

Legal Protection for Investors Against Illegal Investment

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Abstract

This research was conducted with the aim of exploring the rise of fraudulent or illegal investments in Indonesia. The outbreak of fraudulent investment cases in the digital transformation era has harmed many people. There are various types of fraudulent investment modus operandi, including using Ponzi Schemes with cryptocurrency mode, using social media and influencers, and claiming to be an investment company that has been licensed by OJK. The research method used a literature study. The results show that the cause of people becoming victims of illegal investment fraud is not only because they are tempted by the large profits offered, but also the lack of knowledge of victims about the mechanism and workings of investment products. When investing, it should be in a place with clear legality. Investors invest in platforms that are licensed and supervised by regulators in the financial sector. Therefore, it is very important to verify and check the legality of the investment platform. In addition to socializing and educating the public regarding illegal investments, the Investment Alert Task Force also plays a role in preventing unlicensed business activities that have the potential to harm the public. The public is asked to be cautious of illegal investment offers. Investors must understand financial and digital literacy before investing because it is important to prevent investment fraud. Increased financial literacy will increase public knowledge of legal financial products.

Keywords: Economic Growth, Investment Alert Task Force, Illegal Investment

INTRODUCTION

"Wanting to get rich, instead of languishing because of bad investments" is more or less the headline on an online news portal. Flawed investment crime practices eventually claimed many victims. What is quite alarming is the type of illegal investment crime based on data from time to time, the types, motives, victims and losses continue to increase. Legal devices do exist if they are based on morals according to (Putra, 2018) this can be an argument that character building is a fundamental thing that must be owned by every human being to maintain every noble behavior (Putra, 2018). It cannot be denied that the consequences of development in a developed and developing country, namely the widespread use of digitalization, provide opportunities for criminals to carry out their actions. If traced and observed, the rise of illegal investment crimes is the result of the fairly good economic growth in Indonesia, even though it has just come out of a pandemic and the global economic situation is also not bright, the Indonesian economy can be a benchmark that economic activity in society is still stretching (Huda, 2021). And based on the data, the number of middle class also continues to grow, where the contribution of the creative economy to the national economy in 2013 showed very significant figures, namely the growth of the creative economy of 5.76% above the national average growth, an increase in GDP of 7.05% and absorption or employment opportunities of 10.7%. From these statistics, obtained in 2013, it shows that it is important to encourage and improve the existing creative economy and assist the developing creative economy industry to be more successful and increase (BPS Ekraf, 2015).

Even the World Bank's analysis is quite melodious in its report entitled "Aspiring Indonesia - Expanding the Middle Class" states that almost half of the Indonesian people are heading towards the middle class. This amounts to 114.7 million people. This amounts to 44% of Indonesia's total population. This number is the largest compared to other groups. And in the explanation, it is mentioned that the middle class is very important to unlock Indonesia's development potential and push Indonesia towards high-income country status (Kusnandar, 2022).

Apparently, this also increases the occurrence of crime in the investment sector. Investment is very important for the economic development of a country (Sulhani & Mughni, 2022). A country will be difficult to develop if there is no investment that supports the process. Investment can also be called investing money or capital that aims to benefit (Arno, 2017). Investment is an obligation to inject funds into an asset for a certain period of time in the future. Crimes in the investment sector give rise to fictitious investments that are widely offered to the public by illegal investment companies (Amanda, Noval, & Herlina, 2022). People who actively invest sometimes lack vigilance and clarity in making investment choices (Syauket, Amelia, & Adawiah, 2022). Victims of this fictitious investment are not only from the lower middle class, but also the upper class or upper class who can be classified as educated or well educated (Julia, Dewi, & Wifyantara, 2021).

The rise of investment fraud in Indonesia has been driven by several factors, such as the lack of public awareness of the financial sector, especially legal investments, and those who seek high returns while ignoring the risks (Asti, Putu, & Dewi, 2020). There have been many studies on illegal or fictitious investments, some of which are presented in table 1 below.

Table 1. Research on Fictitious Investment

No	Author	Title	Findings
1	Shilvia Amanda, Sayid Mohammad Rifqi Noval, Elis Herlina (2022)	Law Enforcement to Money Game Practices with Ponzi Schemes in Illegal Investments in the Tiktok E-Cash Application in Indonesia	The results of the study state that law enforcement against money game practices in illegal investments can be carried out through legal substance in Article 378 of the Criminal Code and Article 28 Paragraph (1) of the ITE Law, the active role of legal structures and changing the legal culture of society. Dispute resolution against money game practices in illegal investments can be done through complaints to the OJK or complaints through the Police for fraud and spreading news.
2	Aldika Yafi Raharjo (2020)	Restitution of Victims' Losses as a Result of Investment Illegal by Cooperatives	In terms of legal acts, it is a crime or a criminal offense if the <i>actus reus</i> of the crime is committed by humans as perpetrators of criminal acts. In the Legal Entity Theory, in addition to humans, legal entities are also seen as legal subjects. This is the basis for the justification of criminal liability by cooperatives.
3	Rhizaldy, Vicky (2018).	Legal Protection of Investors in Ponzi Scheme Businesses in Indonesia	The proliferation of fictitious investments offered to the public with episodes of victims with a high loss value, makes the author question the government's efforts to protect investors. So hopefully the government continues to strive to provide clarity on the status of ponzi investments and how legal protection efforts for investors who have lost their money disadvantaged.
4	Natalia Lorien, Tantimin (2022)	Investment Fraudulent Investment with Ponzi Scheme System: A Criminal Law Study	In this study, the discussion of the role of law enforcement against the perpetrators of fraudulent investments using ponzi schemes and presents the legal protection efforts given to victims of fraudulent investments ponzi schemes in the application 'alimana'.

From the research on illegal or fictitious investments presented in table 1, in brief, there are similarities between these studies, namely that illegal investment offers are still rampant and victims continue to grow. Therefore, in this research, the author wants to "photograph" the presence of the government through the Investment Alert Task Force, especially its steps in tackling and preventing various kinds of illegal investments.

There are at least two types of people targeted by illegal investment companies: those who do not know that the proposed company or the proposed investment product is not licensed (unclear legality), and those who already know the company's license but have high expectations (Amanda, Noval, & Herlina, 2022). To date, illegal investments have caused concern to the general public, with methods often presented, such as promising investment returns or unreasonable returns, providing information through online channels where the company's

headquarters are unclear. Investments are also offered in various forms ranging from gold investments, Hajj and Umrah investments, real estate investments, cooperatives, stocks and others. The Financial Services Authority is fully accountable as an independent organization responsible for the management, supervision, and protection of the interests of consumers and the public in order to create a healthy and strong financial sector. Given the importance of investor protection, a clear and solid legal instrument is needed to regulate it (Amanda, Noval, & Herlina, 2022).

Indonesia currently has a Financial Services Authority Regulation (POJK) that regulates investor protection, specifically POJK No. 21 of 2011 concerning the Financial Services Authority on Financial Services Consumer Protection. The Financial Services Authority (OJK), the Ministry of Trade, the Ministry of Communication and Information Technology, the Ministry of Cooperatives and Small and Medium Enterprises, the Indonesian Attorney General's Office, the National Police, and the Investment Coordinating Board (BKPM) agreed to strengthen cooperation in the Investment Alert Task Force to prevent and handle illegal investment activities and transactions (Ani, Wulandar, & Faizal, 2023).

The Task Force for Handling Allegations of Unlawful Acts in the Field of Community Fund Raising and Investment Management or Satgas Waspada Investasi is a forum for coordination between regulators, supervisory agencies, law enforcement agencies and other related parties in terms of handling allegations of unlawful acts in the field of community fund raising and investment management (Arno, 2017). Therefore, by looking at the developments that occurred with the rampant fraud committed by the company, on the basis of this phenomenon, a special unit was formed called the Investment Alert Task Force or better known as the Investment Alert Task Force, where this task force supervises non-financial institutions to fill the void in the supervision of financial products, the formation of the Alert Task Force aims to monitor unlawful acts in the field of raising funds in the community and investment management can be identified early and accelerate the process, the law against illegal investment practices that occur a lot in society, especially in the regions (Takalamingan, 2021).

Therefore, it is necessary to consider the authority of the Financial Services Authority to protect the public from legitimate investment activities, moral hazard from illegal investment activities arising from the weak supervisory system of financial institutions caused by several factors, namely (1), the weakness of the architecture of the financial supervisory system in Indonesia; (2). No communication between financial supervisors; (3). Selfishness remains high among supervisors of financial institutions. With this, the role of the Investment Alert Task Force in investigating fictitious investment crimes is a necessity to be followed up and guarded so that the number of victims of fraudulent investment does not increase

RESEARCH METHOD

The method used in this research is to use a normative juridical approach. Where normative legal research is based on document studies, namely using secondary data sources in the form of regulations, legislation, court decisions, legal theories, and opinions of legal experts. The normative juridical approach studied is the legal aspects, legal principles and legal rules on investor dispute resolution against illegal investment. As stated by (Ibrahim & Johny, 2013) that normative juridical research is a scientific research procedure to find the truth based on scientific logic from the normative side

RESULTS AND DISCUSSION

The easier information is obtained by individuals related to investment, making fraudulent investment scams more prevalent. The latest news about the alleged Net89 trading robot investment fraud that fled funds amounting to 10 trillion rupiah. For this reason, it is always worth being aware of and recognizing the characteristics of fraudulent investments so as not to be easily deceived and fall into it. Usually, fraudulent investments offer a large and tantalizing profit. That way, the victims will be more interested and invest without thinking (consider impact). However, it is not the profit that will be obtained, but rather the loss that is obtained if it is trapped in it. The types of fraudulent investments include: (1) Online Investment / Robot Trading, which is a type of fraud where the perpetrators will look for or attract victims through advertisements on social media. In other words, they create an advertisement on social media that contains an invitation to invest by promising a large profit in a short time; (2) Bodong Cooperative, which is by using a fictitious cooperative where the perpetrators offer victims who want to save their money in the cooperative to be promised a large interest every

month; (3) Bodong Arisan, which is where bodong arisan is carried out in a group that collects a certain amount of money from its members, but in the background the perpetrators offer a large profit every time someone gets a turn to win. Related to the characteristics of the bodong investment mode before starting an investment are (a) Information related to the investment business process is unclear; (b) Offering bonuses if you succeed in getting new members; (c) Promising unreasonable profits in a short time and without risk; (d) Promising invested assets are safe and provide a guarantee of repurchase; (e) Offering investment products through social media, whatsapp groups, telegrams that include photos of artists, religious leaders or *public figures* (Febriyanto & Arrie, 2023).

As stipulated in Law No. 21/2011 on the Financial Services Authority, the powers and duties of the OJK are to supervise Financial Services Institutions (FSIs) in the capital market sector, the non-bank financial industry sector (such as insurance, pension funds, finance companies, etc.) and starting in 2014 it will also supervise the banking sector (Commercial Banks and Rural Banks) (Lorien, 2022). Most of the companies or parties conducting illegal investment offerings are not Financial Services Institutions (FSIs) so they are not registered and supervised by the OJK (Sulhani & Mughni, 2022). Thus, OJK cannot ensure the legality of the company. Related to this, to participate in fighting illegal investment offers that harm and disturb the community. OJK has two strategies, namely: Preventive (Apriani, 2019).

Socializing and educating the public about the characteristics of fundraising activities and managing illegal investments sharing knowledge with law enforcement and regulators in the regions (Yitawati & Sumanto, 2020). Helping to coordinate efforts between relevant agencies to accelerate the handling process through the cooperation framework of the Task Force for Handling Allegations of Unlawful Actions in the Field of Fundraising and Investment Management or better known as the Investment Alert Task Force (Benuf, Mahmudah, & Priyono, 2019). Cases and public complaints related to illegal investments reported to OJK will be coordinated with the Investment Alert Task Force for handling. The Investment Alert Task Force was formed by the Commissioner of the Financial Services Authority as stipulated in the Decree of the OJK Board of Commissioners Number: 01/KDK.04/2013 dated June 26, 2013. From the Decree of the OJK Commissioner, a Memorandum of Understanding between the Heads of Agencies and Members of the Investment Alert Task Force was drafted as the legal umbrella of the Task Force to strengthen the joint commitment between ministries/agencies in the implementation of the main tasks of the Investment Alert Task Force (Decree of the OJK Commissioner Board Number: 01/KDK.04/2013 dated June 26, 2013). The Memorandum of Understanding is contained in the Memorandum of Understanding of the Financial Services Authority Number: PRJ-07/D.01/2016, Ministry of Trade of the Republic of Indonesia: 822/M.DAG/MOU/6/2016, Ministry of Communication and Information of the Republic of Indonesia Number: 1039/MOU/M.KOMINFO/HK.03.02/06/2016, Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 09/KB/M.KUKM/VI/2016: Attorney General of the Republic of Indonesia Number: KEP - 459/A /JA /06/2016, Police of the Republic of Indonesia Number: B/35/VI/2016, Coordinating Agency of the Republic of Indonesia, and the National Police. Investment Number: 25/KS/BKPM/2016 on Coordination of Prevention and Handling of Allegations of Unlawful Acts in the Field of Public Fund Raising and Investment Management (Memorandum of Understanding Contained in the Memorandum of Understanding of the Financial Services Authority Number: 25/KS/BKPM/2016). Number: PRJ-07/D.01/2016, n.d.). Article 5 paragraph 1 of the memorandum of understanding explains that the Investment Alert Task Force carries out the task of preventing and handling allegations of unlawful acts in the field of collecting public funds and managing investments. Paragraph 2 of the same article explains that the membership of the Investment Alert Task Force is appointed by the parties and stipulated based on the Decree of the Board of Commissioners of the Financial Services Authority. Furthermore, the Second and Third parts of articles 8 and 9 of this Memorandum of Understanding contain the prevention of illegal acts in the Field of Community Fundraising and Investment Management as well as the Handling of alleged illegal acts in the Field of Community Fundraising and Investment Management carried out by the Investment Alert Task Force. Consumer and community protection is contained in Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority (Permata, 2020).

As in its supervisory duties, OJK carries out two supervisory actions, namely initial action, or called preventive action (*to prevent*). Then repressive action (in an effort to follow up the criminal process). Currently, there are not a few illegal investments that are rampant (Zuchroh, 2021). Indeed, with a viral case a few years ago, a hot case involving a well-known celebrity named Indra Kenz or better known as *crazy rich* from Medan. The Criminal Investigation Agency (Bareskrim) of the National Police

Headquarters officially issued a detention warrant for influencer Indra Kesuma alias Indra Kenz after being named a suspect in a case of alleged investment fraud through the Binomo Application. Therefore, we hope that OJK as the Head of the Investment Alert Task Force must be able to detect every activity under the guise of investment (Lobo, 2021). Moreover, they use celebrities or artists as part of the *marketing team*, of course ordinary people are easily slipped into business activities with a delicious aroma, aka fast and large profits.

CONCLUSION

Based on the explanation above, it can be concluded that the legal protection of investors by brokerage companies is not sufficient to accommodate the interests of investors. Law Number 32 of 1997 only regulates dispute resolution and does not further mention the form of legal protection efforts that must be made. Settlement of disputes against investors is carried out by civil settlement including settlement within the Futures Brokerage, settlement through the futures exchange institution, and settlement through Bappebti. Criminal settlement is carried out by Bappebti civil servant investigators or through the Police and Criminal Justice Institution. And the Financial Services Authority has cooperated with relevant ministries and institutions to reduce space in conducting legal protection to investors as stated in the Memorandum of Understanding contained in the Financial Services Authority Memorandum of Understanding Number: PRJ-07 / D.01 / 2016.

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