

**LAW ENFORCEMENT AGAINST FRAUD THAT IS UNDERSTANDING
INVESTATION BULGING**

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ABSTRACT

The development of investment at this time has progressed so fast and rapidly. The investment itself in this case can be used by investors by using media applications that utilize technological developments to carry out their activities. In Indonesia, fraudulent investment applications are widespread, which raises the problem that in Indonesia there is no specific regulation related to fraudulent investment actions. This study aims to find out how the law is enforced against fraudulent investment actors and how legal protection efforts are given to victims of fraudulent investments. This research uses normative legal research methods. And please note that fraudulent investment actors in Indonesia can be charged with Article 378 of the Criminal Code concerning Fraud and because they do not have a permit, fraudulent investments can be subject to Article 103 of Law Number 8 of 1995 concerning Capital Markets and related to investment victims in applications because they use electronic media. it may be subject to Article 28 paragraph 1 of Law Number 11 of 2008 concerning Information and Electronic Transactions Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Keywords : *Law Enforcement, Investation Bulging*

INTRODUCTION

In today's modern times, the unavoidable thing is development of technology and information that is increasingly advanced from time to time. As is development of technology and this information is encouraging development of one of them in investment field.¹ Own investment is an activity that done by someone or something commonly referred to as investors with put some of his wealth which can be in the form of money or in other forms of value and entrusted to a party or certain institutions, activities This investment aims to get

¹Jonkarlo, E., Sudirman, L., & Disemadi, HS(2022). Market Manipulation On The Indonesia *Stock Exchange By Market Maker: Investor Protection?*. Journal of Legal Communication (JKH), 8(1), 219-232., p. 220.

profit or profit and can also be referred to as investor. Own investment comes from Italian, investire which means to wear or use.²

Investment fraud cases often occur. The longer More and more, several modes of fraud are being carried out by irresponsible parties. Investment bidder take advantage of increasingly sophisticated technological developments to make investment activities easier and more practical called online investing. Because society will automatically adapt to the development of these technologies and also they will be more tempted to invest online. A more diverse modus operandi will be displayed by investment bidders to attract public interest.³

So that more and more investments are appear with various kinds such as investments in gold, money, or other valuables. However, this event occurs frequently people do not realize how legal and illegal investments are so that not a few people become victims of investment, This incident is called a crime in the economic field.⁴

In the Criminal Code there is an explanation of the conceptual fraud in deceiving, among others: :

1. Persuade, make an invitation in the form of persuasion to someone or corporation to deliver goods, or give debt, or write off the debt of the persuading person.
2. The purpose of persuading, aiming to seek profit for oneself themselves or members or others in a way that is against the law.
3. Persuasion is carried out in various ways, such as:
 - a. Using a fake name;
 - b. Using unreal circumstances;
 - c. Craftiness;
 - d. The lies that have been designed are so attractive.⁵

R. Subekti defines if the legal subject is a body law or corporation, then in essence it is a body which have rights and can act like a non-corporate and own funds or property and can be the defendant or sue before the judge.⁶

In relation to the criminal act of investment fraud, it is contained in Article 372 of the Criminal Code concerning the crime of embezzlement or Article 378 Criminal Code

²Pramita, KD, & Hendrayana, KD (2021). *Legal Protection Against Investors As Consumer in Online Investing*. Pacta Journal Sunt Servanda, 2(1), 1-8., p. 2

³Abdul Wahid, Mohammad Labib. Mayantara Cyber Crime. Bandung: PT Refita Aditama. 2005. p.8.

⁴Hermansya. Indonesian National Banking Law. Jakarta: Kencana Prenada Media Group. 2005. p.159.

⁵R. Susilo. Criminal Code (KUHP). Bogor: POLITEIA. 1988. p.261.

⁶Chidir Ali, Legal Entity. Bandung: Alumni. 1991. p.11

regarding the crime of fraud. As for the legal sanctions used to ensnare perpetrators has been regulated in Law No 2010 concerning the prevention and eradication of criminal acts money laundering with a maximum threat of 20 years and a maximum fine of 10 billion rupiah.⁷

Fraud in principle has been explained in the Criminal Code (KUHP). In Article 378 of the Criminal Code which reads: "Any person 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, moves another person to hand over something to him, or to give a debt or write off a debt, is threatened with fraud with a criminal sanction. imprisonment for a maximum of four years. From the sound of the article above, it can be seen that the elements that must be met to be considered a criminal act of fraud or fraud, these elements include:

1. Subjective element;

This element is in the form of a deliberate act of the perpetrator to deceive others which is formulated in the article of the law which reads: "with the intention of unlawfully benefiting oneself or others".

2. Objective element.

This element is in the form of an attempt by the perpetrator to move others in the form of using a false name, false dignity or character, deception, or a series of lies.

Thus, it is necessary to examine and prove legally and convincingly whether it is true that the alleged act has been proven to fulfill the elements of a criminal act of fraud, both subjective and objective elements.

This act includes a criminal act or offense which if it does not comply or violates its elements, it will be subject to sanctions in the form of imprisonment. According to Leden Merpaung, an offense or in Latin *delictum* is an act that violates the rules of criminal law and will be subject to sanctions for violators.⁸

It can be concluded that the offense can be seen in terms of objective elements, among others, from the act, the consequences arising from the act, as well as the state of intent and

⁷Rodliyah, Salim HS. Special Criminal Law Elements and Criminal Sanctions. Ed. 1. cet. 1. Depok: Eagle Pers. 2017. page 291-307.

⁸Leden Merpaung, Theoretical Principles of Criminal Law Practice (Jakarta: Sinar Graphic, 2005), 7.

purpose. In terms of the subjective element, it is how the act can be categorized as a crime or violation.⁹

According to Simon, that an act of violation that causes consequences, the actions and consequences must be in accordance with the law¹⁰ the same time and place.¹¹ However, other experts provide another argument from Simon, Van Hammel in his argument, explaining that the effect will not arise without an action. The conclusion is that Van Hammel's argument has a broader meaning than Simon's previous opinion. According to Cleiren, fraud offenses are the consequences of offenses and offenses that occur in an event. This offense is considered a fraud offense by the legislators based on the history of its creation.¹²

PROBLEM

1. How is Law Enforcement against perpetrator Investment bulgin?
2. How are legal protection measures given to victims of investment bulging?

RESEARCH METHODS

Legal research or what in English is referred to as *legal research* research is a legal research conducted to find solutions or legal issues that occur, namely by giving prescriptions about what is appropriate for the issues presented.¹³ The research method used in this study uses a normative legal research method which has the object of study in the form of legal rules and is based on primary legal materials, secondary legal materials, and tertiary law. The analytical method used in this study uses qualitative data analysis methods that collect data from literature studies, and other internet sources.

⁹Yahman, Characteristics of Default and Fraud Crimes Born from Contractual Relationships. Jakarta: Kencana, 2014. 110.

¹⁰Utrecht, Series of Sari Criminal Law I (Surabaya: Pustaka Tinta Mas, 1986), 251

¹¹*Ibid.*, 256.

¹²Andi Hamzah, Certain Offenses in the Criminal Code (Jakarta: Sinar Graphic, 2014), 112

¹³Tan, D. (2021). Legal Research Methods: Peeling and Reviewing Methodology in Conducting Legal Research. *Nusantara: Journal of Social Sciences*, 8(8). 2463-2478. p. 2466.

DISCUSSION

1. Law Enforcement against Fraud Investment Bulging

With regard to law enforcement, in this case, it must first be known what is the legal basis for law enforcement, related to law enforcement against investment actors in Indonesia, in this case, it has been regulated in Law Number 21 of 2011 concerning the Service Authority. Finance (OJK Law) which contains all arrangements relating to financial services in Indonesia. Law enforcement in a country aims to provide the purpose of the formation of the law itself in a country, and as is known through the theory of legal ideals which confirms related to the objectives of the law. The purpose of the law is to provide justice, certainty and benefit in society in carrying out an act that is guaranteed by the law itself.¹⁴

In addition to being based on law enforcement agencies, another factor that influences law enforcement is the level of development of the place where the law is enforced. So that an evaluation is needed to achieve the goal of a just law and legal certainty.¹⁵

According to Josep Goldstein listed in his book Prof. Muladi, he divided criminal law enforcement into three parts, among others:¹⁶

1. *Total enforcement*(Substantive enforcement) Enforcement carried out by law enforcement officers who are limited by the provisions of the Criminal Procedure Code (KUHAP). This enforcement indicates that law enforcement officers cannot arbitrarily enforce the law against a criminal act, but must pay attention to the rules that have been set. Enforcement cannot occur if no victim is harmed or no one reports it, in this case reporting to the police as the first role in law enforcement procedures.

2. Full enforcement (bound law enforcement) Law enforcement carried out by law enforcement officers who are bound by the Criminal Procedure Code and other applicable rules. Law enforcement officers in this case are expected to work as much as possible in dealing with every criminal act.

¹⁴Assad, AZ (2017). The Role of the Financial Services Authority in Overseeing Financing Risks in “Bodong” Investments. *Al-Amwal: Journal of Islamic Economic Law*, 2(1), 85-95., pp. 88.

¹⁵Sanyoto, “Law Enforcement”, *Journal of Legal Dynamics*, No.3 (September, 2008), 1.

¹⁶M. Husein Maruapey, “Law Enforcement and State Protection Critical Analysis of the Case of Blasphemy of Religion by Patahana Governor of DKI Jakarta”, *Journal of Political and Communication Science*, No.1 (June, 2017), 24.

3. Actual enforcement (Barriers to law enforcement) Law enforcement which in reality there are still obstacles experienced. These obstacles are in the form of facilities and so on in law enforcement efforts which are still limited.

According to Soerjono, there are several factors that can affect the law enforcement process, including:

1. Factors from the law itself or the Act; In this case, Soerjono interprets the law as a material element that is written and applies in general which is prepared by the government and the region which is considered valid to issue a rule. The scope of a law includes central regulations and regional regulations, the difference is that in central regulations, these rules apply to all citizens or parts of a country. While local regulations, these rules apply in one area only. Several principles are also contained in the enactment of a law including: First, a law that is not retroactive. Second, the law formed by the leader who has the highest position in the legislation. Third, laws whose rules are specific so that they override general rules. Fourth, the applicable law cancels the previous law. Fifth, laws that are inviolable. Sixth, the law as a path to equitable welfare for the community and individuals.

2. Law enforcement factors; In this case, law enforcement is a group that has several abilities in dealing with events in society. Therefore, law enforcement is very dependent on law enforcement officials as a determinant of whether a rule can be carried out properly and correctly.

3. Factors of facilities and facilities In this case, factors of facilities and facilities greatly affect the law enforcement process. Law enforcement cannot run easily if the facilities and facilities are inadequate. These facilities and facilities include law enforcement officers who have special abilities, equipment in law enforcement processes, sufficient finances and so on.

4. Community factors; In this case, the community has an influence on law enforcement because law enforcement aims to create prosperity in the community. Therefore, the public is expected to be able to understand the rules in an orderly manner and obey them. The inaccessibility of people in remote areas who find it difficult to socialize about the applicable legal rules and must be obeyed.

5. Cultural factors. In this case, culture has a great influence on society which makes it able to understand every action it takes. Therefore, it is necessary to instill legal values to the

community which include: First, values that describe good morals. Second, values that are maintaining and doing renewal. Third, the value of order and welfare.¹⁷

In Indonesia, investment activities are not new in improving the national economy. In practice, all forms of investment are certainly not always as expected, because there are always irresponsible parties who abuse the authority given to them in obtaining profits.¹⁸

Related to law enforcement against fraudulent investments in Indonesia. The perpetrators of these acts in this case can be ensnared in several regulations that apply in Indonesia which are then related to fraudulent investments, one of which can be charged with using Article 378 of the Criminal Code concerning fraud with a maximum sentence of 4 (four) years in prison. According to Moeljatno, the criminal arrangements contained in this article are about acts of bedrog or fraud. Fraud investment perpetrators can also be punished by using Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, hereinafter referred to as (UU ML). Which is the action of the perpetrator if looking at the meaning contained in the sound of the article where the perpetrator has placed investment money from the victim which is reasonably suspected to be the result of a criminal act of fraud which then aims to carry out money laundering, it can be subject to a maximum imprisonment of 20 (twenty) years and can also subject to a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

The application of Article 28 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions on ITE will be an option in law enforcement efforts to ensnare the perpetrators, because their actions are operated on the online internet network, causing losses to many people who have joined inside it. Criminal threats from Article 28 paragraph (1) of Law No. 11 of 2008 are contained in Article 45 paragraph (1) of Law No. 11 of 2008 with a penalty of six years in prison and or a maximum fine of one billion rupiah.

2. Legal Protection for Victims of Fraudulent Investments

Legal protection is a protection which is then given to legal subjects both repressive and preventive as well as verbal and written. And according to Philipus M. Hadjon's theory of legal protection, which divides legal protection into preventive and repressive. and according

¹⁷Laurensius Arliman S, Law Enforcement and Public Awareness (Yogyakarta: Deepublish, 2015), 44-65.

¹⁸Syafari, T., & Robo, BD (2019). The Effectiveness of Law Enforcement on Criminal Acts of Collecting Public Funds Illegally with Investment Mode in the City of Ternate. *Humano: Research Journal*, 10(1), 397-406., pp. 401.

to Satjipto Raharjo who argues related to legal protection is an effort to then be used to protect a person's interests by giving him human rights to be able to act in accordance with his interests.¹⁹

Judging from the theory of legal protection Philipus M. Hadjon, in this case, preventive measures that the government can take in providing legal protection to investors, can be seen in Article 28 of the OJK Law, which in this case OJK as the government's representative in providing preventive legal protection is to provide information to the public regarding the characteristics of the OJK. from the sector contained in financial services, services and products, and can also ask the financial service institution if it is detrimental to the community in carrying out its activities, and take other actions deemed necessary. Therefore, in this case, it is a preventive effort that can be done to investors before choosing a financial service institution to invest.²⁰

Then repressive legal protection for victims of fraudulent investments in this case can ensnare perpetrators with several positive laws that apply in Indonesia, one of which is by using Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions. Electronic (UU ITE) because this case uses network devices in carrying out its activities, using Article 28 paragraph 1 of the ITE Law can be used to punish the perpetrators of these fraudulent investments.²¹

CONCLUSION

With regard to law enforcement against fraudulent investment actors, Article 378 of the Criminal Code concerning fraud, where one of the elements of the act is fulfilled in the article, is that the perpetrators clearly defrauded the victims of investors in these fraudulent investments. And also in this case the perpetrators Article 3 of the Money Laundering Law can be imposed as an element of the article is that the perpetrator places a certain amount of investment money in a way that is against the law and this has been fulfilled in fraudulent investment activities carried out by the perpetrators.

¹⁹e-Journal *Yustisia Communication* Ganesha University of Education Legal Studies Program (Volume 5 Number 1 March 2022)

²⁰*Ibid*, p. 364.

²¹ Primantari, AA, & Sarna, K. (2014). Efforts to Overcome "False Investments" on the Internet. *Kertha Semaya: Journal of Legal Studies*, 2(3). 1-5. p. 3.

Regarding the legal protection that can be given to victims who are victims of fraudulent investment practices, in this case the perpetrator can be subject to Article 28 paragraph 1 of the ITE Law because it is related to electronic transactions that are carried out electronically, so to punish the perpetrators of the act, the article can be imposed. which in this case the perpetrator has clearly and clearly spread false news in which the investment does not clearly have a legal basis in carrying out its activities.

In this case Article 378 of the Criminal Code regarding fraud can also be used because the elements of the actions committed by fraudulent investment actors have fulfilled the elements in the article so that the legal basis for using this article is very strong. And also Article 3 of the Anti-Money Laundering Law can be used because the activities carried out in this case are under the guise of fraudulent investments which in this case use the article can touch the element of how the perpetrators take advantage of the benefits of the victim. And the last repressive measure given that fraudulent investments are not officially registered and have permits, the perpetrators in this case can be charged with Article 103 of the Capital Market Law which in that article requires that every party conducting activities in the capital market must have a permit.

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