

## Legal Protection for Victims of Illegal Investment Fraud Using the Ponzi Scheme in Indonesia



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**ABSTRACT:** This study was conducted through the investigation and analysis of additional criminal reasons for *rugli* can be applied as an *ulpaya perlindungan* victim of investment with a ponzi scheme. Also, reviewing and analyzing Hukum Perlindungan for Victims of Investigative Pellnipulan with Ponzi Skema. This research uses a Normative Juridical approach. While the penelitian that is carried out by *pelneliti* is the case study (Casel Approach). The results of this study show two things, namely: 1) At present there are only a few regulations that more or less allude to the discussion of ponzi, including: Law No. 7 of 2014 concerning Trade, Law No. 21 of 2008 concerning Sharia Banking, Law No. 19 of 2016 Jo. Law No. 11 of 2008 concerning Electronic Information and Transactions Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. Criminal provisions against investment activities with ponzi / fraudulent schemes are regulated in Article 378 of the Criminal Code and are very closely related to crime and the scope of criminal liability, 2) Compensation as one type of criminal sanction adopted in the new Criminal Code does not provide further explanation about the amount.

**KEYWORDS:** Fraudulent Investment, Legal Protection, Ponzi scheme Investment

### INTRODUCTION

In this modern era, technology is developing very rapidly, everything is made easier by technological developments such as payment methods using online transactions, in online transactions there are also various types of payment options. This means that related parties no longer need to meet face to face to carry out transactions, this really saves time and energy.<sup>1</sup> Apart from that, the development of increasingly sophisticated and advanced technology makes society increasingly developed in terms of knowledge. With the development of technology and information, this has encouraged developments in the investment sector. Investment itself is an activity carried out by a person or what is usually called an investor by placing part of his assets which can be in the form of money or in other forms of value and entrusted to a certain party or institution, this investment activity aims to gain profit or benefits and can also be are called investors. Investment itself comes from Italian, *investire*, which means to use or utilize.<sup>2</sup>

The emergence of the influence of globalization on economic development has caused many new types of fraud crimes to occur in the economic field. One thing that often happens is businesses using a Ponzi scheme.<sup>3</sup> The application of the law and criminal sanctions against fraudulent investment activities is closely related to the criminal act of fraud which is legalized in Article 378 of the Criminal Code (hereinafter referred to as the Criminal Code), where according to Moeljatno, the criminal regulations in this article are about acts of fraud.<sup>4</sup> The prohibition on fraudulent investment is regulated in Article 378 of the Criminal Code and is also regulated in Article 3 of Law No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (UU No. 8/2010).

<sup>1</sup>Handar Subhandi Bakhtiar, dkk, *Edukasi Hukum Transaksi Elektronik Terhadap Masyarakat Di Kelurahan Cilandak Kota Jakarta Selatan*, Jurnal Abdi MOESTOPO ISSN: 2599-249X - Vol 6, No 1 (2023), pp.46-56

<sup>2</sup>Jonkarlo, E., Sudirman, L., & Disemadi, H. S. 2022. *Market Manipulation On The Indonesian Stock Exchange By Market Maker: Investor Protection?*. Jurnal Komunikasi Hukum (JKH), 8(1), hlm. 220.

<sup>3</sup> M. Thevani, 2021, *Tinjauan Yuridis Terhadap Tindak Pidana Penipuan Bisnis Investasi Emas Pre-Order Dengan Skema Ponzi (Studi Kasus Putusan Nomor 363/Pid. B/2018/PN. Skt)*, (Doctoral dissertation, Universitas Hasanuddin), hlm. 3.

<sup>4</sup>Winda fitri dan Elvianti, 2021, *Tinjauan Yuridis Penegakan Hukum Terhadap Investasi Bodong yang Memakai Skema Ponzi*, Jurnal Pendidikan Kewarganegaraan Undiksha, Vol. 09, No. 03, hlm, 589.

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Investment in a Ponzi scheme is an interesting problem to discuss and research, especially from a criminal law perspective. Apart from the Ponzi investment problem, legal protection for witnesses who are victims of Ponzi schemes also needs attention. Likewise, the case of Decision number 374/pid.sus/2023/Pn.jkt.sel is very interesting and deserves to be discussed and reviewed. Therefore, the exclusion of witnesses in criminal proceedings has an important position, as seen in Article 184 of the Criminal Procedure Code (hereinafter abbreviated to the Criminal Procedure Code).<sup>5</sup>

As the main evidence, of course the impact is felt if in a case no witnesses are obtained. The importance of the position of witnesses in the criminal justice process has started since the beginning of the criminal justice process. It must be acknowledged that the disclosure of cases of law violations is largely based on information from the public. Likewise, in the subsequent process, at the prosecutor's level and ultimately at court, witness statements as the main evidence become the judge's reference in deciding whether the defendant is guilty or not.

So it is clear that witnesses have a very big contribution in efforts to uphold law and justice. In this regard, witnesses are an important factor in proving or disclosing facts which will be used as a reference in finding other evidence to strengthen an inquiry, investigation and even proof in court.<sup>6</sup> The importance of the role of witnesses in the law enforcement process, especially criminal law, of course has its own consequences for the people who serve as witnesses, whether they are victim witnesses and reporting witnesses or other witnesses in proving perpetrators of criminal acts, especially in investment matters using Ponzi schemes.

If you look at the old Criminal Code and the new Criminal Code, there are several differences in the types of criminal sanctions or punishments in the old Criminal Code (KUHP) and the new Criminal Code. On January 2 2023, Indonesia ratified and promulgated Law (UU) Number 1 of 2023 concerning the Criminal Code, aka the new Criminal Code. In the old Criminal Code, two types of criminal penalties were regulated, namely basic penalties and additional penalties. Meanwhile, Law Number 1 of 2023 regulates three types of criminal penalties. The differences in the types of criminal sanctions in the old and new Criminal Code refer to Article 10 of the Criminal Code<sup>7</sup>, there are two types of criminal penalties, namely: Main crimes Additional crimes. Meanwhile, according to Article 64 of Law Number 1 of 2023 (new Criminal Code)<sup>8</sup>, Criminal sanctions are divided into: Main punishment Additional punishment Special punishment for certain criminal acts specified in the law.

Based on the old Criminal Code, the main crimes consisted of five types. Meanwhile, in the new Criminal Code, the main crimes only consist of five types. The difference between the two lies in the criminal or death penalty which is no longer the main crime according to the new Criminal Code. Apart from that, in the new Criminal Code, the government also replaced the crime of cover-up with the crime of supervision. Not only that, the new Criminal Code also adds another type of punishment in the form of social work crime. According to Article 10 letter a of the old Criminal Code, the main penalties were death penalty, imprisonment, imprisonment, fine and cover-up crime. On the other hand, referring to Article 65 of the new Criminal Code, the main crimes consist of imprisonment, cover-up, supervision, fine and social work. Whether the rules are old or new, the criminal order determines the severity or lightness of the punishment.

The striking difference between the old and new Criminal Codes is the placement of the death penalty. In the old Criminal Code, the death penalty was included in the main type of crime. Meanwhile, in Law Number 1 of 2023, the death penalty is classified as a special crime which is an alternative. This is in accordance with Article 67 of Law Number 1 of 2023, namely: "Special crimes as intended in Article 64 letter c are the death penalty which is always punishable by alternative means."

Apart from that, Agus Surono<sup>9</sup> also explains that the goal of justice from the law which is the hope of the existence of a regulation, should be packaged in a mechanism that supports the essence of justice itself. The law must ensure that a statutory regulation is not just a piece of paper without any substance, but the law must ensure that a regulation can be implemented without exception. Therefore, there is a very important urgency for witnesses who are victims of fraud using this Ponzi scheme. Victims do not have to receive protection by how the criminal act is regulated but also how the victim is treated afterward, whether it ensures that the victim is truly fully protected and that the victim's rights are achieved. So there is a main problem in this research, namely additional punishment in the form of compensation applied as an effort to protect victims of investment fraud using Ponzi schemes, and how to provide legal protection for victims of investment fraud using Ponzi schemes.

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<sup>5</sup> Pasal 184 KUHP

<sup>6</sup> Prasetya Margono, 2020, *Tinjauan Yuridis Perlindungan Hukum Terhadap Saksi Serta Hak Saksi Ditinjau Menurut Undang-Undang Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban*, Jurnal Independent Vol. 5, No. 1, hlm. 46.

<sup>7</sup> Lihat pasal 10 KUHP.

<sup>8</sup> Lihat Pasal 64 UU No. 1 Tahun 2023 tentang KUHP.

<sup>9</sup> Agus Surono, *Fiksi Hukum Dalam Pembuatan Peraturan Perundang-Undangan*, Universitas Al-Azhar Indonesia, Jakarta, 2013, hal 107-108.

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The theory used in this research is legal protection theories. According to Satijipto Raharjo,<sup>10</sup> Legal protection is to provide protection for human rights (HAM) which are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. Meanwhile, according to Lili Rasjidi and I.B Wisa Putra<sup>11</sup> believes that law can be used to create protection that is not only adaptive and flexible, but also predictive and anticipatory. Another opinion was expressed by Sunaryati Hartono<sup>12</sup> which says that law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

Philipus M. Hadjon believes that "The principle of legal protection for the people against government actions relies on and originates from the concept of recognition and protection of human rights because historically in the West, the concepts of recognition and protection of human rights were born. directed towards restrictions and placing obligations on society and the government."<sup>13</sup>

Basically, legal protection does not differentiate between men and women. Indonesia as a legal state based on Pancasila must provide legal protection to its citizens because this legal protection will give rise to recognition and protection of human rights in their form as individual and social creatures within a unitary state that upholds the spirit of family in order to achieve common prosperity. Opinion regarding the meaning of understanding the meaning of the law stated by Dr. O. Notohamidjojo, SH Law is the totality of written and unwritten regulations which are usually coercive for human identity in state society and between states which are oriented towards two principles, namely justice and efficiency, for the sake of order and peace in society.<sup>14</sup>

According to Prof. Mahadi, SH legal definition is a set of norms that regulate human behavior in society. According to Soedjono Dirdjosisworo, the meaning of law can be seen from eight meanings, namely law in the sense of rulers, law in the sense of officers, law in the sense of attitude of action, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of a legal system, law in the sense of legal science, law in the sense of legal discipline. Various definitions have been put forward and written by legal experts, which basically provide almost the same definition, namely that the law contains regulations for human behavior.

Legal protection for every Indonesian citizen without exception, can be found in the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), for this reason every product produced by the legislature must always be able to provide guarantees of legal protection for everyone, even must be able to arrest aspirations for law and justice that develop in society. This can be seen from the provisions that regulate the existence of equal legal status for every citizen. Legal protection can also be interpreted as an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.<sup>15</sup>

In the Unitary State of the Republic of Indonesia (NKRI), the concept of legal protection, which cannot be separated from the protection of human rights, is the concept of the rule of law which is a term as a translation of the two terms *rechstaat* and rule of law. So, in the explanation of the 1945 Constitution of the Republic of Indonesia before the amendment, it was stated, "The Indonesian state is based on law (*rechtsstaat*), not based on mere power (*machtsstaat*)".

In terms of understanding law there is the concept of legal construction. There are three types or three kinds of legal construction, namely, first, legal construction by contrast. The purpose is to interpret the law between the rules in the legislation and the case or problem at hand. Second, narrowing legal construction is limiting the legal interpretation process contained in statutory regulations to the actual situation. Third, expanding legal construction, namely construction that interprets the law in a way that broadens the meaning at hand so that a problem can be ensnared in a statutory regulation. According to Hans Kesen, law is a normative science and not a natural science. Hans Kesen further explained that law is a social technique for regulating people's behavior.<sup>16</sup>

## RESEARCH METHODS

This research is a type of normative juridical research or also called doctrinal legal research. Normative legal research is legal research carried out by examining library materials so that normative legal research is also called doctrinal legal research.

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<sup>10</sup>Satijipto Raharjo, 2000, *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, hlm. 53.

<sup>11</sup>Lili Rasjidi dan I.B Wisa Putra, 1993, *Hukum Sebagai Suatu Sistem*, Bandung, Remaja Rusdakarya, hlm. 118.

<sup>12</sup>Sunaryati Hartono, 1991, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Bandung: Alumni, hlm. 55.

<sup>13</sup> Philipus M. Hadjon, 1987, *Perlindungan Rakyat Bagi Rakyat di Indonesia (sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara)*, Surabaya: PT. Bina Ilmu, hlm. 38.

<sup>14</sup> Syamsul Arifin, *Pengantar Hukum Indonesia*, Medan: Medan area University Press, 2012, Hlm 5-6.

<sup>15</sup> Setiono, 2004, *Rule of Law (Supremasi Hukum)*, Tesis Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta, hlm. 03.

<sup>16</sup> Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*, ( Jakarta: PT. Raja Grafindo Persada, 2008 ), hlm. 25-43

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According to Peter Mahmud Marzuki,<sup>17</sup> Normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.

The research approach carried out by the researchers is the case approach in normative legal research. This approach is carried out by combining practical concepts that can be implemented into one particular point of view and become a solution to problems that have occurred. This research also uses descriptive analysis to describe the problems regarding fraudulent investment which will be discussed in this research. The sources used in this research are Decision Number: 374/pid.sus/2023/Pn.jkt.sel and Decision Number: 1907/pid.b/2021/Pn.Tng.

### RESULTS AND DISCUSSION

#### 1. Legal Protection for Victims of Investment in Ponzi Schemes

The legal protection needed by people who are victims is the right to receive compensation or compensation because as a result of this case the community has been materially harmed. The right to receive compensation can be seen in Article 4 Letter h of Law Number 8 of 1999 concerning Consumer Protection<sup>18</sup> which states that 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.

Compensating victims for losses is also contained in the Investment Law. In Article 16 Letter b of Law Number 25 of 2007 concerning Investment, it is stated that every investor is responsible for bearing and resolving all obligations and losses if the investor unilaterally stops or abandons or abandons his business activities in accordance with the provisions of statutory regulations.

Article 1365 of the Civil Code can also be used as a legal basis for legal protection for victims who wish to obtain compensation. It is stated that every act that violates the law and causes loss to another person requires the person who caused the loss through his fault to compensate for the loss. This means that the person is harmed by the perpetrator of an unlawful act.

Previously, legal protection was very necessary in social life, to ensure justice and certainty in the law. Having legal protection will minimize conflicts of interest and protect those interests. In this case, the interest in question is an interest in investing. Furthermore, if we discuss illegal investment cases, of course there are investors who are victims.

Although illegal investments do not necessarily result in victims, because there are many investments that are declared illegal and do not have permits and continue to operate but there are no or no investors who feel like they are victims of fraud. This could be because the investment is considered illegal because it has not met the permit, so illegal investment can also be in the form of investment services that provide correct performance but do not yet have permission from the OJK to run the business but the instruments invested are correct.

Basically, responsibility for compensation is identical to the principle of good faith. The principle of good faith is the most important principle in contract law. The principle of good faith is one of the legal instruments to limit freedom of contract and the binding force of agreements.<sup>19</sup> With good faith, business actors will look for ways to compensate for losses from failure to pay an investment, including when business actors commit fraud, it is clear that there is no good faith because they have violated the initial agreement or initial contract, as well as providing false or false information. related to investment is one of the characteristics of a lack of good faith.

However, when cases of illegal investment fraud occur, if business actors try to have good faith by negotiating the losses suffered by investors and compensating for the losses according to what was agreed upon in the negotiations, there is no longer a need for criminal prosecution and civil lawsuits through court processes. Although there are rare cases of illegal investments that replace victims before they are pushed.

Responsibility here does not only refer to criminal responsibility but also corporate responsibility in both criminal and civil aspects. According to Muladi and Dwidja Priyatno, if we discuss corporations, we cannot separate this understanding from the field of civil law. Because corporation is a terminology that is closely related to legal entities (rechtsperson) and legal entities themselves are terminology that is closely related to the field of civil law.<sup>20</sup>

From the explanation above regarding responsibility, we will first discuss a little about responsibility for crimes. Every illegal investment that involves investment fraud is usually followed by embezzlement so this is a crime in the criminal realm, namely in Article 372 of the Criminal Code ("KUHP") and 378 of the Criminal Code, namely regarding embezzlement and fraud. However, criminal liability should not be required if business actors have good intentions to compensate for losses experienced by investors. Article 372 of the Criminal Code regulates embezzlement which reads:

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<sup>17</sup>Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta,:Kencana Prenada, hlm. 35.

<sup>18</sup> Ferlianto dkk, *Trading Tren Investasi Masa Kini*, PT. Gramedia, Jakarta, 2007, hlm. 2.

<sup>19</sup> Ahmad Dahlan, Usman, Herry liyus, "Perbandingan pengaturan Perlindungan Saksi Tindak Pidana Pencucian Uang", PAMPAS: Journal of Criminal Volume 2 Nomor 1, 2021 hlm 3.

<sup>20</sup> Leonard dan Ariawan, *Analisis Perlindungan Hukum Terhadap Ganti Kerugian Akibat Investasi Ilegal*, Jurnal Hukum Adigama, Vol. 4, No. 2, 2021, hlm. 4436-4437

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"Any person who intentionally and unlawfully owns something which wholly or partly belongs to another person, but which is in his control not because of a crime, is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah."

And Article 378 of the Criminal Code which regulates fraud reads;

"Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by deceit or a series of lies, induces another person to hand over something to him, or to give him a debt or write off a receivable, is threatened with for fraud with a maximum prison sentence of four years."

This punishment is actually the last option when compensation is not received, even though this fraud is actually the basis of this illegal investment crime. However, it all comes back to the fact that for victims of illegal investment what is needed is compensation for their losses. Compensation for losses experienced by investors who have experienced fraud and have suffered losses, can be requested for compensation in accordance with what is regulated in Article 20 of PERMA 13/2016 which reads:

"Losses experienced by victims as a result of criminal acts committed by the Corporation can be sought for compensation through a restitution mechanism in accordance with applicable statutory provisions or through a civil lawsuit."

Furthermore, compensation in civil law can arise due to breach of contract as a result of an agreement or can arise due to unlawful acts. This is regulated in the Civil Code which originates from Default as regulated in Article 1238 Juncto Article 1243 and Unlawful Acts as regulated in Article 1365. In a breach of contract, compensation is also the result of a breach of contract, whereas in an Unlawful Act, compensation arises because of a mistake and the existence of a relationship. laws that cause losses. So, in the case of filing a lawsuit regarding an illegal investment failure to pay, it can be based on either a breach of contract lawsuit or a lawsuit against the law. Default is regulated in Article 1243 of the Civil Code which reads:

"Compensation for costs, losses and interest due to non-fulfillment of an obligation begins to be obligatory, if the debtor, even though he has been declared in default, still fails to fulfill the obligation, or if something that must be given or done can only be given or done within a time that exceeds the time specified. Determined."

Meanwhile, unlawful acts are regulated in Article 1365 of the Civil Code which reads:

"Every person who commits an unlawful act is obliged to compensate for the losses arising from his or her mistake."

Meanwhile, compensation for unlawful acts is regulated in the event that a person commits an unlawful act, then he is obliged to pay compensation for his actions, but it is not clearly regulated regarding compensation, and also regarding compensation, it can be seen from Article 1371 paragraph (2) Civil Code implied guidelines contain;

"Also, compensation for losses is assessed according to the position and abilities of both parties, and according to the circumstances."

In the event that someone commits an unlawful act, he is obliged to pay compensation for his actions, but there is no clear regulation regarding compensation. As well as unlawful acts demanding compensation not based on the scope of the agreement. Furthermore, the lawsuit mechanism can be carried out by filing a class representative lawsuit, or what is known as a class action lawsuit. Because usually there are many victims who become victims of fraudulent investments.

Apart from that, for the protection of consumers if the investment company has a permit, it can be seen in Article 30 paragraph 1 letter b of Law Number 21 of 2011 concerning the Financial Services Authority which states that the Financial Services Authority has the authority to carry out legal defense in filing a lawsuit to recover assets. assets belonging to the injured party from the party causing the loss, whether under the control of the party causing the loss in question or under the control of another party in bad faith; and/or to obtain compensation from parties who cause losses to Consumers and/or Financial Services Institutions as a result of violations of laws and regulations in the financial services sector.

This is also supported by Article 4 letter a of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime which states that victims have the right to obtain restitution in the form of compensation for loss of wealth and/or income. Victims can demand compensation in the form of returning their assets to the illegal investment company with the assistance of the Financial Services Authority as the authorized party. Then, Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime can be used as supporting material for the Financial Services Authority to strengthen demands against illegal investment companies to provide compensation to victims who have been materially harmed.

### **2. Additional punishment in the form of compensation as legal protection for victims of Ponzi scheme investments**

The crime of fraud in the form of illegal investment has resulted in losses for several people at this time, but until now there have been no specific regulations to follow up on perpetrators of this illegal investment crime.<sup>21</sup> However, juridically, illegal investment has violated several existing laws and regulations, namely the Criminal Code (KUHP), Law Number 11 of 2008 concerning Information and Electronic Transactions as amended into Law Number 19 of 2016 which regulates all actions in the field of information technology, and the Law on Capital Investment. Article 378 of the Criminal Code which reads:

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<sup>21</sup> Mantulangi. N, "Kajian Hukum Investasi dan Perlindungan Terhadap Korban Investasi Bodong", Jurnal Lex Administratum, Vol .5 No 1 Tahun 2017, hlm. 108

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"Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by deception or a series of lies, induces another person to hand over something to him, or to give a debt or write off a receivable, is threatened with fraud. with a further prison sentence of four years."

Article 28 paragraph (1) of the Information and Electronic Transactions Law reads:

"Every person intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions."

Here it is clearly seen that there is a criminal threat as a form of criminal responsibility in Article 28 paragraph (1) of the Information and Electronic Transactions Law as described in Article 45 paragraph (1) of the Information and Electronic Transactions Law which reads:

"Any person who intentionally and without right spreads false and misleading news which results in consumer losses in Electronic Transactions as intended in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000,- (one billion rupiah)."

The form of criminal threat in Law Number 8 of 1995 concerning Capital Markets is contained in Article 104 which reads: "Any party who violates the provisions as intended in Article 90, Article 91, Article 92, Article 93, Article 95, Article 96 paragraph (1) and Article 98 is threatened with imprisonment for a maximum of 10 (ten) years and a fine of a maximum of Rp. 15,000,000,000,- (fifteen billion rupiah)".

Criminal threats as a form of criminal responsibility for online illegal investment crimes in the form of imprisonment and fines, for compensation for victims of illegal investment crimes in the realm of civil law, not the criminal realm. Regarding its implementation in the field itself, there are still many obstacles to online illegal investment crimes, such as shifting authority between related agencies, Bank Indonesia, Bappeti and the Financial Services Authority. and Police. The police can only follow up on illegal investment crime cases if people report being victims of illegal investment crimes.

There is a need for preventive measures in preventing/overcoming illegal investments online/digitally, law in Indonesia has a very important role in Indonesian society, because it has the function of regulating all human activities, including investment activities in Indonesia, however The form of protection that is needed for society is not only after a crime that causes loss occurs or after a report is made, but regulations are formed that have the aim of preventing the crime or loss from occurring.

The Indonesian government has entrusted the Financial Services Authority (OJK) to supervise all investment business actors in order to prevent cases of illegal investment fraud. For investment itself, the state institution that has the authority is the Financial Services Authority (OJK), as regulated in Article 6 of the OJK Law, namely Law Number 21 of 2011 which strictly regulates that: The OJK's task is to supervise and regulate service activities. finance in the banking sector, capital markets, insurance, pension funds, financial institutions and other financial service institutions.

So it is the authority of the OJK to regulate and supervise every type of financial services institution. As a form of preventive role, the OJK has prevented losses to society caused by illegal investment activities in Indonesia. In Law Number 21 of 2011 concerning the Financial Services Authority, in supervising financial institutions, including investment activities, OJK carries out preventive supervision, including:<sup>22</sup> carry out indirect supervision based on periodic reports related to inspections and other information submitted by the bank and direct supervision is carried out routinely once a year. This report was carried out via social media. Then carry out supervisory action and supervisory approach, then analyze the problem and then provide a solution.

The main problem in cases of investment crimes using Ponzi schemes is compensation in criminal prosecution. Because compensation is not included in the criminal realm, but civil. As explained above, victims of investments in Ponzi schemes can get compensation by filing a civil lawsuit. This is of course a new problem because it takes quite a long time and is a process. So, additional punishment as an effort to protect the law for victims of investments in Ponzi schemes could be an alternative.

One of the criminal acts of fraudulent investment using a Ponzi scheme in which the judge decided in his ruling that all assets must be returned to the victim was the case of gold fraud using a Ponzi scheme carried out by Budi Hermanto. The Tangerang District Court Panel of Judges granted the merger of the claims for compensation filed by victims of the IDR 1 trillion Ponzi Scheme. In their decision, the panel of judges stated that the defendant Budi Hermanto was legally and convincingly proven to have committed the crime of fraud and money laundering and sentenced him to 13 years in prison and a fine of IDR 2 billion, subsidiary to 6 months in prison. This is stated in the decision in case Number 1907/Pid.B/2021/PN Tng. Apart from that, the panel of judges rejected all of the defendant's objections. However, the problem is that the decision is a combination of civil and criminal lawsuits.

Regulations on restitution do not play much of a role in fulfilling victims' rights. The restitution regulated in this law does not provide a complete guarantee that the victim can receive restitution after the court decision. This is due to the weakness of the coercive measures imposed on convicts if they do not fulfill restitution. In fact, there are laws that do not regulate at all if the convict does not carry out his restitution obligations after being decided by the court. Only Law no. 21 of 2007 which has coercive measures, while other laws do not provide coercive measures if the convict does not want to pay restitution.

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<sup>22</sup> Fadlia & Yunanto, "Peran Otoritas Jasa Keuangan (OJK) dalam Perlindungan Hukum Bagi Investor Atas Dugaan Investasi Fiktif", *Jurnal Law Reform*, Tahun 2015 Vol.1 No 2, hlm. 207

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The coercive measures provided by Law no. 21 of 2007, if the convict does not fulfill his restitution obligations, the Public Prosecutor confiscates the convict's property and sells it, the proceeds of which are handed over to the victim or the victim's family or heirs. If the convict is unable to pay due to the absence of assets that can be confiscated, this will be replaced by imprisonment for a maximum of 1 year in prison. Meanwhile, in Law no. 11/2012, it is emphasized that if the perpetrator of a criminal act denies the payment of compensation that has been agreed upon in the diversion process, then this denial will have the consequence that the case will be continued using the criminal justice system.

When compared to the new Criminal Code, restitution has become a type of punishment, namely being included in additional penalties regulated in Articles 70-72. In Article 70 it is stated that punishment consists of main punishment, additional punishment and special punishment. In Article 72 it is stated that one type of additional punishment is compensation. Thus, it is clear, the new Criminal Code has included one type of crime, namely compensation or what is better known as restitution.

However, this does not mean that the provisions regarding compensation are not without problems. Compensation as a type of criminal sanction adopted in the new Criminal Code does not provide further explanation regarding the amount. In contrast to fines, the new Criminal Code provides very detailed regulations, including the consequences for not paying the fine.

Therefore, there must be confirmation in the material criminal law that restitution is part of the form of punishment (criminal) and is grouped as a main crime or additional crime, so that all offenses that cause loss and suffering can be subject to restitution. In this way, the criminal restitution will be parallel to the criminal fine. Thus, the Public Prosecutor will not hesitate to carry out the execution of court decisions which have permanent legal force and can be linked to Law no. 16 of 2004. The concept of criminal restitution has long developed in common law countries, and is one of the opinions expressed by Cortner E. Lollar, professor at the University of Kentucky (What is Criminal Restitution?). Criminal restitution is imposed in criminal acts that cause economic losses, cause medical and psychological impacts. In this case, the new Criminal Code has included it, but does not provide a classification for the offense for which restitution is given.

To encourage perpetrators to fulfill their restitution obligations, it is necessary to consider granting remission or conditional release. Perpetrators of criminal acts who do not fulfill their restitution obligations in good faith must resort to coercive measures with several options, namely confiscation and imprisonment. So, victims are not burdened with complicated administrative procedures in proving the losses they have experienced. As an option, the law regulates the qualifications for compensation with categories based on the criminal threat imposed. In this way, the victim does not need to attach damages, because the law has determined this.

## CONCLUSION

Ponzi investment is a form of investment that uses a pyramid scheme where profit payments to investors come from their own money or money from members who have just joined. The attraction of this investment is that it offers convenience and large profits. However, in Indonesia itself there are no regulations that specifically regulate Ponzi investments, therefore legal interpretation of Ponzi investments is needed. Currently there are only a few regulations that more or less touch on the discussion of ponzi, including: Law no. 7 of 2014 concerning Trade, Law No. 21 of 2008 concerning Sharia Banking, Law no. 19 of 2016 Jo. UU no. 11 of 2008 concerning Information and Electronic Transactions Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions. Criminal provisions for Ponzi/fraud scheme investment activities are regulated in Article 378 of the Criminal Code and are very closely related to crimes and the scope of criminal responsibility. Compensation as a type of criminal sanction adopted in the new Criminal Code does not provide further explanation regarding the amount. Therefore, there must be confirmation in the material criminal law that restitution is part of the form of punishment (criminal) and is grouped as a main crime or additional crime, so that all offenses that cause loss and suffering can be subject to restitution. In this way, the criminal restitution will be parallel to the criminal fine.

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