



Legal reconstruction of the role of the prosecutors in the prevention and eradication of criminal acts of illegal investment based on justice value

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Abstract

The purpose of this study is to analyze and find out the weaknesses in the regulation of the prosecutor's role in preventing and eradicating the crime of illegal investment and to reconstruct the regulation of the role of the prosecutor's office in preventing and eradicating illegal investment crimes in Indonesia based on the value of justice. This research is a non-doctrinal/socio-legal-research research with a descriptive study. The approach method in this research is Sociological Juridical Research using the constructivism paradigm. The findings show that there is no regulation on the role of the Prosecutor's Office in preventing and eradicating illegal investment crimes in Indonesia, this condition in preventing and eradicating illegal investment crimes in Indonesia is further worsened by the fact that there is inadequate infrastructure, less literate people, the culture of wanting to get rich quick. Based on this problem, the Reconstruction of the role of the prosecutor's office in the prevention and eradication of illegal investment crimes in Indonesia based on justice value is namely the need for a renewal of the regulation on the role of the prosecutor's office in preventing and eradicating illegal investment crimes, especially when linked to the Law of the Republic of Indonesia, investment between technical agencies and law enforcement officers for the prevention and eradication of criminal acts must also be controlled by the prosecutor's office.

Keywords: legal reconstruction, prosecutor, illegal investment, justice value

Introduction

In order to eradicate investment crimes, the Financial Services Authority together with the Ministry of Trade, Ministry of Communications and Information Technology, the Ministry of Cooperatives and Small and Medium Enterprises, the Attorney General's Office, the Indonesian Police, and the Investment Coordinating Board have agreed to strengthen cooperation within the Investment Alert task force to prevent and deal with the existence of offers and illegal investment practices. This task force is a coordination forum between regulators, supervisory agencies, law enforcement agencies, and others who have links in handling alleged unlawful acts in the field of collecting public funds and investment management. The Financial Services Authority (OJK) investment alert task force has terminated 821 illegal peer-to-peer (P2P) lending financial technology companies. The number has significantly jumped by 103.22% since 2018's finding of 404 entities (Hafiyyan, 2019) ^[2]. The Head of the Financial Services Sector Investigation Department, Inspector General of Police Rokhmad Sunanto, said that every week the OJK Investment Alert Task Force (SWI) recapitulates illegal investment entities that have been handled. The majority of these entities are in the form of fintech. There are a number of factors that encourage customers or investors to fall into illegal investments, especially fintech. First, is the easy process of borrowing even without collateral. Second, there is the lure of high returns and no risk. The value of losses due to fraudulent investments is also very high. In the period 2008 to mid-2019, the value of losses that cannot be returned to customers is around Rp. 105 trillion.

The Investment Alert Task Force (SWI) until March 14 has found a peer-to-peer lending fintech again where investment

entities and private pawnshops without permits are still operating and can harm the public. In March, SWI again found 388 illegal peer-to-peer lending fintech entities. Previously, in January 2020, SWI found 120 entities that carried out illegal peer-to-peer lending fintech activities that were not registered with the OJK. So that the total from January 2020 to March 2020 was where they found 508 Illegal fintech lending entities. Total Illegal fintech lending handled by the investment alert task force from 2018 to March 2020 was 2406 entities (OJK, 2020) ^[6].

How can an investment activity not be detected and monitored by the authorities, especially those that are preventing the collection of public funds or fake and illegal investments? In fact, by paying attention and based on community activities, it is very easy to obtain information from the public, there have been activities to raise public funds in an area that are similar to illegal investment crimes, even companies or individuals, who carry out activities under the guise of investment, usually also use promotional/advertising facilities that are such as word-to-word, as well as digital and electronic advertisements, as well as advertisements on other social media. However, for prevention efforts, the crime of illegal investment, which has only taken a few victims, is very difficult. Do the regulations, facilities, and infrastructure, even legal instruments not yet exist, or are the officers lacking in supervising, and many more questions are asked in order to prevent the criminal act of illegal investment from thriving in Indonesia? the cases of large illegal investments surprisingly actually occur in urban areas and are suffered by people who are actually highly educated (Widodo, 2018) ^[9]. Meanwhile, what happens in rural areas is usually the mode of taking away customers' money.

Based on the description above, we can see how easy it is for someone to form a company and even individuals can make investments easily get customers, even if there is no need for particular word-to-word promotion, companies under the guise of investment easily get customers.

Trust is the key to investment, it is a tool on how one can win the trust of the public, to invest their funds. However, it is impermissible to let the public's trust be misused by someone, by creating a company under the guise of investment, but it turns out that from the start it has intended to make illegal investments and even fraudulent investments with no clear funding system and even unclear activities.

Various efforts have been made by forming institutions, even forming a team of work units, to tackle illegal investment crimes, but they continue to be conceded and occur repeatedly and take many victims from the community. Presenting the state in the community through state officials, especially law enforcement officers to take preventive and repressive actions in handling illegal investment crimes based on the value of justice. The Prosecutor's Office must have a bigger role even though there is already a law that regulates the role of the prosecutor, but the existing arrangements are outdated and therefore need to be considered to form or create a new role by referring to other institutions such as financial services or banking authorities.

Based on the above background, the authors are interested in conducting research titled "Legal Reconstruction Of The Role Of The Prosecutors In The Prevention And Eradication Of Criminal Acts Of Illegal Investment Based On Justice Value" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses of the regulation on the role of the prosecutor's office in preventing and eradicating illegal investment crimes in Indonesia currently?
2. How is the legal reconstruction of the role of the prosecutor's office in the prevention and eradication of illegal investment crimes in Indonesia based on justice value?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [8].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [1]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and

have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of The Regulation on The Role of The Prosecutor's Office in Preventing and Eradicating Illegal Investment Crimes in Indonesia Currently

Efforts to prevent and eradicate illegal investment crimes, in practice, still have many weaknesses, one of which is the factor of the law or its own regulations as described in the discussion of the previous chapter. This regulation or law is very important in the implementation of the process of preventing and eradicating the law because basically the law or regulation is something that is not value-free because in the process of its formation there must be a tug-of-war process for a strong interest between the interests of the capital owner, the public and the government (Widodo, 2019) [10].

The weakness of the regulatory factor is that for criminal acts of illegal investment in Indonesia, there is no formal juridical rule either in the form of articles or laws. What has happened so far is considered a modus or criminal act under the guise of illegal investment and the application of the article also uses articles in the Criminal Code, especially fraud and embezzlement. Banking crime in particular article 46, trafficking crime article 105, money laundering crime. As based on the Deputy Attorney General for General Crimes Fadli Zumana Number: B 609/E/Ejp/02/2022 Jakarta, February 24, 2022, regarding the handling of criminal cases under the guise of investment. The types of criminal acts under the guise of investment include:

- a. Criminal acts related to illegal investments as regulated in the Criminal Code, namely Fraud which is regulated in the second book of chapter XXV of Law no. 1 of 1946 concerning the Criminal Law Regulations from Articles 378 – 395, and embezzlement of money related to Article 372 of the Criminal Code
- b. Money Laundering
- c. Money Game
- d. Does not have a license to raise funds in savings and loan cooperatives related to Article 46 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

The absence of special regulations relating to illegal investment creates an obstacle or weakness in the process of preventing or eradicating illegal investment crimes. This will have an impact that can be described as follows:

- a. Types of illegal investment crimes. The absence of regulations that limit the definition of investment

causes an impact on the extent of illegal investment crimes. Because there is no clear grouping related to any actions that fall into the category of illegal investment crimes, it will create a legal vacuum and limit the understanding of illegal investment crimes. This will also complicate the process of determining which articles will be used to punish perpetrators of illegal investment crimes.

- b. Sentencing by law enforcers. If illegal investment is not regulated, it will result in a very wide range of sentences or articles imposed by law enforcers, and the choices used by law enforcers will be limitless. This limitation will cause even though the illegal investment crimes carried out are the same, the articles used are likely to be different. This will cause injustice in the law enforcement process.

The weakness of law enforcement factors, in particular, is that there are no legal rules governing illegal investment crimes so that it will affect law enforcement both in preventing and eradicating illegal investment crimes and so far, illegal investment crimes are only considered as the modus operandi of the perpetrators, in terms of prevention. namely the lack of the presence of the Prosecutor in providing socialization to the community and cooperation with government agencies, for example with the cooperative service and with local governments related to the dangers of illegal investment crimes and recognizing the characteristics or modes used by perpetrators of illegal investment crimes and recognizing companies or a healthy cooperative.

The role of law enforcement in preventing crime can be done through legal counseling mechanisms. Legal counseling is a process, which mainly aims to make citizens know, understand, obey and respect the law. Sufficient legal knowledge is the minimum target of legal counseling because it is considered the lowest requirement for humans who are expected to behave in accordance with applicable law. Respect for the law is the last goal because it is hoped that people who respect the law will obey it in the form of always behaving in accordance with the law.

In addition to the above, weaknesses also arise from the factors of facilities and infrastructure, among others, which can be described as follows:

- a. Lack of clarity of information or difficulty in obtaining information quickly and accurately about the legality of the company/cooperative, SOPs for the company/cooperative, and the health of the company/cooperative. The existence of money facilities and infrastructure that can support clarity in obtaining information from companies or cooperatives is needed to support the implementation of the law enforcement process carried out by the Prosecutor's Office. The role of the prosecutor as a public prosecutor will certainly require information or data that can support the implementation of the prosecution and also the process of making indictments. Facilities to improve the enforcement implementation process are urgently needed, such as tapping devices or other supporting equipment needed to facilitate the implementation of the law enforcement process (Rasyid, 2020) ^[5].
- b. The Prosecutor's Office in the field of Intelligence increases the transformation of digital intelligence to support the implementation of government programs and there is an adequate Information and

Communication Technology (ICT) / digital transformation infrastructure but has not led to activities in the field of preventing illegal investment crimes. Information and communication technology facilities are needed to develop and accelerate the law enforcement process carried out by the prosecutor's office. Technology is something that is created to facilitate human life with the provision of knowledge with human reason, the use and development of information technology produce creations in the form of artificial intelligence, software engineering, computers, and the internet. Thus, in the development of this information technology, it will be able to assist law enforcement officers, in this case, the prosecutor's office, to carry out the process of eradicating illegal investment crimes. The form of development or infrastructure that can assist the law enforcement process, for example, is the existence of mobile phone infrastructure, and also includes internet access facilities, computers with high specifications that allow access to data to various parties by collaborating with the ministry of information (Kominfo) or related parties to facilitate the enforcement process. law and can also take advantage of other technologies that can assist the process of law enforcement Illegal investment that still rife in the community. It can also be in the form of assistance to block sites that are proven to be an illegal investment platforms.

2. Legal Reconstruction of The Role of The Prosecutor's Office in The Prevention And Eradication of Illegal Investment Crimes in Indonesia Based on Justice Value

To increase trust in investment in Indonesia and as explained in the previous discussion, a regulation that clearly regulates investment and prohibitions and penalties for the existence of criminal acts of illegal investment is needed. This is needed because so far the regulation on the role of the prosecutor will be ineffective as long as there is no legal regulation that regulates the crime of illegal investment both in its articles and laws and for the District Attorney, especially the intelligence section, it is necessary to create officers or special functional positions or be attached and added to their duties. subsections of economics, finance, and security of strategic development. And the field of investment or investment tasks that are made routinely such as monthly reports on investment activities and the presence or absence of legal counseling about the dangers, modus operandi, characteristics, and prevention of illegal investment crimes in collaboration with other law enforcement officials and the local government together in services related to the modes of illegal investment crimes such as the corporate and trade services (Tambunan, 2022) ^[7].

For the State Prosecutor's Office, especially the intelligence section, because there is no investment task area and there is a high prosecutor level, especially in section c and subsection c1, the focus depends on section c and subsection c.1 has the task of preparing materials for the preparation of plans and work programs including the implementation of intelligence technical policies and intelligence administration, planning, implementation, control, and assessment of intelligence activities and intelligence operations as well as intelligence administration, planning and implementation of mapping potential threats,

disturbances, obstacles, and challenges, as well as providing intelligence technical support to other fields in the environment. District Attorney's Office and District Attorney's Office, coordination and cooperation, evaluation and reporting, preparation of intelligence estimates, guidance and provision of technical intelligence guidance, and intelligence administration related to financial institutions, state finance, monetary, asset tracking sectors t, investment, taxation, customs, and excise in the jurisdiction. So it is hoped that section c and subsection c1 at the high prosecutor's level will coordinate with the intelligence section of the state attorney's office for the preparation of work plans and programs including making potential mapping and providing technical guidance and guidance related to the financial institution sector, investment/investment in their jurisdiction (Herlina, 2022) [3].

Thus, based on the description described above, the reconstruction of the role of the prosecutor's office can be broken down into several points, namely as follows:

- a. To establish special regulations governing the criminal act of illegal investment. This regulation serves as a means of prevention to become a means of control so that illegal investment is not free in the midst of people's lives.
- b. Legal counseling to the public to increase public awareness of investment, this understanding is very necessary to provide debriefing so that it is not easy for the community to enter into illegal investments.
- c. To have non-formal institutions such as investment communication forums between technical agencies and law enforcement officers for the prevention and eradication of investment crimes, among others, with OJK, OSS Institutions, Police, Attorney General's Office, Courts, Central Government, Regional Governments and other technical agencies such as the Ministry of Finance. /Department of Marine and Fisheries, Agriculture, Environment and Forestry, Energy and mineral resources, Nuclear, Industry, Trade, Public works and public housing, Transportation, Health, medicine and food, Education and Culture, Tourism, Religion, Post, telecommunications, broadcasting, and electronic systems and transactions, Defense and security, Employment
- d. The need for regulations/guidelines regarding discussions related to the formation of laws such as the Omnibus Law entitled the Investment Law which holistically invests activities as contained in the work copyright law but needs to be added to formal law in terms of investigations, investigating who the PPNS is in the field of investment, prosecution, trial and execution including material law related to investment licensing and all criminal acts related to investment activities including illegal investments and the financial management system on these investments which shows that individual entities or legal entities engaged in investment are legal, including regulating concerning the prevention and eradication of illegal investment crimes in Indonesia so that its implementation can be in line with the value of justice
- e. There is a need for regulations/guidelines regarding the existence of web and connected applications between technical agencies and law enforcement officers, especially those related to business licensing and

supervision of individuals and legal entities during the licensing process, for example, whether the prospective registrant is involved in legal problems or has been punished and when the permit has been granted issued and has run its business whether throughout its business there are problems or not. For example, in microfinance institutions, whether the person concerned has opened a branch outside the district/city area or not, whether the person concerned has transformed into a bank or not, there should be a website or application that can check the business actors.

Although the Government and Development Guards and Security Teams both at the center and at the regions have been disbanded based on the Attorney General's Decree Number 345 of 2019, the Attorney General's Office still has the role and authority in securing the government's strategic development, namely through various preventive and persuasive activities, which are carried out by the Director of Strategic Development Security at the Deputy Attorney General for Intelligence. This is also in line with the mandate of Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office which states: "*The Prosecutor's Office must also be able to be fully involved in the development process, including creating conditions that support and secure the implementation of development to create a just and prosperous society based on Pancasila.*" Therefore, in this case, the Prosecutor's Office must also contribute to monitoring/reviewing regional regulations that are not friendly to investment. The review of this regulation is carried out in the regions through the High and State Prosecutors scattered throughout Indonesia so that later proposals for these investment-unfriendly regulations will be revised or revoked. The author hope that BKPM can provide input or information to the Prosecutor's Office if it finds out or finds regulations in the regions that hinder investment.

At the investigation stage, the principle of a fast, simple, and low-cost process also applies. Because witnesses and victim-witnesses should receive serious service and attention by law enforcement officials, starting from the time of submitting reports, investigations, searches, and confiscations as well as in the process of arresting the accused so that they are carried out in accordance with applicable regulations and always pay attention to the dignity of the victim. humans, protect the community quickly, straightforwardly, and professionally. Law enforcement officials must realize that many members of our community, especially those in rural areas, are still unfamiliar with the law, and need a simple approach and legal service that does not make it difficult for the population. For example, in reporting incidents of crimes that have befallen members of the public so that the recipient of the report is smart enough to put in the complaint report what was conveyed orally, be grateful if there is already a form to fill in so that it can be quickly, easily and accurately (Julia, 2021) [4]. Even by paying more attention if the complainant cannot write or read. In the investigation stage, the investigation, both against witnesses, victims, and other witnesses, as well as against suspects, should be carried out quickly, simply and uncomplicatedly, concisely, but complies with the elements and applicable provisions. the examination of witnesses should not be prolonged because the witnesses will suffer the loss of time

to earn a living for their families. The protracted examination of witnesses/victim witnesses has received little attention from law enforcement officials. It is necessary to think about and formulate the possibility of preparing a witness examination form to facilitate investigators and speed up the process

In the pre-prosecution stage, the prosecution and examination are tried by a court of justice which is fast, simple, and low-cost so that it is implemented seriously. So far, what we often find is that there is a delay in the examination at trial because the judge or public prosecutor is not present. Community members who are involved as witnesses often complain that the process of examining cases drags on for months from the time the investigation is carried out until the case is decided by the court, especially if the case is often delayed. Things like this need to be prevented in the future so that people don't feel let down and economically disadvantaged.

What does this fair legal process involve? the point is that the rights of a suspect and a defendant to have their views heard on how the crime occurred during the examination of him are given the right to be accompanied by legal counsel; he also has the right to advance his defense and the public prosecutor must prove the guilt of the accused before an independent court and with an impartial judge.

Regarding the reconstruction of the prosecutor's role in eradicating illegal investment crimes, existing regulations need to add an additional regulations in the form of instructions relating to regulations that are still scattered in various laws and the latest regulations related to business licensing, both those regulated in the Act. work copyrights and their derivatives as well as with law number 1 of 2013 concerning microfinance institutions and their derivatives are included in the Financial Services Authority Regulation. It is hoped that in the future the author will issue a kind of Omnibus Law entitled Investment Law which regulates investment activities holistically as contained in the work copyright law but needs to be added to formal law in terms of investigations, investigating who the PPNS is in the investment sector, prosecution, trial and execution including the material law related to investment licensing and all criminal acts related to investment activities including illegal investments and included in the financial management system of the investment which shows that the individual entity or legal entity engaged in the investment is legal and still running, until now and not financial management that is private and a company secret, because after all, one of the goals of investment is to seek profit and business sustainability. In addition, it is necessary to conduct socialization both online and offline in the form of education in the field of investment as well as refreshing for prosecutors so that they are ready with new knowledge when handling criminal cases related to investment including asset tracking and recovery of losses suffered by victims so that they can create handling cases based on the value of justice both to the perpetrator and to the victim.

Thus the reconstruction of the regulations that are built can provide strict sanctions for perpetrators of illegal investment crimes, the sanctions given to perpetrators can be in the form of long prison terms. Because the actions of illegal investment actors have a massive and widespread impact on society, these actions result in material, social, and political losses that greatly damage the life of the Indonesian people. The sanctions given should also pay attention to the return

of funds from the victims of illegal investment acts. The return of funds given is very important because of the economic impact of its very large value.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The weaknesses, according to the author, are the absence of a material legal umbrella in the form of a law entitled the Investment Law which holistically invests activities, so that the regulation on the role of the prosecutor's office in preventing and eradicating illegal investment crimes is still partial, incidental and in accordance with certain needs. Regulatory factors must be strong to create a rule that can be a guideline for law enforcement to carry out effective law enforcement to prevent and also eradicate illegal investment crimes in Indonesia. Prevention of illegal investment is constrained by the lack of legal education to the public regarding understanding related to investment and illegal investment. For the eradication process, the Prosecutor's Office is constrained by the lack of IT experts who can support the prosecution process that is carried out, this is related to data access to find evidence, support from other agencies, for example, the OJK, which tends to the Police compared to the Prosecutor's Office. this is also worsened by the lack of tools that can make it easier for the prosecutor to obtain the information needed to be related to the existence of illegal investment crimes, one of the needs is modern information and communication technology facilities.
2. There needs to be a legal reconstruction related to the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation and its derivatives as well as Law Number 1 of 2013 concerning Microfinance Institutions followed by the need for non-formal institutions such as investment communication forums between technical agencies and law enforcement officers for the prevention and eradication of investment crimes, among others, with OJK, OSS Institutions, Police, Attorney General's Office, Courts, Central Government, Regional Governments and other technical agencies such as the Ministry of Finance, /Department of Marine and Fisheries, Agriculture, Environment and Forestry, Energy and mineral resources, Nuclear, Industry, Trade, Public works and public housing, Transportation, Health, medicine and food, Education and Culture, Tourism, Religion, Post, telecommunications, broadcasting, and electronic systems and transactions, Defense and security, Employment.

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