



Criminal Law Review of Investment Managers Who Implement Pyramid Schemes

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Abstract: Indonesian people's interest in investment is increasing, this is in line with current technological advances. The number of capital market investors in mid-October 2021 grew by around 68 percent from the end of 2020 which reached 3.88 million people. With advances in technology and the rapid flow of information in cyberspace, many people only think about the benefits to be gained from an investment and have no knowledge or lack of understanding about investments and their risks. This is proven by the large number of people who are victims of an illegal investment that implements schemes, for example in the investment case of capital injection (sunmod) for medical devices, the number of victims is estimated to reach 3,000 people with a loss of Rp. 1.2 Trillion. The schematic diagram is also interpreted as a fake investment system that pays old participants from the money of the new participants they recruit, not from real profits. This scheme is aimed at collapsing, because the revenue if any, will hurt the participants. The illegality of the scheme lies in the incurring of losses at a rate below the loss of the amount of money invested in the business. Investment business activities that apply schemes can be held criminally accountable for violating Law Number 7 of 2014 concerning Explanation of Trade Article 9. Law Number 8 of 1999 concerning Consumer Protection Article 8 paragraph (1) letters a, d, e, f, Article 9 paragraph (1) letters c, e, j, k, Article 10, Article 13 paragraph 1, Article 15, and Article 17 paragraph (1) letters a, b, c, d. Regulation of the Minister of Trade Number 70 of 2019 concerning the Direct Distribution of Goods Article 21 letter k, Law Number 21 of 2008, Article 59. Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Article 46. Law Number 8 of 1995 concerning Capital Markets Article 103. Article 378 of the Criminal Code concerning fraud.

Keywords : Criminal, Investment, Pyramid Scheme

A. Background of the Problem

The interest of the Indonesian people in investment is increasing, this is in line with technological advances at this time. Investment becomes easier and more practical with the existence of smart phone electronic devices that can be used as a means of investing. Many investments are offered through cyberspace so that the general public can find out easily. The number of capital market investors in mid-October 2021 grew by around 68 percent from the end of 2020 which reached 3.88 million people.¹ The types of investments can be in the form of Stocks, Cryptocurrencies, Bonds, Gold, Property, Mutual Funds, and others. Investment itself is an activity to place funds in an asset within a certain period of time in the hope of obtaining profits or increasing investment value in the future.

With the advancement of technology and the rapid flow of information in cyberspace, many people only think about the benefits obtained from an investment and the absence of knowledge or lack of understanding about investment and its risks. This is evidenced by the number of people who are victims of an illegal investment that applies a pyramid scheme, for example the case of capital injection investment (sunmod) medical devices the number of victims is estimated to reach 3000 people with losses of Rp. 1.2 trillion.² Another example is EDCCash's investment investment whose number of victims reached 57,000 people with losses of Rp. 285 billion.³

The pyramid scheme according to the WFDSA (World Federation of Direct Selling Association) is defined as follows:

*Pyramid selling is a fraud. It is a mechanism by wich promoters of socalled 'investmen' or 'trading' schemes enrich themselves is a geometric progression through the payments made by recruits to such schemes. Related deceitful svhemes have been described in various international jurisdictions as chain latters, chain selling, money games, referral selling, and investment lotteries.*⁴

A pyramid scheme is a form of fraud that promoters engage in activities he calls "investment" or "trade, business" with the aim of enriching himself. The wealth is

¹ BEI, "Minat Investasi Terus Meningkat, Jumlah Investor Pasar Modal Bisa Naik 30 Persen Di 2022," n.d.

² CNN Indonesia, "No Title," n.d., <https://www.cnnindonesia.com/nasional/20211216062752-12-734660/buka-posko-laporan-bareskrim-selidiki-penipuan-investasi-alkes>.

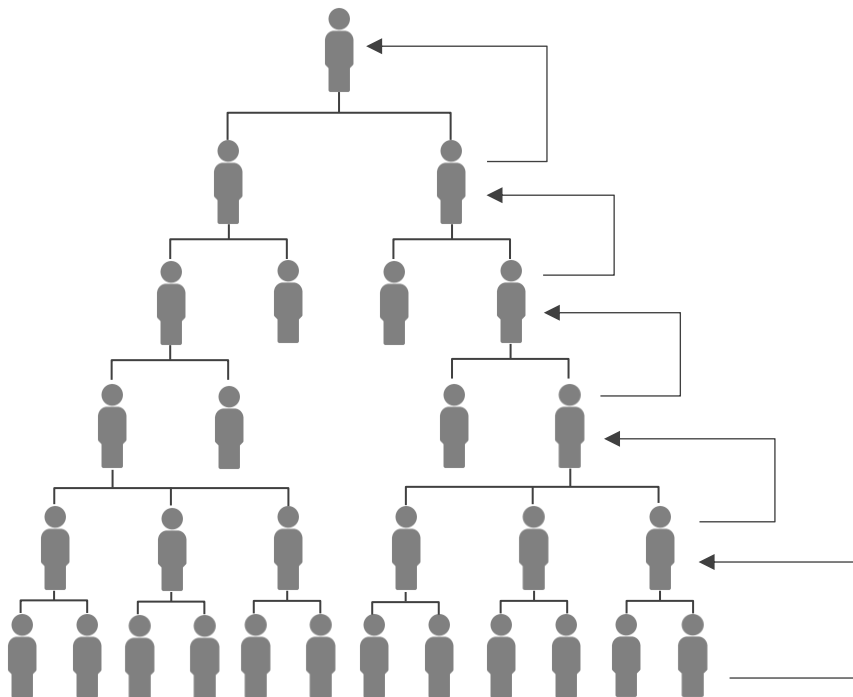
³ Tribun.com News, "No Title," n.d., <https://www.tribunnews.com/metropolitan/2021/04/22/suami-istri-pemilik-investasi-bodong-edccash-raup-untung-rp-285-miliar-dari-hasil>.

⁴ Castberg F, *Problem of Legal Philosophy*, JSTOR (London: Oslo University Press, 1957), 34.

obtained from the payment of funds by a group of people formed through a tiered recruitment system that places them in such a way as to form a pyramid. Pyramid schemes in various international jurisdictions are known in the practice of chain letters, chain sales, money games, inducements sales and gambling investments.

A pyramid scheme is also defined as a fake investment system that pays old participants from the money they recruit, rather than from real profits. The scheme is doomed to collapse, as income, if any, will be paid to the participants. The illegality of pyramid schemes lies in incurring customer losses at the lowest level of loss of money invested into the business.

According to Andrias Harefa, stating that pyramid schemes are an illegal business system, where profits obtained by a number of people who are at the top of the pyramid (old members) are paid from the funds of a number of people who are at the bottom of the pyramid (new members).⁵



Several companies have used Pyramid Schemes and also Chain Letter Investment in the 1960s, such as Koscot, Bestline, Nutribio, Dare-to-be-Great and

⁵ Andrias Harefa, *Menapaki Jalan DS-MLM* (Yogyakarta: Gradien Books, 2007), 84.

others. There is an opinion that this has been done since the 1920s and links it to the Ponzi scheme (ponzi scheme) taken from the name of the main perpetrator Carlo Ponzi. Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi or also known as Charles Ponzi was an Italian immigrant born on March 3, 1882. Ponzi is known as one of the biggest fraudsters in the history of the United States.⁶

Business practices with the concept of Pyramid Schemes in Indonesia also come from the Ponzi Scheme which was first implemented by Jusup Handojo Ongkowidjaja in the Adil Makmur Family Foundation (YKAM) which he established in 1987 in Jakarta. Ongko introduced YKAM as a "gotong-royong tube-borrowing" business that offers a credit package of Rp 5 million without much effort. The condition is that participants only need to pay a registration fee of IDR 50 thousand, and deposit savings of IDR 30 thousand seven times within one month. The repayment of the Rp 5 million loan can be paid in installments for 15 years, and if it is paid off, the borrower is also promised a bonus of Rp 9.6 million. This offer succeeded in attracting many people, YKAM members until February 1988 reached more than 44,000 people with registered packages of 70,000 pieces, spread across Jakarta and 27 other cities.⁷

The application of pyramid schemes in business activities in Indonesia is prohibited, this is stated in Article 9 of Law Number 7 of 2014 concerning Trade which states that distribution business actors are prohibited from implementing a pyramid scheme system in distributing goods. This prohibition is also stated in Article 21 letter k of the Minister of Trade Regulation Number 70 of 2019 concerning the Direct Distribution of Goods, that companies that already have a trading business license are prohibited from carrying out activities by forming a marketing network using a pyramid scheme.

B. Problem Statement

From the background described above, the author raises the problem, namely how to review criminal law against investment managers who implement pyramid schemes.

C. Discussion

⁶ Muhammad Idris, "Sejarah Skema Ponzi," 2022, <https://money.kompas.com/read/2022/10/20/110448226/apa-itu-skema-ponzi-cara-kerja-dan-contoh-kasusnya?>

⁷ Adler Haymans Manurung, "Berinvestasi Dan Perlindungan Investor Di Pasar Modal" 2, no. 1 (2009): 14.

Pyramid scheme business is a system of business activities whose profits are not from the sale of goods, but by utilizing the participation costs of new and old business partners, as explained in the explanation of Article 9 of Law Number 7 of 2014 concerning Trade, stating that Distribution Business Actors are prohibited from applying the pyramid scheme system in distributing goods. From the explanation of the Law, it can be concluded that the pyramid scheme is a fraudulent act with the benefit of being made in such a way as if it is the result of sales even though the profit is the result of the cost of participant participation.

In businesses that apply pyramid schemes, there are usually known terms upline and downline, where the upline is a person who has joined first and then recruited new members below. This recruitment can only be done by uplines with a tiered affiliate method. While the downline is a newly joined member who has no members under it. If this downline gets new members under it, the downline status changes to *upline*.

The following will describe several criminal law reviews against investment managers who implement pyramid schemes. Law Number 8 of 1999 concerning Consumer Protection provides criminal sanctions against business actors and/or their management when implementing a pyramid scheme, this is contained in Article 8 paragraph (1) letters a, d, e, f, Article 9 paragraph (1)) letters c, e, j, k, Article 10, Article 13 paragraph 1, Article 15, and Article 17 paragraph (1) letters a, b, c, d which read as follows:

Article 8 paragraph (1): Business actors are prohibited from producing and/or trading goods and/or services that: letter a. do not meet or are not in accordance with the required standards and provisions of laws and regulations; letter d. is not in accordance with the conditions, guarantees, privileges or efficacy as stated in the label, etiquette or description of the goods and / or services; letter e. is not in accordance with the quality, grade, composition, processing process, style, mode, or use as stated in the label or description of the goods and / or services; letter f. is not in accordance with the promise stated in the label, etiquette, description or sales promotion of the goods and / or services.

Article 9 paragraph (1): Business actors are prohibited from offering, promoting, advertising goods and/or services incorrectly, and/or as if: letter c the goods and/or

services have obtained and/or have sponsorship, approval, certain equipment, certain benefits, work characteristics or certain accessories; letter e the goods and/or services are available; The letter j uses excessive words, such as safe, harmless, does not contain risks or side effects without complete description; The letter K offers something that contains uncertain promises.

Article 10 Business actors in offering goods and / or services intended for trade are prohibited from offering, promoting, advertising or making false or misleading statements regarding: letter a. the price or tariff of a good and / or service; letter b the use of goods and/or services; letter c conditions, dependents, guarantees, rights or compensation for goods and / or services; letter d offer discounts or attractive prizes offered; letter e danger of using goods and/or services.

Article 13 paragraph (1) Business actors are prohibited from offering, promoting, or advertising goods and/or services by promising gifts in the form of other goods and/or services for free with the intention of not giving them or giving them not as promised.

Article 15 Business actors in offering goods and / or services are prohibited from doing so by coercion or other means that can cause both physical and psychological disturbances to consumers.

Article 17 paragraph (1) Advertising business actors are prohibited from producing advertisements that: letter a deceives consumers about the quality, quantity, usefulness and price of goods and / or service tariffs as well as the timeliness of receipt of goods and / or services; letter b deceives the guarantee / guarantee of goods and / or services; letter c contains false, false, or incorrect information about goods and/or services; Letter D does not contain information about the risks of using goods and / or services.

Criminal provisions for violations of the above Article are contained in Article 62 paragraphs (1) and (2) which read: Article 62 (1) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp.2,000,000,000, 00 (two billion rupiah). Paragraph (2) Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16 and Article 17 paragraph (1) letter d and letter f

shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Criminal provisions in Law Number 8 of 1999 concerning Consumer Protection can be used against investment business managers who use pyramid schemes because the position between business actors and consumers is not balanced. Consumers tend to be the object of business activities of business actors to achieve large profits. In a pyramid scheme, the end consumer will prop up profits from the upline above it. Through advertising, promotion and sales methods that are stratified and tiered and do not apply standard standards, of course, will harm consumers. Consumer losses are basically divided into; (1) losses caused by the manager's behavior that irresponsibly harms consumers; and (2) consumer losses that occur due to unlawful acts committed by the manager or upline, so that consumers are misled and ultimately harmed.⁸

The prohibition on using pyramid schemes is also listed in Article 21 letter k of the Minister of Trade Regulation Number 70 of 2019 concerning Direct Distribution of Goods which states that companies that already have a trading business license are prohibited from carrying out activities by forming marketing networks using pyramid schemes.

Law Number 21 of 2008 Article 59 states that any person who conducts business activities of Sharia Banks, UUS, or fund raising activities in the form of Deposits or Investments based on Sharia Principles without a business license from Bank Indonesia as referred to in Article 5 paragraph (1) and Article 22 shall be punished with a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp10,000,000,000, 00 (ten billion rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion rupiah).

Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Article 46 which states that whoever collects funds from the public in the form of deposits without a business license from the Chairman of Bank Indonesia as referred to in Article 16, shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine

⁸ Ahmad Ramli, "Perlindungan Hukum Terhadap Konsumen Dalam E-Commerce," *Jurnal Hukum Bisnis* vol 18, no. nomor 3 (2002): 14.

of at least Rp10,000,000,000, 00 (ten billion rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion rupiah).

In addition, investment activities that use pyramid schemes often do not have permission from the Financial Services Authority (OJK), so they can be charged with imprisonment and fines for any party who carries out capital market activities without OJK permission based on Article 103 of Law Number 8 of 1995 concerning Capital Market which states Article 103 paragraph (1) Every Party that carries out activities in the Capital Market without permission, approval, or registration as referred to in Article 6, Article 13, Article 18, Article 30, Article 34, Article 43, Article 48, Article 50, and Article 64 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). Paragraph (2) Any Party that carries out activities without obtaining a permit as referred to in Article 32 shall be threatened with imprisonment for a maximum of 1 (one) year and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

In the explanation of Article 9 of Law Number 7 of 2014 concerning Trade which states that pyramid schemes are a system of business activities that obtain profits not from the results of selling goods, but by taking advantage of opportunities for business partner participation, especially from the participation costs of others who will join or who have joined, it is very clear that investment activities that use pyramid schemes are deceitful activities with The lure of large profits, the money paid to participants comes only from the participation money of new members not from trading results as promised. This is included in the fraud article.

In practice, business actors who apply pyramid schemes in running their business only have the ability to speak with persuasion to lure large profits in a short time that does not make sense without explaining the risks that will arise in the company's activities, or in other words, business managers do not explain or deliberately cover up matters related to company activities based on the provisions of laws and regulations, then the act can be categorized as fraud, because in Article 378 of the Criminal Code it is seen about the elements of fraudulent acts that can be fulfilled, namely:

- a. There is a purpose;
- b. Benefit yourself or others;
- c. Unlawfully;

- d. Wearing a false name or false dignity;
- e. By deception or series of lies;
- f. Moving others;
- g. Hand over things to him;
- h. In order to give debts or write off receivables.

Based on the elements contained in Article 378 of the Criminal Code, investment managers can be held criminally liable individually.

D. Closing

The conclusion of this study is that investment business activities that apply pyramid schemes can be criminally held responsible for violating Law Number 7 of 2014 concerning Trade explained by Article 9. Law Number 8 of 1999 concerning Consumer Protection Article 8 paragraph (1) letter a, d, e, f, Article 9 paragraph (1) letter c, e, j, k, Article 10, Article 13 paragraph 1, Article 15, and Article 17 paragraph (1) letter a, b, c, d. Regulation of the Minister of Trade Number 70 of 2019 concerning Direct Distribution of Goods Article 21 letter k, Law Number 21 of 2008 Article 59. Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Article 46. Law Number 8 of 1995 concerning Capital Market Article 103. Article 378 of the Criminal Code on fraud.

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