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The Politics of Criminal Law in Tackling Crimes Under the Guise of Electronic Investment in Indonesia

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Abstract: Criminal law politics is indispensable in tackling crimes under the guise of electronic investment to overcome the rampant crime in the field of information technology. The Criminal Code, Consumer Protection Law has not been able to overcome information technology crimes, then the government issued Law No. 19 of 2016 concerning Electronic Information and Transactions as an anticipatory step against the negative impact of advances in information technology. The cyber world has great crime potential and is very difficult to catch because most of the people present in cyberspace are fictitious. Countermeasures carried out by the government in tackling crimes under the guise of electronic investment are still oriented towards the criminal justice system, by applying the provisions in Law No. 19 of 2016 concerning Electronic Information and Transactions. Countermeasures faced by law enforcement in tackling crimes under the guise of electronic investment include, lack of law enforcement officers savvy with technology, limited facilities and infrastructure, and lack of public investment skills.

Keyword: Politics of Law, Tackling Crimes, Investment, The Guise of Electronic.

INTRODUCTION

Technological developments have brought new business opportunities to the community, especially the financial sector, so that people can more easily access financial products, facilitate transactions, and increase financial literacy, including investment. The word "investment" has become a word that is commonly used not only by the elderly but also by the general public. Investment can be given the definition of "placement of a certain amount of funds at this time with the aim of obtaining additional or certain profits in the future".(Herlianto, 2013) In other words, sacrificing assets owned now in order to acquire assets in the future, of course, with a large amount, and achieve financial freedom.(Herlianto, 2013)Through investing, one hopes that the value of assets will get higher over time.(Wisani, 2022)

In addition to providing convenience, it turns out that the development of technology is so fast, it turns out that it has implications for the birth of crime using internet facilities. One of these crimes is the criminal act of fraud by using trading robots in investing for example forex trading, binary options, etc. The use of commercial robots is one of the characteristics based on artificial intelligence and internet of things. In this case, it is necessary to understand that trading robots are just artificial intelligence-based tools programmed by algorithms and other programs to generate currency trading predictions.

In general, Indonesian people are still unfamiliar with investing online, some of the people are very indifferent to how to invest properly and correctly. People are only interested in the results obtained, the question that often arises is how much profit will be obtained from the investment, without thinking about the risks that occur from the investment.(Hermawanti et al., 2022)

From the author's observations various types of trading robots have sprung up and have committed fraud in Indonesia, Mobile Trade RoboForex, Binomo Robot, RoboForex Indonesia, Robo-id, Forex Robot Auto Pilot D7MT4Instaforex Broker, Auto Sultan Community, Smartxbox, Antares, Auto Trade Gold 4.0, Fahrenheit Trading Robot, Btrado, Pansaka Trading Robot, RoyalQ Indonesia, Maxima Margin Trading Robot, Bintang Mas Revenue Trading Robot, Smartavatar.co.id, DNA.Pro Trading Robot, EA50/PT Sere Mega Indote, OPAX-OPAC Trading Limited. (Dewi, 2022)

Some of the trading service provider platforms mentioned above, have provided losses to the public, including: *First*, Net89 Trading managed by PT Sembiotik Multi Talenta (SMI), with 4 thousand members, and a loss value of around Rp 2 trillion rupiah. In running its business Trading Net89, it even contains a number of celebrities including Atta Halilintar and Taqi Malik. (Saptohutomo, 2022) *Second*, Fahrenheit Trading Robot managed by PT PT FSP Akademi Pro, with 7,000 members, with a loss value of around Rp 5 trillion rupiah. (Ties, 2022) *Third*, the DNA PRO trading robot managed by PT DNA Pro Akademi with 3,621 members, and a loss value of IDR 551,725,456,000, this trading robot is suspected of working with a pozzi scheme. *Fourth*, Binary Option Trading began to spread since around 2018 through digital mass media marketing. *The five* Auto Trade Gold (ATG) Trading Robots known as owned by Wahyu Kenzo under the auspices of PT Pansaky Berdikari Together with 25,000 members come from various continents such as America, Russia, France, China, United Kigdom, United Arab Emirates to Singapore. (Mahendra, 2023) During 2021, the Commodity Futures Trading Supervisory Agency (BAPPEBTI) in collaboration with the Ministry of Communication and Information (Kominfo) has blocked 1,222 commodity futures trading websites without permission and under the guise of trading gambling.

The electronic investment crime cases above are very worrying, considering the number of victims and quite large losses. Even though electronic investment crimes have occurred repeatedly and have been widely reported in the media, electronic investment crimes committed by these perpetrators still continue to occur, and the number of victims is very large. For the general public as investment actors, usually called traders or investors, having legal protection is very important. Indonesia's efforts to provide legal protection to traders and investors aim to increase guarantees of law enforcement. The aim of ensuring law enforcement is to guarantee investment stability. Guaranteeing legal protection for traders and investors is closely related to equal distribution of legal justice.

The government cannot turn a blind eye to this situation, in order to protect the public interest, in this case there has been a crime under the guise of electronic investment in investment trading, the government must take action to prevent the use of illegal trading robots, to protect the public, such as stopping or preventing the use of trading robots that violate the law. (Wijaya Kusuma & Gultom, 2023) Until now, the use of trading robots in investment trading is only based on the regulations of Bappeti and related agencies. The

absence of clear legal rules has resulted in many interpretations, resulting in a negative impact on society because it has hampered law enforcement and supervision. Trading robots are not a legal subject; it is simply a human-made intelligence tool that cannot be held criminally liable. Only the corporation or individual that organizes it can be held criminally responsible. Therefore, it needs to be regulated with clear regulations, so that the public will be protected from incorrect information and at the same time create a legal relationship between investors as users of trading robots and corporations as organizers of fair investment trading. (Christiawan, n.d.)

Apart from that, law enforcement efforts in dealing with crimes under the guise of electronic investment have not been optimal. The concern of law enforcement officials in preventing and enforcing laws reported by the public as victims of crimes under the guise of electronic investment is still far from expectations.

Based on the description above, reforms need to be made, especially in tackling crimes under the guise of electronic investment. Criminal law reform is part of criminal law policy. Criminal law policy is an effort to overcome crime through rational law enforcement, especially through the realization of a sense of justice and effectiveness. It is said to be rational considering that criminal law enforcement goes through several stages which are interconnected with each other. At the formulation stage, they give the highest priority because at this stage legal policies are created to be implemented at the next stage. To ensure that criminal law has qualities that can be relied upon to stop the development of crime in society, the formulation of legal principles and norms at this formulation stage must be carried out using various approaches, including normative juridical approaches and sociological approaches. (Mahroni, 2016) Criminal law politics is part of legal politics, where in forming laws and regulations one must know the value system contained in society, so that crime prevention under the guise of online investment can be overcome.

Similar research has been conducted *firstly*, Kori Hermawan, Intan Nurani, et al, who discussed the efforts made in handling illegal investment fraud cases so that they do not happen again, both in preventive and repressive efforts, *secondly*, Raditya Sri Krisnha Wardhana who discussed criminal law policies regarding criminal acts fraud that uses electronic means, where criminal law prevention policies are intended to protect society from injustice and welfare, as well as how judges assess fraud perpetrators who make online investments using electronic technology, *third*, the application of criminal sanctions for perpetrators of online investment fraud as regulated by Law No. 19 of 2016 concerning Information and Transactions.

Based on the three (3) described above, what distinguishes this research lies in the politics of criminal law in tackling crime under the guise of electronic investment in Indonesia and the obstacles faced by law enforcement in tackling crime under the guise of electronic investment in Indonesia. Thus, this research is different from research that has previously been carried out, therefore this research has novelty value.

METHOD

The focus of this research is on crime under the guise of electronic investment. This research study uses normative or doctrinal juridical research and is also commonly called literature research. Normative or doctrinal juridical research is legal research that considers law as the body of the legal system, which concerns principles, norms, rules and legal regulations, court decisions, treaties and doctrines. (Efendi & Ibrahim, 2018)

Normative juridical or library research aims to collect data and information with the help of various materials found in the library, including books, magazines, notes, manuscripts, documents, etc. (Suteki & Galang, 2018)

In accordance with the nature of research, normative juridical, the legal materials used are primary legal materials, namely authoritative legal materials, which means they have

authority. (Marzuki, 2018)consisting of: Law No. 32 of 1997 concerning Commodity Futures, Law No. 8 of 1999 concerning Consumers, Law No. 25 of 2007 concerning Capital Investment, Criminal Code (KUHP), Law No. 11 of 2008 concerning Information and Transactions Electronics (ITE). Secondary legal materials are legal materials which aim to provide an explanation of primary legal materials in the form of all legal publications relating to electronic investment crimes and books about investment, national and international journals or research results that support this research. The non-legal materials used by researchers are materials that can provide instructions and explanations for primary legal materials and secondary legal materials. (Marzuki, 2018)which is in the form of a general dictionary, a legal dictionary will also be used to translate foreign terminology, popular magazines, newspapers

RESULTS AND DISCUSSION

The Politics of Criminal Law in Overcoming Crime Under the Guise of Electronic Investment in Indonesia

Criminal law is a type of law in Indonesia which functions to regulate violations and crimes against the public interest, and perpetrators are threatened with sanctions in the form of suffering or torture. People who violate the law in the form of crimes that disrupt the public interest will be tried using criminal law. The existence of criminal law is very important because it is a moral body that is responsible for ensuring public security from the threat of criminal acts and maintaining national stability.

If we refer to Article 1 paragraph (3) of the 1945 Constitution which states that: "The Indonesian state is a state of law," it clearly states that the law has binding force which must be obeyed by all citizens and the government. The enthusiasm to position the law as the spearhead of legal reform, aims to ensure that the law acts as commander in chief in law enforcement. (Napitupulu, 2021)The existence of statutory regulations, especially those relating to investment or capital investment law, is the main characteristic of a rule of law state. Efforts to overcome crimes under the guise of electronic investment in Indonesia require comprehensive efforts through criminal law.

Crime prevention and control is carried out through an integral approach between penal policies and non-penal policies. Penal policies have limitations and weaknesses, including being pragmatic, individualistic (offender oriented), emphasizing repression and having to be supported by infrastructure that requires high costs. Therefore, crime prevention is better carried out using non-penal policies that are preventive in nature. (Hatta, 2010)

Currently, the criminal law policy carried out by the government in the context of combating crime under the guise of electronic investment prefers penal policies, namely by empowering the Criminal Justice System. This action was carried out due to a lack of legal understanding among the general public which caused the regulations that apply in society to be less than ideal, and even due to the rapid development of technology, these legal instruments have been misused for the benefit of groups of people and individuals who want to take advantage, namely by committing unlawful acts

The ITE Law, which is the first law to regulate crimes under the guise of electronic investment, also known as cyber crimes, is used to deal with crimes under the guise of electronic investment. Criminal law relating to information technology crimes is not covered by the Criminal Code, and the application of this law is based on the principle of *lex specialis derogat legi generali*.

The principle of legality, which is the basis of criminal law, is also adhered to by UUIE; According to Article 54 paragraph (1) UUIE, this law takes effect from the date of its promulgation. According to the principle of legality, a criminal act can be classified as a criminal act and can be punished if the legal subject's actions fulfill the elements regulated in law. (Widodo, 2013)

A part from the principle of legality, other principles as regulated in Articles 2 to 9 of the Criminal Code also apply equally to crimes under the guise of electronic investment. However, because these crimes are often committed outside national borders and in virtual space, applying the principles of criminal law in dealing with crimes under the guise of electronic investment is not easy. Therefore, in the process of handling cases related to electronic investment, the basic principles contained in the Criminal Code can still be used as a basis.

A part from being regulated in the ITE Law, the regulation of criminal acts under the guise of electronic investment is also linked to the provisions regulated in the Criminal Code to facilitate the resolution of cases. With the development of information technology in the 5.0 era, legal regulations and criminal law policies must become a legal basis that adapts to developments and anticipates problems and negative impacts of technological progress. (Sri Krishna Wardhana, 2021)

Furthermore, as a special law (*lex specialis derogat lex generale*), the ITE Law can be used as a legal basis to at least protect people involved in cyber activities. To provide protection to the public in the ITE Law, the principles of contracts in electronic transactions are regulated in detail, including; 1. The Principle of Legal Certainty, stated in Article 18 Paragraph (1) of the ITE Law which states that "Electronic transactions contained in electronic contracts are binding on the parties". 2. The principle of Good Faith is stated in Article 17 Paragraph (2) of the ITE Law which states that: "Parties carrying out electronic transactions in the public or private sphere are obliged to act in good faith when interacting and/or exchanging electronic information and/or electronic documents during the transaction.", 3. The principle of consensualism, stated in Article 20 of the ITE Law which states "Unless otherwise determined by the parties, electronic transactions occur when the transaction offer sent by the sender has been received and approved by the recipient." Furthermore, Article 20 paragraph (2) of the ITE Law states that "Approval of electronic transaction offers as referred to in Paragraph (1) must be carried out with an electronic statement of acceptance." Through these two provisions it can be understood that agreement on an electronic contract can occur when the offer is sent and approved by the recipient with an electronic statement. 4. The principle of openness or transparency stated in Article 9 of the ITE Law states "Business actors who offer products through electronic systems must provide complete and correct information regarding the terms of the contract, manufacturer and products offered."

Apart from that, Article 28 paragraph (1) in conjunction with Article 45 paragraph (2) of the ITE Law plays an important role in efforts to prevent crimes under the guise of electronic investment which are identified with criminal acts of fraud using electronic devices. Article 28 paragraph (1) UUITE states that; "everyone deliberately and carelessly spreads false and misleading news which results in consumer losses in electronic transactions." This provision protects investors, who are consumers who only interact with producers via computer media as is done in commercial transactions. At the same time, non-business aspects are also included in this article. (Sri Krishna Wardhana, 2021)

Article 28 paragraph (1) of the ITE Law is in line with Law No. 8 of 1999 concerning Consumer Protection, which aims to increase consumer awareness and independence by providing legal certainty and information disclosure, as well as facilitating access to this information.

In Article 4 of the Consumer Protection Law, consumer rights include: The right to comfort, security and safety in consuming goods and/or services; 1. The right to choose goods or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised; 2. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services; 3. The right to have opinions and complaints heard regarding the goods and/or services used. 4. The right to obtain

advocacy, protection and appropriate efforts to resolve consumer protection disputes; 5. The right to receive consumer guidance and education; 6. The right to be treated or served correctly and honestly and not in a discriminatory manner; 7. The right to receive compensation, compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or are not as they should be; 8. Rights regulated in other statutory provisions;

Furthermore, the obligations of business actors in accordance with Article 7 of the Consumer Protection Law include; Have good intentions in carrying out business activities; 1. Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as providing explanations of use, repair and maintenance; 2. Treat or serve consumers correctly and honestly and non-discriminatory; 3. Guarantee the quality of goods and/or services produced and/or traded based on the applicable quality standards for goods and/or services; 4. Provide opportunities for consumers to test and/or try goods and/or warranties for goods made and/or traded; 5. Providing compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services; 6. Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Based on the provisions of the Consumer Protection Law, it can be understood that in carrying out investment activities via the internet, investors can request compensation, and/or replacement if the goods and services received are not used properly or not. If an economic entity violates regulations prohibiting the marketing of goods or services that do not fulfill the commitments on the label, declaration, advertisement or promotion of the goods or services, then the economic entity may be subject to fines in accordance with basic laws and regulations. Article 62 paragraph (1) of the Consumer Protection Law reads: "Business entities that violate the provisions of Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1), letters a, b, c, e, paragraph (2) and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of IDR 2 billion."

Criminal sanctions as referred to in Article 28 paragraph (1) UUITE are regulated in Article 45 paragraph (2) UUITE with a maximum penalty of six years and a maximum fine of IDR 1,000,000,000.00 (One billion rupiah). Criminal acts in the form of electronic investment are included in criminal acts against property regulated in Article 378 of the Criminal Code, specifically: Whoever intentionally obtains illegal profits for himself or another person by using a false name or identity, by deception or a series of lying, deceiving others into giving up something.

Furthermore, in relation to Article 27 paragraph (2), consumers/investors must not use any permits, not make fake investments, or make investments under the guise of online investments which are actually just online gambling applications, which often become victims of companies. UUITE states "any person intentionally and without authorization distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain gambling content." Next, Article 45 paragraph 1 UUITE regulates the amount of sanctions that will be received by perpetrators who are deemed to have fulfilled the provisions in Article 27 paragraph (2) UUITE. The sanctions given to every person who meets the elements as intended in article 27 paragraph (1), paragraph (2), paragraph (3) or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum IDR 1,000,000,000.00 (one billion rupiah).

Obstacles Faced by Law Enforcement in Efforts to Combat Crime Under the Guise of Electronic Investment.

The politics of criminal law overcoming crime under the guise of electronic investment is not something that is easy to do. This is due to the high number of investment crimes under

the guise of electronics. The existence of the ITE Law to tackle investment crimes under the guise of electronic investment is not solely imposed on the law.

According to Sumadi, obstacles to dealing with crime under the guise of electronic investment in the hands of law enforcement officers include the lack of law enforcement officers who understand the ins and outs of information technology (internet), limited facilities and infrastructure and a lack of public legal awareness in dealing with information technology crimes. (Sumadi, 2016) Apart from that, the capacity of law enforcement officials in the region is still very minimal and not even ready to anticipate the development of information technology crimes caused by technological ignorance among law enforcers.

In line with Sumadi's views, Perkasa, Nyoman and Bambang stated that the obstacles experienced by law enforcers in tackling crimes under the guise of electronic investment are; (Perkasa et al., 2016) 1. Digital Evidence; Searching for digital tools is something that is still difficult to do, because it requires adequate capabilities and infrastructure to obtain this evidence. 2. Difference of Opinion that occur between law enforcement officials in interpreting crimes under the guise of electronic investment, especially in the application of articles by the public, investigators, public prosecutors and judges, are very influential in resolving cases that occur, giving rise to legal uncertainty for victims as seekers of justice. 3. Investigator Ability: Police investigators still have shortcomings in terms of numbers and quality, therefore it is necessary to increase education and training for police investigators to understand and master the crime mode under the guise of electronic investment. 4. Lack of public awareness and attention; The public awareness and attention needed to report investment crimes under the guise of electronic investment to the police is very low. There is an opinion among the public that the amount of money lost is not too large, so they are reluctant to report it to law enforcement officials.

Tumalum further stated that apart from what is described above, the inhibiting factors experienced by law enforcers in dealing with electronic investment crimes include: (Tumalum, 2015) 1. Limited number of experts; The limited number of experts is one of the factors hampering the law enforcement of investment crimes under the guise of electronics. For example, when compared to the number of experts in China, the number of personnel is quite large, but the number of experts in Indonesia is very limited, while police reports show that the number of electronic investment crimes increases drastically every year. Barda Nawawi stated that "The limited number of experts in the police is certainly a very big factor, and with this limited number of expert members, it is difficult to complete the disclosure of crimes disguised as electronic investments in a timely and fast manner, so that it will give the perpetrators more space to act ." 2. The role of the Government in supervising is very weak; The government's weak role in supervising internet usage has apparently resulted in opportunities for crime in cyberspace in general, specifically electronic investment crimes. 3. Constraints in the ITE Law; The weakness of the legal instruments of the ITE Law can be seen in Articles 27 and 37 relating to prohibited acts. Law enforcement officials still do not properly understand the meaning of this article.

According to Soerjono Soekanto, there are five factors that influence law enforcement to run well, including: 1. The legal factors themselves, which are limited by law only; 2. Law enforcement factors, namely the parties who form and implement the law; 3. Facility or facility factors that support legal enforcement; 4. Community factors, namely the environment in which the law applies and is implemented; 5. Cultural factors as a result of work, creativity and feelings that are based on human intention in social life

Based on the factors mentioned by Soerjono Soekanto, according to the author, the five factors mentioned are still inhibiting factors in overcoming crimes under the guise of electronic investment in Indonesia. In implementation in the field, the police formed a Cyber Crime Sub-Directorate, a special unit tasked with combating information crimes and electronic transactions. The aim of establishing the Cyber Crime Sub-Directorate is to

eradicate the increasing number of criminal cases in the information technology sector, especially crimes under the guise of electronic investment.

CONCLUSION

The politics of criminal law in tackling crimes under the guise of electronic investment can be concluded:

1. The politics of criminal law in the context of tackling crime under the guise of electronic investment to protect society is still oriented towards the criminal justice system. Therefore, dealing with crimes under the guise of investment has been accommodated by the provisions of Article 378 of the Criminal Code and is also regulated in Article 4, Article 7 and Article 62 of the Consumer Protection Law. The government has issued Law No and Article 28 paragraph (1) in conjunction with Article 45 paragraph (2) of the ITE Law in the form of a maximum prison sentence of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion).
2. Obstacles faced by Law Enforcement in efforts to overcome crime under the guise of electronic investment include the small number of law enforcement officers who understand the ins and outs of technology, in this case the internet, limited facilities and infrastructure, and a lack of public legal awareness which is an obstacle to crime prevention. under the guise of electronic investment. Apart from that, the inability of law enforcement in the regions to anticipate the rise of crime under the guise of electronic investment is due to lack of technology. Efforts to overcome crime under the guise of electronic investment require human resources who understand the internet or information technology

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