

CRIMINAL LIABILITY FOR PERFORMERS OF ILLEGAL ONLINE INVESTMENTS USING PONZI SCHEMES

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Abstract

Technology and information are advancing at a rapidly increasing pace in the current era of globalization. Unfortunately, many of the benefits of technological progress are being abused as they spread. The fraudulent crime mode is just one of the many new types of crime that are constantly popping up. Ponzi schemes have become more common in online illegal investment scams in recent years. This study aims to understand better the regulation of illegal online investment crimes with the Ponzi scheme in Indonesia and the criminal liability for illegal online investment actors with the Ponzi scheme in Indonesia. This writing uses normative legal research. In this article, illegal online investment with Ponzi schemes has started operating in Indonesia. This writing discusses the unregulated form of illegal online investment with Ponzi schemes in Indonesia. Illegal online investment with this Ponzi scheme is related to Article 378 of the Criminal Code and the Information and Electronic Transaction Law. In the case of illegal online investments with Ponzi schemes, the perpetrators will promise the victims large profits quickly. The absence of clear regulations regarding forms of illegal online investment fraud with the Ponzi scheme in Indonesia impacts the unclear criminal responsibility for perpetrators who invest illegally online with the Ponzi scheme in Indonesia.

Keywords: *Criminal liability, illegal investment, Ponzi scheme.*

INTRODUCTION

The rapid spread of technological and information developments in modern times has a universal impact, occurring in rich and developing countries. To remain competitive in today's more efficient and advanced global market, every country must ensure that every citizen follows the latest technological advances and knowledge. Physical boundaries between countries are acceptable in the current era of globalization. Various individuals worldwide feel the effects of this rapid development of technology and information. The world's population and nations have merged into one unit due to the rapid flow of globalization (development). It cannot be denied that the rapid spread of information has changed society; more transparency and participation in the information sector allows people to share the latest news with friends and family members without relying on traditional media such as newspapers and television. What happens in one part of the world may have a domino effect in other parts. The possibility of criminal acts/crimes in the economic sector carried out by business actors, whether in the form of individuals or companies, including natural consequences of the current rapid development of technology and information, which can cause losses and victims.

Economics is just one area where the Internet has proven profitable in recent years. Technological and communications advances partly drive rapid global economic growth. One example of how global society is currently connected through technology is through online investment. However, along with technological advances, technological advances have been misused, giving rise to forms of crime that are currently also increasing. One form

of crime is fraud, which can take the form of online investment offers through social gatherings, forex businesses, investments with high-interest profits, Etc. One of the most essential parts of every country's economy is investment, which serves two purposes: first, to show the correlation between investment and GDP, and second, to finance the acquisition of new capital goods and industrial machinery to increase output and reduce waste. In the economy, capital goods will be used to create new products and services in the future. Investments are made so that basic desires can be fulfilled. Investors often engage in investment activities to support their families. A second investment must be made to satisfy the need for property. It proves that the commercial sector will be essential to a country's economy.

Business competition in Indonesia is very fierce because one entrepreneur and another has their own goals along with the development of the country's economy. An example of how business has developed in line with the digital era is the emergence of mobile device-based commerce and finance. However, many companies and people utilize technology to engage in matters often referred to as investment fraud, corporate fraud, or counterfeit goods to avoid obtaining the necessary licenses and permits from the Financial Services Authority. People are given and enticed with promises of high income and money in the shortest possible time (immediately) without having to work hard. The fundamental goal of those involved in illegal or fraudulent investment activities is to make as much money as possible from investors, regardless of the consequences for those who fall victim to their schemes. Those who invest capital in perpetrators are often guaranteed profits from their investment capital.

The potential for return of capital with large profits attracts potential investors to want to invest. Due to a lack of knowledge about how to invest appropriately, many people fall victim to fraudsters. No one wants to risk losing money by investing it because the essence of investing is to make a profit. Most individuals in Indonesia still need to learn more about investment-related things. When faced with an investment opportunity, most individuals first consider the return on capital with the profits they might see. For this reason, most parties and institutions that offer investment emphasize the potential for financial profits. Despite the apparent danger, some individuals appear to be attracted by the prospect of significant financial gains. As a result, the concept of fraudulent investments or investment fraud developed. It is as if a company or government agency manages public money and invests in several businesses, but one of those investments needs to be more active or legal. The criminal regulation in this article is an act of *Bedrog*, namely if someone intentionally and with their will and knowledge causes another person to go astray. This article is relevant to the application of law and criminal sanctions against illegal investment activities because they involve fraud. As per Article 378 of the Criminal Code, it is against the law to "move another person to hand over the goods by using a false name or dignity, by deception, or with a series of lies" to benefit himself unlawfully. Or else. The person who lies to him to get something from him or to have his debts forgiven or reduced is punished with a maximum prison sentence of 4 years.

Based on this article, the elements of a criminal act of fraud are:

1. "Actions are carried out with the intention of benefiting oneself or others;
2. This act is against the law;
3. The act is committed using a false name or false dignity, deception, a series of lies;
4. This action aims to persuade other people to hand over something to him, or to give a debt or write off a receivable."

In the case of illegal investment through online systems, things are different compared to other types of fraud because investors and investment bidders never actually meet in person; instead, the investor sends the money to the investment bidder's bank account. Unfortunately, victims of crimes involving unlawful internet investments are usually unaware they are victims. After some time or after the victim has experienced a loss, they find out they are victims of a crime. Extending the time required to investigate or track down criminals who have moved outside the area or even further afield is necessary.

Nowadays, the Internet is flooded with illegal investment scams. The Ponzi scheme was used as a fraud method in this case. Ponzi schemes are often used in illegal investments, and they work by funneling money from new investors to existing investors through incentive payments to existing investors. To maximize the return on members' investment, the value of the investment made by each participant must be increased constantly, so the profits obtained by the participants will stop if no more participants join or increase the value of their investment. Because the principle established is the principle of "dig a hole, cover the hole." However, this form of illegal online investment using a Ponzi scheme has yet to be regulated in Indonesia. Previously, Research on illegal, fraudulent investments has been researched by Muhamad Iqbal Ikhsani, Chitto Chumbadrik, IBLAM College of Law, Central Jakarta, DKI Jakarta, Indonesia, with the title Legal Responsibility of Perpetrators of Investment Fraud Crimes. This research discusses the legal responsibilities of perpetrators of investment crimes in general. Meanwhile, this research will focus more specifically on criminal liability for illegal online investment perpetrators who use Ponzi schemes. Based on the background above, the author wants to write a paper entitled "**Criminal Liability for Actors in Illegal Online Investment Using Ponzi Schemes**," which is the formulation of the problem, namely, how to regulate the criminal act of illegal online investment with a Ponzi scheme in Indonesia and how criminal liability against perpetrators of illegal online investment with a Ponzi scheme in Indonesia.

LITERATURE REVIEW

The rule of Law concept

The Indonesian constitution stipulates that the Indonesian State is legal; this is explained in the state constitution, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Law is an inseparable part of social life, so there is always law in society. As a legal state, law has a very fundamental role in the life of the nation and State. It means that the law must be a central point in all individuals' lives, the nation, and the State.

In the sense of the rule of law (*Rechtsstaat*), every person in carrying out activities or actions must comply with what has been regulated in the law,

Legal Certainty Theory

Legal certainty is established by establishing these norms and enforcing these regulations. Thus, it can be concluded that normative legal certainty exists when a rule is developed and published confidently because it regulates explicitly and rationally, without ambiguity or room for multiple interpretations, and with predictability. When people, whether as individuals, groups, or institutions, act within the limits and boundaries of the law, we say that there is legal certainty. According to Maxeiner, there are two main objectives of legal certainty: (1) directing society to obey the law and (2) protecting society from the possibility of arbitrary government action in formulating and enforcing the supremacy of the law. Efforts should be made to codify the law in statutes made by legitimate authorities. Only then can we be sure that the regulations made by these bodies have a legally binding component? There is no doubt about certainty (of circumstances). Laws, in general, must be transparent and fair. The problem of legal certainty can only be resolved normatively, not sociologically. When a rule is developed and published with absolute confidence that it regulates conclusively and rationally, we say that the rule has legal certainty.

METHOD

This paper will use normative legal research in its construction. In this field of study, law can be a codified collection of laws or a set of rules and standards that society uses to behave. The study of legal principles, norms, legal history, legal comparison, legal inventory, legal systematics, and legal synchronization all fall under the umbrella of normative legal research. This research will focus on the need for more precise regulation regarding forms of illegal online investment using Ponzi schemes in Indonesia. This normative legal study bases its study on pre-existing legal texts. Binding core legal texts and explanatory secondary legal sources are included here. Both the statutory approach and the case method approach were used in writing this research. The research will be carried out as part of a legal approach, which requires a thorough assessment of applicable laws and regulations. Research or review findings will provide a basis for addressing identified problems. To use case techniques, we will examine situations relevant to the topic to be discussed, in this case, unlawful investment in a Ponzi scheme.

The 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, and Law No. 21 of 2011 concerning the establishment of the Financial Services Authority are examples of legal materials or legally binding documents. The authors will rely on secondary legal sources such as books, research findings, and scientific journals relevant to the topic to be discussed and the views of recognized legal experts expressed in mass media and online media. This study used a documentary approach to data collection, with the researcher gathering relevant legal sources that answered the

research questions. To write this study, we will read and take notes on relevant legal sources, collect them, and organize them methodically. After collecting relevant legal papers, they will be analyzed using various analytical methods. To analyze the data, this research uses:

- a. Description technique: In technical descriptive analysis, a condition will be described as it is regarding legal and non-legal propositions.
- b. Interpretation techniques, using several legal science interpretation techniques, including grammatical, historical, systematic, teleological, and contextual interpretation.
- c. Systematization techniques, in particular, by investigating the relationship between the development of legal understanding or legal propositions and the existence of unbalanced legal requirements.

RESULTS AND DISCUSSION

Regulations regarding criminal acts of illegal investment using Ponzi schemes in Indonesia.

Article 1, paragraph (3) of the 1945 Constitution states, "The State of Indonesia is a state of law". It means that everyone in Indonesia is responsible for always obeying the law. When a person or group of people violates the laws governing their behavior, they face consequences in line with the rules violated. The role of the State is to protect its citizens, and therefore, it is the State's responsibility to uphold the supremacy of the law and protect its citizens from criminals. Prohibitions and orders or requirements contained in statutory regulations, for which those who do not comply face criminal sanctions, are important for imposing legal sanctions. In a legal state, Existing rules must be obeyed by the community in order to achieve the objectives of existing laws. So achieving this goal requires joint efforts, substantial resources, clear, strong, and organized commitment, and the knowledge that such compliance will lead to justice, legal clarity, order, and peace. Public interests must be protected and regulated; these are all law-related functions. People tend to respond negatively when laws are violated in a way that harms, ignores, or upsets the balance of public interests. *Criminal acts* are acts that deviate from the requirements of criminal law. People who commit crimes can face legal consequences. It is not enough that someone has committed a crime; they must also be proven guilty.

1. A human act

The criminal acts committed originate purely from human actions.

2. The act is prohibited and punishable by law

According to the concept of legality in criminal law, an act cannot be punished unless it is based on the strength of the provisions of criminal legislation, so that act must have provisions in law. So, if an individual carries out an act that is not prohibited by law, then the law cannot punish him.

3. The actions carried out can be accounted for

Being accountable means that the perpetrator can be held responsible for his actions without being less than perfect in his mind or mentally ill. Because if these two things exist within the perpetrator, then the violating act cannot be punished with a crime.

4. This act is against the law

Strictly speaking, breaking the law is breaking the law. Therefore, criminal consequences can be applied if it is proven that the perpetrator committed an illegal act in that situation.

5. There is an element of error

First, the perpetrator must be able to accept responsibility for his actions; second, the error must be intentional or due to negligence; third, there should be no way to undo the mistake and no justification for excusing it.

The problem of widespread fraud can be linked to how fraud can be carried out and the ease with which falsehoods can persuade victims. Due to the progress of the global economy, there have been some adjustments in how goods are purchased, invested, and other forms of trade. Change may have both good and bad effects. The absence of legally validated evidence from the supervisor attached is a sign of illegal investment. For this reason, the Financial Services Authority, together with other related institutions, needs to increase public knowledge about illegal investment models and procedures. Actions that are prohibited in terms of electronic transactions are regulated in Article 27 of the ITE Law and continue to Article 35 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions. Article 28, paragraph (1) of the ITE Law explains consumer detrimental behavior when doing business electronically. According to Article 28 paragraph (1) of the ITE Law, anyone can be punished for intentionally and unlawfully spreading rumors that harm consumers financially as a result of online activities. The requirements of Article 378 of the Criminal Code are met, but the provisions of this article do not include the main media components used in online fraud, especially electronic media.

First Travel, MeMilers, Abu Tours, PT Qurnia Subur Alam Raya, Golden Traders Indonesia Syariah, Virgin Gold Mining Corporation, Human Helping Humans, and the Pandawa Group are just a few examples of investments using Ponzi schemes in Indonesia that have been exposed in recent years. Following other financial institutions' footsteps, Ponzi schemes have recently entered Indonesia. Such scams were first launched in the 1920s in the United States. The increasing public interest in investing combined with the influence of low public financial literacy in government-managed institutions has led to the birth of the Ponzi scheme. When this happens, unscrupulous and legitimate investment bidders target the public. The public's investing goals must follow its understanding of investment theory, laws, or even inherent investment dangers. Nowadays, investing is often described as a strategy that guarantees a 100% return on initial capital. The perpetrator will promise a quick return of capital with investment profits. However, not all investments are risk-free and do not carry losses. In this Ponzi scam, investors are not forced to buy anything or recruit new members. However, they are pressured to part with significant amounts of money in order to increase returns on their investment capital. Participants in a Ponzi scheme will be required to continually increase the value of their investments to generate greater profits; However, if no new participants join or existing participants do not increase the value of their investment, then the profits obtained by participants will not increase.

Investment fraud with Ponzi schemes appears in various forms today because many individuals are easily persuaded and misled by promises and large monthly profits provided by Ponzi scheme fraudsters. Even though the criminal act of fraud has been regulated in the Criminal Code and activities prohibited by law using electronic media have been regulated in the ITE Law, the regulation of online investment fraud which violates the law with a Ponzi scheme is not yet clearly visible in Indonesia. One explanation regarding the growing consumer losses in online transactions is in Article 28 Paragraph 1 of Law No. 19 of 2016, Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions. However, in this article, there is a vagueness of norms, where the article has not explained clearly and in detail the forms of actions that cause consumer losses in electronic transactions due to the rise of illegal forms of fraud online, one of which is about illegal investment with this Ponzi scheme.

Punishment of perpetrators of illegal investments using Ponzi schemes in Indonesia.

Criminal law is legislation that regulates wrongful acts that endanger the general public. The punishment for such offenses and violations is likely to be criminal. Subjecting someone to suffering or punishment is one of the essential parts of criminal law because the existence of this punishment makes the person responsible for their criminal actions. Because when the State imposes a crime in the form of imposing suffering on someone, a reason is needed to justify the steps taken by the State. The justification lies in the reasons for which the punishment was given; this has developed into a theory of the purpose of punishment. There are three groups of objectives of developing theories of punishment: those who see punishment as an act of revenge (retaliation theory) and those who view punishment as a greater goal (relative theory). Have different perspectives on punishment than the unified theory that has emerged. Both retribution and relative theories have been combined into this one. It is because the punishment is given after the crime has been committed, but it must not be worse than the crime itself (just retribution). It must also help the perpetrator and have a positive effect on society.

The law's success in dealing with cases that arise in society is based not only on the positive law itself but also on the enforcement of the law itself. Application of law is the act of applying general legal regulations to concrete events. The concrete event must have been proven to be a legal event. That way, existing legal arrangements can be applied to these legal events. It will also encourage law enforcement. Law enforcement will be carried out when there are no problems or when problems do occur. Factors that can determine whether law enforcement can run as it should are:

- a. "It lies in the legal factor itself;
- b. Factors of law enforcement officers, such as the parties who form and implement the law;
- c. Community or environmental factors where the law is applied and Applicable;
- d. Facilities and infrastructure factors that support law enforcement;
- e. Cultural factors can be seen from habits, views or opinions, ways of acting and thinking in that society."

Currently, regulations regarding forms of illegal investment using online Ponzi schemes have not been regulated explicitly because although the offense of fraud has been regulated in the Criminal Code, as well as acts prohibited by law using electronic media have been regulated in the ITE Law, forms of illegal investment online using It is not precise how this Ponzi scheme is regulated in Indonesia. By not yet strictly regulating this form of illegal online investment using a Ponzi scheme, it will also impact the criminal liability of the perpetrators. It will, of course, have an impact on legal certainty. Legal rules, both written and unwritten, provide fundamental principles that guide how people should act in public and limit how the government can tax, regulate, or influence citizens, according to the idea of legal certainty.

Those involved in online investment fraud often recruit victims by placing advertisements on social media platforms. Advertisements are created to encourage investment by promising high profits quickly. However, fraudsters will carefully plan their schemes to appear authentic and legitimate. The perpetrators even dare to advertise their platforms in the name of legitimate financial institutions such as OJK, BI, and others. Victims are then directed to fake websites where they are asked to provide personal information, register as investors, and make cash transfers. The page will be removed from the website when the process is complete. After receiving the victim's money, the criminals will disappear without a trace.

- a) "Providing information and education to the public regarding the characteristics of the financial services sector, its services and products;
- b) Requesting Financial Services Institutions to stop their activities if these activities have the potential to harm the public; And
- c) Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector."

The Financial Services Authority offers preventive legal protection to keep the government away from potential conflicts and disputes by mandating careful decision-making.

CLOSING

Online Ponzi Schemeprohibited under Article 378 of the Criminal Code and the Information Technology and Electronic Transactions Law (ITE Law). Fraud is a scheme or series of untruths intended to trick someone into believing something that is not true when, in fact, it is. Perpetrators of unlawful internet investment Ponzi schemes often promise victims a quick refund with profits. However, until now, the law has not regulated forms of illegal online investment using Ponzi schemes.

This form of illegal online investment fraud with a Ponzi scheme has not been regulated because although the offense of fraud has been regulated in the Criminal Code, and acts prohibited by law using electronic media have been regulated in the ITE Law, this form of illegal online investment with a Ponzi scheme has not yet been regulated. The setting is in Indonesia. By not yet strictly regulating this form of illegal online investment using a Ponzi scheme, this will also impact the criminal liability of the perpetrators.

Suggestions and Acknowledgments

It is hoped that the government will strictly regulate this form of illegal investment in online Ponzi schemes in legislation in order to provide legal certainty.

With strict regulations regarding this form of illegal online investment using the Ponzi scheme, it is hoped that it will be possible to provide sanctions against the perpetrators commensurate with their actions.

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