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The Validity of Illegal Investments In The Digital Era On Positive Legal Arrangements In Indonesia

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Abstract: The rapid advancement of technology has transformed human behavior in numerous ways, including the widespread use of the internet, which has become an indispensable part of modern life. The internet has revolutionized various industries such as communication, trade, finance, education, and business, making it easier than ever for people to engage in online activities and even digital investments. Yet, unfortunately, many fraudulent investment opportunities have emerged, preying on unsuspecting victims and causing significant financial losses. As a result, the Indonesian government has taken measures to combat illegal investments and protect the public. Such practices are considered criminal offenses under the Criminal Code's Article 378, which criminalizes deceitful and fraudulent schemes. Additionally, fundraising without proper authorization is punishable under Article 46 of Law Number 10 of 1998 jo. Law Number 7 of 1992 concerning Banking. Sharia-based investments without a business permit from Bank Indonesia can also face legal repercussions under Article 59 of Law No. 21 of 2008 concerning Sharia Banking. These regulations aim to safeguard individuals from illegal investment activities.

Keyword: Digital Investment; Illegal, Criminal Offenses.

INTRODUCTION

The advancement of the modern era is always accompanied by advancements in technology. Technology serves as the primary driver in transforming various aspects of life, ranging from how we communicate, work, and shop, to obtain information. With technological progress, innovations continue to emerge, allowing us to do things that were previously considered impossible or difficult. Advanced technology also influences how we go about our daily lives, offering unprecedented convenience and efficiency. For example, the development of smartphones and digital applications enables us to connect with others worldwide in an instant, while artificial intelligence and automation technology change how we work and produce goods.[1]

However, along with this progress, some new challenges and risks need to be faced, such as cybersecurity issues, personal data protection, and the social impact of continuously evolving technology. Therefore, as the era becomes increasingly modern, it is important to remain wise in the use of advanced technology, as well as to develop policies and regulations that can ensure technology is used for the common good. One form of sophisticated technology that we use daily is the internet. The internet is one of the most tangible proofs of technological advancement in the modern era. As a global network connecting billions of devices worldwide, the internet has revolutionized how we communicate, work, learn, shop, and even socialize. Here are some reasons why the internet is considered as one of the evidence of technological sophistication.

The presence of the internet makes people want to explore further, one of which is through online investment. Online investment allows individuals to invest in various financial instruments and assets without having to leave their homes. Thanks to technological advancements, the investment process has become easier, faster, and more accessible to more people. The Internet enables individuals to buy and sell stocks, mutual funds, and other financial instruments through online trading platforms or digital brokers. It provides direct access to global stock markets and allows investors to transact in real time.

The abundance of investment activities indicates a strong desire from the public to see an increase in their asset values over time. This increasing expectation indicates that investment has become the primary choice in managing finances and planning for the future. In this modern technological era, investment has become easier due to widespread access and information available through online platforms. Online investment, known as online investing, has become an intriguing phenomenon because it allows the public to invest through trusted platforms overseen by the Financial Services Authority (OJK).[2]

The presence of the Financial Services Authority (OJK) in digital investment plays a crucial role in ensuring security, transparency, and compliance with regulations in the increasingly prevalent online investment activities. The role of the OJK here is to be responsible for issuing regulations and guidelines governing digital investment in Indonesia. The OJK ensures that digital investment platforms adhere to established rules to protect investors from fraudulent practices, market manipulation, and other illegal activities. Additionally, the OJK's task is to safeguard consumers involved in digital investment by overseeing online platforms to ensure that the information provided to investors is clear, transparent, and not misleading.

Unfortunately, online investment also brings certain risks, such as the potential for fraud, high market fluctuations, and cybersecurity risks. Recently, many illegal investments have caused significant losses to many people who have become victims. Illegal investments or Ponzi schemes often disguise themselves as legitimate investment opportunities, but in reality, they are fraudulent schemes designed to deceive people into depositing their money with unrealistic promises of high profits.[3][4]

A Ponzi scheme is a form of investment fraud in which individuals or entities behind the scheme solicit money from a group of investors with the promise that they will receive large profits from their investment. Subsequently, the scammer will collect money from a second group of investors and use those funds to pay the first group of investors, creating the illusion of high returns. Initially, the first group of investors may feel they are profiting as promised. However, this scheme relies on a continuous influx of new investors to fund payments to previous investors. When the Ponzi scheme cannot attract more investors to put money into the scheme, it collapses, and the final investors typically experience significant losses as they receive no returns.

Ponzi scheme investments are often considered attractive because of the promises of quick and large profits made to investors. Ponzi scammers often use appealing tactics, such as promising high investment returns in a short period without significant risk. Moreover, Ponzi schemes are often packaged in attractive and professional-looking presentations, using complex financial terms to reinforce the impression of trust. Scammers also tend to use aggressive and manipulative marketing techniques to attract potential investors, such as promising bonuses or special incentives to those who recruit other investors into the scheme. It can create a domino effect where investors initially interested in the investment opportunity are soon incentivized to recruit others, without realizing they are involved in a fraudulent scheme.

The prevalence of illegal investment fraud has prompted the OJK to enhance transparency and security in investments. According to the OJK, there are at least approximately 400 illegal investment companies, indicating that the OJK is serious about addressing the issues faced by the Indonesian people. The proliferation of illegal investments conducted through electronic media is one of the new legal issues requiring legal transformation to prevent illegal investments in the future, thereby improving digital investment transformation in Indonesia.

Based on the background outlined above, this article will discuss the positive legal regulations in Indonesia concerning illegal investments.

METHOD

Method

The research method used to create this writing is normative legal research which is a legal study conducted by examining library materials and secondary data, wherein the approach used is normative jurisprudence with a descriptive-analytical nature.[5]

Approach

The normative approach is a method used to examine issues in the context of law and regulations, including rules that can be used as a basis to examine issues and their legal consequences. In this case, for example, is Law Number 25 of 2007 concerning Investment. The normative approach is conducted on specific regulations or written laws related to the concept of law enforcement regarding Illegal Digital Investment. The research describes the object being studied, focusing on regulations and legal protection concepts related to illegal digital investment in the digital era.[6]

RESULT AND DISCUSSION

Illegal Investment in the Digital Era.

The rapid advancement of technology has led to changes in human activities, one of which is the presence of the internet, which aids in the lives of society today. Many people cannot imagine living without the internet. The Internet has begun to permeate all potential industries such as communication, trade, offices, finance, education, and even business and investment. The extensive reach of the internet facilitates people to engage in activities online, one example being seeking profits through digital investment.[7]

Technology-savvy individuals only require a smartphone to engage in investment activities. The number of digital investment users in Indonesia is increasing in line with technological advancements and easier access to online investment platforms. It is attributed to widespread internet access, the growth of internet access, and high smartphone usage in Indonesia, enabling more people to connect to digital investment platforms. Additionally, the ease of use of digital investment platforms, and finally, the increasing awareness of investment for financial planning in old age, contribute to this trend.

In the context of the rapid development of digital investment, there are opportunities for irresponsible parties to exploit the situation for personal gain through fraudulent investment practices. Illegal investments often promise quick and easy profits, but in reality, they only harm society. Terms such as "Ponzi schemes" or "illegal investments" are often used by the public to refer to such types of investments. Undoubtedly, illegal investment is an activity that lacks permission and is not allowed as per Article 16 paragraph (1) of Law Number 10 of 1998 concerning banking. This law mandates that any entity that intends to raise funds from the public in the form of mandatory deposits should first obtain a business license as a Commercial Bank or People's Credit Bank from the Head of Bank Indonesia. However, if the fundraising activities of the public are regulated by separate laws, then the aforementioned law would not apply.

Illegal investment is a fundraising activity that offers a commission or bonus to new members who sign up. Additionally, illegal investments offer various enticing promises such as business partnerships in agriculture and plantations, trading mobile phone credit, partnerships in cattle farming, gold trading, hajj savings, investment partnerships in the capital market, and many other methods to lure customers.[8]

The most commonly used illegal investment scheme by many perpetrators is the Ponzi scheme. A Ponzi scheme is a type of investment fraud where the returns paid to initial investors come from the money invested by new investors, rather than from actual profits generated by legitimate business or proper investment activities. The scheme is named after Charles Ponzi, a notorious swindler who ran a similar scheme in the early 20th century. In a Ponzi scheme, perpetrators typically promise large profits in a short period to attract new investors. Initially, the first investors may receive payments as promised, making the scheme appear legitimate and attracting more investors. However, this scheme is not sustainable because it relies on a continuous flow of new investors to pay returns to earlier investors. When there are not enough new investors or when too many investors want to withdraw their money, the Ponzi scheme collapses, and many investors lose their funds. Characteristics of a Ponzi scheme include:

a. Promise of high profits with low-risk.
   Ponzi schemers often promise large profits in a short time with minimal or no risk.
b. The consistency of profits is too good.
   Although investment markets generally fluctuate, Ponzi schemes tend to show consistent and steady profits, even when markets are volatile.
c. Lack of transparency.
   Ponzi schemes often do not provide clear information about how profits are made or actual investment details.
d. Emphasis on recruiting new investors.
   To keep the scheme running, Ponzi perpetrators encourage investors to recruit others, thereby generating a continuous flow of funds.

Ponzi schemes are illegal and can cause significant financial losses to their victims. To avoid these types of schemes, investors should always do thorough research, be wary of promises of profits that are too good to be true and ensure their investments are made through platforms or companies that are legitimate and regulated by trusted financial authorities. There are also negative impacts from illegal digital investments, namely as follows:

a. Financial loss.
   Investors who engage in illegal investments can lose all the funds they invested. Ponzi schemes and similar illegal investment schemes often end in total losses for investors, as funds from new investors are used to pay old investors, creating an inevitable vicious cycle
b. Reputation damage.

Illegal investments can damage the reputation of the digital investment industry as a whole. Public trust in online investing could decline if a series of illegal investment scandals occur that destroy the lives of many people.

c. Market instability.

Illegal investment practices can create instability in overall financial markets. When illegal investment schemes collapse, the impact can be felt not only by direct investors but also by the economy at large

d. Emotional and psychological damage.

Illegal investments can cause stress, anxiety, and depression for victims who have lost their money. For many people, losing their life savings in a fraud scheme can have a devastating long-term impact on their emotional and psychological well-being.

e. Loss of confidence in the financial system.

Illegal investment schemes can reduce public confidence in the financial system as a whole. When people feel that they are not protected from fraudulent practices, they may become more skeptical of legal and legitimate investments in the future.

Illegal investment in Indonesia is a serious issue that requires a quick and vigilant response from the Financial Services Authority (OJK). In the current digital era, information can spread rapidly through the internet, so swift action can save the public from the risks of illegal investment. Therefore, OJK has established the Task Force for Handling Suspected Unlawful Actions in Investment Management, known as the Investment Alert Task Force (SWI), since 2007. The main task of SWI is to stop and prevent illegal investments in Indonesia by identifying and inventorying fraudulent investment schemes. To carry out its duties, SWI collaborates with various relevant institutions such as the Capital Market Supervisory Agency and Financial Institutions (Bapepam-LK), Bank Indonesia (BI), the Ministry of Trade (Kemendag), the Criminal Investigation Agency of the Indonesian National Police, as well as the Financial Transaction Reports and Analysis Center (PPATK). This collaboration aims to strengthen coordination among institutions in protecting the public from unlawful actions related to the collection and management of investments.

Illegal Investment Law in the Digital Era According to Indonesian Positive Law.

Investment is the act of placing money or other resources into a project, asset, or business with the hope of gaining profit or benefit in the future. Generally, investment can be seen as the process of allocating capital with the expectation of generating financial returns or added value over time. There are various types of investments, and each type has different characteristics and levels of risk. Here are some common forms of investment:

a. Financial investment

Involves purchasing stocks, bonds, mutual funds, cryptocurrencies, and other financial instruments with the hope of gaining profit through price appreciation, dividends, or interest.

b. Real estate investment

Involves the purchase of properties such as houses, buildings, or land with the expectation of gaining profit from property value appreciation or rental income.

c. Business investment

Investing in businesses or ventures to gain profit from business income or increase the value of the business.

d. Human resource investment

Involves investing in education, training, or skill development to enhance an individual's earning potential and capabilities.

Investment has two main elements: risk and return. Every investment carries a certain level of risk, and there is typically a relationship between risk and potential return. The higher the risk, the higher the potential return, but also the greater the likelihood of loss. Therefore, investors need to carefully assess risk and adjust their investment strategies according to their goals and risk tolerance. Investments can also have short-term or long-term goals, depending on individual or organizational strategies and needs. In the long term, investments can be a way to build wealth, achieve financial goals, or plan for the future, such as retirement or children's education.

Meanwhile, the Indonesia Stock Exchange (BEI) explains that investment is an activity aimed at combating the reduction of the value of money due to inflation. According to Kamarauddin, investment is the activity of transferring funds into stocks, bonds, or other financial instruments. Investment can also be defined as the act of purchasing capital goods using available funds for use in the production process, to generate income in the future. Foreign investment activities in Indonesia are regulated by Law Number 25 of 2007, which sets out provisions for foreigners wishing to invest in Indonesia, whether by foreign nationals, foreign business entities, or foreign governments.[9]

According to the constitution, the President has the authority to propose legal regulations regarding investment, by the provisions of the 1945 Constitution. In the constitutional framework, national development assumes a pivotal role in the progression of Indonesia's economic landscape, with the overarching objective of fostering enduring enhancements to the nation's economic fabric. It is important to note that Indonesia's economic development must be based on the principle of economic democracy. Investment is considered one of the key steps in national economic development. This approach aligns with the mandate given by the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998, which emphasizes the implementation of investment regulations and policies based on the people's economic system.

The people's economic system involves various economic actors, including MSMEs (Micro, Small, and Medium Enterprises) and cooperatives. Capital investment is carried out to accelerate economic development, with the hope of transforming the economic potential of the community into tangible economic activities. This capital investment does not always have to come from abroad but must also utilize domestic resources. Before entering the global market and engaging in international cooperation, an important step to take is to create a conducive investment climate. Furthermore, this climate must be maintained to remain productive and attractive to investors. Indonesia's investment climate must also possess qualities that are marketable, efficient, and most importantly, prioritize the interests of the Indonesian people.

Legal certainty is paramount for investors, as it ensures stability and predictability for long-term investment decisions, crucial for attaining future profitability. If a country lacks legal certainty during the investment period, investors will struggle to calculate the potential profits or losses due to constantly changing regulations. Uncertainty is the enemy of investment; the higher the level of uncertainty, the smaller the likelihood of investors to invest. In response to this challenge, the Indonesian Government is diligently endeavoring to furnish remedies aimed at mitigating potential legal ambiguities. The government must formulate regulations capable of reconciling overlapping or contradictory statutes, thereby fostering a stable and foreseeable investment environment.

The concept of regulations aimed at harmonizing various disparate regulations is known as the Omnibus Law. With this concept, the Indonesian Government formulated Law No. 11 of 2020 concerning Job Creation. However, the presence of this law does not immediately solve the issue of legal certainty. Legal certainty depends not only on regulations but also on law enforcement. In addition to regulatory alignment, the Job Creation Law is also expected to create a competitive investment climate comparable to other countries. Another factor influencing investors' decisions to make investments is the ease of doing business and incentives provided by the government. The Indonesian government must address these demands to attract more investors.

The Financial Services Authority (Otoritas Jasa Keuangan) plays a crucial role in supervising illegal investments in Indonesia. As the supervisory body for the financial sector, the Financial Services Authority functions to ensure the smooth operation of financial institutions and prevent illegal practices. One preventive measure taken is through the Investment Alert Task Force under the Financial Services Authority. Although this task force routinely reports illegal investment entities to the public, new entities continue to emerge due to ongoing interest in such financial services.[10]

One of the objectives of law in Indonesia is to protect all its citizens from detrimental circumstances. Therefore, Indonesian law must be capable of fulfilling society's need for legal protection against illegal investments. The presence of law is not only to prevent fraudulent investment practices but also to safeguard the community from potential fraudulent investment schemes that may exist within Indonesian society. Investment, as one of the economic activities, must also receive legal protection. According to Article 28D paragraph (1) of the 1945 Constitution regarding the recognition, guarantees, protection, and legal certainty, and Article 33 paragraph (4) regarding efforts to maintain economic balance, investment, and trade play a significant role in driving national economic progress. However, without adequate state protection for individuals involved in investment and trade activities, it is difficult to expect progress and may even risk economic regression. Therefore, ensuring a conducive investment climate in Indonesia is one of the crucial steps to guarantee national economic advancement.

Illegal investment practices can be prosecuted as fraudulent offenses because they involve deception, trickery, or a series of falsehoods that induce others to deliver goods to fraudulent investment service providers, thereby Article 378 of the Indonesian Criminal Code applies. Furthermore, fundraising activities without permission can also be criminally punishable under Article 46 of Law No. 10 of 1998 jo Law No. 7 of 1992 concerning Banking. Similarly, Sharia-based investments without a business license from Bank Indonesia may be subject to criminal sanctions under Article 59 of Law No. 21 of 2008 concerning Sharia Banking. These regulations aim to protect the public from illegal investment practices.

Although there are regulations governing investment activities in Indonesia, the protection needed by the public is not only limited to defense after incurring losses but also involves efforts to prevent such losses. On September 6, 2019, the Financial Services Authority issued a press release listing websites or commodity futures trading entities without permits. The list included 49 names of websites, companies, or related entities. Additionally, on July 14, 2021, the OJK also reported a list of illegal investment entities that had ceased operations, with 11 companies listed. These actions reflect the government's efforts to prevent public losses due to illegal investment activities.[11]

Based on the discourse presented in this article, the Financial Services Authority plays a crucial role in safeguarding the public's interests within the realms of financial services and investment. Investor protection stands out as one of the mandates vested in the Financial Services Authority, as articulated in Article 6 of Law Number 21 of 2011 concerning the Financial Services Authority, which grants the OJK the authority to regulate and oversee various types of financial services institutions. The safeguarding of investment endeavors in Indonesia transcends mere legal formalities; it necessitates the oversight of an independent body specifically tasked with this responsibility. In the context of facilitating economic activities in Indonesia, the provision of robust and high-quality financial services emerges as a pivotal element in the economic ecosystem. As a supervisory entity, the Financial Services

Authority (OJK) assumes the role of ensuring the caliber of financial services offered by corporate entities operating in Indonesia.

CONCLUSION

The rapid advancement of technology has led to a transformation in human activities, one of which is the presence of the internet, which aids in the lives of society today. Many people cannot imagine living without the internet. The Internet has permeated into all potential industries such as communication, trade, offices, finance, education, and even business and investment. The widespread reach of the internet facilitates people to engage in activities online, one example being seeking profits through digital investments. However, online investment also entails certain risks, such as the potential for fraud, high market fluctuations, and cybersecurity risks. Recently, there have been numerous illegal investments causing significant losses to many victims. Illegal investments, or Ponzi schemes, often masquerade as legitimate investment opportunities, but in reality, they are fraudulent schemes designed to deceive individuals into depositing their money with unrealistic promises of substantial returns.

Illegal investments refer to investment activities that lack authorization or violate existing laws and regulations. These investments often disguise themselves as legitimate investment opportunities but involve fraudulent practices, embezzlement, or other legal violations. The fraudulent practices associated with illegal investments can be prosecuted as fraud offenses, as they involve deception, trickery, or a series of falsehoods that lead others to surrender property to fraudulent investment service providers, thereby falling under Article 378 of the Indonesian Penal Code. Additionally, unauthorized fundraising activities can also be punishable under Article 46 of Law Number 10 of 1998, in conjunction with Law Number 7 of 1992 concerning Banking. Similarly, Sharia-based investments without business permits from Bank Indonesia can face criminal sanctions under Article 59 of Law Number 21 of 2008 concerning Sharia Banking. These regulations aim to protect the public from illegal investment practices.

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