



## LAW ENFORCEMENT AGAINST ILLEGAL INVESTMENTS

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### ABSTRACT

*Investment is something that is growing rapidly in society. Apart from being easy, investing can also provide quite large profits. However, there is still a lot of illegal investment occurring in society. This is due to a lack of strict law enforcement and a lack of public education regarding investment. Therefore, it is necessary to educate the public and provide strict law enforcement to perpetrators of illegal investments so that people do not become victims in the future. Illegal investments usually offer large profits in a short time with low risk. Law enforcement against illegal investments can be carried out from two perspectives, namely civil and criminal. Investment is a rapidly growing trend within society, presenting an easy way to achieve substantial profits. Despite its potential benefits, there remains a significant presence of illegal investment activities. This issue primarily stems from insufficient law enforcement and a lack of public education about investment principles and risks. To mitigate this problem, it is crucial to enhance public awareness and implement stringent legal measures against those involved in illegal investments, ensuring that individuals are protected from becoming future victims. Typically, illegal investments promise high returns in a short period with minimal risk, attracting many unsuspecting individuals. Effective law enforcement against these fraudulent activities can be approached from both civil and criminal perspectives, addressing the issue comprehensively.*

**Keywords:** *Illegal Investment, Law, Society.*

### 1. Introduction

The term investment comes from the Italian word, *investire* which means to wear or use. In the law, the term investment is called investment. According to Article 1 paragraph (1) of Law Number 25 of 2007 concerning Investment, the definition of investment is all forms of investment activities, both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia. Then according to Martalena and Maya Malinda, the understanding of the capital market is a market to share long-term financial instruments that can be traded, both debt securities (bonds), equities (stocks), mutual funds, derivative instruments and other instruments.

Investment is growing and in demand by the community. This is marked by an increase in the number of investment realizations from year to year. In 2019, the Investment Coordinating Board (BKPM) stated that Indonesia's investment realization in 2019 amounted to Rp. 809.6 trillion. This figure exceeds the target of Rp. 792 trillion for 5 years (Dwi Hadya Jayani: 2020). In 2020, it rose 8.0% to reach Rp. 210.7 trillion.<sup>4</sup> The increase was not only followed by a positive impact on the economy, but also followed by a negative impact, namely the emergence of illegal good entities in the name of investment.

In the interaction between individuals and within a group to achieve an investment activity, the Government provides and sets boundaries which often include prohibitions on certain actions. Violation of the limits set by the Government will of course result in sanctions for individuals who violate them. With the restrictions set by the government as stated in a provision in the legislation, of course, causing certain individuals to seek various ways to be able to carry out investments easily, including the nominee concept. The existence of regulations governing the prohibition of nominee practices is not only a dilemma for foreign investors, but also a strict prohibition for domestic investors to act "naughty" by taking steps for the nominee concept to facilitate their investment activities in Indonesia. (Andy Putra Kusuma, 2022)

Cases of illegal investment have mushroomed from the past, how can illegal investment work because of

weak supervision and lack of education about investment in the community. So when offered a large profit just by investing, people believe without finding out information about the entity. Not a small amount of losses suffered by victims of illegal investment. The public needs to be educated related to investment and the need for law enforcement against illegal investment so that there are no further victims.

Law enforcement against illegal investments can be carried out in civil and criminal perspectives. Because of the location of investment law in legal studies, some investment law falls into the field of civil law related to agreements. And some are in the field of licensing law which can be grouped into state or state administrative law and public law. Law enforcement with a civil perspective on illegal investments will make it easier for victims to get compensation, because the rules regarding investment law are also regulated in the *lex specialis* which remains based on civil law. Law enforcement with a criminal perspective on illegal investment cases can also be carried out, but victims are less likely to get compensation. Because in crime more focuses on punishment against the perpetrators of illegal investments, and property that has been misused is confiscated by the state.

## **2. Method Research**

This study examines illegal investments and how to overcome it. The discussion in this study is based on theories and laws and regulations related to Investment in Indonesia and also based on the legal perspective of illegal investment actors and law enforcement in regard to investment. The research results will be presented clearly and systematically. Based on the foregoing, this research includes research in the field of civil law. The research adopts a doctrinal approach whose studies include statutory provisions (in abstracto). The type of legal research is descriptive, which is to explain in full, detailed, and systematic in accordance with the problems being discussed.

## **3. Results and Discussion**

### **3.1 Result**

Law enforcement in a civil perspective against illegal investments can be done in several ways. Before entering into law enforcement, it is necessary to know in advance about the illegal investment.

#### **I. Illegal Investment**

Capital Market Law No. 8 of 1995 explains that Capital Market or also called Stock Exchange is a party that organizes and provides a system or means to bring together offers to sell and buy securities of other parties with the aim of trading securities between them.

The capital market is a market that trades long-term (more than one year) securities. Securities buying and selling transactions can be done in two ways, namely inside the exchange and outside the exchange (*over the counter*). The use of the word investment is commonly used in the economy. Article 1 paragraph (1) of Law Number 25 of 2007 concerning Capital Investment, provides the definition of investment is all forms of investment activities, both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia. In Article 1 paragraph (7) capital is an asset in the form of money or other forms that are not money owned by investors that have economic value. There are several types of investments in the capital market, namely stocks, bonds, and mutual funds.

#### **a) Stock**

Shares are proof of company ownership. Shareholders are also called shareholders (*shareholder or stockholder*). Proof that a person or party can be considered a shareholder if a person or a party has been recorded as a shareholder in a book called the register of shareholders (Mohamad Samsul: 2015).

#### **b) Bond**

Bonds can be described as transferable medium-long term bonds, which contain a promise from the issuing party to pay rewards in the form of interest in the exclusive period and pay off the principal at a predetermined time to the buyer of the bond.

#### **c) Mutual funds**

The definition of mutual funds is contained in Article 1 paragraph (27) of Law No. 8 of 1995 concerning Capital Market, which is a forum used to collect funds from the investor community to be subsequently invested in securities portfolios by Investment Managers.

The most common and popular type of investment in the community is stocks. The type of stock that can be purchased by the public is shares of a publicly traded company. Because the shares of a closed company are only limited to the ownership of the company or depend on its AD/ART. The Financial Services Authority (OJK) requires companies that conduct equity public offerings to list their shares on the Indonesia Stock Exchange (IDX) and register their shares in collective custody at depository and settlement institutions. That way, if these companies want to carry out a *rights issue*, *private placement*, or other corporate actions that are equity, they must carry out an *initial public offering* (IPO) first. This is as stipulated in Article 63 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 3 / POJK.04 / 2021 concerning the Implementation of Activities in the Capital Market Sector which came into effect on February 22, 2021. Thus, public companies that have registered their shares are legal and for investors are given protection by Indonesia SIPF which is supervised by OJK. Only public companies in the form of legal entities can list their shares on the Indonesia Stock Exchange.

Illegal investments are those that are not registered with the Indonesia Stock Exchange in accordance with applicable regulations. Illegal investment offers can be through individuals, organizations, cooperatives, or other offers. Usually, the offer offered to potential investors does not make sense, here are the characteristics of illegal investment according to OJK (Dina Rayanti: 2016):

1. Returns that are beyond the limits of fairness in a short time.
2. The main emphasis is on recruitment.
3. It is not explained how to manage his investments.
4. It is not explained *the underlying* business that meets the principles of fairness and propriety in the financial investment sector.
5. Unclear management structure, ownership structure, business activity structure and business domicile address.
6. The activities carried out resemble *money games* and ponzi schemes.
7. When there are goods, the quality of the goods is not worth the price.
8. The bonus is paid only when there is a recruitment.

With a very commercial offer, of course, people who lack education about stocks will be tempted and invest their capital. Business competition in the digital economy is also very tight, this naturally occurs in any business because every business actor is sure to develop their products for the better. Many threats occur, for example, companies offering products that have relatively the same characteristics or products that can substitute them because they have better benefits than existing products. To maintain existing markets and expand market networks, digital businesses need to innovate, one of which is in the marketing aspect through advertising (Idha Pratiwi Dyah& Pujiyono,2020) . Many cases of illegal investment have occurred and the losses suffered by investors are not small. One example of an illegal investment case is the Pandawa Group KSP investment case. KSP Pandawa Group started operating in 2015, KSP Pandawa Group has a license from the Ministry of Cooperatives and SMEs in the form of a cooperative business. However, KSP Pandawa Group violated several rules in its business. The business pattern run by KSP Pandawa Group uses a microcredit scheme, where funds collected from investors are rotated by lending to traders. In return, this investment company offers investors 10% interest. Due to the large level of profit, it is estimated that as many as 1,000 members invested their capital with a total investment fund of Rp. 500 billion. The flow of funds to investors was initially smooth as promised by the Pandawa Group KSP, but some time later only 5% was received by investors from their investment results until finally the KSP stopped operating. Due to many incoming complaints, OJK stopped the activities of KSP Pandawa Group on November 11, 2016. OJK determines the KSP as an illegal investment entity and has the potential to harm the community.

Legal investments refer to investments made by public companies with legal entities, and their securities are listed on the Stock Exchange. For instance, the Pandawa KSP is a cooperative that fails to meet the criteria to engage in investment activities or raise public funds. Presently, in accordance with current regulations, only banks are authorized to gather funds from the public directly. This provision is outlined in Banking Law No.7 of 1992, as revised by Law No.10 of 1998 regarding Banking.

Banking is an important part of the country's economic activities that has a function to support the economy. To be able to realize a sound banking system, the factors of supervision and control of the bank, both those carried out by Indonesian banks and the banks concerned. So the bank must be able to maintain its business continuity well so that it can be said to be a healthy bank. One of the activities in the world of banking is lending. Various principles regarding healthy lending have been introduced in almost

all countries, including in Indonesia. In Indonesia, healthy credit problems have even been regulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. (Nasrullah, 2019)

Banking business is a risky business. On the one hand, this business promises big profits if managed properly and carefully. On the other hand, it is full of risks (full risk business) because most of its activities rely on community deposits, both in the form of savings, current accounts and deposits. Aware of the vital role of the banking sector, the government has devoted considerable attention to improving legal regulations in the banking sector. Even regulations related to prudential regulation have been very adequate. However, the completeness of regulations, especially regarding the principle of prudence, is not enough to be used as a benchmark for national banking to be free from all problems. In practice there are still many banks that are constrained by problems. One of the factors that made the national banking system porous was due to the behavior of managers and bank owners who tended to exploit and or ignore the prudential banking principle in trying. (Mega Mustika, 2019)

Article 16 in Banking Law No. 7 of 1992, as revised by Law No. 10 of 1998 regarding Banking paragraph (1) states that "Every party that carries out activities to collect funds from the public in the form of deposits in the form of current accounts, time deposits, certificates of deposits, savings, and/or other forms likened to it, must first obtain a business license as a Commercial Bank or People's Credit Bank from the Minister, unless the activity of collecting funds from the public is regulated by a separate law".<sup>12</sup> In the explanation of the article, it is stipulated that paragraph (1) The activity of collecting funds from the community by anyone is basically an activity that needs to be monitored, considering that the activity is related to the interests of the community whose funds are deposited with the party who collected the funds. In this regard, in this paragraph it is affirmed that the activity of collecting funds from the public in the form of deposits can only be carried out by parties who have obtained a business license as a Commercial Bank or as a People's Credit Bank. While KSP is a cooperative institution that is allowed to raise funds, but not community funds that are collected. In accordance with the Cooperative Law and Government Regulations, the funds collected are the funds of members and / or prospective members of the Cooperative. In addition, investments made by KSP Pandhawa are also not listed on the Stock Exchange. This violates the regulations set by OJK.

This is a telltale sign of Corporate crime which is a crime committed by a collective or group of individuals with different fields (jobs). In essence, to be called a corporate crime if the official or management of a corporation violates the law for the benefit of the corporation. (Hadi Supriyanto, 2020)

At the end of January 2017, KSP Pandawa Group promised to return investor funds on February 1, 2017. However, the promise was not carried out and eventually 15 members who were victims of illegal investments reported the incident to the police. KSP Pandawa Group reported three legal remedies by its members. These legal remedies are reports of criminal acts, seven civil lawsuits in the Depok District Court, and Suspension of Debt Payment Obligations (PKPU) in the Commercial Court at the Central Jakarta District Court (PN Pusat). Of the three legal remedies, only the PKPU lawsuit that has been decided by the panel of judges decided that the Pandawa Cooperative and its owner Nuryanto were terminated from postponing payment obligations on April 17, 2017 through case No. 24 / Pdt. Sus PKPU / 2017 / PN. Jkt. Pst. The PKPU application granted by the panel of judges is the second PKPU submitted by the same party. But then KSP Pandawa Mandiri Group was declared bankrupt because 28,000 creditors rejected the debtor's PKPU time extension application on May 30, 2017. In the bankruptcy process, the total bills of the Pandawa and Nuryanto Cooperatives were recorded at IDR 3.32 trillion from 39,068 customers.

Then in a different case, Nuryanto was also entangled in a criminal case of embezzlement. This case is registered under No. 424/Pid. Sus/2017/PN. DPK at the Depok District Court. On December 11, 2017, the panel of judges sentenced Nuryanto, the chairman of the Pandawa Group KSP, to 15 years in 6 months' subsidiary prison and a fine of Rp200 billion, and 26 leaders of the Pandawa KSP in the same case were sentenced to 8 years in prison, with a fine of Rp50 billion for 5 months' subsidiary. The panel of judges considered Nuryanto's fundraising to be against the law. And in its ruling, the panel of judges stated that evidence in the form of money, assets and other objects of economic value were confiscated, to be auctioned and put into the state treasury.

Not only that, the curator of KSP Pandawa Group filed a lawsuit related to case No. 11 / Pdt. Sus- Miscellaneous Lawsuit / 2018 / PN. Jkt. Pst regarding miscellaneous gugatan filed by the KSP Pandawa Group Mandiri curator group representing 39,068 customers with the demand of the Government of Indonesia cq the Attorney General's Office cq the West Java High Prosecutor's Office cq the Depok State Attorney returned the

assets of the founder and management of the cooperative to creditors. In its ruling, the Central Jakarta Negero Court granted the receiver's lawsuit with the contents of the petition being that 19 assets of the bankrupt budel belonged to the plaintiff and the court ordered the Indonesian Prosecutor's Office to hand over evidence of the assets of the founders of the Pandavas, namely Nuryanti, Nanti Susanti and Cicih Kusnenti to the curator. The judge had two considerations, namely the first decision of the PN on case No. 37 / Pdt.Sus- PKPU / 2017 / PN.

Niaga.Jkt.Pst which states that KSP Pandawa Mandiri Group and Nuryanto are bankrupt have legal force. Thus, upon this cassation decision, the goods claimed by the plaintiff to be bankrupt will be distributed to creditors by the receiver, the status of which is definitely not owned by the bankrupt respondent anymore (KSP Pandawa Mandiri Group and Nuryanto). In addition, the Supreme Court of the Republic of Indonesia stated that the decision of the criminal case PN Depok No. 425 to No. 429 / Pid.Sus / 2017 / PN.Dpk namely assets belonging to the founder of KSP Pandawa Mandiri Group and its management is public confiscation, so it cannot be transferred to state property because it does not belong to Nuryanto.

### 3.2. Discussion

## II. Law Enforcement Against Illegal Investment

Investment is included in civil law regulations, which can be classified into banking law, business law, and other *civil law lex specialties*. However, if there is a violation of law related to investment, it can be resolved through civil law or criminal law. The settlement of investment disputes is waived to the parties concerned, whether to be settled by criminal law or civil law. Like the example of ka-sus described earlier, the dispute resolution uses two laws, namely civil and criminal. Where it is resolved by civil law, namely through PKPU, and by criminal law through reports to the police. Law enforcement efforts are an important part of eradicating illegal investment to realize the legal objectives of justice, expediency, and legal certainty. The following is an explanation of law enforcement against illegal investments:

### 1) The role of Law Enforcement in addressing illegal investments from the perspective of Criminal Law

In Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking, it is explained that "Every party that carries out activities to collect funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or Rural Bank from the Chairman of Bank Indonesia, unless the activity of collecting funds from the public is regulated by a separate law". So it can be concluded, that only banks are allowed to collect funds from the public, unless regulated by a separate law. Anyone who collects funds from the public without permission from Bank Indonesia shall be threatened with criminal penalties as stipulated in Article 46 paragraph (1) of Law Number 10 of 1998 concerning Banking which reads "Whoever collects funds from the public in the form of deposits in the form of current accounts, time deposits, certificates of deposit, savings, and/or other forms likened thereto without a business license from the Minister as referred to in Article 16 and Article 17, threatened with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 10,000,000,000,- (ten billion rupiah)".

In addition to criminal threats contained in the Banking Law, illegal investments can also be threatened with embezzlement, *money laundering*, and fraud. Violation of the law can be threatened because investor funds that have been deposited in the entity are misused by the owner of the entity. In cases that often occur, the owner of the entity generally uses the funds for direct interests and does not use the funds deposited in accordance with the initial agreement. The threat of embezzlement offense is regulated in Article 372 of the Criminal Code which reads "Whoever knowingly possesses against the rights of an item that wholly or partly belongs to another person and the item is in his hands not for a crime, shall be punished with embezzlement, with imprisonment for a maximum of 4 (four) years". The penalty for *money laundering* offenses is regulated in Law Number 15 of 2002 concerning Money Laundering Article 3 paragraph (1) letter h which explains any person who conceals or disguises the origin of Assets that he knows or reasonably suspects is the result of a criminal act, is convicted of money laundering with a prison sentence of not less than 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000. 000,00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah). The penalty for fraud offense is stipulated in Article 378 of the Criminal Code, Whoever with the intention to benefit himself or others unlawfully, by using a false name or false dignity, by deceit, or a series of lies, moves another person to deliver something to him, or to give a debt or write off receivables shall be punished for fraud with a maximum imprisonment of four years.

### 2) The role of Law Enforcement in addressing illegal investments from the perspective of Criminal Law

In the case of illegal investment, generally the amount of loss caused is not small, and takes a large number of victims. To get compensation for what was experienced, it would be nice for victims to take civil legal remedies. Because in the case of illegal investment, an agreement is generally written between the investor and the entity. So that if there is negligence or breach of promise by the entity to the investor, it can be subject to Article 1243 of the Civil Code which reads "Reimbursement of costs, losses and interest due to non-fulfillment of an engagement begins to be mandatory, if the debtor, even though he has been declared negligent, still fails to fulfill the engagement, or if something he must give or do can only be given or done within a time beyond the specified time". And this request for damages can be done using filing a class action, given that generally the victims of illegal investments are numerous. Class action according to Article 1 letter a of Supreme Court Regulation Number 1 of 2002 concerning Class Action Procedure is a procedure for filing a lawsuit, in which one or more people representing a group file a lawsuit for themselves or themselves and at the same time represent a large group of people, who have similar facts or legal basis between the class representative and the members of the group.

In addition, it can also be done by filing with the Commercial Court. By submitting a Suspension of Debt Payment Obligation (PKPU), regulated in Article 222 paragraph (2) of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, it is explained that debtors who cannot or expect will not be able to continue paying their overdue and collectible debts, can request a postponement of debt payment obligations, with a view to submitting a peace plan that includes an offer of payment part or all of the debt to Creditors. Through PKPU, investor funds can be protected holistically. The PKPU submission also provides an opportunity for debtors and creditors to re-agree regarding the use of debt payment methods, including if debt restructuring is needed. If the creditor or entity does not approve the PKPU proposal submitted by the debtor or investor, the debtor is declared bankrupt. In addition to PKPU, you can also file for bankruptcy at the Commercial Court. Investors as victims can file for bankruptcy of an entity to the Commercial Court as stipulated in Article 2 paragraph (1), debtors who have two or more Creditors and do not pay in full at least one debt that has fallen due and can be collected, are declared bankrupt by a Court decision, either on their own application or on the application of one or more of their creditors.

Insolvency is the process of managing an entity's assets by a receivership appointed by the Commercial Court. Furthermore, the assets of the entity executed by the receivership to be used as payment for all debtor obligations registered with the curator who get payment in advance are special or preferred creditors such as taxes and labor. Furthermore, separatist creditors are those who are guaranteed by material guarantees. The last one who gets compensation if there is still remaining is a concurrent creditor, namely a creditor who has no collateral. The effectiveness between PKPU and bankruptcy in illegal investment cases is actually more effective bankruptcy. Because the purpose of applying for PKPU is so that debtors can submit a peace plan that includes an offer to pay part or all of the creditor's debt, including asking for an additional payment period of several years. Meanwhile, not always creditors assume good faith and carry out their promises. However, if the bankruptcy route is taken, it will be easier for victims to receive compensation. Because all assets of the entity will be executed by the curator who will later be auctioned, and the proceeds from the auction will be distributed to investors.

Law enforcement of illegal investments can be seen from four factors, namely:

#### **a. Perpetrator Factors**

If we look at the legal process carried out only on the main perpetrator, while other perpetrators who participated were not processed. As a result, these perpetrators who are still on the loose will re-make illegal investment offers.

#### **b. Casualty Factor**

Law enforcement is often constrained because victims do not report to law enforcement. The reason is because of the shame of being deceived, small losses, fear of being terrorized by the perpetrator, still expecting returns, or fear of the money not coming back.

#### **c. Legal Device Factors**

In this case, laws and regulations. Law enforcement is often constrained in determining the type of alleged criminal act that occurred. Articles that are often used are fraud and embezzlement in the Criminal Code. The use of articles in other statutory provisions is not widely practiced, such as the Trade Law, Banking Law, Commodity Futures Trading Law, Consumer Protection Law.

#### **d. Law Enforcement Factors**

Handling illegal investment cases has not been a priority for law enforcement officials. General crimes are preferred, because of the large number of cases handled. Another consideration is that the costs of law enforcement are not worth the harm suffered by victims.

The success of eradicating illegal investment is largely determined by optimal law enforcement. These four factors determine the success of law enforcement in order to provide protection to the public from illegal investment. Illegal investment deals will remain rife if law enforcement is weak. The Investment Alert Task Force always encourages all efforts to increase law enforcement against illegal investment actors.

#### **4. Conclusion**

Investment is an investment for one or more assets owned and generally long-term in the hope of getting profits in the future. Investment can be done with several types found in the capital market, namely stocks, bonds, and mutual funds. Investment means the act of raising funds, and only special entities that have licenses under the law have licenses to establish investment companies. In addition, investment securities must be registered and registered with the competent institution. These things are requirements that must be done by investment entities. If these things are not or are not carried out, then it can be said that the entity is an illegal entity. Illegal investment entities are not under OJK protection, besides that investor funds are also not under SIPF protection under OJK authority. Many illegal investments occur in the people by showing high profits with low risk, as a result of which people are interested in investing their capital. This happens because of the lack of education and thoroughness of citizens. People are only interested in the profit factor that will be generated without seeing the risk of loss and even fraud.

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