



CRIMINAL ACTIONS AGAINST ONLINE INVESTMENT FRAUD AND LEGAL PROTECTION AGAINST INVESTORS

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Abstract

This study aims to learn how online investment fraud is committed and what measures investors or investors can take to protect themselves. This study approaches the relevant laws and regulations using a normative juridical approach. Based on the study's findings, it was discovered that Article 372 and Article 378 of the Criminal Code, which provides a maximum sentence of four years in prison or a fine nine hundred thousand rupiahs, regulates the application of legal sanctions for online investment fraud perpetrators. This is in contrast to the lack of a specific law that specifically regulates the use of criminal penalties for perpetrators. In the meantime, the Consumer Protection Act Number 8 of 1999 still generally governs online investor protection.

Keywords: Criminal act; fraud; online investment; investors

I. INTRODUCTION

Indonesia is a developing nation with the potential to invest in business. In addition to the Indonesian people's development and expanding economy, the most important factor in investing is the large number of Indonesians. The modern era of globalization is synonymous with rapid technological and information advancements.

Currently, online investment is one aspect that was born from advances in technology and information, which is quite interesting for some people. The "millennials" are one of several groups of people who are starting to try this new breakthrough. In fact, many people are tempted by the benefits offered by online investment owners. People believe that investing online saves time, is easier to manage, and even yields a profit. With a smartphone and of course fresh funds, you can participate as investors. The various conveniences offered by the organizers or business actors of these digital investment applications are ways that are often found by online investment users.

However, at the beginning of 2022, the public was shocked by the discovery of fraud cases under the guise of investment or fraudulent investments. In the near future, the police managed to uncover a number of fraudulent investment cases with losses reaching hundreds of billions of rupiah.

The lack of public awareness of the financial sector, particularly legal investments, and the plight of those seeking high returns while ignoring risk have both contributed to the rise in investment fraud in Indonesia. Not only members of the lower middle class, but also members of the educated or upper class, which can be categorized as educated or well educated, are among the victims of this fictitious investment. There are two types of people targeted by illegal investment companies: those who do not know that the proposed company or proposed investment product is not licensed (the legality is unclear), and those who are aware of the company's license but have high hopes. Various phenomena of investment fraud that are increasingly prevalent in recent times,

The facts that exist today are many in the community who often disguise themselves as investment transactions. The main feature, of course, is a business that focuses on raising money and promises fantastic profits. Crimes in Indonesia that have emerged in recent years are trading robots, trading robots are computer software that can work automatically to monitor the market, calculate entry opportunities, place transactions, and carry out risk management based on algorithms that have been embedded in the program lines. How it works, this robot will look for open trade opportunities, open sell, and buy in the forex market. The Forex Robot will use a series of forex market signals to run an algorithm that will help you decide whether to buy or sell a currency pair at a particular time. However, the fact is that there are many cases that arise

because the affiliate or investment owner has set up favorable arrangements for the affiliate, so that the victims who have invested suffer losses of up to billions of rupiah.

Cases of online investment fraud like this can occur due to a lack of information in the community about investment businesses, they are only trapped by promises of big profits that are trumpeted by irresponsible elements. Problems with evidence and legal proceedings that are carried out through electronic systems are frequent in online investment fraud.

Because most people who commit fraud through online media also use e-mail to communicate with their victims, the Criminal Code's provisions governing fraud cannot still accommodate acts committed through electronic systems in Law No. 11 for the year 2008 According to Article 1 point 2 of Law Number 19 of 2016 Concerning Information and Electronic Transactions, "Electronic transactions are legal acts carried out using computers or other electronic media".

As shown by this explanation, the state must clearly regulate criminal law against online investment actors and provide legal protection for victims of online-based investment fraud,. Repressively or emphasizing the application of criminal sanctions after the crime has occurred, the application of criminal sanctions against perpetrators of online investment fraud as a form of legal responsibility has not been expressly regulated in a special law that can provide criminal penalties for perpetrators. So that in this study the author will thoroughly review the "Criminal Act Against Online Investment Fraud Actors and Legal Protection Against Investors"

II. RESEARCH METHOD

This study employs a normative legal approach. Normative legal research or library research specifically by looking at existing legal principles, relevant laws, and scientific journals. The goal of library research is to gather data and information by using the various materials in the library, such as; books, magazines, manuscripts, notes, historical stories, documents, and so on.

III. DISCUSSION

3.1 Law Enforcement Against Online Investment Fraud Actors

At the beginning of 2022 cases of online investment fraud began to be revealed to the public, the facts dragged a number of artists or influencers who were quite well known in Indonesia. A quite horrendous case occurred in the case of Binomo or Binary Option Trading, which dragged the name of a quite controversial influencer showing off his wealth in the social field, namely Indra Kens. This case emerged to the public because many victims reported losing their money which had been invested in the Binomo application, so that all customers or victims received losses of up to billions of rupiah. Not only the Binomo case, several online trading applications have finally become legalized, such as Quotex, and now that show in hot news is trading net 89 which also dragged a number of artist names in Indonesia.

Indonesia is a country of law. It regulated in Article 1 paragraph 3 of the Indonesian constitution makes it clear that highest law in Indonesia. In this instance, Indonesia is a nation founded on law (*rechtstaat*) and not just power (*maschtsstaat*). This is stated in the general explanation of the Republic of Indonesia's 1945 Constitution. As a result, the existence of laws and regulations is one of the most important aspects of a state of law. Investment law, also known as investment law, is governed by a number of laws and regulations, one of which is Law No.25 of 2007 about investments.

According to Law No.25 of 2007 Article 1 point 1 concerning Interest in gives a comprehension of venture as "All types of speculation exercises, both by homegrown financial backers and unfamiliar financial backers to lead business in the domain of the Republic of Indonesia." Other than that, Law No. 25 of 2007 Article 7 regarding Investment. "Capital is an asset in the form of money or other forms that are not money owned by investors that have economic value,".

An investment, according to the Big Indonesian Dictionary (KBBI), is an investment of money or capital in one or more owned assets, typically for a long period of time, with the intention of earning profits in the future.

The investment's goals include, among others:

- a. Accelerate national economic expansion;
- b. Adding jobs;



- c. Encourage long-term economic growth;
- d. Making the national business community more competitive;
- e. Increase the national capability and capacity for technology;
- f. Promoting the growth of the economy of the people;
- g. Turning the potential economy into a real economic powerhouse with funds from within and outside the country; and
- h. Enhance community well-being.

Technological progress has a considerable influence on the economic progress of a country and encourages the development of a more efficient and effective business sector. The development of technology in the capital market is marked by the emergence of online investment facilities or known as online investment. Investments in digital technology as it develops today, are generally done conventionally and are now switching through websites or online applications.

Because it is now easier for everyone to access information about the capital market, it is hoped that this will encourage investors or potential investors to invest. It is anticipated that this facility will directly affect the community's growing interest in stock investing, particularly among students, who are likely technology-conscious novice investors.

In recent years online investment has often been heard in the world of capital markets in Indonesia, but there are no specific rules in the laws and regulations that regulate it, but the government has made legal products related to information and electronic transactions, specifically through Law No.11 of 2008, which deals with electronic transactions and information.

The contents of Law no. 11 of 2008 concerning Information and Electronic Transactions says, *"That the globalization of data has set Indonesia as area of the planet data society so it requires the foundation of guidelines with respect to the administration of Data and Electronic Exchanges at the public level so the advancement of Data Innovation can be done ideally, equitably, and spread to all degrees of society to instruct the country's life."*

Based on Law Number 11 of 2008 concerning Information and Electronic Transactions in Article 1 and Article 2 which reads, "Electronic information is one or more sets of electronic data, such as writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegrams, telexes, telecopies, or similar devices, processed letters, signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by people who are able to understand them."

" Legal actions that use computers, computer networks, or other electronic media are known as electronic transactions."

Online investing has been demonstrated to meet the requirements of Law No.11 of 2008 jo. Articles 1 and 2 of Law No. 19 of 2016 Concerning Electronic Transactions and Information, because in carrying out investment activities the actors use the media, namely the internet. In practice, online investment is the same as investing in general, but what makes the difference is the media used. Ordinary investment through direct face-to-face media, while online investment uses the internet media which is believed to be more practical than ordinary investment. Articles 9 and 10 of Law No. 11 of 2008 on Information and Electronic Transactions mention the requirement to provide contract terms information and certification from a Reliability Certification Agency.

Article 10 which reads as follows:

"The Reliability Certification Agency offers certification to any business entity that organizes Electronic Transactions. A government regulation specifies how the aforementioned Reliability Certification Agency will be established."

Therefore, it is evident that Government Regulation Number 82 of 2012 Concerning the Implementation of Electronic Systems and Transactions is the Government Regulation referred to in Article 10 of Law Number 11 of 2008 Concerning Electronic Information and Transactions Concerning Reliability Certification Agencies. In Indonesia, conducting online investment activities is not a prohibited act, it is even protected by the laws and regulations in force in Indonesia, specifically, regarding Investment Law No. 25 of 2007/11 of 2008 related to Regulation no.19 of 2016, which deals with information and electronic transactions, has not specifically addressed online investment regulation.

However, in addition to the criminal sanctions outlined in Article 378 of the Criminal Code, the government also offers criminal sanctions for those who engage in online investment fraud,

specifically those outlined in Article 372 of the Criminal Code, which deals with embezzlement offenses. According to the regulations in Chapter XXIV, Book II of the Criminal Code, Articles 372 to 377, the crime of embezzlement is included in the crime of crime against people's assets, or *vermogensdelicten*.

Embezzlement is an act that is included in the type of crime which regulated in book II Chapter XXIV, that the Criminal Code is a translation of the word "*verduistering*" in Dutch. As for the crime of embezzlement, one of which is regulated in Article 372 of the Criminal Code, which reads:

" The threat of embezzlement carries a maximum sentence of four years in prison or a fine of nine hundred rupiahs for anyone who illegally and intentionally owns something that belongs to another person in whole or in part but is not under his control due to a crime."

A principal crime is the offense described in Article 372 of the Criminal Code, thus, all types of embezzlement must meet the elements of the core part of Article 372 plus other core parts. The aforementioned objective elements of Criminal Code Article 372 are:

- a. Anyone (a legal subject is a person or legal entity);
- b. With intent and in violation of the law;
- c. Owning something that someone else owns in whole or in part;
- d. He did not commit a crime when he had access to the goods.

In addition, subjective elements also exist regulated in Article 372 of the Criminal Code, namely:

- 1) The element of intentionality. This element is an element of error in embezzlement, as in the doctrine, error (*schuld*) consists of 2 forms, namely intentional (*opzettelijk or dolus*) and negligence (*culpos*).
- 2) Elements against the law. Basically against the law is the reprehensible or forbidden nature of a certain act. In doctrine, it is known that there are two kinds of against the law, namely against the formal law (contrary to written law) and against the material law (contrary to the legal principles of society).

Thus, it can be clearly seen that the sanction that can be applied to perpetrators of online investment fraud have been regulated in Article 372 and Article 378 of the Criminal Code with a maximum imprisonment of four years or a maximum fine about nine hundred rupiah.

3.2. A Form of Protection for Investment Actors or Investors

In the case of online fraudulent investments that are currently circulating in Indonesia, it is certainly one of the things that the public must be aware of. The fact that emerged today due to wanting to get rich instantly, many investors or investors experienced considerable material losses. For this reason, public awareness in choosing a place to invest must be carefully and precisely.

Article 372 of the Criminal Code clearly defines the criminal form for online investment fraud perpetrators, and the Act also defines the protection of equivalent deposits to safeguard the user or investor. Definitions, business, standard provisions, actions prohibited by consumer protection authorities, and economic business responsibilities, such as fostering and supervising the user, are all included in Indonesia's Consumer Protection Law Number 8 of 1999. In article 3 on protecting the user the objectives are as follows:

- a. Increase the ability, independence, and awareness of customers;
- b. Improve one's self-esteem by avoiding bad access to goods and services;
- c. Give users more control over how they use their rights;
- d. Make a rule that must have an open nature and include legal accuracy;
- e. To foster an honest and responsible attitude in business, raise stakeholder awareness of the significance of consumer protection;
- f. Improvement of a material and the creation or acquisition of a guarantee for the user's safety and security.

Therefore, it is evident that the application of the principles of transparency, regulatory oversight, investment product quality, prohibitions, and regulation enforcement is the foundation for the protection of investors as consumers of investment products when investing online. As a

result, saving money for consumers requires having an open mind. However, this is clearly not an easy task. Since this point is definitely standing out enough to be noticed in the field of utilization. It really depends on how truthful, accurate, and on time the delivery. There is additionally banter about how far this transparency will go.

IV. CONCLUSION

Based on the study's findings, it was discovered that Article 372 and Article 378 of the Criminal Code, which provides a maximum sentence of four years in prison or a fine nine hundred thousand rupiahs, regulates the application of legal sanctions for online investment fraud perpetrators. This is in contrast to the lack of a specific law that specifically regulates the use of criminal penalties for perpetrators. In the meantime, the Consumer Protection Act Number 8 of 1999 still generally governs online investor protection. For this reason, it is very clear that losses in online investing are difficult to claim by investors who have been materially harmed.

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