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Reconceptualization of Money Game Arrangements (Illegal/Bodong Investments) as a Crime Related to Legal Protection Efforts of Investors in Indonesia

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Abstract

Money game is an activity of collecting money in the practice of bonuses or commissions taken from the addition or the recruitment of new members, and not from product sales. Even if there is a sale of a product, it is only camouflage. The main problem in this research is how the regulation of money games (investment illegal/ fraud) as a criminal act is associated with legal protection efforts of investors in Indonesia and how the reconceptualization of regulation money game (investment illegal/ fraud) as a criminal act is associated with legal protection of investors in Indonesia. The research method is a normative legal research that is legal research library (Library Research), The nature of research is descriptive analytical. From the results of the study it can be concluded that the regulation of money games (investment illegal) as a criminal act is associated with legal protection for investors in Indonesia which is not effective in its application, this is because in field practice, law enforcement officials tend to be guided by the Criminal Code in enforcing law enforcement. law against perpetrators. Even though the perpetrator's actions can be charged with legal regulations outside the Criminal Code. And the idea of reconceptualizing money game (investment illegal) as a criminal act is associated with legal protection efforts of investors in Indonesia, which can be seen from the three elements of the legal system, namely the structure of law, the substance of the law and culture. law (legal culture). No matter how good the arrangement of legal.

INTRODUCTION

The scope of direct selling is an activity unit that carries out management activities of production factors in order to produce products, namely goods and / or services aimed at consumers through the marketing mechanism of *Single Level Marketing* or *Multi Level Marketing* (hereinafter referred to as MLM). The product must have a clear existence, because the essence of the MLM system is the sale of goods and / or services directly to consumers. Whatever the type of sale or the company's operating system, if it doesn't have a product /

service that is sold and paid for based on recruitment not based on sales, it will still be called illegal.¹

In this business *money game*, the products being sold are not the products needed because they are only camouflage to run this business. Many fraudsters who claim to sell products using a system *networking* are ultimately the products they use only to cover up their fraudulent schemes. It is best not to get involved with a marketing plan where the money earned only comes from the number of distributors recruited and only from their purchases that are in the marketing plan, versus purchases made by people who are outside the marketing plan.²

In the Criminal Code (KUHP) Criminal law is the law that regulates any crime or act who can be punished with a crime stipulated by law, and against whoever said punishment can be imposed.³

Business actors under the guise of selling or trading businesses as it is known have the main intention of raising as much funds as possible from the public by trading or investing for their own interests. The methods used by business actors under the guise of achieving these objectives are manipulative and can be categorized as a criminal act of fraud as regulated in Article 378 of the Criminal Code.

In addition to the criminal act of fraud, business crimes under the guise of Indonesia under the Criminal Code can also be categorized as a criminal act of embezzlement as regulated in Article 372 and Article 374 of the Criminal Code. There are weaknesses in the Criminal Code regulations related to handling business fraud under the guise of regulating sanctions. The criminal sanctions in Article 378 of the Criminal Code and Article 374 of the Criminal Code are deemed too light to be imposed on undercover business actors. This is due to the large number of victims incurred with total losses which generally reach billions to trillions of rupiah. If this rule is to continue to be used, then it is certain that business actors under the guise will not be afraid of the threat of sanctions, and if caught does not deter the perpetrators.

Law Number 7 of 2014 concerning Trade is the latest breakthrough for investigators as law enforcers made non-penal efforts because without a complaint, investigators can carry out investigations and investigations as well as prevention.⁴

¹ Lian Lubis (editor), "APLI Protects Consumers", *APLI Network News* 3, 25.

² Kany V. Soemantoro, "MLM Watch & SIUPL Compliance", *APLI Network News* 2, 13.

³ Erdianto, *Under the guise of Criminal Law Enforcement Against Gambling Children's Games at Shopping Centers (Malls) in Pekanbaru City By Polda Riau*, Jurnal Selat, October 2018, 1.

⁴ Ina H. Rachman, "SKB comes out, APLI is increasingly showing its teeth with money games", *APLI Network News* 3, 20.

The following is an example of a business case under the guise of trafficking, where the victim initially collaborated with the perpetrator in the business of selling pharmaceutical products / drugs with the agreement that the victim received a profit of 70% of the profit and 30% for the perpetrator with a refund of capital every 1 month for 1 DO / Invoice purchase and benefits. Furthermore, the victim handed over 3.4 billion worth of money for the purchase of 13 purchase invoices with each purchase invoice worth IDR 225,000,000. However, until now, the capital money and the profits have not been handed over to the victim.⁵ However, in reality the case was only proven to have violated Article 378 of the Criminal Code concerning fraud. Article 378 of the Criminal Code is punishable by a maximum sentence of four years, whereas if it applies Article 105 of Law Number 7 of 2014 concerning Trade, the punishment is heavier, can be imprisoned for a maximum of 10 years and / or a maximum fine of IDR 10 billion.

This is according to the author's weak law enforcement because if you see this case it can be tried with the trade law, because the trade law sanctions are heavier while the imposition of Article 387 of the Criminal Code is not proportional to the loss of the victim and this writer believes it will not create a deterrent effect. the perpetrator.

In addition, the Lumajang Police revealed a case of money games using a pyramid system in trading, where the perpetrator was the board of directors of PT. Amoeba International has the initials MK (48 years) Kebonsari, Madiun. According to the perpetrator's confession, PT. it is affiliated with PT. Q Net as the holding company that runs pyramid trading systems. New members are required to find two members, and each new member is assigned the same thing, namely recruiting new members so that it forms a binary system (pyramid), where each of its right and left legs will continue to branch. They were promised that every multiples of three for each left and right leg, they would get 250 dollars, even they were promised to get 11 billion rupiah in a year if they worked diligently.⁶

The number of fraud cases in Indonesia has harmed investors who have made investments, but currently it is more focused on criminals even though protection for investors is no less important so that investors feel security and responsibility as protection for investors to invest. For example, by making preventive measures in order to minimize losses to investors.

⁵ Dian Rachmaningsih, Thesis "*Law enforcement against business fraud under the guise of implementing a pyramid scheme*" (Yogyakarta: Islamic University of Indonesia, 2016), 98.

⁶ Finance Seconds, Madoff and Investment Cheats in a Ponzi Scheme, Accessed from <https://www.medianasional.id/polres-lumajang-disclosed-kasus-money-game-yangdij-Run-pt-q-net/> Accessed July 4, 2020 , At 21.53 WIB.

Preventive efforts are one of the efforts to control before something bad happens, therefore action is needed such as advice, suggestions, arrangements, etc. which are to prevent or at least minimize crimes that harm investors on investments that are made he did. Because considering the cases that occur in law enforcement are also considered to be very far from the maximum, the proof is that investment cases have a special regulation of Law Number 7 of 2014 concerning Trade which regulates heavier but law enforcement officers always ensnare the perpetrator with a Criminal Code. Of course, it leads to fraud so that the sanctions / penalties given are very low or do not create a deterrent effect so that the incident continues to recur.

In this study, the authors used Normative Law Research, namely library research, which is a data collection method by studying books, laws and regulations, as well as writings related to this research.⁷ While the nature of the research used is research descriptive analytical, which provides a clear and detailed description of an incident that occurs regarding the reconceptualization of regulation money game (investment illegal/ fraud) as a criminal act associated with legal protection of investors in Indonesia.

SETTINGS MONEY GAME (INVESTMENT ILLEGAL/ BODONG) AS CRIME LINKED WITH INVESTOR LEGAL PROTECTION EFFORTS IN INDONESIA

Acts money game as adikatan Crimes Unit is very harmful because the victims are parties investor. R. Soesilo distinguished the juridical definition of crime and the sociological definition of crime. From a juridical perspective, the definition of crime is an act of behavior that is contrary to law. Meanwhile, in terms of sociology, then what is meant by crime is an act or behavior which is not only detrimental to the sufferer but also very detrimental to the community, namely in the form of loss of balance, peace and order.⁸

Fraud with money games, pyramid schemes, and inventory loading is indeed difficult for ordinary people to distinguish. Especially if this fraud uses the guise of legitimate businesses such as investment, multi-level marketing, social gathering, savings and loans, and the use of internet technology. This fraud is increasingly free to move because the government as supervisor and regulator does not have legal instruments, even easily granting operating

⁷ Soerjono Soekanto, Sri Mamudji, *Normative Legal Research, A Brief Overview*, (Jakarta: PT. Raja Grafindo, 2003), 23.

⁸ Mohammad Aiman Kiraman, *In his Thesis Victimological Review of Psychic Crimes Against Domestic Helpers in Makassar City*, Makassar, 2013, 14.

licenses for these businesses without supervision.⁹ As for the regulation money game (investment illegal), namely :

1. Law Number 8 of 1995 concerning the Capital Market.
2. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Charges.
3. Law Number 25 of 2007 concerning Investment.
4. Law Number 21 Year 2008 concerning Sharia Charges.
5. Law Number 21 of 2011 concerning the Financial Services Authority.
6. Law Number 7 of 2014 concerning Trade.
7. Law Number 11 of 2020 concerning Job Creation.
8. Regulation of the Minister of Trade Number 70 of 2019 concerning Direct Distribution of Goods.

Company Direct Selling (DS) or Multi Level Marketing (MLM) is false conducting business as a securities company may be penalized in imprisonment of five (5) years and / or a fine of Rp 5 billion, according to the provisions of Article 103 Paragraph (1) Capital Market Law (Law 8 of 1995). As is well known, Article 30 Paragraph (1) of Law 8 of 1995 explicitly states that those that can carry out business activities as securities companies are companies that have obtained a business license from Bapepam-LK.¹⁰

According to the author, although companies Direct Selling (DS) or Multi Level Marketing fake (MLM) can be subject to criminal sanctions under the Banking Law and the Capital Market Law, in reality, this is not able to cause a deterrent effect on the fraudsters. Almost every year cases of fraud under the guise of DS / MLM always occur repeatedly, but the legal instruments seem to be powerless to deal with them, the government must make even stricter legal rules so as to cause a deterrent effect in the future, such as imposing a life sentence for committing fraud, especially in case money game (investment illegal/ fraudulent).

As it is known, money game is a business concept under the guise of trade which is actually only doing a pyramid scheme which is always identified with the MLM system. Participants in this scheme are placed in such a way that they look like a pyramid shape. Pyramid schemes are fake investment systems that pay commissions to old participants from

⁹ Accessed on : <https://musabab.com/sejarah-bisnis-ponzi-money-game-berkedok-mlm-yang-berujung-bangkrut/>, November 16, 2020, at 13:15 WIB.

¹⁰ Serfianto D. Purnomo, Iswi Hariyani, *Multi Level Marketing Money Game, Op., Cit.*, 59.

new recruits' funds, not from real profits. This scheme is destined to collapse because if there is income there will be less to pay for the benefits of the participants. The illegality of this scheme lies in incidence of losses from the lowest level participants due to the loss of the amount of money invested in the business.¹¹

The most common MLM business is money games or multiplying money using the pyramid system. The business process of the fake investment initially deposits a certain amount of money as capital and the money will return in a larger amount if the victim is able to attract and enter one or more members (members) and will get a partner bonus or point bonus. When viewed from the way of giving bonuses and company profits that focus on the results of recruitment and registration of money, this system is clear that it will only benefit the first party because the bonus or profit is actually the investment funds of the investors.¹²

However, over time and the increasing number of people participating in this investment business and the increasing amount of money paid up, the victim's paid-up capital never returned and the bonus promised by the perpetrator was never given. Finally, the investors or victim victims who invested these funds sued the perpetrator by visiting the investment office, but the perpetrators could not return the victims' capital. The perpetrator's actions resulted in huge losses for the victims because they had deposited a lot of money but this money instead of returning in a larger number did not come back at all.¹³

Criminal charges in the ponzi scheme have not been specifically regulated, but actors of the ponzi scheme can be charged with sectoral laws and regulations. In addition, ponzi scheme activities or other fraudulent investments often do not have OJK permits, so they can be charged with imprisonment and fines for any party conducting capital market activities without OJK's permission under Article 103 of Law Number 8 of 1995 concerning Capital Market.

The public can report any suspected illegal investment to the OJK Investment Alert Task Force Secretariat via email waspadain Investasi@ojk.go.id or OJK customer service at 157 as explained in the Report on Alleged Illegal Investments on the OJK website. Meanwhile, this list of illegal or unregistered investments can be seen in the article List of Unregistered and Not under OJK Supervision of Investments from the OJK website.

¹¹ MLM Leaders, *The Secret Book Of MLM*, (Jakarta: Mic Publishing, 2007), 20.

¹² Nita Yudasari Yusuf, Thesis. "*Victimological Review of Fraud Crimes with Multi Level Marketing Business Mode (Case Study in Makassar City 2012-2014)*", (Makassar: Hasanuddin University, 2015), 4.

¹³ *Ibid.*, P. 5.

According to the author, there have been many cases that have occurred with the modus operandi of committing fraud, so the OJK and the Investment Alert Task Force must appeal to the public so that before investing, they must do the following things, including :

1. Ensure that the company offering the investment must have a license efforts from competent authorities such as OJK.
2. Ensure that those who offer investment products have a license to offer investment products or are registered as marketing partners.
3. Requesting the public, especially financial service entrepreneurs, to be vigilant and careful of offers and requests from any party that promises to pay off debts.

It is better if the competent authorities such as OJK should provide more counseling, notification, expose and teach the public about good and correct investment efforts. Also, it is hoped that the Government will be more deft and quick to act in eradicating crimes that can harm many parties.

The rules in the Criminal Code (hereinafter referred to as the KUHP) related to MLM business crimes are Article 372- Article 377 of the Criminal Code regarding the Crime of Embezzlement and / or Article 378-Article 395 of the Criminal Code concerning Fraud. Meanwhile, outside the Criminal Code that can be used to ensnare the perpetrators with heavier crimes is Law Number 7 of 1992 jo. Law Number 10 of 1998 concerning Banking, Law Number 8 of 1995 concerning Capital Market, Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, and Regulation of the Minister of Trade Number: 32 / M-DAG / PER / 8 // 2008 concerning the Implementation of Trading Business Activities with the Direct Selling System.

In field practice, law enforcement officials tend to be guided by the Criminal Code in enforcing law against perpetrators. Even though the perpetrator's actions can be charged with legal regulations outside the Criminal Code. The existence of different rules certainly has the intent and purpose so that these rules can be applied in accordance with the actions committed by the perpetrators of crimes. As it is known, if the perpetrators of crimes are caught money game by the rules in the Criminal Code, for example, such as fraud as regulated in Article 378 of the Criminal Code.

According to the author, it will not fulfill a sense of justice if the losses received by investors are due to investment, because in general, the amount of money invested is very large and is not comparable to only penalties contained in the criminal act of fraud in the Criminal

Code. In addition to the criminal act of fraud, business crimes under the guise of Indonesia under the Criminal Code can also be categorized as a criminal act of embezzlement as regulated in Article 372 and Article 374 of the Criminal Code. However, if law enforcement officials refer to rules outside the Criminal Code as stipulated in Article 105 of Law Number 7 of 2014 concerning Trafficking, the punishment is heavier, can be imprisoned for a maximum of 10 years and / or a maximum fine of Rp. 10 billion.

The consequences of law enforcement by law enforcement officials who always apply rules which according to the authors are not comparable to the perpetrators' actions, among others: It will not be effective in dealing with criminal acts because the sanctions received by the perpetrators are very light, even the perpetrators may repeat the act. On the other hand, the impact will also be received by the victim, namely the investor, that the victim does not only suffer material losses, but also suffers psychologically or mentally because the punishment received by the perpetrator will still not return the losses suffered by the victim.

RECONCEPTUALIZATION OF ARRANGEMENTS MONEY GAME (INVESTMENTS ILLEGAL/ BODONG) AS CRIMINAL ACTIONS ASSOCIATED WITH LEGAL PROTECTION EFFORTS OF INVESTORS IN INDONESIA

Judging from the legal system put forward by Lawrence M. Friedman, the effectiveness and success of law enforcement depends on three elements of the legal system, namely (*structure of law*), substance of the law (*substance of the law*) and legal culture (*legal culture*).¹⁴

According to the authors, the elements of the legal system are :

1. The legal structure here concerns law enforcement officials, such as the police, prosecutors, judges, advocates by means that law enforcement officials must be more pro-active in taking action against cases money game (investment illegal/ invalid) and forming a task force. investment alert.

According to the author, of course the term fake investment is familiar to the ears, but still people who are tempted and trapped in a vicious cycle of investment scams under the guise of investment often occur. Ponzi schemes (the business model introduced by Charles Ponzi of Italian descent) are often found in investments or sales of products and

¹⁴ Lawrence M. Friedman *Op., Cit.* 5.

services camouflage. The priority is more on how to attract new members to close the investment of old members (who have already registered in advance). All of that is nothing more than trickery, aka the game of money (money game). Even if there are products / services that are actually offered, but the Ponzi scheme, then the initial intention of this business is indeed is wrong and intends to deceive. Because in the end this business model will not last long.

According to the author, as the latest example is the Umrah travel service provider First Travel, which has been able to attract about 70 thousand pilgrims at low prices. However, not half of them were successfully dispatched. Of course there are many other forms of service and investment offerings that are not really that different from these deceptive attempts. As with money games, it usually promises huge profits for those who invest a large amount of money and recruit other members.

Members Money game will go to great lengths to convince potential investors that they are a genuine company, but in reality it is illegal. The concept money game is similar to the Multi Level Marketing (MLM) business. To avoid being trapped in the business money game, we need to understand and critically conduct background checks on the companies they will invest in and verify whether they have a license to operate according to their type of business or not.

2. The substance of the law is the real rules, norms, and patterns of human behavior within the system. So the substance of the law concerns the prevailing laws and regulations which have binding power and serve as guidelines for law enforcement officials, especially in cases of money games (investment illegal/ fraudulent).

According to the author, according to the discussion in CHAPTER I there are weaknesses in regulations, regarding the case of money games (investment investment illegal/ fake), while the prohibition of carrying out business activities in the form of a pyramid scheme is regulated in Article 9 of Law Number 7 of 2014

which states that the perpetrators distribution businesses are prohibited from applying a pyramid scheme system in distributing goods. This prohibition is also stated in Article 21 letter k of the Regulation of the Minister of Trade Number 70 of 2019 concerning Direct Distribution of Goods, namely that companies that already have a trading business license are prohibited from carrying out activities by establishing marketing networks using a pyramid scheme. Those who apply the pyramid scheme in the distribution of goods can

be punished with a maximum imprisonment of 10 years and / or a maximum fine of Rp. 10 billion. Whereas in Article 31 of the Minister of Trade Regulation 70 of 2019, companies implementing pyramid schemes are only subject to administrative sanctions in the form of written warnings to revocation of trading business licenses. In addition, ponzi scheme activities or other fraudulent investments often do not have OJK permits, so they can be charged with imprisonment and fines for any party conducting capital market activities without OJK's permission under Article 103 of Law Number 8 of 1995 concerning Capital Market. The public can report any suspected illegal investment to the OJK Investment Alert Task Force Secretariat.

According to the authors, the way to do that is with preventive measures in order to minimize losses to investor. Preventive efforts are one of the efforts to control before something bad happens, therefore action is needed such as advice, suggestions, arrangements, etc. which are to prevent or at least minimize crimes that harm investors for the investment they make. Because considering the cases that occur in law enforcement are also considered to be very far from the maximum, the proof is that investment cases have a special regulation of Law Number 7 of 2014 concerning Trade which regulates heavier but law enforcement officers always ensnare the perpetrator with a Criminal Code. Of course, it leads to fraud so that the sanctions / penalties given are very low or do not create a deterrent effect so that the incident continues to recur.

3. Legal culture is alive and adhered to in a society. And the government must add to the latest regulations or regulations in addition to the related regulations that the authors previously mentioned in the case of money games (investment illegal) so that there is a deterrent effect in the future and provide a picture or direction to the public to avoid cases money game (investment). illegal/ bodong) which is very detrimental to society such as avoiding fraud. And as good as the arrangement of the legal structure, in order to run the rule of law established, and no matter how well the quality of legal substance that is made without supported by the legal culture of the people involved in the system and the law enforcement community will not run effectively.

According to the author, from the explanation above, it can be concluded that all efforts made by law enforcement officials do not necessarily depend on the rules and norms that govern. However, the results of law enforcement are also determined by legal culture factors.

CONCLUSION

The regulation of money games (investment illegal/ fake) as a criminal act is associated with efforts to protect the law of investors in Indonesia which are not effective in its application, this is because in field practice, law enforcement officials tend to be guided by the Criminal Code in enforcing the law against perpetrators. . Even though the perpetrator's actions can be charged with legal regulations outside the Criminal Code. The existence of different rules certainly has the intent and purpose so that these rules can be applied in accordance with the actions committed by the perpetrator of the crime. Criminal charges in the ponzi scheme have not been specifically regulated, but actors of the ponzi scheme can be charged with sectoral laws and regulations. In addition, ponzi scheme activities or other fraudulent investments often do not have OJK permits, so they can be charged with imprisonment and fines for any party conducting capital market activities without OJK's permission under Article 103 of Law Number 8 of 1995 concerning Capital Market.

The idea of reconceptualizing money game (investment illegal) as a criminal act is associated with legal protection for investors in Indonesia, which can be seen from three elements of the legal system, namely the legal (structure structure of law), the substance of the law (substance of the law). and legal culture. No matter how good the legal structure is, the aim is to carry out the stipulated legal rules, and no matter how good the quality of the legal substance made without the support of a legal culture by people involved in the system and society, law enforcement will not run effectively, all efforts made by the apparatus law enforcers do not necessarily depend on rules, regulatory norms. However, the results of law enforcement are also determined by legal culture factors.

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