset determination in Islamic banking investment products under Financial Services Authority Regulation No. 4 of 2026. The legal problem arises from the unclear boundary between investment losses constituting reasonable business risks borne by Investor Customers and losses attributable to the bank's professional misconduct. This normative-doctrinal legal research employs statutory, conceptual, and analytical approaches. Legal materials comprising legislation, fatwas, and scholarly literature are analyzed through systematic interpretation and prescriptive legal reasoning. The analysis produces three findings. First, POJK No. 4 of 2026 constructs Islamic banking investment products as restricted investments by linking the contract, investment amount, tenor, and return mechanism to identifiable productive underlying assets. Second, the allocation of investment risk to Investor Customers does not transfer all losses because Islamic banks remain subject to prudential, Sharia-compliance, disclosure, suitability, segregation, governance, and fiduciary obligations. Thus, Investor Customers bear losses arising from normal business performance, while Islamic banks remain liable for losses caused by improper asset determination, negligence, contractual or Sharia violations, conflicts of interest, fund commingling, inadequate disclosure, or supervisory failure. Third, the regulation requires a clearer mechanism to distinguish asset-performance risk from bank-caused loss. The study's novelty lies in a three-stage liability model: prudent asset determination, trustworthy management and supervision,

Keywords: Islamic Bank; Underlying Asset; Investment Product; Bank Liability; POJK No. 4 of 2026.

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and liability and loss recovery. Its scientific contribution is a normative framework integrating risk sharing with Islamic banks' fiduciary and professional responsibilities.

Abstrak: Penelitian ini menganalisis dan merekonstruksi batas tanggung jawab Bank Syariah dalam penetapan *underlying asset* pada Produk Investasi Perbankan Syariah berdasarkan POJK Nomor 4 Tahun 2026. Permasalahan hukum muncul karena belum tegasnya batas antara kerugian investasi yang merupakan risiko bisnis wajar Nasabah Investor dan kerugian yang timbul akibat kesalahan profesional Bank Syariah. Penelitian hukum normatif-doktrinal ini menggunakan pendekatan perundang-undangan, konseptual, dan analitis. Bahan hukum berupa peraturan perundang-undangan, fatwa, dan literatur ilmiah dianalisis melalui interpretasi sistematis dan argumentasi hukum preskriptif. Hasil analisis menunjukkan tiga temuan. Pertama, POJK Nomor 4 Tahun 2026 mengonstruksikan Produk Investasi Perbankan Syariah sebagai investasi terikat dengan menghubungkan akad, nominal investasi, tenor, dan mekanisme imbal hasil dengan *underlying asset* produktif yang dapat diidentifikasi. Kedua, pembebanan risiko investasi kepada Nasabah Investor tidak berarti pengalihan seluruh kerugian karena Bank Syariah tetap terikat pada kewajiban kehati-hatian, kepatuhan syariah, keterbukaan, *suitability assessment*, pemisahan dana, tata kelola, dan *fiduciary duties*. Dengan demikian, Nasabah Investor menanggung kerugian dari kinerja bisnis normal, sedangkan Bank Syariah bertanggung jawab atas kerugian akibat salah penetapan aset, kelalaian, pelanggaran akad atau prinsip syariah, konflik kepentingan, pencampuran dana, ketidakmemadaian keterbukaan, atau kegagalan pengawasan. Ketiga, regulasi masih memerlukan mekanisme yang lebih jelas untuk membedakan risiko kinerja aset dari kerugian akibat kesalahan bank. Kebaruan penelitian ini terletak pada model tanggung jawab tiga tahap: penetapan aset secara *prudent*, pengelolaan dan pengawasan secara amanah, serta pertanggungjawaban dan pemulihan kerugian. Kontribusi ilmiahnya adalah

Kata Kunci*:* Bank Syariah; *Underlying Asset*; Produk Investasi; Tanggung Jawab Bank; POJK Nomor 4 Tahun 2026.

kerangka normatif yang mengintegrasikan prinsip *risk sharing* dengan tanggung jawab fidusia dan profesional Bank Syariah.

INTRODUCTION

Islamic banking is fundamentally characterized by profit-and-loss sharing through partnership-based contracts, particularly *mudharabah* and *musyarakah*. Under this principle, profit is not treated as a predetermined return but is linked to the performance of the business activity or productive asset underlying the placement of funds.[1] This feature distinguishes Islamic investment products from deposit products because Investor Customers bear business risks associated with the financed activity or asset. At the same time, profit-and-loss-sharing arrangements involve financing risk, liquidity risk, information asymmetry, intermediation costs, and more complex supervisory requirements.[2]

Before the issuance of Financial Services Authority Regulation No. 4 of 2026 concerning the Implementation of Islamic Banking Investment Products, investment activities in Islamic banking were mainly regulated under Article 71 of Financial Services Authority Regulation No. 26 of 2024 concerning the Expansion of Banking Business Activities. The regulation recognized fundraising through deposits and investments in accordance with Sharia principles, but it did not specifically regulate the identification of underlying assets, the linkage between investor funds and particular assets, the matching of

[1] Adil Saleem et al., "Financial Intermediation through Risk Sharing vs Non-Risk Sharing Contracts, Role of Credit Risk, and Sustainable Production: Evidence from Leading Countries in Islamic Finance" 26, no. 5 (May 8, 2024): 11311–41, https://link.springer.com/article/10.1007/s10668-023-03298-7.

[2] Zaini Ibrahim et al., "Determinants of Profit and Loss Sharing Financing in Indonesia," *Journal of Islamic Marketing* 13, no. 9 (July 27, 2022): 1918–39, https://doi.org/10.1108/JIMA-01-2020-0015.

investment amounts and tenors, the segregation of investment funds, or the allocation of liability when losses occurred in the investment asset.[3]

POJK No. 4 of 2026 introduces a more specific regulatory framework for Islamic Banking Investment Products. Under this regulation, investment refers to funds placed by an Investor Customer with an Islamic bank for allocation to an Underlying Asset. The Underlying Asset must constitute a productive asset, while Islamic Banking Investment Products are classified as restricted investment products.[4] Consequently, investment funds can no longer be treated in the same manner as general Third-Party Funds. Instead, they must be linked to specific assets, contractual arrangements, investment amounts, maturity periods, return mechanisms, and investment risks.

This regulatory development is important because the Underlying Asset determines the source of investment returns, the nature and level of risk, the investment tenor, and the prospects for recovery of the Investor Customer's principal. In practice, Islamic banks possess greater access to information, analytical capacity, and professional expertise than Investor Customers in assessing the feasibility and risk profile of financing or Sharia securities. Such information asymmetry may place Investor Customers in a vulnerable position, particularly when the bank inadequately assesses the asset, fails to disclose material risks, or manages investment funds inconsistently with the agreed contractual purpose.[5]

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[3] Otoritas Jasa Keuangan Republik Indonesia, "Peraturan Otoritas Jasa Keuangan Nomor 26 Tahun 2024 Tentang Perluasan Kegiatan Usaha Perbankan" (2024).

[4] Otoritas Jasa Keuangan Republik Indonesia, "Peraturan Otoritas Jasa Keuangan Nomor 4 Tahun 2026 Tentang Penyelenggaraan Produk Investasi Perbankan Syariah" (2026).

[5] Raoudha Saidani, Neila Boulila Taktak, and Khaled Hussainey, "The Determinants of Investment Account Holders' Disclosure in Islamic Banks: International Evidence," *Journal of Risk and Financial Management* 14, no. 11 (2021), https://doi.org/10.3390/jrfm14110564.

Previous studies have highlighted several dimensions of this problem. Research on investment account holders shows that investors generally have limited capacity to directly monitor how banks manage their funds, making information disclosure essential to reducing information asymmetry and supporting informed investment decisions.[6] Studies on risk disclosure similarly demonstrate that the quality of information provided by Islamic banks affects investors' ability to evaluate exposure, uncertainty, and potential investment consequences.[7] Moreover, research on risk sharing between unrestricted investment account holders and shareholders indicates that risk distribution does not always operate proportionately, potentially exposing investors to substantial risks without equivalent economic benefits.[8]

Other studies emphasize the importance of Sharia governance, internal control, and risk management in Islamic banking operations. Sharia governance is intended to ensure that banking activities comply with Sharia principles, while governance disclosure strengthens accountability and institutional performance.[9] Research on risk management further indicates that the control environment, risk policies, monitoring mechanisms, and quality of supervision influence the

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[6] Saidani, Taktak, and Hussainey.

[7] Rihab Grassa, Nejia Moumen, and Khaled Hussainey, "What Drives Risk Disclosure in Islamic and Conventional Banks? An International Comparison," *International Journal of Finance and Economics* 26, no. 4 (2021), https://doi.org/10.1002/ijfe.2122.

[8] Ahmad Mohammad Barau, Saiful Azhar Rosly, and Zulkarnain Mohammad Sori, "Risk Sharing Between Unrestricted-Investment-Account-Holders And Shareholders of Islamic Banks: Implications on Stability and Resilience" *Journal of Islamic Monetary Economics and Finance* 9, no. 3 (2023), https://doi.org/10.21098/jimf.v9i3.1639.

[9] Md. Kausa Alam, Islam, and Runy; Mariem Ben Abdallah and Slah Bahloul, "Disclosure, Shariah Governance and Financial Performance in Islamic Banks," *Asian Journal of Economics and Banking* 5, no. 3 (2021), https://doi.org/10.1108/ajeb-03-2021-0038.r Alam, Fakir Tajul Islam, and Mahfuza Kamal Runy, "Why Does Shariah Governance Framework Important for Islamic Banks?," *Asian Journal of Economics and Banking* 5, no. 2 (2021), https://doi.org/10.1108/ajeb-02-2021-0018.

stability and performance of Islamic banks.[10] However, these studies predominantly examine institutional performance, governance effectiveness, Sharia compliance, disclosure quality, or risk-management practices. They do not specifically determine how legal liability should be allocated when losses arise from an Underlying Asset selected, structured, managed, or supervised by an Islamic bank.

More specifically, the existing literature may be grouped into four main themes. First, studies on profit-and-loss-sharing financing primarily examine determinants, profitability, intermediation costs, and financing structures.[11] Second, studies on investment accounts focus on information disclosure and the distribution of risk between investors and banks.[12] Third, studies on Sharia governance concentrate on supervision, compliance, and banking performance.[13] Fourth, Islamic banking risk studies principally analyze financing risk, liquidity

[10] Shahida Shahimi, and Abdul Ghafar Ismail Siti Najihah Noory, "A Systematic Literature Review on the Effects of Risk Management Practices on the Performance of Islamic Banking Institutions," *Asian Journal of Accounting and Governance* 16 (October 2021): undefined-undefined, https://doi.org/10.17576/AJAG-2021-16-05; Fauziah Fauziah et al., "Corporate Governance, Risk Management, and Financial Performance: The Mediating Role of Risk Governance in Indonesia's Islamic Banks," *Shirkah: Journal of Economics and Business* 10, no. 2 (2025), https://doi.org/10.22515/shirkah.v10i2.858.

[11] Sutrisno Sutrisno and Agus Widarjono, "Is Profit–Loss-Sharing Financing Matter for Islamic Bank's Profitability? The Indonesian Case," *Risks* 10, no. 11 (2022), https://doi.org/10.3390/risks10110207; Kautsar Riza Salman, "The Determinants of Profit-Loss Sharing Financing of Islamic Banks in Indonesia," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 13, no. 2 (February 20, 2023): 95–111, https://doi.org/10.18326/muqtasid.v13i2.95-111.

[12] Saidani, Taktak, and Hussainey, "The Determinants of Investment Account Holders' Disclosure in Islamic Banks: International Evidence."

[13] Memiyanty Abdul Rahim, Nur 'Ain Syahirah Shaharuddin, and Norazah Mohd Suki, "Shariah Governance Disclosure and Its Effect on Islamic Banks' Financial Performance: Evidence from Malaysia and GCC Countries," *Journal of Islamic Accounting and Business Research* 15, no. 4 (2024), https://doi.org/10.1108/JIABR-08-2021-0235; Muammar Arafat Yusmad et al., "Revitalization Supervision Islamic Banking in Enhancement Compliance in Indonesia and Malaysia," *Samarah* 8, no. 1 (2024), https://doi.org/10.22373/sjhk.v8i1.20524.

risk, and asset quality.[14] lthough these studies provide important foundations, they remain fragmented in relation to the present legal problem. They have not examined how the new regulatory structure introduced by POJK No. 4 of 2026 changes the legal consequences of Underlying Asset determination, nor have they established a clear boundary between losses constituting ordinary investment risk and losses attributable to the bank's professional failure.

Accordingly, an important research gap remains. POJK No. 4 of 2026 expressly places certain investment risks on Investor Customers, while at the same time requiring Islamic banks to comply with prudential principles, Sharia principles, governance standards, disclosure obligations, suitability assessment, fund segregation, and fiduciary duties. The unresolved issue is therefore not merely whether Investor Customers bear investment risk, but **which losses should legitimately remain with Investor Customers and which losses should be attributed to the Islamic bank because of improper asset determination, negligence, contractual or Sharia violations, conflicts of interest, inadequate disclosure, or supervisory failure**. This distinction is important because an overly broad interpretation of risk sharing could allow losses caused by the bank's professional misconduct to be transferred to Investor Customers under the justification of investment risk. Conversely, imposing liability on banks for every decline in asset performance would undermine the fundamental risk-sharing character of Islamic investment.

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[14] Agus Widarjono, Diana Wijayanti, and Suharto Suharto, "Funding Liquidity Risk and Asset Risk of Indonesian Islamic Rural Banks" 10, no. 1 (December 31, 2022), https://doi.org/10.1080/23322039.2022.2059911; Ichsan Hamidi et al., "Does the Risk and Financing Structure Affect Islamic Bank Performance in Indonesia?," *Journal of Islamic Economics and Finance Studies* 6, no. 2 (2025), https://doi.org/10.47700/jiefes.v6i2.11323.

Research Novelty. The novelty of this study lies in reconstructing Islamic banks' liability through the entire Underlying Asset cycle rather than examining disclosure, governance, risk management, or investment risk separately. This study proposes a three-stage liability model consisting of **prudent asset determination, trustworthy management and supervision, and liability and loss recovery**. The model distinguishes reasonable business risks inherent in a properly determined Underlying Asset from losses caused by the bank's failure to fulfill its professional, contractual, Sharia, prudential, or fiduciary obligations. In this way, the study develops a normative boundary of liability that integrates the principle of risk sharing with fiduciary responsibility and the principles of Islamic Economic Law.

The theoretical framework combines agency theory and stakeholder theory with the principles of Islamic Economic Law. Agency theory explains the information asymmetry arising because Islamic banks control essential information concerning Underlying Assets, financing risks, expected returns, and fund management. Stakeholder theory emphasizes that the interests of Investor Customers must be considered in the bank's decision-making and risk-allocation processes. These perspectives are complemented by the principles of trustworthiness (*amanah*), justice (*al-'adl*), transparency (*al-shafafiyyah*), mutual consent (*al-ridha*), risk sharing, and protection of property (*hifz al-mal*). Together, these principles provide the normative basis for determining when investment losses constitute legitimate business risks and when they should result in Islamic bank liability.

Based on this research gap, the study addresses two questions. First, how is the normative framework for determining Underlying Assets constructed under POJK No. 4 of 2026? Second, how should the limits of Islamic banks' liability be reconstructed when losses arise in relation to Underlying Assets? Accordingly, this study aims to analyze the normative standards governing Underlying Asset determination and to formulate a three-stage liability model that provides a clearer legal basis for distinguishing Investor Customer risk from losses attributable to Islamic banks.

METHODS

This study employs normative-doctrinal legal research, as the research questions concern the interpretation, coherence, and normative consequences of legal rules governing Underlying Asset determination and the allocation of investment losses between Islamic banks and Investor Customers, rather than the empirical frequency of losses in practice. Statutory, conceptual, and analytical approaches are used to examine the regulatory framework and the normative basis of bank liability[15]. Primary legal materials include Law No. 21 of 2008 on Islamic Banking, Law No. 4 of 2023, POJK No. 26 of 2024, POJK No. 4 of 2026, the Compilation of Sharia Economic Law, and DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000, supported by secondary materials (books and articles, 2021–2025) on Islamic investment, risk sharing, governance, and investor protection, collected through library research and legal database searches. These materials are analyzed using grammatical interpretation (to clarify key concepts such as Underlying Asset, fiduciary duty, and suitability assessment), systematic interpretation (reading POJK No. 4 of 2026 as an integrated framework linking

[15] Hari Sutra Disemadi, "Lensa Penelitian Hukum: Esai Deskriptif Tentang Metodologi Penelitian Hukum," *Journal of Judicial Review* 24, no. 2 (2022); Sholahuddin Al-Fatih, "Perkembangan Metode Penelitian Hukum Di Indonesia [Development of Legal Research Methods in Indonesia]," 2023, https://books.google.com/books/about/Perkembangan_Metode_Penelitian_Hukum_di.html?hl=id&id=EObiEAAAQBAJ.

risk allocation with prudential, Sharia compliance, disclosure, segregation, and fiduciary provisions), and teleological interpretation (assessing these provisions against the regulatory aims of distinguishing investment from deposits and ensuring proportional risk allocation).

The prescriptive analysis proceeds in three stages: identifying Islamic banks' legal duties in Underlying Asset determination, investment management, and supervision; assessing each category of loss to determine whether it stems from ordinary asset performance or from breach of the bank's prudential, contractual, Sharia, disclosure, segregation, suitability, or fiduciary obligations; and reconstructing these duties and loss patterns into a three-stage liability model prudent asset determination, trustworthy management and supervision, and liability and loss recovery yielding a normative standard for distinguishing reasonable investment risk from bank-attributable loss. Validity is maintained through normative triangulation (comparing POJK No. 4 of 2026 against higher-level legislation, fatwas, and scholarly literature) and consistency testing[16], including rejection of the alternative view that all Underlying Asset losses automatically fall on Investor Customers whenever such loss is causally linked to the bank's non-compliance.

RESULTS AND DISCUSSION

The Shift in Underlying Asset Regulation after POJK No. 4 of 2026

Before POJK No. 4 of 2026, investment activities in Islamic banking had been recognized as part of fundraising activities. However, the regulatory

[16] Sidi Ahyar Wiraguna, "Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (2024), https://doi.org/10.59818/jps.v3i3.1390.

framework did not establish a detailed asset-based investment relationship. Article 71 of POJK No. 26 of 2024 merely stated that Islamic banks could collect funds in the form of deposits and investments, provided that such activities complied with prevailing laws and Sharia principles.[17]

POJK No. 4 of 2026 clarifies the distinction between deposits and investments. Investment products are classified as restricted investments, while the Underlying Asset is positioned as a productive asset forming the basis of the investor's fund placement. Consequently, investment is no longer understood merely as funds collected by the bank but as funds legally linked to a particular asset, contract, amount, tenor, and risk.

This change transforms the legal relationship between the bank and its customer. In deposit products, the customer is positioned as a depositor, and the legal relationship is oriented toward the collection of Third-Party Funds. In investment products, the customer is positioned as an Investor Customer who places funds in productive assets and bears risks according to the applicable contract. The bank acts as a fund manager and channel of investment funds while remaining obliged to comply with prudential principles, transparency, sound governance, and fiduciary duties.

Table 1: Comparison of Underlying Asset Regulation before and after POJK No. 4 of 2026

Aspect	Before POJK No. 4 of 2026	After POJK No. 4 of 2026	Legal Implication
Regulatory basis	Investment was generally regulated under	Investment is specifically regulated under POJK No. 4 of 2026	A specific regulatory regime for Islamic Banking

[17] Otoritas Jasa Keuangan Republik Indonesia, Peraturan Otoritas Jasa Keuangan Nomor 26 Tahun 2024 tentang Perluasan Kegiatan Usaha Perbankan.

Aspect	Before POJK No. 4 of 2026	After POJK No. 4 of 2026	Legal Implication
	POJK No. 26 of 2024		Investment Products is established
Position of the asset	Not expressly formulated as the central element of an investment product	Underlying Asset is a productive asset forming the basis of investment	The asset must be identifiable and traceable
Product character	Investment was treated as a form of fund collection	Restricted investment linked to a particular asset	Investor funds cannot be equated with Third-Party Funds
Contractual structure	Investment contracts were generally regulated	Two-tier contracts: investor–bank and bank–asset-related party	Clarifies legal relations and fund flows
Amount and tenor	No specific standards	Investment amount and tenor must correspond to the underlying asset	Prevents mismatches between funds and assets
Return	Investor risk was generally stated	Return derives from the profit, loss, or income of the asset	Returns cannot be treated as fixed returns
Investor protection	General in nature	Suitability assessment, disclosure, fund segregation, and periodic communication	Strengthens Investor Customer protection

Source: Prepared by the author based on POJK No. 26 of 2024 and POJK No. 4 of 2026.

This regulatory shift bears similarities to the Malaysian experience following the Islamic Financial Services Act 2013. That regulatory framework more clearly distinguishes deposit funds, which have a relatively secure character, from investment accounts, which are subject to the risks of asset or business performance.[18] This comparison shows that the classification of products is not merely administrative but determines rights, obligations, risk distribution, and investor protection.

The regulatory change should not be understood merely as a reclassification of Islamic banking products. It changes the legal basis on which investment risk is allocated. Under the previous framework, investment was primarily recognized as a category of fund collection, whereas POJK No. 4 of 2026 links Investor Customer funds to identifiable productive assets, contractual arrangements, investment amounts, tenors, returns, and risks. Accordingly, the Underlying Asset performs at least three legal functions: it identifies the source of investment returns, determines the commercial risk legitimately borne by the Investor Customer, and establishes the object against which the bank's compliance with prudential and fiduciary duties can be assessed.

The Indonesian development is comparable with Malaysia's regulatory transition under the Islamic Financial Services Act 2013. Bank Negara Malaysia distinguished Islamic deposits from investment accounts and required Islamic banking institutions to explain the different legal and risk characteristics of the two categories to customers.[19] This distinction has subsequently been reflected at the operational level. Malaysian Islamic banks expressly state in their product disclosure documents that investment accounts are linked to the performance of

[18] Nik Abdul Rahim Nik Abdul Ghani and Mastura Mohd Saffai Mohd Shafie, "Islamic Banking Deposit Innovation Post-IFSA 2013: A Qualitative Analysis," *Samarah* 9, no. 1 (2025), https://doi.org/10.22373/sjhk.v9i1.26941.

[19] "Transition Policy under Islamic Financial Services Act 2013 - Bank Negara Malaysia," accessed August 25, 2026, https://www.bnm.gov.my/-/transition-policy-under-islamic-financial-services-act-2013.

underlying assets and are not deposit products.[20] They also recognize that financial losses are ordinarily borne by the capital provider unless the loss results from misconduct, negligence, or breach of specified terms by the *mudarib*.[21]

The comparison reveals both convergence and a distinctive feature of POJK No. 4 of 2026. Both jurisdictions separate deposit-taking from genuine investment and emphasize informed risk taking by investors. However, the Indonesian regulation expressly connects the investment amount and tenor with the Underlying Asset and requires segregation of investment funds and assets. These requirements strengthen the traceability of the investment relationship. At the same time, POJK No. 4 of 2026 remains less explicit regarding the private-law consequences of non-compliance. Although the Regulation prescribes obligations and administrative sanctions, it does not comprehensively determine how causation, compensation, and evidentiary responsibility should be assessed when an Investor Customer suffers a loss. Therefore, the principal regulatory gap is no longer the absence of an asset-based investment structure, but the absence of a sufficiently detailed loss-attribution mechanism.

Normative Construction of Underlying Asset Determination under POJK No. 4 of 2026

Article 1 points 7 through 10 of POJK No. 4 of 2026 position the Underlying Asset as a central element of Islamic Banking Investment Products. Investment products consist of funds entrusted by Investor Customers to banks

[20] "Ihsan Sustainability Investment Account (ISIA) – Bank Islam Malaysia Berhad," accessed August 25, 2026, https://www.bankislam.com/personal-banking/deposit-and-investments/investments/ihsan-sustainability-investment-account-isia/.

[21] "Awfar – Bank Islam Malaysia Berhad," accessed August 25, 2026, https://www.bankislam.com/personal-banking/deposit-and-investments/investments/awfar/.

for allocation to underlying assets. These assets must constitute productive assets.[22] This formulation indicates that the underlying asset is not merely supplementary information but constitutes the legal basis of the investment relationship and the source of both returns and risks for investors.

Article 2, paragraph (3) states that Islamic Banking Investment Products are qualified restricted investments. In addition, Article 3 paragraph (1) lays down a two-tier contractual structure, namely a fund placement contract between the bank and the Investor Customer and a fund disbursement contract between the bank and the recipient of funds or asset-related party. The structure is consistent with the two-tier mudharabah model, where the bank is an intermediary between the owners of capital and the recipients of financing.[23]

Article 3 paragraph (1) also requires the investment fund amount to correspond to the amount of the Underlying Asset, while the investment placement period must correspond to the asset's maturity period. These provisions establish the principle of asset matching. This principle is important for preventing the use of investor funds for other assets, the bank's general liquidity needs, or financing with a tenor that does not correspond to the investment period.

POJK No. 4 of 2026 further provides that investment returns must derive from the profit, loss, or income of the Underlying Asset in accordance with the applicable contract. Therefore, banks may not market investment products as

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[22] Otoritas Jasa Keuangan Republik Indonesia, Peraturan Otoritas Jasa Keuangan Nomor 4 Tahun 2026 tentang Penyelenggaraan Produk Investasi Perbankan Syariah.

[23] Amine Ben Amar and Abdel Kader Abdel, "Profit- and Loss-Sharing Partnership: The Case of the Two-Tier Mudharaba in Islamic Banking," *International Journal of Islamic and Middle Eastern Finance and Management* 16, no. 1 (January 25, 2023): 81–102, https://doi.org/10.1108/IMEFM-12-2020-0630.

products with guaranteed or fixed returns. This distinction protects investors from mis-selling and preserves the risk-sharing character of Islamic investment.

Table 2: Normative Construction of Underlying Asset Determination under POJK No. 4 of 2026

Provision	Regulatory Substance	Normative Meaning
Article 1 points 7–10	Investment consists of Investor Customer funds allocated to productive assets.	Assets become the basis of the legal investment relationship.
Article 2 paragraphs (3)–(4)	Investment products are restricted investments and recorded in the bank's statement of financial position.	Investment funds cannot be treated as ordinary deposits.
Article 3 paragraph (1) points a–d	Two-tier contracts and assets in the form of financing and/or Sharia securities	Clarifies the investor–bank–asset relationship
Article 3 paragraph (1) points e–g	Returns derive from assets; amount and tenor must match the asset	Establishes the asset-matching principle
Article 3 paragraph (1) points h–l	Investment risk, holding until maturity, and no LPS guarantee	Confirms the investment risk character
Article 5 paragraph (4)	Assets must be managed prudently and in accordance with Sharia principles to fulfill fiduciary duties.	Banks owe professional duties to investors.
Article 6 paragraph (2)	Policies on suitability assessment, disclosure, asset determination, and engagement	Asset determination must follow reviewable procedures.
Article 7	Segregation of investment funds, assets, and return calculations	Prevents commingling of funds and assets
Articles 10–11	Consumer protection, transparency, and administrative sanctions	Bank obligations have binding legal force

Source: Prepared by the author based on POJK No. 4 of 2026.

The structure is strengthened by Articles 5 to 7 of POJK No. 4 of 2026. Islamic banks are required to apply governance, risk management, prudential, and Sharia principles in managing Underlying Assets. Banks are also subject to establishing policies on suitability assessment, disclosure, asset determination mechanism, and engagement with Investor Customers.[24]

These obligations are important because investors do not possess the same capacity as banks to assess asset feasibility. Information disclosure and sound governance reduce information asymmetry and enable investors to understand the nature of assets, potential returns, risks of loss, and the fact that the Indonesia Deposit Insurance Corporation does not guarantee investment products.[25]

The provisions summarized in Table 2 demonstrate that Underlying Asset determination is not a single administrative decision. It constitutes a continuing professional process involving asset selection, contractual conformity, amount-and-tenor matching, suitability assessment, disclosure, segregation, monitoring, and Sharia compliance. This finding expands previous studies on information disclosure, which primarily emphasize the reduction of information asymmetry between banks and investment account holders. In the present regulatory framework, disclosure is only one component of a broader legal duty. Proper disclosure cannot cure an Underlying Asset that was improperly selected or structured from the outset.

A systematic interpretation also reveals an important normative tension. Article 3 paragraph (1) point i allocates risks arising from the placement of funds

[24] Otoritas Jasa Keuangan Republik Indonesia, Peraturan Otoritas Jasa Keuangan Nomor 4 Tahun 2026 tentang Penyelenggaraan Produk Investasi Perbankan Syariah.

[25] Saidani, Taktak, and Hussainey, “The Determinants of Investment Account Holders’ Disclosure in Islamic Banks: International Evidence.”

into the Underlying Asset to the Investor Customer. Read literally and in isolation, this provision could be interpreted as transferring virtually every asset-related loss to the investor. Such an interpretation, however, would weaken the normative effect of Articles 5, 6, 7, and 10, which impose prudential, Sharia, governance, suitability, disclosure, segregation, and fiduciary obligations on Islamic banks. The provisions should therefore be harmonized by distinguishing between **asset-performance risk** and **bank-conduct risk**. Article 3 paragraph (1) point i governs the former, whereas breaches of the bank's legally prescribed duties govern the latter.

A further interpretive tension arises between the recognition of investment products in the bank's financial position and the obligation to segregate investment funds and Underlying Assets from Third-Party Funds and other productive assets. These provisions are not inherently contradictory, but they require strict operational separation so that accounting recognition does not result in investment funds being economically managed as ordinary deposits. Consequently, segregation must be understood substantively rather than merely as separate bookkeeping. The bank should be capable of tracing the Investor Customer's funds, the relevant Underlying Asset, the resulting income, and the associated investment loss.

This interpretation is consistent with international Islamic finance standards. IFSB conduct-of-business principles require Islamic financial institutions to recognize, avoid, disclose, or appropriately manage conflicts of interest while taking account of their fiduciary duties toward investment account holders. Thus, the existence of risk sharing does not eliminate professional responsibility; instead, it makes governance and traceability more important because the investor bears genuine commercial exposure.

Limits of Islamic Banks' Liability for Underlying Asset Determination

Article 3, paragraph (1), point i of POJK No. 4 of 2026 provides that Investor Customers bear risks arising from the disbursement of funds to the Underlying Asset. This provision reflects the fundamental principle of Islamic investment: investors bear business risks related to the assets underlying their investment. However, this provision cannot be interpreted separately from the bank's obligations under Articles 5, 6, 7, and 10.

Under mudharabah, business losses are normally borne by the capital provider, provided such losses are not due to intentional misconduct, negligence, or breach of contract by the fund manager.[26] Since the bank participates in determining, managing, and supervising the underlying asset, it may not transfer all losses to investors without demonstrating that the losses genuinely resulted from reasonable business risks.

Islamic banks remain liable when they fail to conduct asset feasibility analysis, select assets inconsistent with Sharia principles or contractual terms, fail to align investment amounts and tenors with underlying assets, commingle investment funds with Third-Party Funds, fail to carry out suitability assessments, or fail to disclose risks transparently. Such circumstances constitute professional misconduct by the bank and cannot be characterized as pure investment risks borne solely by Investor Customers.

Table 3: Boundary between Investor Risk and Islamic Bank Liability

[26] Dewan Syariah Nasional–Majelis Ulama Indonesia, "Fatwa Nomor 07/DSN-MUI/IV/2000 Tentang Pembiayaan Mudharabah (Qiradh)" (2000).

Event	Party Bearing the Risk	Analytical Basis
Decline in business profit due to normal business conditions	Investor Customer	Ordinary business risk
Fluctuation of returns according to asset performance	Investor Customer	Consequence of profit-and-loss sharing
Improper asset feasibility analysis	Islamic Bank	Breach of prudential principle
Asset inconsistent with Sharia principles or contractual terms	Islamic Bank	Breach of contract and Sharia compliance
Mismatch between the investment amount or tenor and the asset	Islamic Bank	Violation of the asset-matching principle
Commingling investment funds with Third-Party Funds	Islamic Bank	Breach of segregation obligation
Inadequate risk disclosure	Islamic Bank	Disclosure failure
Product inconsistent with investor profile	Islamic Bank	Failure of suitability assessment
Conflict of interest in asset selection	Islamic Bank	Breach of trustworthiness and fiduciary duties

Source: Prepared by the author based on POJK No. 4 of 2026 and DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000.

This distinction is consistent with the risk-sharing principle. Risk sharing does not mean that the bank is free from the consequences of professional misconduct. Investor Customers bear only risks arising from the business performance of the asset after the bank has complied with its obligations of prudence, Sharia compliance, transparency, and supervision. Therefore, losses arising from mismanagement may not be transferred to investors in the name of risk sharing.

Table 3 establishes an important distinction that may be formulated as a **residual-risk principle**. Investor Customers should bear only those investment losses that remain after the Islamic bank has fulfilled the professional duties required by law, contract, and Sharia principles. Therefore, the fact that a loss originates from an Underlying Asset is not sufficient, by itself, to classify the loss as an Investor Customer risk. The relevant legal question is the cause of the loss and whether the bank's conduct contributed to its occurrence or magnitude.

For example, a decline in the profitability of a properly assessed financing asset caused by an unexpected deterioration in normal market conditions constitutes commercial risk and may legitimately be borne by the Investor Customer. Conversely, where the loss is associated with an omitted feasibility assessment, an undisclosed conflict of interest, a material mismatch between the investment tenor and asset maturity, inadequate monitoring, or the use of investment funds outside the agreed asset structure, the loss cannot automatically be characterized as ordinary investment risk. In such circumstances, the relevant inquiry shifts from asset performance to breach of professional duty and causal responsibility.

This conclusion develops the findings of previous research. Studies on investment account holders identify information asymmetry and limited investor monitoring capacity as fundamental governance problems. Studies on risk sharing similarly demonstrate the potentially unequal distribution of risks between investment account holders and shareholders, while Sharia governance research emphasizes internal control, supervision, and compliance. The present study connects these previously separate findings by giving them a legal consequence: information control and managerial discretion create professional duties, and breach of those duties becomes relevant to the legal attribution of investment losses.

The result is also consistent with the *mudharabah* principle contained in DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000. The capital provider normally bears commercial loss, but this rule does not extend to losses arising from intentional misconduct, negligence, or breach committed by the fund manager. International banking practice demonstrates a similar distinction. Malaysian Islamic investment-account disclosures expressly distinguish normal investment losses borne by investors from losses associated with misconduct, negligence, or breach by the *mudarib*. Consequently, the proposed distinction between Investor Customer risk and bank liability does not undermine risk sharing. Rather, it preserves genuine risk sharing by preventing professional misconduct from being disguised as commercial risk.

Reconstruction of Islamic Bank Liability Based on the Underlying Asset Cycle

POJK No. 4 of 2026 establishes bank obligations, but these obligations need to be reconstructed into an operational model capable of distinguishing investors' business risks from bank errors. This model is built through three stages: prudent asset determination, trustworthy management and supervision, and liability and loss recovery.

The principal innovation of this study is the reconstruction of Islamic bank liability according to the life cycle of the Underlying Asset. Conceptually, the model is based on the proposition that liability cannot be assessed only after a financial loss has materialized. The legal source of liability may arise before the investment is made, during the management of the asset, or when the cause of loss is investigated. The model therefore establishes three interconnected stages: **prudent asset determination, trustworthy management and supervision, and liability and loss recovery**.

The first stage operates *ex ante*. Prudent asset determination requires the bank to establish that the proposed Underlying Asset is Sharia-compliant, economically feasible, consistent with the contractual mandate, proportionate to the Investor Customer's profile, and compatible with the amount and tenor of the investment. The central legal question at this stage is whether the bank employed a reasonable and documented professional process before exposing Investor Customer funds to the asset. [27]

The second stage operates continuously during the investment period. Trustworthy management and supervision require segregation of funds and assets, monitoring of asset performance, continuing disclosure of material developments, management of conflicts of interest, and effective internal and Sharia controls. The bank's duty therefore does not end when the Investor Customer signs the investment agreement. Material changes affecting the quality, legality, risk profile, or expected performance of the Underlying Asset must remain subject to professional supervision. [28]

The third stage operates *ex post*, after a material loss has occurred. Liability and loss recovery require identification of the cause of loss before responsibility is allocated. The bank should demonstrate whether the loss resulted exclusively from reasonable business circumstances or was caused or aggravated by a failure at the asset-determination or management stage. Where

[27] Ahmad Ali Jan, Fong Woon Lai, and Muhammad Tahir, "Developing an Islamic Corporate Governance Framework to Examine Sustainability Performance in Islamic Banks and Financial Institutions," *Journal of Cleaner Production* 315 (2021), https://doi.org/10.1016/j.jclepro.2021.128099; Rafiullah Sheikh, Mohammad Ayaz, and Muhammad Abubakar Siddique, "Sharīʻah Governance and Sharīʻah Non-Compliance Risk Management: A Maqāsid Sharīʻah Based Appraisal," *Journal of Islamic Thought and Civilization* 13, no. 1 (June 20, 2023): 270–91, https://doi.org/10.32350/JITC.131.19.

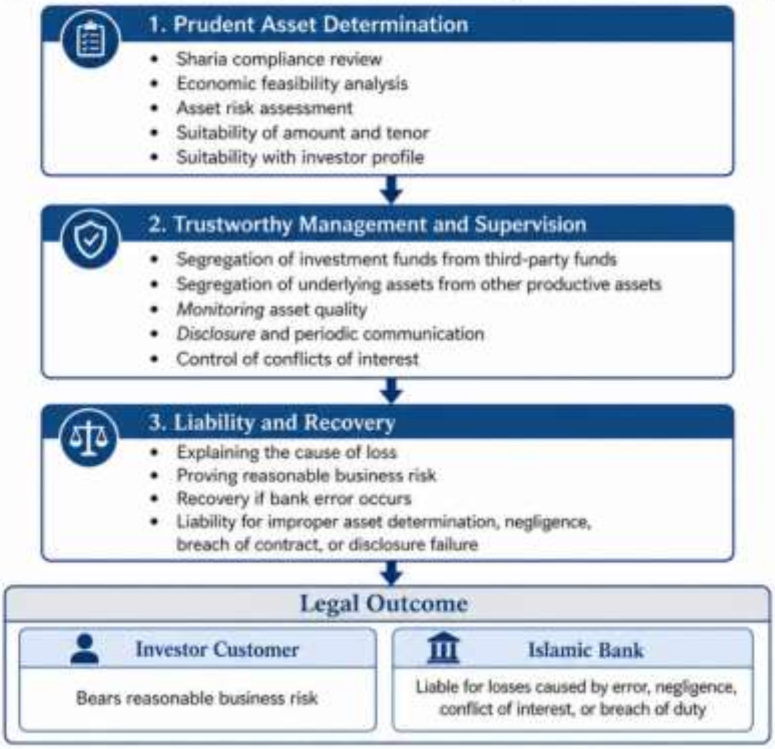
[28] Ben Abdallah and Bahloul, "Disclosure, Shariah Governance and Financial Performance in Islamic Banks."

a breach contributed to the loss, risk-sharing principles should not be used to transfer the consequences of that breach to the Investor Customer. [29]

The model differs from the general concept of fiduciary duty in two important respects. First, fiduciary duty establishes a broad standard requiring the bank to act prudently, loyally, and in the interests of the parties whose funds it manages. The proposed model converts that general duty into **stage-specific and auditable obligations**. Second, the model connects breach of duty with **loss attribution**. It therefore asks not only whether a fiduciary obligation existed, but also when it arose, what evidence demonstrates compliance, whether a breach occurred, and whether the breach contributed to the Investor Customer's loss.

[29] Otoritas Jasa Keuangan Republik Indonesia, Peraturan Otoritas Jasa Keuangan Nomor 4 Tahun 2026 tentang Penyelenggaraan Produk Investasi Perbankan Syariah.

Diagram of the Reconstruction of Islamic Bank Liability Based on the *Underlying Asset* Cycle



Source: Prepared by the author based on POJK Number 4 of 2026

Table 4: Reconstruction Model of Islamic Bank Liability Based on the Underlying Asset Cycle

Stage	Principal Bank Duty	Required Evidence	Liability Test
1. Prudent Asset Determination	Sharia review, feasibility assessment, risk analysis, amount-and-tenor matching, suitability assessment, and conflict screening	Asset-analysis memorandum, Sharia approval, investor profile, risk assessment, contractual documents, and internal approval	Did improper selection or structuring cause or materially contribute to the loss?
2. Trustworthy	Fund and asset segregation,	Separate records, monitoring reports,	Was the loss caused or

Stage	Principal Bank Duty	Required Evidence	Liability Test
Management and Supervision	monitoring, continuing disclosure, internal control, and conflict-of-interest management	investor communications, Sharia review, internal control and audit records	aggravated by negligent management, non-disclosure, commingling, or supervisory failure?
3. Liability and Loss Recovery	Loss investigation, causal assessment, explanation to Investor Customers, corrective action, and recovery	Loss-attribution report, evidence of procedural compliance, causal analysis, complaint records, and remedial measures	If the bank cannot establish that the loss arose exclusively from reasonable business risk, responsibility must be allocated according to its causal contribution.

Source: Prepared by the author based on POJK No. 4 of 2026, DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000, and the analysis in this study.

The practical implication for Islamic banks is that compliance should generate an evidentiary trail throughout the Underlying Asset cycle. Asset-analysis documents, Sharia approvals, suitability records, segregation records, monitoring reports, disclosures, and loss investigations are not merely administrative documentation; they provide the evidence required to distinguish reasonable investment risk from bank-caused loss. For regulators, the model provides a basis for developing minimum standards for asset-determination documentation, monitoring, loss investigation, complaint handling, and investor recovery.

Because POJK No. 4 of 2026 is a recent regulation and this study uses a normative-doctrinal method, the article does not claim to provide empirical evidence of uniform implementation across Indonesian Islamic banks. Its practical application is therefore formulated as a normative-operational framework rather than as a description of existing Indonesian banking practice. Nevertheless, comparative practice provides evidence that such differentiation can be operationalized. Malaysian Islamic banks, for example, use product disclosure documents that expressly identify an investment account as an investment rather than a deposit, connect returns and losses to the performance of investment assets, disclose the absence of deposit-insurance protection, and explain the *mudarib's* responsibility for misconduct or negligence.[30] Future empirical research should examine how Indonesian Islamic banks translate the requirements of POJK No. 4 of 2026 into comparable product-governance and loss-attribution procedures.

Maqasid al-Shariah and Fiqh al-Muamalat Basis of the Liability Model

The three-stage liability model also requires a deeper justification from the perspective of Sharia Economic Law. *Hifz al-mal* should not be understood merely as the preservation of the nominal value of an Investor Customer's capital. Such an interpretation could transform an investment product into a de facto guaranteed deposit and eliminate genuine risk sharing. Rather, *hifz al-mal* requires the lawful acquisition, prudent management, transparent allocation, and protection of property against avoidable loss. In a maqasid-oriented approach, legal rules should therefore protect Investor Customers from preventable

[30] "Ihsan Sustainability Investment Account (ISIA) – Bank Islam Malaysia Berhad."

professional misconduct while preserving their exposure to legitimate commercial risk.[31]

The principle of *maslahah* reinforces this distinction. The relevant public and individual benefit does not lie in eliminating all investment losses, because uncertainty and business risk form part of legitimate investment activity. The relevant *maslahah* lies in creating a fair allocation of risk according to knowledge, control, and responsibility. Investor Customers accept the commercial performance risk of an identified asset, while Islamic banks possess professional expertise, information, and managerial control over asset determination and investment administration. It would therefore be inconsistent with *maslahah* and justice to transfer a preventable loss caused by the bank's own professional failure to a party that lacked comparable capacity to prevent it.

This construction is consistent with the maxims *al-ghunmu bi al-ghurmi* and *al-kharaj bi al-daman*, which connect entitlement to economic gain with exposure to legitimate risk and responsibility. These principles justify the Investor Customer's exposure to genuine business risk because the investor is entitled to the return generated by the investment. However, they do not justify transferring losses resulting from negligence, breach of mandate, concealment, conflict of interest, or violation of Sharia principles to the investor.

The analysis is further reinforced by the principle *la darar wa la dirar* and the legal maxim *al-darar yuzal*. A contractual structure should neither permit the bank to cause avoidable harm to Investor Customers nor allow losses resulting from the bank's breach to remain unremedied. The removal of harm,

[31] Fadilla Syahriani et al., "Application of Maqasid Al-Shariah in Islamic Economics and Finance as the Development of Products of Islamic Value," *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2024), https://doi.org/10.57255/hakamain.v2i1.322.

however, should correspond to the cause of the harm. Accordingly, where a loss is entirely attributable to normal market or business performance, transferring that loss back to the bank would unjustifiably eliminate investment risk. Where a bank's breach caused or aggravated the loss, requiring the bank to bear the corresponding consequences restores the balance between risk, responsibility, and entitlement.

Accordingly, *amanah*, *al-'adl*, *maslahah*, *hifz al-mal*, risk sharing, and the relevant fiqh maxims operate as an integrated normative framework rather than as separate ethical principles. **Amanah** determines the quality of fund management; **justice** requires proportional allocation of losses; **maslahah** protects the legitimate interests of both investors and the Islamic banking system; **hifz al-mal** protects property against avoidable impairment; and the principles of risk and liability ensure that legitimate commercial loss is not confused with professional misconduct. This integrated Sharia Economic Law framework provides the normative foundation for the three-stage liability model proposed in this study.

CONCLUSION

POJK No. 4 of 2026 establishes Islamic Banking Investment Products as restricted investments linked to identifiable Underlying Assets. This framework connects investment contracts, amounts, tenors, returns, and asset performance while requiring segregation, suitability assessment, disclosure, governance, and fiduciary obligations. The study finds that investment risk allocation does not transfer all losses to Investor Customers. Investors bear normal asset-performance risks, while Islamic banks remain liable for losses caused by improper asset determination, negligence, Sharia or contractual violations, conflicts of interest, fund commingling, inadequate disclosure, or supervisory failures. Therefore, liability allocation should follow a residual-risk principle distinguishing asset-performance risk from bank-conduct risk.

This study contributes a normative framework integrating risk sharing with Islamic banks' fiduciary responsibilities through a three-stage liability model: prudent asset determination, trustworthy management and supervision, and liability and loss recovery. The model clarifies the relationship between bank obligations, evidence of compliance, breach of duty, and investment losses based on Islamic legal principles, including amanah, al-‘adl, maslahah, and hifz al-mal.

From a regulatory perspective, POJK No. 4 of 2026 strengthens asset-based investment regulation but requires further guidance on loss attribution, causation, evidence, compensation, and recovery mechanisms. Future research should empirically examine the implementation of Underlying Asset determination, disclosure, governance, and dispute resolution practices in Islamic banking institutions.

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