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## ILLEGAL INVESTMENT SANCTIONS BASED ON THE CAPITAL MARKET LAW AND FORMS OF PROTECTION FOR INVESTORS

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### ABSTRACT

*The ever-developing technology currently affects the course of the economy. One of them is characterized by a hot issue regarding investment which is often discussed along with the current financial problems, such as inflation which has increased quite significantly, household consumption expenditure which has also increased which has made some people more aware and aware of the importance of saving for the long term. . Investment is the best way because we can save but can get a sizable profit. However, this is actually used by unscrupulous people to take advantage instead of investment. This discussion aims to further analyze the rise of "fraudulent" investments which are currently becoming a fear of the public who have already used them and the role of the Capital Market Law as a form of protection for customers.*

Teknologi yang terus berkembang saat ini mempengaruhi jalannya perekonomian. Salah satunya ditandai dengan isu hangat mengenai investasi yang sering diperbincangkan seiring dengan permasalahan keuangan saat ini, seperti inflasi yang meningkat cukup signifikan, pengeluaran konsumsi rumah tangga yang juga meningkat yang membuat sebagian masyarakat semakin sadar dan sadar akan pentingnya investasi. dari menabung untuk jangka panjang. . Investasi adalah jalan terbaik karena kita bisa menabung tapi bisa mendapatkan keuntungan yang lumayan besar. Namun, hal ini justru dimanfaatkan oknum-oknum untuk mengambil keuntungan alih-alih investasi. Pembahasan ini bertujuan untuk menganalisis lebih jauh maraknya investasi “curang” yang saat ini menjadi ketakutan masyarakat yang terlanjur menggunakannya dan peran Undang-Undang Pasar Modal sebagai bentuk perlindungan bagi nasabah.

**Kata Kunci:** *Capital Market, Illegal. Statutory Regulations.*

### A. PENDAHULUAN

Indonesia is a country based on economic principles which is based on the people's economy to become a country (Ashmarina & Saveliev, 2020);(Salam et al., 2021). Along with the development of the people's economy, Indonesian business has progressed quite rapidly, marked by changes not only in terms of growth with all drivers of global economic development (Emara & Mohamed, 2023);(Fu et al., 2010);(Petrunenکو et al., 2021). Based on this statement, it can be proven that more and more generations innovate a lot. The existence of the development of the financial

industry causes the movement of the economic rate which is increasingly developing, but tends to be dynamic and complex (Dumitru, 2021).

Due to the current development of technology and information, many aspects are affected, one of which is investment. Based on Bank Indonesia data in April 2017 it increased to 4.1%, in May 2017 it was 4.35%, and in June 2017 it was 4.40%. This increase in inflation also affected the mindset of the people. Where, people will set aside a portion of their income to invest. Investments that are currently mingling in society are real wealth investments. In addition, investments that are currently in great demand are stock investments, deposits, money market mutual funds, and others (Kpodar & Liu, 2022);(Zubko et al., 2020).

Investments in real wealth are usually carried out for the long term goal of gaining profit. However, investing in the capital market does not rule out the possibility of obtaining short-term profits (Fathmaningrum & Utami, 2022);(Patma et al., 2021). Investment in the capital market and the use of capital market products are still underestimated compared to the other five financial service industries in Indonesia (Darmawan & Japar, 2020);(Fatimah & Nurkhin, 2021). This can be seen from the data from the Indonesia Stock Exchange that public understanding of capital market products in 2016 was 4.40%. (Sitorus & Fitri, 2021) revealed, Investment can also be called an investment that is familiar to the community. Investment is a commitment to invest money in an asset for a certain period of time in the future.

The role of investment comes from three important functions of investment activities, namely investment is a component of total expenditure, so an increase in investment will increase aggregate demand, increase national income and increase economic growth in employment associations, increase in means of production because investment will increase production capacity and investment always accompanies technological developments (Faisal et al., 2021).

Stocks are one of the most popular choices because they are effective for investing for the long term. However, people often misunderstand the functions and objectives of investment in general and stock investment in particular. Often people only focus on the immediate results and the amount of profit that will be obtained later. This can be seen in the question of the benefits that will be obtained when a new type of investment emerges. Especially now that the dissemination of information through online means is very easy, so actors can easily promote this form of illegal investment in the capital market to the public by promising a certain amount of money, a certain large profit. Most people will be tempted by these big profits without worrying about the risks that will come later (Soegoto et al., 2022).

Before making an investment, an investor must clearly understand the business that facilitates investment activities. Therefore, in accordance with applicable laws, companies in the field of financial services, such as securities, must first have official permission as regulators of customer funds, including in investments. However, in reality, many financial service companies are not yet licensed or licensed by capital

market institutions, so their services can be called illegal. For this reason, investment management carried out by companies operating in the financial services sector is illegal. Usually, these unlicensed companies misuse public funds as investments with ridiculously fixed returns. Crime is a social phenomenon that cannot be separated from the movement of people's lives. Evil will always be there at any time (Zuk et al., 2018).

The growing era of globalization can also lead to negative conditions such as the number of crimes circulating in society. Especially now that digital-based crimes are increasingly prevalent in society. However, this era of globalization does not always bring negative influences. The positive influence is also felt by the community and one of them is in the field of investment. Nowadays, people don't have to struggle to save even when they only have a little money. And investments based on platforms like today have many users, especially millennials. In addition, its wide reach, accessible anywhere and anytime, has increased public confidence in investing (Hawariyuni & Andrasari, 2022).

The Financial Services Authority (OJK) as the agency authorized to oversee all activities of the financial services industry in Indonesia reminds the public to be more careful in online-based investments at this time, because crime can come when we are caught off guard. Moreover, it involves finances so that the elements are increasingly aggressive to carry out their actions. Therefore, OJK as an authorized institution continues to protect investors from illegal investment crimes. Usually, the goal of fraudsters is generally the same, but it's just the way the person deceives his target, which, if you think about it, has gone too far. This should be of more concern to the government in charge of supervising public finances (Arisandi & Khudri, 2021);(Rahayu & Jauhari, 2020).

According to (Moh. Ahsan, 2017), as a protection measure for consumers or customers, the Financial Services Authority or OJK designs regulations so that they can be used as guidelines for owning a company as a financial service intermediary that is still under the auspices of the OJK. Cases of rampant fraud are currently exacerbated by the development of electronic transactions, which provide convenience in terms of facilities for users. A ticking time bomb threatens the grand plan for developing the welfare of the Indonesian people (Kharisma, 2021). The aspect of consumer protection for the public and users of financial products and services prior to the formation of the OJK was not specific, specific, and integrated either in financial law or oversight of financial service institutions, both industrial and institutional in nature. Laws that officially discuss consumer protection in the financial services sector are in the Financial Services Authority Law No. 21 of 2011, specifically Articles 4, 28, 29, 30 and 31 (Aprita, 2021);(Sinaga, 2022).

## **B. METODE**

This research method uses descriptive qualitative research methods (Marzuki, 2017), Namely descriptive research methods and mainly using analysis. This method is

often used to perform a search when the state of the object is natural. This discussion is carried out by collecting data from previous research reviews so that conclusions can be drawn. The legal research method is research with legal research objects based on secondary data which includes primary law, secondary law and tertiary law.

## **C. HASIL DAN PEMBAHASAN**

### **1. Investment**

Investment is a commitment of a number of funds or other resources made at this time, with the aim of obtaining future profits (Zubko et al., 2020). The term investment can refer to different types of activities. Investing money in real estate (land, gold, machinery or buildings) and financial assets (deposits, stocks or bonds) is a common business practice. Investment can be interpreted as a suspension of current consumption to be used in productive production for a certain period of time. Meanwhile, according to Sukirno, the investment made by the community will continue to increase economic activity and employment opportunities, increase national income and increase the level of community prosperity (Rachmadini, 2019).

Defines investment in the sense of sacrificing current assets to acquire future assets, of course in larger amounts. Investment as a commitment to invest a certain amount of money in one or more assets in the future. Another definition of investing is a form of investing funds or capital to create wealth, which can generate favorable returns, now and in the future. In general, investments can be divided into two categories, namely investments in real assets and investments in financial assets. Investing in real assets includes land, gold and machinery, while investing in financial assets includes stocks and bonds.

The goal of those who invest is basically to increase the amount of money they have or to expect future profits. Generally, the goal of investing is to make a profit, but for some businesses, there may be a primary goal besides making a profit. In general, the investment objectives are as follows:

- a. Obtain regular income from time to time, such as interest, royalties, dividends or rent and others.
- b. Create special funds, eg funds for expansion purposes, social benefits. Mastering or controlling other companies, by holding part of the company's capital.
- c. Guarantee the availability of raw materials and get a market for manufactured products.
- d. Reducing competition among similar businesses.

The investment process is the most basic way of managing investors when making investments. The investment management process according to Fabozzi consists of 5 steps as follows:

- a. Setting Investment Goals By setting investment goals in accordance with the wishes of investors, namely obtaining a return on the amount invested, the amount is greater than the amount issued.

- b. Planning an Investment Policy When making an investment policy it must be consistent with the objectives of the investor, i.e. the investor must decide how to allocate capital to the major classes of existing assets. Common asset classes include stocks, bonds, real estate and other securities.
- c. Choosing a Portfolio Strategy The selection of a portfolio strategy must be consistent with investment objectives and policies. Portfolio strategies can be divided into active and passive strategies. A proactive portfolio strategy uses available information and forecasting techniques to achieve the best performance. Meanwhile, a passive portfolio strategy is a strategy based on market activity (a passive strategy assumes that the market will reflect all available information on security prices).
- d. Asset selection Asset selection involves efforts to identify security pricing errors, at this stage investors try to design efficient portfolios.
- e. Measuring and evaluating performance By measuring and evaluating performance against benchmarks against certain securities portfolios with other relevant portfolios.

In a simpler and more practical way, the investment management process can be carried out using 5 steps (showing off strategy) as follows:

- a. Portfolio Planning Portfolio planning to determine the investment period for investment objectives. Another important thing to pay attention to is the level of desired income, the level of risk faced and the availability of funds where the three really have to match.
- b. Portfolio Analysis Investors should collect data, both quantitative and qualitative, from various types of investments that will be used as portfolios. Broadly speaking, the type of investment can be divided into 2 namely investment in real assets and investment in financial assets.
- c. After getting to know the various types of investments well, the third step is to form an investment portfolio by selecting various types of existing investments. Adjust to the investment period, the purpose of investing
- d. Portfolio Evaluation. To evaluate the portfolio is to do measurements and comparisons. Simple measurement can be done by assessing the performance of each type of investment using the current market value approach minus the acquisition value, then dividing it by the acquisition value.
- e. Portfolio Revision This step is a follow-up to the investment portfolio performance evaluation step. Evaluation of the results will certainly get the average rate of return from all types of investments in the investment portfolio.

## 2. Capital market

Based on Capital Market Law No. 8 of 1995 provides a more detailed understanding of the capital market, especially activities related to public offerings and securities trading, related public companies, with the securities they issue, organizations and professions related to titles. The capital market is a financial

institution that conducts business activities in the form of offering and buying and selling of securities. The capital market is also a professional institution that conducts transactions in securities and securities-related public companies. Thus, the capital market is known as a meeting place for sellers and buyers of capital/funds.

The capital market offers investors many different alternatives to other investments, such as: saving in a bank, buying land, insurance, gold, etc. The capital market is a liaison between investors (parties who have capital) and companies (parties who need long-term capital) or government organizations through long-term instrument transactions, such as securities including promissory notes, securities, shares, bonds, debentures, warrants, rights issues and various derivative products such as options (put or call). The Capital Market is a market for various long-term financial instruments that can be traded, both in the form of debt and equity, whether issued by the government, public authorities or private companies.

In the economy, the capital market provides a means to transfer capital from owners of capital to those who need long-term capital. By investing their funds, those who have money expect rewards or interest on depositing these funds. For businesses that need long-term financial sources, they can use external capital to develop their business without waiting for capital from business results.

The main actors in the capital market and supporting institutions that are directly involved in the transaction process are as follows:

- a. Issuers, are companies that will sell securities or issue on the stock exchange (companies that sell their ownership to the public or go public).
- b. Investors (owners of funds or financiers) are entities or individuals who buy ownership of a company that has gone public. Individual investors are people or individuals who make investments in their own name, while institutional investors are investments made on behalf of institutions, such as companies, cooperatives, foundations, pension funds, and others.
- c. Supporting Institutions function as a support or support for the operation of the capital market. The functions of these supporting institutions include participating in supporting the operation of the capital market, making it easier for both issuers and investors to carry out various activities related to the capital market.

### **3. Illegal Investment**

Article 1 point 1 Investment Law No. 25 of 2007 explains that investment is all forms of investment activities, both by domestic and foreign investors, to conduct business in the territory of the Republic of Indonesia. Based on the explanation in the article above, it appears that anyone can invest, both Indonesians and foreigners, as long as they invest in Indonesia. This means that even if Indonesians invest their capital outside Indonesia, they cannot be protected by Law Number 25 of 2007 concerning Investment. This investment or investment is the exact opposite of

fraudulent investment, because it is detrimental, destroys legal order in the field of investment, banking law and hinders national economic activity.

If viewed based on the caste of the Indonesian people, those who are interested in trying the world of investment are the Indonesian middle class who continue to develop as one of the triggers for the proliferation of investment products in circulation. It is this middle class who then becomes the target of private investment companies, both legal and unlicensed. Of course, this must be a serious concern of the government, because apart from having an impact on the loss of the community as the owner of capital, of course it also has an impact on the economic condition of the citizens. According to Iman Sugema in his article "Fraud under the guise of gold", in general, illegal investment companies only have the same permits as ordinary commercial investment companies.

Indonesia's growing middle class is one of the triggers for the proliferation of circulating investment products. It is this middle class in society who then becomes the target of illegal investment companies to smooth their way of deceiving investors in various ways to increase their profits. even if the business loses money and the form of investment is unfair and without permission from an authorized organization. Illegal investment is a form of investment in which investors leave a certain amount of money to be managed and handled by investment companies. capital, but in reality the investment company does not manage the money, there, sometimes they transfer it to other people. investors or even withdraw money from investors. Another thing, according to (Ariani & Suryanti, 2019), states that illegal investments are investments with unclear capital and management, legal and without permits. Of course, this must be a serious concern for the government, because apart from having an impact on the loss of society, such as owning part of the capital, of course, it also has an impact on the state of the national economy.

In this case, the government has attempted to reduce or eliminate the occurrence of illegal investments by providing protection, including by establishing laws or regulations that underlie the enforcement of investment laws. Article 9 of the Trade Law Number 7 of 2014 prohibits actors in the distribution sector from applying the pyramid model in the distribution of goods. This prohibition is also contained in article 21 k of Regulation of the Minister of Trade Number 70 of 2019 regarding the direct distribution of goods, which prohibits companies that have commercial business licenses from carrying out trading activities by forming a marketing network using a pyramid scheme. For those who carry out a pyramid scheme in the distribution of goods, shall be punished with a maximum imprisonment of 10 years and/or a maximum fine of IDR 10,000,000,000.

Based on the results of the research used, the authors use 10 national journals as supporting data material which will be discussed. The author finds several findings of previous researchers to be interesting to discuss, namely:

- a. Research conducted by (Bakhri et al., 2019) states an Analysis of Public Perceptions of Illegal Investments. Many people are invited to participate in investments that are designed to look like legitimate investments, and many become victims. This is detrimental to society, and law enforcement efforts are often constrained by inadequate laws and regulations governing this activity. The effect of this is that it will erode legitimate businesses. Therefore, OJK has formed an Investment Alert Task Force to protect consumers and increase public confidence in the financial industry.
- b. The Investment Alert Task Force consists of the OJK, the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, the Ministry of Trade of the Republic of Indonesia (Kemenag), the Ministry of Cooperatives and SMEs and Medium Enterprises of the Republic of Indonesia. The Government of the Republic of Indonesia (Kemenkop and UKM), Ministry of Communication and Informatics of the Republic of Indonesia (Kemenkominfo) and the Investment Coordinating Board (BKPM) ensure the prevention and handling of alleged unlawful acts by providing recommendations for handling cases to the relevant Ministries and/or Agencies or by conducting inspections together.
- c. Article 1 point 1 Investment Law No. 25 of 2007 explains that investment is all forms of investment activities, both by domestic and foreign investors, to conduct business in the territory of the Republic of Indonesia. Based on Ahmad Zuhairi et al. (2021) states that recently the OJK is required to carry out additional supervision of the financial services sector provided by legal investment institutions and by financial service providers that are not registered with the OJK. Many cases that occur in society are related to the rise of illegal investments offered by financial service providers, such as illegal/unregistered fintech, fraud using "fake" or illegal investment methods.
- d. As an effort made by OJK with the aim of providing protection to consumers to avoid illegal investments, the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector can be used as a guideline for financial service institutions and the public. The guideline for the public is that this regulation will become a benchmark because the public can find out which financial industries are under OJK supervision, what types of complaints the public can submit, and what are the stages in a complaint and its requirements.
- e. The increase in investment fraud in exchange for large and abundant profits is becoming more and more common. These events often occur due to a lack of investment knowledge. This creates a loophole for irresponsible individuals to carry out their actions in any form. Increasing the number of offers of investment or public funds by several companies without permission is carried out via short messages (SMS) or other electronic means such as email and

websites. This is in accordance with research conducted by (Sanchez, et al, 2020) which shows that fraudulent investment practices now appear in various forms, one of which is through the use of online media.

Therefore, identification and investment advice are wrong here as a solution to minimize fraudulent acts under the guise of investment or arising in chains. The characteristics of a fraudulent investment offer include:

- 1) The profits are huge and generally unreasonable.
  - 2) Attracts millions of participants worldwide.
  - 3) It's a chain, but no assets to invest in.
  - 4) No commercial license
  - 5) The system is not transparent.
  - 6) Gives the impression of being safe and risk free.
- f. Online transactions are regulated by digital law laws. Circular and Electronic Transactions (ITE) No. 11 of 2008 in Article. Through this regulation, securities companies are required to act as intermediaries or intermediaries for public companies and investors to make transactions. Online stock trading services provide clear and complete information. involves offering investments instead of spreading fake news with a sure compounding regime to trick investors into investing in the stocks offered by these illegal securities firms.
- g. Article 10 paragraph (1) of the same law explains that commercial agents who carry out electronic transactions can be certified by a trusted certification body. Journal of Construction Law Vol. 3, No. 1, 2022 | 150 laws in Indonesia. Through this regulation, securities companies should act as brokers or intermediaries for issuers and investors who carry out online-based stock buying and selling transactions, providing clarity and completeness of the investment-related information offered, instead of spreading fake news with a definite multiple profit mode to trap investors to invest. money in shares offered by the illegal securities firm.
- h. Article 10 paragraph (1) of the same law explains that business actors who have electronic transactions can be certified by a reliability certification agency. The enactment of these laws and regulations can certainly be a legal guarantee for players in the electronic capital market in Indonesia. In investment activities, investor legal protection is something that influences investor interest. Legal protection provided by the state is expected to provide stability in law enforcement. Legal protection obtained by investors from the state, namely prevention and sanctions (repressive).

Repressive legal protection will be provided by OJK in the event of litigation in financial sector activities with the aim of protecting the interests of society as consumers. The legal defense provided by the OJK is in the form of an order obliging financial service institutions to take action against claims of consumers who have been harmed and await decisions for violations of regulations in the financial

services sector. Law enforcement against perpetrators of fraud through illegal online securities companies has not been clearly regulated by specific laws that can bind perpetrators. As a result, the forms of protection that have been tried to be provided to victims of illegal online securities companies include the establishment of the Investment Alert Task Force, the Investor Protection Fund (IPF) formed by the OJK, and the investor protection fund (IPF).

#### **D. SIMPULAN**

The growing era of globalization can also lead to negative conditions such as the number of crimes circulating in society. Especially now that digital-based crimes are increasingly prevalent in society. However, this era of globalization does not always bring negative influences. The positive influence is also felt by the community and one of them is in the field of investment. Nowadays, people don't have to struggle to save even when they only have a little money. And investments based on platforms like today have many users, especially millennials. In addition, its wide reach, accessible anywhere and anytime, has increased public confidence in investing. However. The Financial Services Authority (OJK) as the agency authorized to oversee all activities of the financial services industry in Indonesia reminds the public to be more careful in online-based investments at this time, because crime can come when we are caught off guard. This should be of more concern to the government in charge of supervising public finances. Regarding the preventive legal protection of the Financial Services Authority, in particular the existence of rules to prevent violations that can cause losses in Law no. 21 of 2011 concerning OJK in articles 28 and 29. In addition, repressive legal protection is provided by establishing an investment warning working group.

Legal protection for repression is also regulated by civil, criminal and administrative laws. This legal protection is outlined in various articles of UUPM No. 8 of 1995. The liability of companies owning illegal online property rights is determined by the existence of sanctions in the form of criminal sanctions, civil sanctions and administrative sanctions for companies owning illegal online property rights. Some of these legal remedies are listed in UUPM No. 8 of 1995. Criminal sanctions are regulated in Article 103, civil remedies in Article 111 which explain that parties who feel disadvantaged as a result of these violations can claim compensation, while administrative sanctions are regulated in Article 102 containing written warnings and obligation to pay a nominal amount within a certain amount, temporary business restrictions and restrictions and revocation of business licenses.

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