

Analysis of legal protection for victims of illegal investment of ponzi schemes

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ABSTRACT

Technological development connects the world and becomes the basis for digitalizing finance and boosting the economy. Investment is useful for protecting investors from inflation, planning for the future economy, increasing wealth, and providing convenience in emergency needs. This study aims to analyze legal protection, the problem, and the consequences of law enforcement toward corporations. This study used the library research method. This study used a normative juridical approach which means that the study concerns norms, legislation, and court decisions related to legal protection for victims of illegal investment. The result of the study showed that the court has provided legal protection but it has not been able to meet the aspect of justice. Indonesia faced some problems in enforcing the law and maximizing the function of government institutions. This is proven by the great power to deceive using current developments. Besides, the results reveal that the court gave punishment as the result of the law enforcement to the corporation such as company dissolution and compensation payment to the victim.

Keywords: Investment, Legal Protection, Ponzi Schemes

1. INTRODUCTION

The rapid development of technology not only connects the whole world but also becomes the basis for digitalizing finance and boosting the world economy (Sumiati, 2021). Investment can be useful for protecting investors from inflation, planning for the future economy, increasing wealth, and easily fulfilling emergency needs (Wisani, 2022). This affects changes in people's livelihoods to survive.

People are still ignorant of the correct investment procedures as investment products are still considered new products (Kori Hermawanti, 2022). Eflynn Christie revealed that technological developments could be utilized to create new modes of fraud (Christy, 2018). The new fraud in illegal investment uses Ponzi schemes. Ponzi Schemes are activities to obtain public funds by promising high profits in the shortest period (Ressa Khoerunnisa, 2023). Without curiosity about development, continuous development can create a gap that can be exploited to gain profits.

Limited or even no knowledge of the investment product makes Indonesian people easily tempted and deceived by promises and high monthly returns (Nurdianti, 2020). This can be seen in First Travel cases which use a Ponzi scheme by offering pilgrimage services at low prices. The enthusiasm of the public with the low prices offered makes them join in this investment without



considering the existing permits. In this case, the ignorance can cause losses. Besides, many people look for new ways to commit criminal acts of illegal investment.

First travel is suspected of using a Ponzi scheme by collecting public funds for investment. This will be detrimental to investors who join later because their funds will be used to fund the travel of investors who join first (Sugiharto, 2017). This is in line with the typical characteristics of fraudulent investments with Ponzi schemes where people who join first will get profits first and this is not from business but is a commission obtained from subsequent people who join (Lorien, 2022). The limited legal protection provided to investors in First Travel cases reduces investors' trust in investing. The loss of trust due to investor losses causes difficulty in the development of the capital market (I Komang Ngurah Wirya Jaya, 2022).

Investors want to get a fair compensation for their investment. Compensation refers to the return of property or payment for damage suffered, costs arising from casualties, and provision of services and rights of recovery (Haqq, 2022). The failure to provide the expected compensation causes investors to feel a lack of justice, resulting in further feelings of doubt about investing. This condition makes it difficult for the country to develop its economy. Consequently, the development of other sectors is left behind as the community's investment capacity is low.

Based on the elaboration above, the researcher carried out a study entitled “analysis of legal protection for victims of illegal investment of ponzi schemes: a case study of the court decision number 3096 k/pid.sus/2018”

2. RESEARCH METHOD

This study used a library research method with a normative juridical design. This study used both primary and secondary sources. The primary sources were relevant laws or regulations to this study and the secondary sources were books, journals, theses, dissertations, and other relevant scientific work.

This study used a scientific approach which means that this study is based on scientific methods with a combination of logical and empirical ways of thinking (Wagiran, 2019). The researcher collected books and journals relevant to this study from both online and offline sources. This study used a qualitative method with a case study design so it does not use any formula or numbers.

3. RESULTS AND DISCUSSION

Legal Protection Provided in Supreme Court Decision No. 3096 K/PID.SUS/2018



PT. First Travel was established in 2009 to offer national and international travel services. This company started to offer pilgrimage (Umrah) travel services in 2011. The Ministry of Religious Affairs started to detect suspicions about the strange business model run by First Travel. First Travel failed to depart the customer to Mecca for pilgrimage and they were accommodated at Soekarna Hatta airport, Jakarta.

After a long mediation process which never reached a decision, on 3 August 2017, the Ministry of Religious Affairs officially revoked First Travel's operational permits. Due to violations of several statutory provisions, on 9 August 2017, the owner of PT. First Travel Karya Utama, namely Andika Surachman and Anniesa Desvitasari Hasibuan were named as suspects by the National Police for alleged fraud and violating the ITE Law so that they face a 4-year prison sentence (NEWS, 2017).

Based on the results of the trial, Andika Surachman as defendant 1 and Anniesa Desvitasari Hasibuan as defendant 2 had been proven guilty of "jointly committing fraud and money laundering as a continuing act". The court sentenced defendant 1 (Andika Surachman) to prison for 20 years and defendant 2 (Anies Desvitasari Hasibuan) to prison for 18 years and each was subject to a fine of Rp. 10,000,000,000 (Ten Billion Rupiah) or the equivalent of 8 (eight) months in prison. Besides, the entire period of detention that the defendants have served is deducted entirely from the sentence imposed.

In filing a cassation, the reason for filing a cassation due to an error in the application of the law by *Judex Facti* is not justified as it is not found to be so. *Judex Facti* has considered the facts and the evidence presented as well as the facts discovered during the trial so there is no violation committed against Article 378 of the Criminal Code in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code in conjunction with Article 64 Paragraph (1) for the first indictment and Article 3 of Law Number 8 of 2010 in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code for subsequent indictments.

The decision of prison sentences for 20 and 18 years with a fine of Rp 10,000,000,000 or equivalent to 8 months in prison is considered appropriate. The judges have considered all the circumstances and values that could mitigate or aggravate the sentence and the defendant's behavior during the trial. Evidence of financial deposits confiscated by the state and requests to return the money to the customer were also rejected. This is because the money is the result of criminal acts of fraud and money laundering, so according to the judge, referring to the provisions



of Article 39 of the Criminal Code in conjunction with Article 46 of the Criminal Code, this evidence must be confiscated for the state.

Another reason for filing a cassation by the public prosecutor is an appreciation of a fact. Thus, it cannot be justified as the examination at the cassation level only concerns the non-implementation of a legal order or a trial that is not carried out in accordance with the provisions of the law, or whether the court is carried out outside the limits of its authority as stated in Article 253 Paragraph (1) of Law Number 8 of 1981.

The defendant's reason for filing a cassation cannot be justified because *judex facti* has conducted the trial in accordance with the law without exceeding the limits of authority and with no misunderstanding in applying the law. The reason for filing a cassation cannot be justified because the case is not just a civil case. This can be known when the *quo* trial occurs that this is also a criminal act. The court decision and consideration of the West Java High Court are considered appropriate and correct.

Based on the results of the analysis, the rejection of the cassation application submitted by the prosecutor for errors in the application of the law is considered appropriate which can be seen from the contents of the Criminal Code and other supporting articles that the court's decision is right on target. The decision to reject the cassation for granting respect for truth is also correct. If it is not rejected, it will be blamed on Article 253 Paragraph (1) of Law Number 8 of 1981.

The Supreme Court's decision to reject the defendant's cassation argument of exceeding the limits of authority is considered correct because according to the results of the trial, the decision is correct. Rejecting the cassation which claims that this case is only a civil case is the right decision because there are also criminal elements in this case. Imposing a prison sentence of 20 years for defendant 1 and 18 years for defendant 2 with a fine of Rp. 10,000,000,000 (Ten Billion Rupiah) is the right decision. This is because the sentences imposed are in accordance with the charges given by the prosecutor against the defendants.

The refusal to return material that had been deposited by the customer or investor is considered an inappropriate decision due to losses in investing in First Travel. This can have great impacts on people's trust in investing which ultimately can hinder future economic growth. The government and the Financial Service Authority (OJK) have suspended sales and revoked its operational permits but it is considered quite late because of the high number of victims in West Java and other areas. The delay in issuing an order to stop ticket sales as it is considered an illegal investment and collecting public funds without permission have significantly reduced trust in a safe investment.



Obstacles Faced by the Government in Implementing the Law

The existence of penalties and other articles for perpetrators of illegal investment crimes can be used as an option to tighten existing regulations in Indonesia. These regulations cover articles in the Civil Code book 3 concerning engagements, UURI No. 25 of 2007 concerning Capital Investment, and UURI No. 8 of 1999 concerning Consumer Protection.

In addition to regulations, a state institution namely, the Financial Service Authority (OJK) was established to provide supervisory functions and integrate the banking sector into a single door. This is done to provide a sense of security or increase people's trust to invest in Indonesia.

In implementing the regulations, state institutions face some obstacles, namely the length of the trial period where civil courts take a maximum of 6 months to examine cases since the registration (Indonesia, 2016). This is considered not effective due to the lack of filing of civil cases which are carried out simultaneously with the criminal case so that it is possible to incur even more costs for the victims. The public's legal ignorance causes them to not know that it is permissible to file criminal and civil lawsuits simultaneously, which will result in additional time and material losses if they want to continue carrying out civil court litigation again.

In accordance with Article 194 paragraph 1 of the Criminal Procedure Code, the decision to sentence or release or be free from the law in which if there is evidence, it must be returned to the party most entitled to receive it unless the evidence is regulated in law, it must be confiscated by the state. This article was only reached in the granting decision made in 2022. The case that occurred in 2018 and the return in 2022 is considered quite old. This depends on resubmitting the decision, but in the previous cassation filing stage, it could be returned due to a statement in which they demanded a cassation for the return of the losses suffered.

The period to return the money to the victim is considered inconsistent with the value of the money at the time of the initial decision to confiscate it. This is indicated by the large amount of inflation due to COVID-19. The increase in inflation means that investors are at a loss when the money received does not match the value of the money currently in circulation so it is considered less effective.

Another obstacle is the limitation in giving charges. The Public Prosecutor as the legal institution handling the case has to give charges against the defendant. Referring to Article 127 of RV, it is allowed to change or reduce claims but it is not allowed to change or add to the principal of the claim where the principal of the claim refers to the circumstances or conditions stated so that there is a different principal relationship and changes from the original (Harahap, 2017). Based on



the explanation of both civil and consumer protection laws above, compensation and imprisonment can be given.

The concept of justice for victims has not been achieved as characterized by a refusal to pay back the losses experienced by the investor. The confiscation of evidence and assets to be used as compensations for the victims to recover material losses, especially for the middle to lower levels of society is considered urgent.

In this case, the state institutions must follow stages of examinations in the form of an investigation. Indeed, it will take some time so that there is enough evidence to convict the perpetrators of illegal investments.

This means that during the investigation, public funds can still be collected and cannot be stopped. The supervisory function is the main function or the main reason for the establishment of the institution. However, in carrying out the supervisory function, the government institution faces some limitations due to the large number of institutions operating in the financial and banking sectors.

However, a government institution must have a special team to supervise all their agencies. Supervision that uses the compliance concept may provide business reports that have been falsified so that they cannot be detected by the Financial Service Authority (OJK). On the other hand, there should be an inspection of permits first for any agencies collecting fund funds from the public for investment.

Supervision that uses the risk concept should be mandatory and routine supervision so that there is risk management before any material losses. The lower middle-class society has limited knowledge of investment and it is exploited by criminals to gain profits for themselves. Therefore, state institutions need to carry out educational functions.

Every state institution needs to make regulations for strict supervision due to new regulations governing investment.

However, the increasing number of illegal investment cases and losses every year indicates that the existing regulations cannot have a deterrent effect on these criminals or perpetrators.

Therefore, the provision of legal certainty and justice to victims of illegal investment does not improve because of limited law enforcement in convicting the perpetrators.

Moreover, the formulation of regulations for stopping the sale the travel service products is considered late due to the late detection of whether an investment is legal or not according to existing regulations. The new regulations cannot be immediately used because the laws and regulations will apply in the next years.



Sanctions Provided by the State as a Law Enforcement Effort

The legal basis that can be used to indicate whether a company is legally established or not includes:

1. Law No. 40 of 2007 concerning Limited Liability Companies
2. Law No. 8 of 1997 concerning Company Documents
3. Government Regulation No. 26 of 1998 concerning the Use of Limited Liability Company Names
4. Government Regulation No. 27 of 1998 Concerning Mergers, Consolidations and Takeovers of Limited Liability Companies
5. Government Regulation No. 28 of 1998 concerning Bank Mergers, Consolidations and Acquisitions
6. Government Regulation No. 15 of 1999 concerning Certain Forms of Bills that Can Be Compensated as Share Deposits
7. Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M-01.HT.01.01 of 2000 Dated 4 October 2000 concerning the Establishment of the Legal Entity Administration System of the Ministry of Law and Human Rights of the Republic of Indonesia

After the fulfillment of the laws regarding the legal basis for the establishment of a company, the company can operate. Supervision for all aspects of government institutions is needed to direct the company and avoid losses.

The establishment of companies engaging in financial services or collection of public funds is in accordance with Law No. 7 of 1992 concerning Banking which states that every party who collects public funds in the form of savings, deposits, term deposits, certificates of deposit, and/or other equivalent forms, must first obtain a business permit from the minister as a Commercial Bank or People's Credit Bank.

In addition to banking regulations, money collection is also regulated in Law No. 9 of 1961 concerning the Collection of Money or Goods, and in Government Regulation No. 29 of 1980 concerning the Implementation of Donation Collection. Article 2 of Law No. 9 of 1961 states that "To organize a collection of money or goods as intended in Article 1, prior permission is required from the authorized official."

The strict government regulations are intended to maintain the quality of goods or services provided by the company and maintain the comfort of consumers in carrying out transactions,



whether purchasing goods or using financial services. Besides, strict regulations are also a way to carry out the supervisory function so that the principle of preventing criminal acts can be achieved.

In legislative reform in Indonesia, the recognition of corporations as a legal subject resulted in the formation of a corporate criminal law system which can be seen below.

1. Corporate Criminal Act

Laws that make provisions regarding actions that may and may not be carried out as well as sanctions for corporations that violate them.

2. Substantive corporate criminal liability

It determines when and how a corporation has violated the prohibition and the possibility of being sentenced.

3. Corporate criminal procedure

It determines how this imposition can be implemented if a corporation violates the prohibition as regulated in the Supreme Court Regulation No. 13 of 2016 concerning ways to handle criminal acts performed by corporations (Sirait, 2022).

The Supreme Court Regulation No. 13 of 2016 also states that losses suffered by victims of criminal acts committed by corporations can be submitted for repayment through a restitution mechanism according to the provisions of the applicable laws.

Criminal sentences are also stated in the Supreme Court Regulation No. 13 of 2016 that judges have the right to impose principal and additional penalties. Article 32 contains:

1. Corporations that are subject to additional penalties in the form of substitution, compensation, and restitution, the method of implementation is carried out in accordance with the laws that regulate them.
2. The period for fulfillment of the substitution, compensation, and restitution is a maximum of one month since the decision becomes legally binding
3. In the case of strong reasons, the period in paragraph (2) can be extended with a maximum of one month
4. If the compensation is not paid according to the period stated in paragraph (2) and paragraph (3), the property can be confiscated by the prosecutor and auctioned off to pay the substitution, compensation, and restitution.

Moreover, Law No. 8 of 2010 stipulates that if the criminal act of money laundering is carried out by a corporation and/or corporate control personnel, then a criminal offense will be imposed on the corporation if the criminal act of money laundering:

1. Committed or ordered by controlling personnel



1. Committed in order to fulfill the aims and objectives of the corporation
2. Committed in accordance with the duties and functions of the perpetrator and order-givers
3. Committed with the intention to provide benefits to the corporation

Based on the explanation above, a criminal offense can be imposed as a corporate crime if the above conditions are fulfilled. After determining the criminal act, the sanctions can be found in Article 7, namely:

1. The main penalty imposed on a corporation is a fine of up to Rp. 100,000,000,- (One Hundred Billion Rupiah).
2. In addition to the main penalty imposed, there is the possibility of additional penalty imposed in the form of:
 - a) Announcement of the judge's decision
 - b) Freezing of part or all of the corporation's business activities
 - c) Revocation of business licenses
 - d) Dissolution and/or prohibition of the corporation
 - e) Confiscation of corporate assets for the state
 - f) Takeover of corporations by the state

Article 8 also states that if the assets of those convicted of fines as referred to in Articles 3, 4, and 5, the fine can be replaced by a maximum imprisonment of 1 year and 4 months.

Meanwhile, Article 9 states that if a corporation is unable to pay the fine, the fine can be replaced by confiscation of assets belonging to the corporation or controlling personnel with a value equal to the fine imposed. Therefore, if the sale of the property does not cover the fine, then imprisonment can be imposed to replace the fine imposed on corporate control personnel by calculating the fine to be paid.

Any person who assists in committing the following criminal acts must be punished with the same crime as intended in Articles 3, 4, and 5 of this law.

The possible sanctions in accordance with Case Analysis 3096 K/PID.SUS/2018 are:

1. Revocation of business licenses

Based on the principle of legal certainty, which is the main principle in the establishment of legislation, revocation of business licenses must be performed.

The revocation of business licenses is also supported by the existence of regulations governing this issue. This must be done as soon as possible since the judge's decision has been made to revoke the license to protect the victims and prevent further sales of the product.

Revocation of business licenses will also be followed by a ban on new companies opening to use names that have already been used in the case or names that are already in circulation. This aims to make consumers know that there are differences between one company and another and to protect against bad prejudice towards the company as it has the same name as the troubled company.

2. Imprisonment

Imprisonment imposed becomes a deterrent effect on the company's management and as a response to the principles of legal certainty and justice which cannot be eliminated even though the corporation has already served a fine.

A sense of comfort in investing and compliance with the laws must be maintained in order to improve the economic condition in Indonesia.

3. Main and additional penalties such as compensation

The imposition of administrative penalties involving companies in the form of fines and compensation to victims.

In accordance with the principle of justice where everyone gets their rights and obligations proportionally, victims who have suffered material and time losses while waiting for clarity from First Travel regarding their departure need to be compensated through restitution in accordance with the regulations.

If the corporation or management personnel cannot complete the compensation process, the property of the corporation or the personnel will be confiscated in accordance with existing regulations. However, it must be carried out in a reasonable period as has been stipulated, namely one month and can also be extended for a maximum of one more month after the decision has been issued.

Based on the discussion above, the refunds by the government are considered late because it has to pass some years before retesting. It can be said that government actions in responding to cases are less effective.

A new theory states that legal protection can be provided in the form of refunds to illegal investment victims. This is in accordance with the discussion above. This also proves that there is an opportunity for individuals to be able to reverse a situation from guilty to innocent if they can prove it.



4. CONCLUSIONS

Based on the results of the study, there is legal protection in the case of PT. First Travel in the form of prison sentences of 20 for Andika Surachman and 18 years for Anniesa Desvitasari Hasibuan with a fine of Rp. 10,000,000,000 of each defendant. The implementation of laws and functions of a state institution faces some problems such as an ineffective process of implementing the law and function of the state institution. The availability of government regulations to impose penalties on corporations. Compensation can be imposed on corporations that commit criminal acts as explained in the legislation.

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