



## EFFECTIVENESS OF LAW ENFORCEMENT ON COLLECTING PUBLIC FUNDS ILLEGALLY USING INVESTMENT MODE

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*Investment, Fraudulent Investment, Company.* Investment is all forms of investment activities, both by Domestic Investors and Foreign Investors, to conduct business in all sectors of the business sector in the territory of the Republic of Indonesia. This research aims to find out the law enforcement terkait the existence of funds collection in the community illegally with investment mode one of them Bodong Investment Rp. 1.3 T PT. Exist Assetindo. The existence of this bodong investment (illegal) has been troubling the wider community. This research uses descriptive qualitative research method is in the form of research with case study method or approach. The consequences of this illegal investment can lead to bodong or fictitious investments. With the activities of fund raising conducted by Limited Liability Companies, in addition to contrary to the provisions that have been regulated, it also hinders the existence of banking institutions. Given that the OJK has not provided regulations that specifically regulate the sanctions set for companies that collect funds illegally, the most basic legal policy applied is article 46 of Law No. 10 of 1998 on Banking.

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### A. Introduction

In general, investment can be defined as an activity carried out by both natural persons and legal entities in an effort to increase and/or maintain the value of their capital, whether in the form of cash, equipment, immovable assets, intellectual property rights, or expertise (Ahmad, 2018). Indonesia is one example of an attractive country to invest in. Foreign investment in Indonesia is certainly not something new. It has been growing, developing, and continuing to spread its wings for hundreds of years to become an important part of national development. Investment is something that is inevitable, unavoidable. Investment law or capital markets in Indonesia have been regulated by the Government through Law No. 25 of 2007 concerning Investment. This law has several articles that clearly regulate investment laws or regulations in Indonesia. Based on this law, investment aims to create more jobs, increase the country's economic growth, make changes, help the people's economy so that they are

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able to develop and create prosperity for the community with adequate employment opportunities so that they will not have difficulty finding work. In fact, investment is also intended to reduce the number of poor people in Indonesia. Of course in practice, the Government also has an important role in the course of investment in Indonesia.

However, over time the investment situation in Indonesia has not always run cleanly. The emergence of illegal investment activities has also begun to occur. The existence of illegal investment practices which are often referred to as bogus investments, people are promised to get fixed profits/interest every month even though the company is losing money (Arsil, 2013). When viewed from the aspect of business crime in illegal investment, there are two sides, namely on the one hand there is a civil law aspect and on the other hand a criminal law aspect, both legal aspects have two objectives, nature and characteristics that are contradictory. The civil law aspect is more concerned with peace between the two parties so that it is only related to legal relations between individuals while the criminal law aspect is more concerned with the public interest or the wider community so that it is more coercive, to deter parties who have caused losses.

## **B. Method**

The research was carried out using normative juridical research methods, namely by examining research problems by referring to legal norms and rules, statutory regulations, legal doctrine and other relevant literature materials. The data source obtained is secondary data, in the form of primary legal data and secondary legal data through literature study. The research approach is carried out using a statutory approach, a conceptual approach and a case approach to the problems studied.

## **C. Result & Discussion**

### **1. Investment Dispute Regulation in Indonesia Viewed from the Perspective of Law Enforcement**

Illegal investment can generally be interpreted as an investment that does not have a permit from the relevant state institution or in Indonesia is the Financial Services Authority (OJK). The consequences of this illegal investment can lead to fraudulent or fictitious investments, in this case it is certain that consumers will not get their money back because the investment service provider aims to commit fraud. However, illegal investment can also be in the form of investment services that provide proper performance but do not yet have permission from the OJK to run their business. In the current weakening economic conditions, the number of illegal investment offers is increasing because people are looking for other alternatives to seek profit. Quoting IDX Channel, in April 2020, the OJK closed 18 business activities because they were suspected of carrying out activities without permission from the competent authorities and had the potential to harm the public.

Fundraising activities can also be said as the process of finding sources of bank funds (Kasmir, 2011). Bank financial institutions are financial institutions that provide the most complete financial services. Non-bank financial institutions are

sectors related to development financing in the form of providing medium-term or long-term credit, which can also be in the form of capital participation and businesses aimed at meeting the needs of the community. In investment activities carried out by the community, there are several business entities that facilitate the community in carrying out investment activities, the establishment of a business entity that has the authority to collect funds must obtain permission from the authorized authority. In reality, many business entities engaged in fundraising do not have official permission from the authorized authority to issue it. This causes the collection of funds carried out by the business entity to be illegal.

The collection of public funds carried out by business entities must first have permission from the competent authority, including the head of Bank Indonesia as stated in Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking which states: "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 General Bank or People's Credit Bank from the Head of Bank Indonesia, unless the activities to collect funds from the public are regulated by a separate Law.

In the article above, there are two types that can have the authority to carry out activities to collect funds from the public, namely general banks and people's credit banks, Article 21 paragraph (1) of Law Number 10 of 1998 concerning banking states the legal form of the two banks, namely the legal form of a general bank can be a limited liability company, cooperative and regional company. The legal form of a people's credit bank is a regional company, a limited liability cooperative and other forms as stipulated by government regulations.

Companies or parties that make illegal investment offers are mostly not from Financial Services Institutions (LJK) so that the company is not registered with the OJK. Facts prove that many people are trapped in wanting to get rich quick without hard work. This opportunity is used by irresponsible parties by committing fraud under the guise of investment. Illegal investment companies are aware of the character of investors if the initial investors get the promised return, they tend to reinvest the money. Even the possibility of inviting their family, friends, or relations to invest.

Along with the complexity of the financial industry, it certainly raises various problems such as the proliferation of business entities that facilitate the community in investment activities but do not have official permits from the competent authorities. According to Nurhuda, this causes the collection of funds carried out by financial service actors to be illegal (Nurhuda, 2017). It is also mentioned in Rahmadi, Prananingtyas and Mahmudah that companies that have official permits as ordinary trading companies, but in practice operate as investment companies that carry out fundraising activities (Rahmadani, 2016). This is also considered a practice of violating investment ethics, because it has acted inconsistently with the principles of moral standards that should be based on human rights and environmental protection.

One of the developing modes is an effort to collect funds for investment or capital investment that is lured with very tempting profits or with interest beyond reasonable limits. In addition, to convince the public, the company tries to show that the investment made is real and operates in various business sectors such as trade, services, agriculture, animal husbandry, securities, foreign exchange and gold. However, in reality, the business is nothing more than just circulating funds that have been collected from the public or investors to pay profits and installments of money that has been received. So the business is very dependent on the accumulation of funds that come in through new investors, not through profits obtained from business activities. The investment activity offers profits from the results of business activities that are fixed and high so that the public without thinking twice invests their money, resulting in criminal acts. This section discusses matters related to criminal acts in the banking sector as one form of criminal acts in the economic sector.

The Financial Services Authority (OJK) institution, which in this case is an independent and integrated institution to carry out tasks, functions and authorities in regulating and supervising financial services activities in the Insurance, Capital Market, Financing Institutions and other financial institutions sectors, which originated from the Minister of Finance, the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK),<sup>5</sup> and was previously transferred from Bank Indonesia to the Financial Services Authority institution on December 31, 2012. One of the objectives of establishing the Financial Services Authority is to meet the needs and protect the interests of the community, including in terms of supervising illegal investments in order to protect the needs and interests of the community.

In terms of legal protection for the public against criminal acts of illegal fundraising, Law Number 10 of 1998 concerning Banking has provided complete regulations and mechanisms regarding the process of fundraising up to criminal provisions for committing criminal acts of fundraising in the community, so that in the application of the law against perpetrators of criminal acts in the banking sector, this law can be fully applied in accordance with Article 63 paragraph (2) of the Criminal Code, namely: *"if an act falls within a general act, it is also regulated in special criminal regulations, then only the special ones are applied."*

OJK's authority in overcoming illegal investment in Indonesia Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law) where OJK has the authority and duties of OJK in supervising Financial Services Institutions (LJK) in the capital market sector, non-bank financial industry sector (such as: insurance, pension funds, financing companies, etc.) and starting in 2014 will also supervise the banking sector (Commercial Banks and Rural Credit Banks). In addition, the legal basis for protecting the public from business actors is also regulated in Law Number 8 of 1999 concerning Consumer Protection. Specifically, OJK has also issued Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK 1/2013) as an initial step in dealing with illegal business actors in the financial industry. However, specifically each financial industry

is also regulated in each OJK Regulation (POJK). For example, in the case of Peer to Peer Lending which is usually carried out by Financial Technology (Fintech) companies, it has been specifically regulated in POJK Number 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending Services (POJK 77/2016). Where in POJK 77/2016 it is stipulated that organizers or business actors are required to apply for registration and licensing from OJK.

## **2. The role of OJK in enforcing investment law in Indonesia regarding illegal investment cases**

Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority states that the OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial institution sector. This means that even though a limited liability company has a Trade Business License (SIUP) and a Decree of the Minister of Law and Human Rights in carrying out all its business activities, the limited liability company must still report to the Financial Institution Authority. In accordance with the provisions of Article 6 letter c of Law Number 21 of 2011 concerning the Financial Institution Authority, the Financial Services Authority deals with financial institutions, pension funds and other financial institutions in insurance institutions. In this case, in addition to carrying out the responsibility for supervision and supervision in the banking sector, the OJK has also obtained permission from the non-banking sector, one of which is to handle unauthorized limited liability company activities.

Then to implement the provisions of Article 6 above, OJK has special authority as stated in Article 9 letter (c) which reads: to carry out supervision, inspection, investigation, consumer protection, and other actions against financial institutions, actors and/or supporters of financial institution activities (Haymans, 2013). In terms of fulfilling the provisions of Article 9 above, the basic basis for organizing OJK is related to handling criminal acts of limited liability companies in the field of fundraising. Based on Article 49 paragraph (1) of Law Number 21 of the Financial Services Authority of 2011, it is stated that in addition to Polri investigators, civil servants within OJK have special authority in investigating financial institutions. Provisions regarding special investigators have been regulated in Article 1 point (1) of the Criminal Procedure Code which states that: Investigators are officers of the Republic of Indonesia state police or certain civil servants who are given special authority by law to conduct investigations.

In this case, the Financial Services Authority's actions in handling unlawful acts by Limited Liability Companies in the field of fundraising are in accordance with the investigation process in Article 49 paragraph (3). The implementing provisions of Article 49 above are Financial Services Authority Regulation Number 22/POJK.01/2015 concerning the Investigation of Criminal Acts in the Financial Sector which has the function of realizing justice, certainty, legal benefits in terms of growing and maintaining public trust in the financial institution sector and strengthening financial stability. According to Article 9 of the policy, each party can submit reports and/or information regarding alleged criminal acts in the financial

institution sector to the OJK. The provisions for a written report to the OJK must at least include the name of the reporter, the reporter's identity and a description of the incident and/or action suspected of being a criminal act in the financial institution sector. Then in Article 11 it is explained that upon the reporter's written request, the OJK will submit developments in handling reports and/or information on alleged unlawful acts in the financial institution sector reported by the reporter immediately after the investigation begins. Regarding the gradation rules of the above policies issued by the OJK previously, it is the Financial Services Authority Regulation Number 11/POJK.05/2014 concerning Direct Examination of Non-Bank Financial Institutions.

According to the OJK, the business permit for Limited Liability Companies to collect public funds is in conflict with various statutory regulations, including Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking, which states: every party that carries out activities to collect funds from the public in the form of savings must first obtain a business permit as a general bank or people's credit bank from the head of Bank Indonesia.

The licensing authority was then transferred to the Financial Services Authority as a microprudential supervisor. Until the OJK investigation was conducted on the Limited Liability Company, the legal status of the company was still a limited liability company. Then in article 9 of Law Number 07 of 2014 concerning Trade, it is emphasized that distribution business actors are prohibited from implementing a pyramid scheme system in distributing goods.

Based on the provisions of the article above, what is meant by a pyramid scheme is a term for business activities that are not from the results of selling goods. With the fundraising activities carried out by Limited Liability Companies, in addition to being contrary to the provisions above, it also hinders the existence of banking institutions. This is because financial institutions that have the right to collect funds in accordance with legal provisions are general banks, sharia and people's credit. Apart from these institutions, they are required to report and register their business activities first with the financial institution authorities. Given that the OJK has not yet issued regulations that specifically regulate the sanctions imposed on companies that collect funds illegally, the most basic legal policy applied is Article 46 of Law No. 10 of 1998 concerning Banking.

Article 46 states that *"anyone who collects funds from the public in the form of savings without a business license from Bank Indonesia as stated in Article 16, shall be subject to a prison sentence of at least 5 years and a maximum of 15 years and a fine of at least IDR 10,000,000,000.00 and a maximum of IDR 200,000,000,000.00 rupiah"*. In addition to these provisions, sanctions for perpetrators of illegal investment are also stated in Article 55 paragraph (1) concerning involvement in criminal acts in conjunction with Article 372 concerning embezzlement in conjunction with Article 378 concerning fraud.

#### **D. Conclusion**

In illegal investment there are two sides, namely on the one hand there is the civil law aspect and on the other hand the criminal law aspect, both legal aspects have two objectives, nature and characteristics that are contradictory. The civil law aspect is more concerned with peace between the two parties so that it is only related to legal relations between individuals while the criminal law aspect is more concerned with the public interest or the wider community so that it is more coercive, to deter parties who have caused losses. Illegal investment can generally be interpreted as an investment that does not have a permit from the relevant state institution or in Indonesia it is the Financial Services Authority (OJK).

The consequences of this illegal investment can lead to fraudulent or fictitious investments. Companies or parties that make illegal investment offers are mostly not from Financial Services Institutions (LJK) so that these companies are not registered with the OJK. With the fundraising activities carried out by Limited Liability Companies, in addition to being contrary to the provisions that have been regulated, it also hinders the existence of banking institutions. Given that the OJK has not provided regulations that specifically regulate the sanctions imposed on companies that collect funds illegally, the most basic legal policy applied is Article 46 of Law No. 10 of 1998 concerning Banking

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