



Criminal act of investment fraud in court decisions

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Abstract

Investment fraud is a criminal act or investment activity that is not carried out properly, in other words, the investment bidder has committed a fraudulent act. The main characteristic of investment fraud has diversity, one of which is not having a valid permit from the financial services authority (OJK). Not infrequently the application of crime for perpetrators of investment fraud has uniformity, considering that the element of wrongdoing against the perpetrator is difficult to reveal because in investment practice profits and losses are commonplace. This study aims to determine how to apply the ideal criminal sanctions against perpetrators of investment fraud. The approach method in this study uses a normative juridical approach, in which data is obtained based on studies of laws and regulations and other legal materials. The results of the study show that the cases of 3 court decisions that adjudicate criminal acts of investment fraud have differences, even using different laws and regulations. Perpetrators of criminal acts of investment fraud should ideally be given criminal sanctions specifically by looking at the most severe criminal sanctions, such as Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering if the proceeds of the crime are used to purchase personal items. Application of special criminal rules against investment fraud by the provisions of Article 63 paragraphs (1) and (2) of the Criminal Code. The advice given is that policymakers should make specific rules regarding the crime of investment fraud. So far, the application of criminal sanctions against investment fraud perpetrators has been different. The formulation of criminal regulations related to investment fraud can provide legal certainty in law enforcement against investment fraud.

Keywords: investment fraud; law enforcement

Introduction

Criminal law is part of public law that prioritizes pressure from the public interest on society. According to the doctrine, the existence of a criminal liability must fulfill the conditions, namely by looking at the existence of an act that can be punished by stating its elements explicitly and based on the law which stipulates that the act is contrary to the law that gives rise to a criminal crime, which must be responsible for the cause and effect. of the act. ^[1]

One form of crime that exists in society today, namely the crime of fraud. Various frauds occur today, ranging from direct fraud through electronic means. criminal acts of fraud are regulated in Article 378 of the Criminal Code which is formulated as follows:

“Anyone to unlawfully benefit himself or others by using a false name or false dignity (hoedanigheid); by deceit, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is threatened, for fraud, with a maximum imprisonment of four years.”

Fraud that is very prevalent among the public is fraud under the guise of investment. Indonesian people in general are still very new to various types of new instruments in the investment world, even some people do not want to know how to make good and correct investments. People's ignorance of how to invest safely can make people vulnerable to becoming victims of investment fraud, so in reality, it is just a money game, rotating incoming funds from one investor to the next and so on. ^[2]

Investment can be defined as an activity carried out either by an individual (natural person) or legal entity (juridical person), to increase and/or maintain the value of its capital,

either in the form of cash (cash), equipment (equipment), assets immovable property, intellectual property rights, or expertise.^[3]

Regarding the application of criminal sanctions, there are several different decisions from the court. 3 different decisions were given by the court against the crime of investment fraud, namely:

a. Investment fraud committed by the owner of CV. Yalsa Boutique

In decision No. 269/Pid.Sus/2021/PN.Bna granted by the Banda Aceh district court, the owner of Yalsa Boutique was acquitted until finally, the public prosecutor filed an appeal to the Supreme Court. At the Cassation level, with a decision No. 456K/Pid/2022, the Supreme Court granted a cassation request from the prosecutor, which stated that the defendant was legally and convincingly proven guilty, so that the defendant was sentenced to imprisonment for 15 (fifteen) years and a fine of Rp. 8,000,000,000.00 (eight billion rupiahs) subsidiary 6 (six) months in prison.

b. Investment fraud committed by Agus Indra Maulana, an active police officer

In Decision No. 213/Pid.B/2016/PN.Mjl at the district court level, the perpetrator was proven guilty and sentenced to 1 (one) imprisonment for committing a criminal act of fraud. The defendant filed an appeal to the West Java High Court. Through Decision Number 41/Pid/2017/PT.Bdg, the defendant was acquitted. The Public Prosecutor did not accept the high court's decision and submitted an appeal to the Supreme Court. On the decision of the cassation with NO. 699 K/Pid/2017, the Supreme Court overturned the decision

of the high court and tried the case itself which sentenced the defendant to a prison sentence of 1 (one) year.

- c. Investment fraud committed by Sujono Kusni claimed to be a consulate.

In Decision Number 1091/Pid.Sus/2018/PN.Jkt.Utr, the Judge sentenced the defendant to a prison term of 9 (nine) years for being proven guilty of money laundering. Then the defendant filed an appeal. Through the appeal decision Number 224/Pid.Sus/2019/PT. Jakarta High Court, the court still found the defendant guilty. Then at the cassation level, the Supreme Court found the defendant not guilty. Through Decision Number 4374K/Pid.Sus/2019, the Supreme Court granted the defendant's cassation request by canceling the decisions of the district court and high court.

Observing the several decisions given to the 3 cases, shows that there is a disparity in punishment for the same act. The criminal disparity is the application of unequal punishment to the same offense (same offense) in practice in court.^[4] The difference lies not only in the results of court decisions but also in the application of criminal sanctions carried out by law enforcement officers against investment fraud. Thus, the imposition of criminal sanctions and the application of different criminal rules against perpetrators of investment fraud creates legal uncertainty and justice for both perpetrators and victims who feel aggrieved. Based on this description, the problem that needs to be studied in this research is how to apply the ideal criminal sanctions against investment fraud.

There are writings related to previous research, namely: (1) Adalia Safira Rahma, *et al* with the research title Application of Criminal Law in Cases of Fraud Investments. This study discusses what criminal rules can be applied to investment fraud perpetrators. (2) Wilda Assa and Youla O. Aguw, with the research title Application of Legal Sanctions for Online Investment Fraud Perpetrators. This study only examines the scope of the application of the law against perpetrators of online investment fraud. Different from previous research, this research is more on the aspect of applying ideal sanctions for investment fraud perpetrators and the object of the study does not use electronic means.

Research Method

The research method used in this study uses normative juridical law research. This approach is also known by the general public as a normative approach or legal research. A normative juridical approach is an approach that is based on the main legal material by examining theories, concepts, legal principles, and legislation related to this research.

Result and Discussions

Application of Ideal Criminal Sanctions against Investment Fraud

The application of criminal sanctions against criminals is one form of tackling crime.^[5] Crime prevention can use the means of criminal policy. In a sense, criminal policy has the meaning of a rational effort from society to tackle crime. Where this definition is taken from Marc Ancel who formulated it as "*the rational organization of the control of crime by society*".^[6] There are several ways to tackle crime using criminal policies, namely:

1. The application of criminal law (criminal law application).
2. Prevention without punishment (prevention without punishment); and
3. influencing views of society on crime and punishment.^[7]

The application of criminal law is one of the efforts in tackling crime. The existence of criminal sanctions can provide psychological aspects for perpetrators who want to commit crimes. Remembering perpetrators who want to commit a crime can result in punishment that will be received. Aspects of criminal law can also influence the public's view of prohibited acts. The existence of criminal sanctions can give a sense of fear to people who want to commit a crime.

Criminal law itself has 3 purposes. In his book, Andi Hamzah mentions 3 purposes of criminal law, namely:^[8]

1. Reformation

That is, repairing or rehabilitating criminals into good people and useful to society. Society will gain and no one will lose when criminals become good.

2. Restraint

That is, alienating criminals from the community. with the elimination of criminals, the community environment will be safer. Society needs physical protection from criminals such as robbers, murderers, and other armed criminals.

3. Retribution

That is, the retribution that must be given is because the criminal has committed a crime.

The existence of these criminal objectives emphasizes the aspect of protection provided by law to the community. With the form of exile and retaliation that must be accepted by criminals, it can provide community protection from all fears that will be carried out by criminals. Several efforts in tackling criminal acts, do not rule out the possibility of criminal acts. such as fraud. By definition, a criminal act of fraud is a deception or a series of lies so that someone is deceived because his words appear to be true. This is confirmed by R. Sugandhi, who states that fraud is the act of a person deceiving a series of lies, false names, and false circumstances to benefit himself with no rights.^[9]

The crime of fraud is regulated in Article 378 of the Criminal Code (KUHP). The elements contained in Article 378 of the Criminal Code and must be met to be able to say someone has committed a criminal act of fraud are as follows:^[10]

a. Objective elements

1. Motivate others.
2. To give up an object.
3. To enter into a debt agreement.
4. To eliminate debt.
5. By using efforts in the form of using false names, using deceit, using false traits, and using false words.

b. Subjective elements

1. to benefit oneself or others.
2. Illegally

As for the crime of fraud that is currently rife in the community, namely the crime of investment fraud. Investment fraud is an investment activity that is not carried out properly, in other words, the investment bidder has committed a fraudulent act. This act is marked by the loss of

investors' money which is taken away by investment bidders, causing losses to the owner of the funds/investors. There are so many cases of investment fraud circulating in the community, ranging from investment fraud with various ways and modus operandi. The 3 cases described in the previous chapter show that there are 3 investment models, such as fundraising which is promised a profit of 30%-50% per month by the owner of the CV. Yalsa Boutique; an investment offer with a toll road construction project carried out by Agus Indra Maulana by luring a profit of up to 70% along with a full return of capital; and investment fraud under the guise of investing in Timber export business conducted by Sujono Kusni.

The acts committed in 3 (three) cases of investment fraud have fulfilled the elements of fraud mentioned in the Criminal Code (KUHP). According to Moeljatno, the elements of fraud namely: ^[11]

- a. There is someone who is persuaded or moved to give up an item or make a debt or write off a debt. The goods or money were handed over by the owner using deceit.

- b. The fraudster intends to benefit himself or others without rights. From that intention, it turns out that the purpose is to harm the person who handed over the item.
- c. Those who are victims of the fraud must be moved to hand over the goods by road. Submission of capital in the form of money from investors has been proven to meet the elements of fraud..

Based on the elements that have been mentioned, the three cases have met the elements of fraud in the Criminal Code. The three cases of investment fraud have similarities in elements, persuading investors to give up their goods, to want to benefit themselves. The profits earned by investment fraudsters are used to buy personal equipment such as cars, land, jewelry, motorcycles, and other luxury items. Although the three investment fraud cases have similarities in terms of actions, the three cases have differences in terms of the decisions given by the court and the determination of criminal sanctions from the public prosecutor.

Table 1: The following is a table of decisions issued by the court

NO	Case	Decision
1	Owner CV Yalsa Boutique	In decision Number 269/Pid.Sus/2021/PN.Bna, the public prosecutor demanded imprisonment for 15 (fifteen) years and a fine of Rp. 8,000,000,000 (eight billion rupiahs) because it has been legally and convincingly proven guilty. together to commit the Crime of Fraud and Money Laundering, but the court gave the defendant an acquittal. Until finally the public prosecutor filed an appeal to the Supreme Court, so in Decision Number 456K/Pid/2022, the Supreme Court granted the prosecutor's appeal, namely canceling the Banda Aceh District Court Decision Number 269/Pid.Sus/2021/PN.Bna..
2	Agus Indra Maulana	Decision Number 213/Pid.B/2016/PN.Mjl, the Public Prosecutor stated that the defendant had been legally proven to have committed the Fraud which was carried out continuously, and demanded the defendant be sentenced to imprisonment for 1 (one) year and 6 (six) months. The defendant objected, so he filed an appeal. On the appeal decision in the high court, the defendant was acquitted. Then, not accepting this, the public prosecutor filed a cassation at the Supreme Court, until the Supreme Court decided with a decision number 699 K/Pid/2017, which declared the defendant guilty and sentenced them to prison for 1 year.
3	Sujono Kusni	In Decision Number 1091/Pid.Sus/2018/PN.Jkt.Utr, the defendant was initially sentenced to 9 (nine) years in prison at the district court. The defendant also filed an appeal, but the appeal increased the criminal sanction to 10 years in prison. Not accepting this, the defendant then filed an appeal to the Supreme Court. At the appeal level, the defendant was acquitted. Decision Number 4374K/Pid.Sus/2019 granted the defendant's request and stated that the defendant was not proven to have committed a crime.

The explanation is as follows:

1. The decision given in table 1 is correct by applying Article 3 of the Money Laundering Law, considering the actions committed by the CV owner. Yalsa Boutique has fulfilled the elements of money laundering. Article 2 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering states that the proceeds of criminal acts are assets obtained from criminal acts, one of which is fraud. The criminal sanctions are regulated in Article 3 which reads:

“Any person who places, transfers, transfers, spends, pays, grants, entrusts, carries abroad, changes form, exchanges for currency or securities or other actions on Assets which he knows or reasonably suspects is the result of criminal acts as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiahs)”.

It is appropriate to be punished with imprisonment for 15 (fifteen) years and a fine of Rp. 8,000,000,000 (eight billion rupiahs) which was imposed on the owner of Yalsa

Boutique. The use of property from the proceeds of a criminal act of fraud by spending luxury goods, so that can change the form of money generated from the form of a criminal act into personal assets. Money laundering is generally understood as an act that aims to hide or disguise assets whose origin is from illegal activities (dirty money) and assets obtained from criminal acts (proceeds of crime) are made as if they did not originate from crime.

2. The decisions given in table 2 show that law enforcement officials have correctly applied Article 378 of the Criminal Code on Fraud. The defendant Agus Indra Maulana only offered to invest. In the end, the investment that had been promised to the victim turned out to be just a lure, so that the perpetrator was only punished as an act of fraud as stated in the Criminal Code. Considering that the perpetrators do not use the proceeds of fraud to spend or disguise the property.

3. The decision given in table 3 is the same as in table 1, due to the use of the proceeds of a crime to buy personal equipment such as land, cars, and other luxury goods. But in the end, the Cassation decision from the Supreme Court did not pay attention to the losses suffered by the victim. Considering the verdict that was

sentenced, there was no cumulative punishment such as imprisonment and fines.

The disparity of criminal penalties given to the 3 cases cannot be separated from the judge's consideration. Where in adjudicating the Judge gives his decision regarding the following matters:^[12]

- a. The decision regarding the incident, whether the defendant has committed the act that is accused of him.
- b. The decision regarding the law, whether the act committed by the defendant is a crime, and whether the defendant is guilty and can be punished.
- c. Decision regarding the crime, if the defendant can indeed be punished.

The judge's consideration is not the only one in the current evidence system, but the evidence system looks more at the theory of negative evidence of *wettelijk bewijstheorie* or the theory of proof based on the judge's belief that emerges from the evidence in the law negatively. This proof system combines a positive evidentiary system according to the law and a proof system according to the judge's belief so that this proof system is proven to be multiple (*doubelen grondslag*), meaning that whether or not it is wrong or not is determined by a belief based on methods and valid evidence according to legislation.^[13]

Ideally, the application of an ideal criminal offense against investment fraud should take into account specific laws and regulations. Investment fraud is closely related to other laws, such as Banking Law, Investment Law, Trade Law, and other special criminal regulations. Likewise, many investment fraudsters do not have the initiative, to be honest and open about the value of the promised investment. Whereas investment fraud is contrary to the rights of consumers as stated in Article 4 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, namely the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services.

The criminal act of investment fraud that uses the method of collecting funds from the public such as that carried out by the owner of Yalsa Boutique is against the Banking Law. As stated in Article 46 paragraph (1) of Law Number 10 of 1998 concerning Banking: "Anyone who collects funds from the public in the form of savings without a business license from the Management of Bank Indonesia as referred to in Article 16, is threatened with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000.00 (ten billion rupiahs) and a maximum of Rp. 20,000,000,000.00 (twenty billion rupiahs)".

Based on the Regulation of the Minister of Trade Number 36/M-DAG/PER/9/2007 concerning the Issuance of Trading Business Permits, it is regulated that companies/business entities are prohibited from using SIUP to carry out activities "to collect public funds by offering promises of unfair profits (money game). The application of criminal sanctions against criminal acts of fraud must pay attention to the criminal rules that are specifically regulated. Bearing in mind that the provisions of the Criminal Code are stated in Article 63 paragraph (1) that if an act is included in more than one criminal rule, only one of the rules contains the most severe main criminal threat. Article 63 paragraph (2) explains that if an act is included in general rules, but is also regulated in special criminal rules, then only special

criminal rules are imposed. This statement relates to the principle of *lex specialis derogate legi generalis*.

According to Bagir Manan, there are several principles that must be considered in the principle of *lex specialis derogat legi generalis*, namely:^[14]

- a. The provisions found in the general law rules still apply, except those specifically regulated in the special legal rules;
- b. The provisions of the *lex specialis* must be equal to the provisions of the *lex generalis* (law with the law);
- c. The provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generalis*. The Commercial Code and the Civil Code are both included in the civil law environment.

Based on these provisions, it is certain that the application of criminal sanctions against investment actors pays more attention to the criminal sanctions stipulated in the special criminal provisions. Can be applied to the money laundering law, if the fraudster uses the proceeds of a crime to spend his interests.

Conclusion

Fraud under the guise of investment carried out by investment fraud perpetrators has fulfilled the elements of a criminal act of fraud. This element includes the way investment fraud perpetrators persuade investors to hand over a certain amount of money by luring large profits every month so that the crime can benefit the perpetrators. The ideal application of criminal sanctions for perpetrators of investment fraud, namely the application of specifically regulated criminal rules. For example, Article 3 of Law no. 8 of 2010 concerning the prevention and eradication of the crime of money laundering is applied to investment fraud perpetrators who use the proceeds of criminal acts to buy personal interests or intend to make the assets obscure. however, for investment fraud perpetrators who offer investment to businesses that do not have a license, they may be subject to the Banking Law. The application of criminal sanctions against investment fraud prioritizes the principle of *lex specialist derogate legi generalis*, meaning that special provisions can override general provisions. This principle has been stated in Article 63 paragraphs (1) and (2) of the Criminal Code (KUHP).

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