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Legal Protection for Victims of Investment Fraud

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ABSTRACT: In the Globalization Era, advances in financial technology have triggered the emergence of various digital economic facilities, including investment facilities. However, in reality, there are still many companies that use this sophisticated technology for illegal business purposes, especially in the field of fraudulent investments with various practices such as Ponzi Schemes and pyramids. This research method uses a type of normative research or also called doctrinal research, where this research is a process to find legal principles to answer the legal problems being faced. Based on the results of the research and discussion above, it can be concluded that Ponzi Schemes and Pyramids are prohibited in Indonesia. There is no legal certainty regarding legal protection for investors who are victims of investments with Ponzi schemes, there are only a few regulations that are more or less relevant to the discussion of Ponzi Schemes. There are 2 legal protections for victims of investments using Ponzi Schemes or Pyramids, namely preventive legal protection and repressive legal protection.

KEYWORD: Investment, Ponzi Scheme, Pyramid Scheme, Legal Protection

INTRODUCTION

In this modern era, technological development has accelerated in various sectors, including the financial technology or fintech sector. The advancement of fintech has given a significant boost to the economy of many countries, including Indonesia. Developments in the fintech sector have given birth to various digital economy platforms, such as digital wallets and digital banks, as well as various investment vehicles (Jalal et al., 2023). Currently, the options for investing are very diverse, ranging from various types of stocks, trading robots, cryptocurrencies, mutual funds, to the latest, namely Non Fungible Tokens (NFTs). NFTs are unique digital assets that can be purchased with cryptocurrencies, adding a new dimension to the world of digital investing (Alt et al., 2018).

The majority of people have begun to realise the importance of accumulating and developing assets to meet future needs, because the rate of economic growth, which is mainly indicated by increased income, increased community needs for facilities and infrastructure (infrastructure), and the productive age of the community is limited by time, while people's desires are not limited by time. In this case, people can only invest (AlMomani & Alomari, 2021).

Ponzi schemes are activities that raise public funds with the promise of large profits in a short period of time, far exceeding normal investment returns. Ponzi schemes usually involve recruiting new members to keep the money flowing (Mugarura, 2017). This money is not converted into a specific business or investment, but rather funds payments to the first members who sign up. A Ponzi is a business that ‘takes money from person A to pay to person B’, and only deposits the money (Bosley & Knorr, 2018). That's why some people call it a chain meeting. The company doesn't make money to make a profit, so one day when the number of new members is not enough to pay the old members, the company will run out of money (Machkour & Abriane, 2020). If that happens, the Ponzi business will stall and go bankrupt. They usually get around this by saying that they will restart the business and ask older members to keep more money so that they can recruit more members who will inevitably fall victim one day (Arthur, 2024).

Pyramid Schemes are essentially similar to Ponzi Schemes, which seek to raise money through the continuous recruitment of new members. Simply put, pyramid schemes often focus on buying and selling goods or services (Ressa, 2023). The buying and selling process is essentially just a camouflage, as the goods are often much more expensive than they should be, and sometimes the goods offered are not very useful (Theresia,2016). When convincing potential members, they often talk more about the benefits they will receive than the products offered. However, in order to guarantee cash flow, pyramid schemes also require members to buy large quantities every month, far beyond their need or ability to resell (Leuer, 2022) .

Ponzi Schemes and Pyramid Schemes are similar investment scams perpetrated by one or more people for personal gain (Deb & Sengupta, 2020). Both involve deceiving others by promising significant income or profit from the investor's initial investment (Basdekis et al., 2022). However, there is a fundamental difference between the two, which distinguishes these two types of schemes in that Ponzi schemes only require investors to invest their money for profit. Pyramid schemes, on the other hand, require investors to pay fees or buy products to participate and earn profits (Bhadra & Singh, 2024).

Legal Protection for Victims of Investment Fraud

Ponzi and pyramid scheme investment scams are serious problems that harm many people in Indonesia (Hidajat et al., 2020). Ponzi schemes and pyramid schemes are two similar forms of fraud, Ponzi schemes rely on new investors' money to pay profits to previous investors, while Tower pyramid schemes require each member to recruit new members to earn profits. Both forms often promise high returns in a short period of time and have no clear risks, attracting many victims (Tajti, 2020). On the basis of these problems, the authors are interested in researching and raising the topic of the problem with the title 'LEGAL PROTECTION FOR VICTIMS OF INVESTMENT FRAUD WITH PONZI AND PIRAMIDA SCHEME PRACTICES IN INDONESIA'.

RESEARCH METHOD

In the research for writing this journal, the author uses a type of normative research or also called doctrinal research, where this research is a process to find legal rules to answer the legal problems at hand. In this type of legal research, law is often defined as laws or as rules or norms that are reasonable standards of human behaviour (Rohman et al., 2024).

RESULTS AND DISCUSSION

Indonesian Positive Law's View on Ponzi Schemes and Pyramid Schemes Ponzi schemes and pyramid schemes are two methods that are similar in the way they raise money from the public, namely through the continuous recruitment of new members. Despite their similarities, there are fundamental differences between these two schemes. In a Ponzi scheme, the promoter initially has no real product as camouflage to attract participants. Instead, participants are simply asked to invest with the promise that they will make a profit from the investment. The promised profits often look so lucrative that they attract a large number of people.

In Ponzi schemes, investors who recruit new members are not given a commission. This is different from pyramid schemes, where commissions are usually given to recruiters. In addition, in Ponzi schemes, participants will be asked to continuously increase the value of their investment with the promise that the profits earned will be even greater. This causes participants to feel encouraged to increase their investment in ever larger amounts.

However, this scheme is highly vulnerable to collapse. If no new participants join or if existing participants do not add value to their investment, the flow of profits will stop. investment, then the flow of profits will stop. This is because the principle applied in Ponzi schemes is "dig a hole cover a hole", where money from new participants is used to pay the profits of old participants. When the flow of new participants stops, the scheme will collapse and cause huge losses to the majority of its participants.

Due to their highly detrimental nature, Ponzi schemes and pyramid schemes are considered illegal and banned by many countries, including Indonesia. In Indonesia, such business activities are prohibited under Law Number 7 Year 2014. The government and financial authorities are trying to protect the public from the pitfalls of such schemes by providing education and strict law enforcement against the perpetrators.

The prohibition of Ponzi schemes has not been specifically regulated in the law so that there are still legal loopholes. The operational activities of Ponzi schemes or other fraudulent investments often do not have permission from the OJK, so that any party carrying out capital market activities without permission from the OJK can be subject to criminal sanctions in the form of imprisonment and fines.5 Article 103 of Law Number 8 of 1995 concerning the Capital Market. Meanwhile, the Prohibition of Pyramid Schemes has been regulated in Article 9 of Law Number 7 of 2014 concerning Trade which stipulates that actors in the distribution sector are prohibited from implementing pyramid schemes in the distribution of goods. This prohibition is also regulated in Article 21 letter k of the Regulation of the Minister of Trade Number 70 of 2019 concerning Direct Distribution of Goods (Permendag 70/2019) that companies that already have a trade business license are prohibited from carrying out activities by forming a marketing network using a pyramid scheme. In Article 105 of Law No. 7 Concerning Trade states that "Distribution Business Actors who implement a pyramid scheme system in distributing Goods as referred to in Article 9 shall be subject to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)."

Legal protection for victims of investment with Ponzi and Pyramid Schemes in Indonesia

Legal protection is very important in community life to ensure justice and legal certainty. With legal protection, conflicts of interest can be minimized and these interests can be protected. In this context, the interests in question are interests in investing.

When discussing cases of illegal investment, there are often investors who become victims. However, not all illegal investments cause victims, because there are many investments that are declared illegal because they do not have a permit but continue to operate without any investors feeling disadvantaged. Some investments are considered illegal because they have not met the permit requirements, even though the services they provide may be legitimate.

Legal protection itself is a form of protection given to legal subjects, either in the form of preventive or repressive actions, both verbally and in writing. The purpose of preventive legal protection is to prevent the emergence of disputes and conflicts, which directs government actions to be careful and discretionary in decision-making.7 Preventive legal protection for the general public as investors is contained in Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority which reads:

a) "Providing information and education to the public on the characteristics of the financial services sector, its services, and products;"

b) “Requesting Financial Services Institutions to stop their activities if the activities have the potential to harm the community; and”
c) “Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.”

Meanwhile, repressive legal protection is intended to resolve conflicts or disputes, including resolving such conflicts or disputes in judicial institutions. Repressive legal protection for victims of fraudulent investments with Ponzi or Pyramid schemes can be found in Article 378 of the Criminal Code.8 The provisions in Article 378 of the Criminal Code explain that “Anyone who with the intention of benefiting himself or another person unlawfully, by using a false name or false dignity, by trickery, or a series of lies, moves another person to hand over something to him, or to give debt or write off receivables, is threatened for fraud with a maximum imprisonment of 4 years.”

In relation to this, in the provisions of the Republic of Indonesia Law Number 1 of 2024 concerning the Second Amendment to Law Number I1 of 2008 concerning Electronic Information and Transactions. Article 28 paragraph (1) stipulates: "Any person who intentionally distributes and/or transmits Electronic Information and/or Electronic Documents containing false notifications or misleading information that results in material losses for consumers in Electronic Transactions." Therefore, if someone commits the act of spreading false information, spreading false information and causing others to be deceived or harmed, then this is clearly a violation of this law. Investment fraud cases will certainly result in losses for investors who have provided their capital.Law enforcement officers need to further complete and perfect the regulations regarding the Ponzi model. There are no specific regulations to guarantee legal security in society to create peace and order in society.

CONCLUSION

Based on the results of the research and discussion above, it can be concluded that Ponzi and Pyramid Schemes are prohibited in Indonesia. There are 2 legal protections for victims of fraudulent investments using Ponzi and Pyramid Schemes, namely preventive legal protection and repressive legal protection. Preventive legal protection can be seen in Article 28 of Law No. 21 of 2011 concerning the Financial Services Authority, namely by providing knowledge or insight into investment to the public. Repressive legal protection can be seen from law enforcement, namely Article 378 of the Criminal Code concerning Fraud, Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering and Article 103 of Law No. 8 of 1995 concerning the Capital Market.

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