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The Rising Tide of Financial Crime: A Ponzi Scheme Case Analysis

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Abstract *Ponzi scheme is one of the most common types of fraud perpetrated by con artists. The reason for this is that the mode is relatively easy to conceal. In this regard, criminal law plays a significant role in countering fraudulent practices. It serves as an initial warning to individuals who intend to engage in such behavior that they may face harsh penalties if they do so. The study aims to compare and analyze the Ponzi and pyramid schemes in the framework of criminal law enforcement. It also thoroughly investigates the criminal rules and their application to specific cases associated with Ponzi and pyramid schemes in Indonesia. This normative or doctrinal legal research employs statutory, conceptual, and case approach. The study reveals that there is some confusion in the community as well as the legal enforcement officers on the practice of Ponzi and pyramid schemes. As a result of this*

discrepancy, law enforcement officers may be incorrect in ensnaring an allegation against the offenders, or they may even consider that offenders are innocent. It is also exacerbated by the lack of a single rule that particularly governs the issue of Ponzi schemes, which may result in a legal vacuum. This circumstance might therefore be used by irresponsible persons to create such business companies that use Ponzi schemes and conceal their actions with crypto investment or robot trading software, as recently occurred in Indonesia.

Keywords Financial Crime, Ponzi Scheme, Pyramid Scheme

1. Introduction

There are many fraudulent modes under the guise of investment these days. These fraudsters take advantage of the enthusiasm of the Indonesian people in investing but are easily tempted by the lure of large profits. As a result, not a few become careless and cannot control themselves to hand over some of their money. One of the fraudulent investments that often results in high nominal victims is investing with a Ponzi scheme. Bernard 'Bernie' Madoff's death on April 14, 2021, reminded people of the fraudulent investments that constantly stalk society.¹ From a series of fraudulent investments that have been uncovered, many have used the Ponzinomics system or Ponzi schemes such as that run by Madoff.² This Ponzi scheme is considered very detrimental because it has to involve many people. The name Ponzi was taken from an accomplished con artist from the United

¹ Diana B Henriques, "A Case Study of a Con Man: Bernie Madoff and the Timeless Lessons of History's Biggest Ponzi Scheme," *Social Research: An International Quarterly* 85, no. 4 (2018): 745–766, <https://doi.org/10.1353/sor.2018.0048>.

² John Hardy and Peter Bell, "Resilience in Sophisticated Financial Crime Networks: A Social Network Analysis of the Madoff Investment Scheme," *Crime Prevention and Community Safety* 22, no. 3 (2020): 223–247, <https://doi.org/10.1057/s41300-020-00094-7>.

States (US) named Charles Ponzi.³ Ponzi was famous for his fraud because he offered investments in the form of speculative transactions of US stamps against foreign stamps in the 1919-1920 era.⁴

Ponzi scheme is a term for dirty practice in the financial business that promises a steady income, profit sharing, and multiplied profits that are much higher than real business profits for investors who want to keep their investment funds longer in investment companies. Investors generally do not know and do not want to know where the company will pay the promised profits. Thus far, Ponzi's profit-making method is still widely used. One of the most widely used Ponzinomics practices is multi-level marketing (MLM) or the member get member system.⁵ Throughout 2020, the Financial Services Authority (OJK) has stopped and closed 390 illegal investment activities. The OJK Investment Alert Task Force (SWI) recorded public losses due to illegal investments of IDR 114.9 trillion in the last decade. The realization has been calculated since 2011.⁶

Those who are new to investment literacy are easy targets for adherents of Ponzinomics. Because people who are new to investment literacy tend to be tempted by the lure of high profits in a short time. In fact, in the investment world, nothing is instant. In a number of investment fraud cases that were revealed in Indonesia, this Ponzi scheme was widely adopted. One of the cases employing the Ponzi

³ Norman Mugarura, "The Use of Anti-Money Laundering Tools to Regulate Ponzi and Other Fraudulent Investment Schemes," *Journal of Money Laundering Control* 20, no. 3 (2017): 231–246, <https://doi.org/10.1108/JMLC-01-2016-0005>.

⁴ Mervyn K Lewis, *Understanding Ponzi Schemes: Can Better Financial Regulation Prevent Investors from Being Defrauded?* (Cheltenham: Edward Elgar Publishing, 2015).

⁵ Tibor Tajti, "Pyramid and Ponzi Schemes and the Repercussions of the Differing Regulatory Approaches: Hungarian Developments in the Light of Contemporary Global Trends," *Hungarian Journal of Legal Studies* 62, no. 1 (2022): 24–74, <https://doi.org/10.1556/2052.2021.00313>.

⁶ Martha Warta Silaban, "Pandemi Covid-19, OJK: Investasi Ilegal Marak Bermunculan," *Tempo*, 13 April, accessed from <https://bisnis.tempo.co/read/1452057/pandemi-covid-19-ojk-investasi-ilegal-marak-bermunculan>.

scheme is Jiwasraya. The indication of the existence of this Ponzi scheme was expressed by the President Director of Jiwasraya Hexana Tri Sasongko. He said the two business models run by the insurance company forced the existence of a Ponzi scheme in their business. This departs from Jiwasraya which promises fixed returns to customers with rates up to 14 percent and provides long-term guarantees for customers who buy Jiwasraya Saving Plan products. According to Hexana, this scheme requires companies to use premium deposits from members to pay claims that are due every day.⁷

Long before the Jiwasraya case emerged, the public was shocked by the revelation of a fraudulent case of Umrah pilgrims carried out by the First Travel travel agency. First Travel is known to offer Umrah travel costs that are cheaper than normal prices. In the case of First Travel, a number of parties considered that the company owned by Andika Surachman and Anniesa Hasibuan was running a business using the Ponzi scheme model.⁸ In the trial process, it was revealed that First Travel's management used a member-get-member system and dug a hole to close a hole, namely using fresh funds from new prospective customers to pay old customers.

The Ponzinomics business model is described as a pyramid. The more members join, the stronger the pyramid. As long as there are new funds (fresh money) coming in, the Ponzi pyramid will stand tall and fund managers will enjoy the benefits. On the other hand, when

⁷ Taofik Hidajat, "Unprotected Insurance: A Case from Jiwasraya," in *ICEBE 2020: Proceedings of the First International Conference of Economics, Business & Entrepreneurship, ICEBE 2020, 1st October 2020, Tangerang, Indonesia* (European Alliance for Innovation, 2021), 8.

⁸ Mochammad Ardani et al., "A Tale of Umrah Pilgrims Fraud in Indonesia: A Narrative Review Indicating and Anticipating 'Fake Bureau,'" *Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE)* 5, no. 1 (2022): 94–107, <https://doi.org/10.31538/ijse.v5i1.1702>.

new customers falter (no new funds come in),⁹ then the foundation of this pyramid is shaken.

Apart from the Jiwasraya and First Travel cases, there are many other fraudulent investment cases in Indonesia. The existence of social media makes it very easy for these fraudulent investors Ponzinomics to find potential prey across borders. This investment fraud mode through social media is like what the TikTok Cash platform manager does. TikTok Cash performs rewarding activities for members who follow, like, and watch TikTok videos. In fact, to become a member on the platform, one has to pay a fee that varies depending on the level of membership.¹⁰ TikTok Cash implements a system where users have to invite others to join in order to increase profits. Then, a certain amount of balance can be disbursed to the user's bank account.

Several legal studies have been conducted on this subject to date in order to address various concerns, particularly those pertaining to criminal law and other factors that influence the perpetrators to commit such a conduct. As demonstrated by Henriques, it explains that law enforcement against fraudulent investors in Ponzi schemes is somewhat difficult and challenging as in this context, Indonesia does not yet have a particular rule governing fraudulent investments in Ponzi schemes.¹¹ Besides, it also needs to identify differentiating risk factors of Ponzi from non-Ponzi frauds as argued by Raval.¹² Furthermore, Kethineni and Cao propose that in order to address

⁹ Paul Manning, "Exploiting the Social Fabric of Networks: A Social Capital Analysis of Historical Financial Frauds," *Management and Organizational History* 13, no. 2 (2018): 191–211, <https://doi.org/10.1080/17449359.2018.1534595>.

¹⁰ Shilvia Amanda, Sayid Mohammad Rifqi Noval, and Elis Herlina, "Penegakan Hukum terhadap Praktik Money Game dengan Skema Ponzi dalam Investasi Ilegal pada Aplikasi Tiktok E-Cash di Indonesia," *Res Nullius Law Journal* 4, no. 1 (2022): 57–76, <https://doi.org/10.34010/rnlj.v%vi%i.5584>.

¹¹ Diana B Henriques, *Op. Cit.*

¹² Vasant Raval and Vivek Raval, "Differentiating Risk Factors of Ponzi from Non-Ponzi Frauds," *Journal of Financial Crime* 26, no. 4 (2019): 993–1005, <https://doi.org/10.1108/JFC-07-2018-0075>.

these scam issues, an integrative criminal policy that may incorporate diverse victim's loss recovery regulations, accompanied by precise and exact technological measures throughout a predetermined length of time, is urgently required.¹³ Regrettably, this is worsened by a lack of financial literacy in the society, as seen by the findings of a study conducted by Padil.¹⁴ Furthermore, psychological study conducted by Hidajat has demonstrated that optimism (emotional bias) influences investment decisions in Ponzi and pyramid scams. Investors in these scams were certain that they would profit, but they neglected the possibility of loss.¹⁵

However, despite the numerous studies that have been undertaken, there is no single research that examines the differences between the Ponzi and pyramid scheme in the context of criminal law enforcement as of today there are many parties who misunderstood the distinction between these two schemes. Furthermore, a study that comprehensively explores the criminal provisions and their relation to the specific cases of Ponzi and pyramid scheme in Indonesia is unable to be found. Therefore, in order to fill the gaps, these issues will be addressed in this paper and will become a novel aspect of it. So as to address the issues, the study will discuss and elaborate on the topic in a systematic way. In the beginning, the Ponzi scam which is closely connected to the pyramid scheme is thoroughly discussed in this paper. It goes through several relevant cases that have recently occurred in Indonesia as well as the development of Ponzi schemes over time. It also examines the Financial Services Authority's (OJK)

¹³ Sessa Kethineni and Ying Cao, "The Rise in Popularity of Cryptocurrency and Associated Criminal Activity," *International Criminal Justice Review* 30, no. 3 (2020): 325–344, <https://doi.org/10.1177%2F1057567719827051>.

¹⁴ Hazlina Mohd Padil et al., "Financial Literacy and Awareness of Investment Scams among University Students," *Journal of Financial Crime* 29, no. 1 (2021): 355–367, <https://doi.org/10.1108/JFC-01-2021-0012>.

¹⁵ Taofik Hidajat et al., "Why Are People Trapped in Ponzi and Pyramid Schemes?," *Journal of Financial Crime* 30, no. 1 (2020): 187–203, <https://doi.org/10.1108/JFC-05-2020-0093>.

function in overseeing and discouraging the use of Ponzi schemes in Indonesian investing practices. It also discusses the difficulties OJK had in doing its duty as financial supervisor. It also explores the idea to the formulation of specific rules regulating the Ponzi initiated by the member of parliament. It analyzes and discusses several issues such as the crypto currency and trading robot software that along this time have been illegally used by the perpetrators to disguise their fraudulent acts. At the end, as an *ultimum remedium*, the criminal regulatory framework is primarily studied and thoroughly investigated in this study. Furthermore, it explores and examines a number of cases and the circumstances that led to the offenders' conduct, which caused losses for many individuals. It also elaborates the distinction between the criminal provisions that may be imposed to the Ponzi and pyramid scheme.

2. Method

The study is conferred and analyzed using doctrinal legal research methodology. It exploits the secondary data which includes primary, secondary, and tertiary legal sources. Primary legal sources play significant role in this study as an axis in conducting analysis towards particular circumstances. It comprises of Indonesian Penal Code, Law No. 8 of 1995 concerning Capital Market, Law No. 7 of 2014 concerning Trade, Law No. 10 of 1998 concerning Banking, Law No. 10 of 2011 concerning Commodity Futures Trading, Law No. 21 of 2011 concerning Financial Services Authority, and Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. Furthermore, secondary legal sources are no less important in supporting the information and data that are needed in conducting this study. The secondary legal sources used as references by the authors in this study are reputable journals that are accredited at the national or international level, popular legal books, conference

proceedings, reports, news, and articles taken from Westlaw or the internet. Moreover, tertiary legal sources are also used in this study as it considered important to provide further information in regards to the discussed topic. Tertiary legal sources include encyclopedias and dictionaries such as Black's Law Dictionary. These three types of legal sources are then analyzed and discussed in this paper in qualitative method with employing statutory, conceptual, and case approach. It takes information from legal sources documents such as statutes, regulations, legal periodicals, and cases before interpreting and categorizing the content and uses that data to discover patterns and subsequently written in organized way.

3. Result & Discussion

A. Charles Ponzi: A Legendary Fraudster

The first Ponzi scheme was carried out by an accomplished con artist from the United States (US), Charles Ponzi in the mid-1900s. Ponzi's story began when he worked as an assistant teller at a bank called Banco Zarossi in Montreal Canada. The bank is owned by businessman Luigi Zarossi. Inside the bank, Ponzi's name was quite flashy, and he managed to become a manager. The 'stealing from Peter to pay Paul' method used by Zarossi in managing the bank became the inspiration for the Ponzi scheme in the future. Zarossi took advantage of the flow of deposit money in his bank with the lure of a 6 percent return on new customers. The goal is to fund various other investments. But the investment failed. There is no return to the customer either. Finally, Zarossi fled to Mexico with some of his new customers' money.¹⁶

¹⁶ Colleen Cross, *Anatomy of a Ponzi Scheme: Scams Past and Present: The New York Times Bestseller* (Slice Publishing Mystery and Thriller Books, 2022).

After the case, Ponzi was imprisoned in Quebec on charges of counterfeiting checks and was only released in 1911. However, he was again detained in the Atlanta Jail due to his involvement in the immigrant smuggling business.¹⁷ After two years behind bars, Ponzi returns to Boston, USA. But it was at this moment that Ponzi found his turning point and became a big businessman by carrying out investment fraud practices.

In 1919, Ponzi started a small company in Boston. The idea came from a letter sent by a company in Spain asking for an American advertising catalog. Ponzi found an International Reply Coupon (IRC),¹⁸ a coupon that could be exchanged for a number of priority postmarks or postage stamps from other countries. There he saw a golden opportunity to gain big profits. Not wanting to waste the opportunity, Ponzi immediately devised a plan. He then buys IRC in a country, the profits will come once the IRC is exchanged for expensive stamps in another country.¹⁹ He immediately placed his agents in various countries. The agents were sent some money to buy IRC and tasked with bringing the coupons to America.

After that, Ponzi simply exchanged the expensive stamps for resale at a price higher than the initial capital.²⁰ In this way, Ponzi made a profit of up to 400 percent.²¹ Ponzi was not complacent, he wanted to run a pyramid scheme with bigger goals, for that in January

¹⁷ Serge Matulich and David M Currie, "Charles Ponzi," in *Handbook of Frauds, Scams, and Swindles* (Routledge, 2017), 57–66.

¹⁸ Oluwasegun Peter Aluko and Ibukun Oluwakemi Olawuni, "A Socio-Historical Perspective on Ponzi Schemes and Development in Nigeria: The Role of the Christian Church," *World Journal of Social Science* 8, no. 2 (2021): 41–55, <https://doi.org/10.5430/wjss.v8n2p41>.

¹⁹ *Ibid.*

²⁰ Geldenhuys Kotie, "Crime Series - Krion Ponzi Scheme Bringing a Community to Its Knees," *Servoamus Community-Based Safety and Security Magazine* 113, no. 12 (2020): 46–53, <https://doi.org/10.10520/ejc-servamus-v113-n12-a13>.

²¹ Chad Albrecht et al., "Ezubao: A Chinese Ponzi Scheme with a Twist," *Journal of Financial Crime* 24, no. 2 (2017): 256–259, <https://doi.org/10.1108/JFC-04-2016-0026>.

1920 Ponzi founded a larger company, The Securities Exchange Company. From there, Ponzi promised a return on investment and a 50 percent profit in just 45 days. Armed with good communication skills, Ponzi hooked 18 people as his first investors with an investment value of 1,800 US dollars. As promised, Ponzi bestowed profits on his first investors. Over time, the investment attracted more people. Manipulation with his scheme brings tremendous benefits. Ponzi is said to be earning \$250,000 per day.²²

However, no matter how smart Ponzi acted, his fraudulent scheme began to be detected. Not a few are curious about the Ponzi Scheme. One of them, the Boston Post newspaper, immediately conducted a special investigation into this case. The various findings of the Boston Post immediately made the Ponzi company shaken and many questioned, in the end, there were no more new investors to inject funds.²³ Once his business and large fraud schemes collapsed, Ponzi was arrested on August 12, 1920, on 86 counts of fraud and embezzlement. In court, Ponzi pleaded guilty and was sentenced to 14 years in prison. After his release in 1934, he was deported to Italy.²⁴ Although it ended in failure, until now Ponzi's profit-making method is still widely used.

²² Afia Agyeman Amponsah-Mensah, "Ponzi Schemes in Ghana: The Menzgold Saga," *African Journal of International and Comparative Law* 29, no. 3 (2021): 463–476, <https://doi.org/10.3366/ajicl.2021.0377>.

²³ H Kent Baker and Vesa Puttonen, "Trap 1: Becoming a Victim of Pyramid and Ponzi Schemes," in *Investment Traps Exposed* (Emerald Publishing Limited, 2017).

²⁴ Rivona Ajodapersad, "A Legal Analysis of the Regulation of Pyramid/Ponzi Schemes in South Africa with Specific Focus on the Following; the R699 Car Deal Scheme and the Travel Scheme World Ventures" (University of KwaZulu-Natal, 2018).

B. Ponzi and Pyramid Scheme: Two Sides of the Same Coin

The recent money game scams have shown that Indonesia is not only endangered by the invasion of narcotics or other harmful products, but also by a major direct threat to public finances. So far, the government apparatus has shown to be ineffective in addressing this menace. It is hardly astonishing that awareness of fraud is still widely disseminated, despite strong legislative attempts to prevent it. Victims come from all circles of society, from urban centers to rural farmers and housewives.

Ponzi and pyramid schemes are among the most popular types of fraud committed by fraudsters.²⁵ The reason for this is because these two modes are relatively simple to disguise. Even after years of operation, government authorities and victims may be unaware of its presence and danger. Particularly if the authorities have taken part in it and even become leaders in the bogus industry. The prevalence of pyramid and Ponzi schemes has long been recognized as a severe threat to citizens by governments in developed countries. Fraudsters easily breed their fraudulent business over national borders, draining money from the purses of individuals who are oblivious of what they are dealing with, notably with the existence of modern technology and the internet.

Even though there are minor differences between the two, the terms Ponzi and pyramid scheme are frequently used interchangeably in daily discourse. Ponzi scheme is a method of raising public finances by promising huge returns that considerably surpass the typical returns on investments in a short period of time. Ponzi schemes are typically operated by recruiting new members to

²⁵ Peter Jeremiah Setiawan and Hansel Ardison, "Criminal Victimization on Large-Scale Investment Scam in Indonesia," *Veritas et Justitia* 7, no. 1 (2021): 1–30, <https://doi.org/10.25123/vej.v7i1.3917>.

keep the money pouring in.²⁶ The money is not invested in specific firms or assets, but rather serves as capital to pay members who have initially joined. Ponzi is a business of “robbing A to pay B,” solely a matter of depositing money.²⁷ Therefore, some people also call it in Indonesia as ‘*arisan berantai*’ (social financial networking), as money is not played in the business to make a profit,²⁸ which subsequently one day this business will run out of money if the incoming registrants are no longer enough to pay the previous members. This is the time when the Ponzi business rocked and could collapse. The perpetrators typically dodge by saying the business is being reset, then ask the old members to deposit more money so they can recruit more members, who will one day become victims.

Meanwhile, the pyramid scheme is basically comparable to Ponzi where there is an effort to collect public money through the continuous recruitment of new members. However, pyramid schemes are often wrapped in the form of buying and selling goods or services. The buying and selling process is basically just a disguise,²⁹ because the goods being traded are usually much more expensive than the prevailing market price for the same type of goods. Even sometimes the goods offered are actually not useful or needed. The goods offered are also not necessarily sold if marketed in a way that applies in general. Furthermore, when seducing prospective members, normally the perpetrators also talk more about money and instead

²⁶ Paul Onanuga and Rotimi Taiwo, “Discursive Features of Nigerian Online Ponzi Schemes’ Narratives,” *ELOPE: English Language Overseas Perspectives and Enquiries* 17, no. 2 (2020): 61–82, <https://doi.org/10.4312/elope.17.2.61-82>.

²⁷ Diana B Henriques, *Op. Cit.*

²⁸ Matthieu Montalban, Vincent Frigant, and Bernard Jullien, “Platform Economy as a New Form of Capitalism: A Régulationist Research Programme,” *Cambridge Journal of Economics* 43, no. 4 (2019): 805–824, <https://doi.org/10.1093/cje/bez017>.

²⁹ Pihu Feng, Duoyong Sun, and Zaiwu Gong, “A Case Study of Pyramid Scheme Finance Flow Network based on Social Network Analysis,” *Sustainability* 11, no. 16 (2019): 4370–4381, <https://doi.org/https://doi.org/10.3390/su11164370>.

focus on the products that will be offered to consumers. Moreover, to ensure the money flows in, pyramid schemes also require members to make monthly purchases of products in large quantities,³⁰ far exceeding the member's needs or ability to resell. In the end, the pyramid scheme business will collapse and make it difficult for many members of the community as the products they sell are not absorbed in the market. In other words, fewer people will buy the product and deposit money, and then eventually the business will disband. Those who do not get the benefits as promised will then shout and sue the perpetrators because they feel deceived.

Many pyramid schemes resemble multi-level marketing (MLM) companies, which also involve successively bringing new people into the operation.³¹ The fundamental difference, however, is that a legitimate MLM company focuses on recruiting people to sell the product, while pyramid scam promoters emphasize the recruitment itself. A typical characteristic of pyramid scams is that their directors, when describing the activity that the company is supposedly engaged in many cases, for example, e-books, digital advertisements, and unspecified technological services — use terms vague, sophisticated-sounding vague ones, in order to hide the fact that the company does not actually sell anything at all. And, just like Ponzi schemes, pyramid schemes sooner or later go under their own weight, and investors are left with nothing to show for it. Another similarity between the two types of scams: they are often committed through "affinity fraud."³²

³⁰ Irfan Ullah, Wiqar Ahmad, and Arshad Ali, "Determinants of Investment Decision in a Ponzi Scheme: Investors' Perspective on the Modaraba Scam," *Journal of Financial Crime* 1, no. 1 (2020): 1–19, <https://doi.org/10.1108/JFC-02-2020-0027>.

³¹ Claudia Groß and Dirk Vriens, "The Role of the Distributor Network in the Persistence of Legal and Ethical Problems of Multi-Level Marketing Companies," *Journal of Business Ethics* 156, no. 2 (2019): 333–355, <https://doi.org/10.1007/s10551-017-3556-9>.

³² Stacie Bosley and Maggie Knorr, "Pyramids, Ponzis and Fraud Prevention: Lessons from a Case Study," *Journal of Financial Crime* 25, no. 1 (2018): 81–94, <https://doi.org/10.1108/JFC-10-2016-0062>.

That is, the scammer is part of a close-knit group, or poses as a member of such a group; for example, from a religious congregation, an ethnic community, or a social organization. They ingratiate themselves with respected members of the group and uses that trust to convince others that a certain fraudulent operation offers a legitimate way to earn income; it may be that the scammer disguises the operation of an investment club or gift program.

C. Financial Watchdog: Its Role and Challenges

President Joko Widodo (Jokowi) said that in the era of the Covid-19 pandemic, the financial services sector has a major role in supporting efforts to recover the national economy. The President explained that the prolonged pandemic has inflicted deep wounds on certain sectors. At the same time, there has been a disruption in global supply chains that has triggered an increase in world commodity prices and led to increasingly uncertain global inflation.³³ Jokowi emphasized that the policies and supervisory instruments issued by the Financial Services Authority (OJK) must be able to prevent the spread of the impact of the Covid-19 pandemic, in particular, on the economy and the financial sector. The President also asked that the financial services sector not only think about profit alone. He said that without moving the real sector, this would potentially lead to various fraudulent models that are very detrimental to society, such as Ponzi schemes and the like. Furthermore, the President stated that such issues are also our common task, with OJK as the driving force. In difficult times, supervision should not be slack because weak supervision will open gaps, open up opportunities, for the emergence

³³ Greg Fealy, "Jokowi in the Covid-19 Era: Repressive Pluralism, Dynasticism and the Overbearing State," *Bulletin of Indonesian Economic Studies* 56, no. 3 (2020): 301–323, <https://doi.org/10.1080/00074918.2020.1846482>.

of various modes of financial crime which will ultimately harm the community where something like this should not happen again.³⁴

Furthermore, illegal investment practices containing Ponzi schemes under the guise of online trading are being discussed recently. Responding to this, the Financial Services Authority (OJK) emphasized that financial service institutions, in this case, banks, are prohibited from facilitating activities that are not regulated by the authorities. In a written statement, OJK Deputy Commissioner for Strategic Management and Logistics, Anto Prabowo, stated that OJK asked banks to ensure bank accounts were not used to accommodate funds for activities that violate the law. OJK also prohibits financial service institutions from using, marketing, or facilitating crypto asset trading³⁵. The prohibition is carried out to ensure the use of bank accounts or the equivalent. Bank accounts are prohibited from being used for activities that are reasonably suspected of containing elements of fraud, moneylender activities, gambling, money laundering, illegal investments, and/or containing Ponzi schemes. In the midst of increasing interest in crypto, OJK asks the public to be more careful with fraudulent practices using Ponzi schemes under the guise of crypto investments or the like.

The Financial Services Authority functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. Based on Law No. 21 of 2011 Article 5, the Financial Services Authority was established with the aim that all activities in the financial services sector are carried out in an orderly, fair, transparent, and accountable manner so that they are able to realize a financial system that grows in a sustainable and stable

³⁴ Doreen Lee, "Indonesia's Economic Futures: Who Will Pay?," *Current History* 120, no. 827 (2021): 214–220, <https://doi.org/10.1525/curh.2021.120.827.214>.

³⁵ OJK, "Tegas! OJK & 7 Negara Beri Warning Bahaya Uang Kripto," *Otoritas Jasa Keuangan*, 26 February, accessed from <https://pasarmodal.ojk.go.id/News/Detail/20577>.

manner and is able to protect the interests of consumers and society.³⁶ In accordance with Law No. 21 of 2011 Article 1 states that: "The Financial Services Authority, hereinafter referred to as OJK, is an institution that is independent and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination and investigation as referred to in this Law."

Meanwhile, based on Article 6 of Law No. 21 of 2011, the main duty of the OJK is to regulate and supervise:

- 1 Financial services activities in the banking sector
- 2 Financial services activities in the Capital Market sector
- 3 Financial services activities in the Insurance sector, Financing Institution Pension Fund, and Other Financial Institutions.

Furthermore, the authorities of OJK are regulated in Article 7:³⁷

1. In regard to Supervision and Regulation of Bank Financial Services Institutions including: Licensing for bank establishment, Bank business activities, Regulation and supervision of bank soundness, Regulation and supervision of prudential aspects of banks.
2. In regards to the regulation of financial services institutions (banks and non-banks), it includes: establishing OJK regulations and decisions, stipulating regulations regarding supervision in the financial services sector, stipulating policies regarding the implementation of OJK duties, stipulating regulations regarding procedures for

³⁶ Suwinto Johan, "Financial Institution and Public Listed Companies: How the Supervision Regulated under the Indonesian Law?," *Varia Justicia* 17, no. 2 (2021): 171–183, <https://doi.org/10.31603/variajusticia.v17i2.404>.

³⁷ S Sulistyandari, Noor Aziz Said, and Wiwik Yuni Hastuti, "Strengthening the Supervision of Market Conduct of Banking Financial Services by Financial Service Authority (OJK) in Central Java," *Jurnal Dinamika Hukum* 16, no. 3 (2017): 258–265, <http://dx.doi.org/10.20884/1.jdh.2016.16.3.708>.

determining written orders for financial services institutions (LJK).) and certain parties, stipulate regulations regarding procedures for determining statutory managers at LJK, stipulate organizational structures and infrastructure as well as manage and maintain and administer assets and liabilities, and stipulate regulations regarding procedures for imposing sanctions in accordance with the provisions of laws and regulations in the financial services sector.

3. In regards to the supervision of financial service institutions (banks and non-banks), it includes: establishing operational policies for supervision of financial service activities, supervising the implementation of supervisory duties carried out by the Chief Executive, conducting supervision, inspection, investigation, consumer protection and other actions against financial service institutions, actors, and/or supporting financial services activities as referred to in the laws and regulations in the financial services sector, giving written orders to financial service institutions and/or certain parties, appointing statutory managers, stipulating the use of statutory managers, stipulating administrative sanctions against parties who violate the laws and regulations in the financial services sector.

Furthermore, to carry out the regulatory tasks as referred to in Article 6, OJK has the authority to stipulate the implementing regulations of this Law; stipulate laws and regulations in the financial services sector; stipulate OJK regulations and decisions; stipulate regulations regarding supervision in the financial services sector; establish policies regarding the implementation of OJK duties; stipulate regulations regarding procedures for determining written orders against Financial Services Institutions and certain parties; stipulate regulations regarding procedures for determining statutory

managers at Financial Services Institutions; establish organizational structure and infrastructure, as well as manage, maintain, and administer assets and liabilities; and stipulate regulations regarding procedures for imposing sanctions in accordance with the provisions of laws and regulations in the financial services sector.³⁸

Meanwhile, to carry out the supervisory duties as referred to in Article 6, OJK has the authority to determine operational policies for supervision of financial service activities; supervising the implementation of supervisory duties carried out by the Chief Executive; carry out supervision, examination, investigation, consumer protection, and other actions against Financial Services Institutions, actors, and/or supporting financial service activities as referred to in the laws and regulations in the financial services sector; give written orders to Financial Services Institutions and/or certain parties; appoint a statutory manager; determine the use of statutory managers; stipulate administrative sanctions against parties who violate the laws and regulations in the financial services sector; and grant and/or revoke business licenses, individual permits, effective registration statements, registered certificates, approval to conduct business activities, ratification, approval, or determination of dissolution, as well as other stipulations as referred to in the laws and regulations in the financial services sector.³⁹

Based on the duties and authorities mentioned above, it can be said that the Financial Services Authority (OJK) has a very broad scope of power in the field of financial services.⁴⁰ The function of the

³⁸ Abidah B Setyowati, "Governing Sustainable Finance: Insights from Indonesia," *Climate Policy*, (2020), 1–14, <https://doi.org/10.1080/14693062.2020.1858741>.

³⁹ Ika Atikah, "Consumer Protection and Fintech Companies in Indonesia: Innovations and Challenges of the Financial Services Authority," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 132–153, <https://doi.org/10.25216/JHP.9.1.2020.132-153>.

⁴⁰ Kevin Davis, Rodney Maddock, and Martin Foo, "Catching Up with Indonesia's Fintech Industry," *Law and Financial Markets Review* 11, no. 1 (2017): 33–40, <https://doi.org/10.1080/17521440.2017.1336398>.

Financial Services Authority is to organize an integrated regulatory and supervisory system for all activities in the financial services sector. So that the Financial Services Authority (OJK) has a very large responsibility in terms of maintaining the stability of the financial institution so that it continues to carry out activities in accordance with the law or other regulations.

For this reason, as a form of effort by the Financial Services Authority (OJK) to protect consumers, the Financial Services Authority (OJK) issued a regulation on consumer protection for financial services, namely Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector which will serve as guidelines for financial service institutions and the public.⁴¹ This regulation will serve as a benchmark because the public can find out which financial industry is under OJK supervision, what types of complaints can be submitted by the public, and what stages in the complaint and the requirements.

Then related to the Ponzi scheme, it is very unfortunate that until now there is no special regulation that regulates investment with this scheme, so that these activities are still being carried out by several parties, and this is where the legal vacuum continues to be exploited.⁴² However, sectoral laws and regulations can still be used to protect the public against this kind of illegal investment practice. Furthermore, regarding this type of illegal investment activities, the Financial Services Authority may carry out direct supervision and

⁴¹ Dwi Edi Wibowo, Liana Endah Susanti, and Aditya Migi Prematura, "The Implementation of Justice Value for Consumer Protection Study of the Financial Services Authority Regulation Number: 1/Pojk. 07/2013 Concerning Consumer Protection," *International Journal of Law Society Services* 2, no. 1 (2022): 1–7, <http://dx.doi.org/10.26532/ijlss.v2i1.20125>.

⁴² Ryan Randy Suryono, Indra Budi, and Betty Purwandari, "Detection of Fintech P2P Lending Issues in Indonesia," *Heliyon* 7, no. 4 (2021): 1–10, <https://doi.org/10.1016/j.heliyon.2021.e06782>.

investigation, particularly if the business activity is included in the category of collecting funds from the public, either directly or indirectly, which is the essence of activities in the financial services sector. The question is why does this happen? The answer is because various business activities that fall into the category of legal or illegal financial services activities can affect the economic needs and circulation of money in the community, even though they do not have a systemic impact, but currently, only the Financial Services Authority is an independent institution formed by the State that has a very large task and authority ranging from regulation, supervision, licensing and prosecution of all activities in the financial services sector in Indonesia. This then becomes a hope for the Indonesian people who need mitigation and solutions to the existence of illegal financial institutions.

D. Ponzi Rule Deliberation: Encouragement to the Issuance

1. Crypto Currency Investment Issue

Member of Commission VI of the DPR RI, Rudi Hartono Bangun, assessed that the various cases of the DNA Pro trading robot that have occurred recently in the community should be an entry point for law enforcement to uncover other similar cases. Moreover, this investment fraud case has cost customers billions of rupiah. It is even predicted that trading robots will start targeting crypto asset investments in Indonesia. Therefore, Rudi reminded the Commodity Futures Trading Supervisory Agency (BAPPEBTI) to prepare strict rules. He called Indonesia an easy target for financial mafias. This is because the capacity of the Indonesian people, especially those who are digitally literate, is still minimal. On the other hand, DPR criticized Bappebti 's policy of being too easy to give crypto asset trading

permits.⁴³ In fact, previously there were a number of crypto assets that had problems and harmed customers. Bappebti should be more selective and stricter so that there are no more customers who become victims of illegal crypto investments.

DPR finds it strange that Bappebti is so easy to grant crypto asset trading permits. Meanwhile, there is no in-depth study of crypto trading. The regulation of Bappebti is not yet clear, because it is not known what the reference or measuring instrument is, so that it can determine which crypto coins are allowed to enter Indonesia. DPR suspects that the coins are sold using a Ponzi scheme with the excuse of forming a community. In practice, there are companies that sell outside the official markets by using illegal applications that are not registered. Therefore, DPR reminded Bappebti not to arbitrarily issue crypto asset trading permits. As long as there are no strict rules to deal with violations that occur, Bappebti is not allowed to issue permits. Bappebti must take responsibility for granting permits. DPR also urged Bappebti to coordinate with law enforcement officials so that illegal crypto investments that have been reported to the Criminal Investigation Department (Bareskrim) can be immediately followed up.⁴⁴ The DPR urges the legal apparatus to dismantle the ulcers of these fraudulent investment players, because they make the people suffer.

⁴³ Nicha Muslimawati, "Anggota DPR Harap Kasus DNA Pro Jadi Pintu Masuk Ungkap Investasi Ilegal Lainnya," *Kumparan*, 30 May, accessed from <https://kumparan.com/kumparanbisnis/anggota-dpr-harap-kasus-dna-pro-jadi-pintu-masuk-ungkap-investasi-ilegal-lainnya-1yAp5xRT6Z2/full>.

⁴⁴ Kiswondari, "Marak Perdagangan Kripto Ilegal, DPR Ingatkan Bappebti Tak Sembarangan Beri Izin," *Sindonews*, 30 May, accessed from <https://nasional.sindonews.com/read/783387/13/marak-perdagangan-kripto-ilegal-dpr-ingatkan-bappebti-tak-sembarangan-beri-izin-1653890725>.

2. *Trading Robot Software Issue*

Chairman of the MPR RI as well as Head of the Law Enforcement, Defense & Security Relations Agency of the Indonesian Chamber of Commerce and Industry, Bambang Soesatyo, supports the effort of the Minister of Trade to take action against rule violators who harm consumers and supports the Commodity Futures Trading Supervisory Agency (Bappebti) to make clear rules regarding the existence and scope of what are the pros and cons of trading robots these days, including the transaction media such as software or applications or the like. Trading as usual has been a part of Indonesian people's lives for a long time, especially currency trading. Bambang Soesatyo explained that digitalization is unavoidable. Like it or not, this digital-based global business is already with the Indonesian people today and is getting more complicated in the future.⁴⁵ Indonesia must adapt because of all the demands of consumers who are increasingly willing to be fast and available and efficient.

From the various meetings that Bambang Soesatyo held as Chairman of the MPR RI which received many public complaints and also meetings with the Chairman of the National Consumer Protection Agency (BPKN) Rizal E Halim and various related associations such as the Indonesian Direct Selling Association (APLI) and the Indonesian Direct Selling Company Association (AP2LI) which is under the auspices of the Indonesian Chamber of Commerce and Industry (KADIN), Bambang Soesatyo believes that the state needs to immediately make clear and firm rules.⁴⁶ So that there is no longer a gray area that can be exploited by irresponsible parties,

⁴⁵ Wahyu Wachid, "Judi Berkedok Robot Trading Tidak Perlu Dilegalisasi," *Gatra*, 8 March, accessed from <https://www.gatra.com/news-537617-Hukum-judi-berkedok-robot-trading-tidak-perlu-dilegalisasi.html>.

⁴⁶ Rofiq Hidayat, "Mendorong Perlunya Payung Hukum Investasi Digital," *Hukumonline*, 7 April, accessed from <https://www.hukumonline.com/berita/a/mendorong-perlunya-payung-hukum-investasi-digital-lt624eb4d14f9e1>.

causing harm to the community or consumers such as the practice of Ponzi scheme.

Regarding the pro-cons phenomenon of the Trading Robot Software, which is much favored by millennials and Generation Z, there are only two choices, namely to be fostered or destroyed. Given this, it is more or less actually a digital-based transaction platform. However, there are also people who think that this Trading Robot Software is an implementation of digital-based commodity currency transactions. These differing views must be resolved as there should not be multiple interpretations due to the vacuum of law or regulation. Rules should be formulated as soon as possible, for the sake of consumer protection, business convenience, and legal certainty, including optimizing state revenues through trade taxes.

In accordance with Article 6 of Law No. 10 of 2011 concerning Commodity Futures Trading, Point b states that Bappebti is authorized to issue business licenses to futures exchanges, futures clearing houses, futures brokers, futures advisors, and futures fund center managers. At the time the law was enacted, neither the digital economy nor the commodity futures trading market was as advanced as they are today. Therefore, so far, futures advisors are more identical to people.

In the midst of advances in information technology, the existence of trading robot software can be included in the Futures Advisor category, as is done by many countries that make trading robot software an expert advisor.⁴⁷ Because the function of trading robot software is like an advisor that makes it easy for someone to invest in currency instruments (forex), commodities, or crypto assets. So that Bappebti can issue regulations and decisions explaining that trading

⁴⁷ Zeynep Engin and Philip Treleaven, "Algorithmic Government: Automating Public Services and Supporting Civil Servants in Using Data Science Technologies," *Computer Journal* 62, no. 3 (2019): 448–460, <https://doi.org/10.1093/comjnl/bxy082>.

robot software is included in the Futures Advisor as referred to in Law No. 10 of 2011, including regulating wider consumer protection, code of ethics for the organizers, and transaction transparency of the trading robot in question.

These legal rules are also needed to regulate the mechanism for selling and using trading robot software. For example, in selling trading robot software, it must be done on a full-time basis, and it must not be accompanied by a promise that using trading robot software will get big profits. Legal regulations are also needed so that supervision can run optimally. Therefore, it is can not be flattened if one of the trading robot software has a problem, then everything is the same. As is the case with the existence of Public Fuel Filling Stations (SPBU), if one has a problem, it cannot be said that all existing gas stations are also problematic.

Referring to the Binomo case promoted by Indra Kenz, then it is actually not part of the trading robot software. Indra Kenz is also not a member of APLI or AP2LI. The public and stakeholders should not misunderstand, as between Ponzi schemes and trading robot software are two different things. AP2LI and APLI firmly consider that Binomo is nothing but a gambling application under the guise of binary options investment which uses a Ponzi scheme.⁴⁸

In order to avoid misunderstandings, KADIN encourages the formation of the Indonesian Robot Trading Association (ARTI), which will become a partner of Bappebti and the Ministry of Trade in providing education to the public.⁴⁹ Another thing that needs to be

⁴⁸ Atta Kharisma, "Bamsoet Dorong Robot Trading Masuk Kategori Penasihat Berjangka," *detikFinance*, 2 March, accessed from <https://finance.detik.com/fintech/d-5965847/bamsoet-dorong-robot-trading-masuk-kategori-penasihat-berjangka>.

⁴⁹ Jaffry Prabu Prakoso, "Ketua MPR: Buat Aturan Khusus untuk Robot Trading," *Tempo*, 12 February, accessed from <https://ekonomi.bisnis.com/read/20220212/12/1499582/ketua-mpr-desak-mendag-buat-aturan-khusus-robot-trading>.

emphasized is that the existence of trading robot software is only a tool, as in the end the trading decisions are still taken by investors. Therefore, that what needs to be prioritized is coaching and education for entrepreneurs who are on average very young under 30 years old to comply with laws and regulations and to be wiser in investing, whether in currency instruments, commodities, or crypto assets.

E. Criminal Provision: Confusion between Pyramid and Ponzi

A series of criminal articles actually exist for adherents of the Pyramid scheme. Powerful articles have often been used to ensnare perpetrators of Pyramid schemes. The perpetrators of the money game should be increasingly difficult to escape from the shackles of criminal law. The article used is not new because it is already available and has actually been used since 2014. The snare in question is Law No. 7 of 2014 on Trade. This rule strictly prohibits business actors from implementing Pyramid schemes. What is meant by a Pyramid scheme is a business activity whose source of income is mainly from the participation fees of other people who are recruited into the network.

According to Bayu Riono, Head of Anti-Money Game Division of the Indonesian Direct Selling Association (APLI), the easiest way to identify whether an investment offer is a money game that uses a Pyramid scheme or not is by asking a question to the inviter. The question is, "will old members receive a bonus if no new members are recruited?" If the answer is no, the company can undoubtedly employ a Pyramid scheme.⁵⁰

⁵⁰ Jan Beek, "Travelling Multi-Level Marketing Schemes and Whispers of Fraud in Kenya," *Social Anthropology* 27, no. 3 (2019): 501–516, <https://doi.org/10.1111/1469-8676.12676>.

If there is a violation, according to Article 105 the perpetrator is threatened with a maximum imprisonment of 10 years and a maximum fine of Rp. 10 billion. The criminal threat does use maximum words. Therefore, it is possible for the public prosecutor and judge to file charges or impose a lower sentence than 10 years in prison and a Rp 10 billion fine. However, this provision is much stronger than the rules used by previous law enforcers in dealing with cases of Pyramid schemes.

In some cases, perpetrators of money games with Pyramid schemes are only rewarded with Article 372 of the Criminal Code (KUHP) regarding embezzlement and Article 378 concerning fraud where the maximum penalty is only four years in prison. For example, in the case of CV Raihan Jewellery's fraudulent gold investment, which was founded and controlled by Muhammad Azhari. On September 23, 2013 the public prosecutor (JPU) of the Surabaya District Attorney charged Azhari with committing a criminal act of fraud in accordance with Article 378 of the Criminal Code. The only sentence is imprisonment for one year. However, on September 30, 2013, a judge at the Surabaya District Court ruled that Azhari's actions were not criminal but civil so that he was acquitted of all charges. For this acquittal, the Public Prosecutor filed an appeal to the Supreme Court (MA) on October 10, 2013. The panel of judges of the Supreme Court granted this appeal on July 23, 2014, and Azhari was sentenced to one year in prison.⁵¹

Indeed, there are also cases of money games that are rewarded with severe penalties. For example, the case of PT Bali Consultant Life Insurance (Balicon). The founder and main commissioner of Balicon, I Made Parisadnyana, was given a multi-layered sentence for carrying

⁵¹ Mochamad Irfan Syaifuddin, "Analisis Yuridis Investasi 'Bodong' dalam Perjanjian Investor Emas dengan CV. Raihan Jewellery di Surabaya" (University of Muhammadiyah Malang, 2015).

out insurance business activities without a business license and Money Laundering (TPPU). For these demands, Parisadnyana had to languish in prison for 20 years with a total fine of Rp. 2.6 billion.⁵² However, there are actually many more cases whose solutions have no end. Either because the main actors escaped without being caught in the jungle, or died.

The prey who was successfully charged with Article 105 of the Trade Law was Fili Muttaqien, the founder of Dream for Freedom (D4F). In fact, the Director of Economic and Special Crimes at the Indonesian Police Headquarters (Mabes Polri) Agung Setya asserted that Fili was charged with multiple layers of Articles.⁵³ In addition to Article 105 of the Trade Law, Fili is charged with Articles 372 and 378 of the Criminal Code as well as Article 3 or Article 5 of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. Based on the assumption of the alleged rule, the total possible penalty for Fili is a maximum of 29 years in prison and a maximum fine of Rp. 21 billion. However, this depends on whether the prosecutor's claim file is submitted in a bundle or separately, on the other hand it also depends on the judge's decision.⁵⁴

The combination of Article 105 of the Trade Law and Article 3 of the Money Laundering Law previously also succeeded in ensnaring Gunarni Gunawan, the founder of Wondermind which operates in Papua. On January 29, 2016, the District Court Judge Class IA Jayapura sentenced Gunarni to 15 years in prison and a fine of Rp. 10

⁵² detikNews, "Hukuman Ditambah, Bos Asuransi Bodong Rp 400 Miliar Dibui 20 Tahun," *Detik*, 10 October, accessed from <https://news.detik.com/berita/d-2383353/hukuman-ditambah-bos-asuransi-bodong-rp-400-miliar-dibui-20-tahun>.

⁵³ Rizki Caturini, "Pendiri Dream For Freedom Resmi Ditahan," *Kontan*, 24 October, accessed from <https://investasi.kontan.co.id/news/pendiri-dream-for-freedom-resmi-ditahan>.

⁵⁴ Topo Santoso, "Parties to Crime: Development and Comparison," *Indonesian Comparative Law Review* 2, no. 2 (2020): 67–79. <https://doi.org/10.18196/iclr.2217>.

billion, subsidiary to 6 months in prison.⁵⁵ Interestingly, the use of Article 105 of the Trade Law allows the police to move without waiting for a victim to fall. According to Bayu, this is because the regulation adheres to a general offense (ordinary offense) not a complaint offense. So that the police can act more responsively without waiting for the Pyramid scheme to break down and take the victim first.⁵⁶

Djoko Komara, Chairman of APLI, said that the complaint offenses enshrined in Articles 372 and 378 of the Criminal Code have never succeeded in ensnaring the perpetrators and masterminds of the money game. Because they already know at some point and at what point their business is no longer able to pay bonuses and return the basic funds that have been deposited by their victims. The average money game with a Pyramid scheme will be destroyed in 1.5 years to three years from operating.⁵⁷ At that point, the perpetrators will run away and reporting to the police will be useless because it is too late and no one else can be held accountable. In fact, everyone who seeks and seduces as many people as possible to participate in the game of Pyramid can also be arrested. Abdul Fikar Hadjar, a Legal Observer at Trisakti University, said that the concept of perpetrators in criminal law is not only direct perpetrators. But also, those who ordered and helped can also be prosecuted.

The appearance of TikTok Cash in 2021 has also attracted public attention and discussion. This new site that uses the popularity of the

⁵⁵ Elza Astari Retaduari, "Kasus Investasi Bodong Ponzi, Gunarni Gunawan Divonis 15 Tahun Penjara," *Detik*, 2 February, accessed from <https://news.detik.com/berita/d-3133319/kasus-investasi-bodong-ponzi-gunarni-gunawan-divonis-15-tahun-penjara>.

⁵⁶ Mahrus Ali, "From Separate Legal Entity to Economic Unity: The Criminal Liability of Parent Company," *Jurnal Media Hukum* 26, no. 2 (2019): 158–67. <https://doi.org/10.18196/jmh.20190131>.

⁵⁷ Jonathan N. Balls, "Low-Cost, Adaptable Solutions Sell: Re-Thinking Off-Grid Solar Diffusion at the Bottom of the Pyramid in India," *Energy Research & Social Science* 70 (2020): 1–9, <https://doi.org/https://doi.org/10.1016/j.erss.2020.101811>.

TikTok application promises lucrative financial benefits with only a small amount of capital and a fairly easy job. However, behind its relatively quick success, TikTok Cash is suspected as a platform that implements the Ponzi Scheme. In order to benefit from the amount of cash promised by TikTok Cash, TikTok users must perform a number of tasks arranged by level. The higher the level, the greater the potential profit. To upgrade TikTok users must pay a TikTok Cash membership fee and are encouraged to invite other TikTok users to become new members for additional bonuses.⁵⁸ This kind of business practice is indicated by implementing a Ponzi scheme.

In principle, the Ponzi-style business model is forbidden in any part of the world, including in Indonesia. Although this business practice is forbidden in Indonesia, there is no regulation that specifically and explicitly prohibits this fraudulent investment. Indeed, there is Law No. 7 of 2014 concerning Trade which prohibits the application of the Pyramid Scheme in business activities in Indonesia. A pyramid scheme is a business mechanism that seeks profit not from selling goods but by taking advantage of the participation opportunities of business partners, especially from the participation fees of investors who will and/or have joined.

Pyramid schemes are identical to Ponzi schemes. The goal is almost the same, namely raising money and recruiting members for a program that has been designed. The difference is that the pyramid scheme only focuses on recruiting members. New bonuses or commissions will be obtained if members recruit new members. Pyramid schemes are often manipulated through buying and selling transactions for goods and/or services. Whereas in the Ponzi scheme, members are only required to invest. The higher the investment value, the greater the potential profit that can be obtained by members.

⁵⁸ Shilvia Amanda, Sayid Mohammad Rifqi Noval, and Elis Herlina, *Op. Cit.*

Recruitment of members under the Ponzi scheme is not mandatory, but each member who does is promised an additional bonus, similar to the TikTok Cash business model. This means that the Trade Law is only limited to prohibiting business practices that use pyramid schemes, not Ponzi schemes.

Although there are no clear regulations and strict sanctions, investing with a Ponzi scheme is not necessarily free from elements of unlawful acts.⁵⁹ Every victim of the Ponzi scheme can still fight for justice for their rights and obtain legal protection from the government. In this case, the investment with the Ponzi scheme is clearly an illegal investment and a banking crime. Unfortunately, there are no regulations that are preventive in nature, but so far it has been more on direct action case by case if someone has reported a loss.

In its dissemination, the Financial Services Authority (OJK) often reminds the public not to be trapped by fraudulent investments, the majority of which use Ponzi schemes. This means that OJK has actually realized the dangers of the Ponzi scheme. OJK has the principle that it will never grant business licenses to legal entities that openly implement the Ponzi scheme. Thus, investment companies with Ponzi schemes certainly do not have business licenses and are not registered with the OJK. Without a business license, the perpetrators of the Ponzi scheme are threatened with a maximum imprisonment of five years and a maximum fine of Rp. 5 billion as stipulated in Article 30 and Article 103 of Law No. 8 of 1995 concerning the Capital Market.

In addition, fraudulent investment under the Ponzi scheme is also a banking crime in accordance with Article 46 paragraphs (1) and (2) of Law No. 10 of 1998 concerning Banking. This regulation

⁵⁹ Eveshnie Reddy, "Analysing the Investigation and Prosecution of Cryptocurrency Crime as Provided for by the South African Cybercrimes Bill," *Statute Law Review* 41, no. 2 (2020): 226–239, <https://doi.org/10.1093/slr/hmz001>.

confirms that any person who collects funds from the public in the form of savings without a business license from Bank Indonesia is a criminal offense with a threat of imprisonment for a minimum of five years and a maximum of 15 years and a minimum fine of Rp. 10 billion and a maximum of Rp. 200 billion. Not only that, the Ponzi scheme also includes acts of fraud and embezzlement of money under the guise of investment which can be sentenced to a maximum imprisonment of four years according to Articles 372 and 378 of the Criminal Code Law.

Unfortunately, all of the above provisions are partial and sectoral. There is no specific regulation that strictly prohibits the practice of Ponzi schemes. This is where there is a legal vacuum that causes the legality of a business engineering to be biased. This legal vacuum is often used as a loophole by the investment mafia to continue to perpetuate the practice of Ponzi schemes in Indonesia.

In addition, as an effort to strengthen the legal enforcement of Ponzi scheme, Indonesia can refer to what other countries organized as comparison. For example, American officials from the United States (US), Canada, UK, Australia and the Netherlands have shared data and identified more than 50 criminal leads related to crypto, including one case that could be a Ponzi scheme of USD 1 billion or the equivalent of IDR 14.67 trillion assuming exchange rate of IDR 14,673 per US dollar. This is suspected to be a global cryptographic crime due to data sharing activities by officials. In 2022 Bloomberg reported, Heads of Tax Enforcement (J5) of the Global Head of Tax Enforcement Joint Nations met in London to share intelligence and data to identify sources of illegal cross-border crypto activity. J5 was formed in response to a call to action from the Organization for Economic Cooperation and Development (OECD) with the aim that countries can do more to address the drivers of tax crime. It also comprises the Australian Taxation Office (ATO), *Fiscale Inlichtingen-*

en Opsporingsdienst (FIOD), Canada Revenue Agency (CRA), Internal Revenue Service Criminal Investigation (IRS-CI), and HM Revenue and Customs (HMRC).⁶⁰

The publication has said that during the ongoing meeting officials identified more than 50 criminal leads related to cryptocurrencies. The Head of Criminal Investigation at the Internal Revenue Service (IRS) said some of these leads had implicated individuals with significant NFT transactions related to potential tax or other financial crimes across jurisdictions. He also added that one clue that seems clear is the USD 1 billion Ponzi scheme that records this clue touching every country in the J5. In addition, officials have identified clues involving decentralized exchanges and financial technology companies. Lee also added that there is a possibility of announcement of significant targets as soon as this month. Head and General Director of the Dutch Fiscal Information and Investigation Service (FIOD), Niels Obbink said, NFT is one of the new modern digital ways of trade-based money laundering. Obbink also notes that cryptocurrencies have less control and less supervision and limited regulation which makes them vulnerable to fraud. He also emphasized that this matter needed to be given more attention.⁶¹

Furthermore, there is still also considerable homework to do to disseminate information to law enforcement. Following the cases that have emerged, many investigators are perplexed by the topic of investment,⁶² particularly whether or not the present investment offer

⁶⁰ Robert T. Kudrle, "Moves and Countermoves in the Digitization Challenges to International Taxation," *Technology in Society* 64 (February 2021): 101453, <https://doi.org/10.1016/j.techsoc.2020.101453>.

⁶¹ Eray Arda Akartuna, Shane D. Johnson, and Amy E. Thornton, "The Money Laundering and Terrorist Financing Risks of New and Disruptive Technologies: A Futures-Oriented Scoping Review," *Security Journal*, September 19, 2022, <https://doi.org/10.1057/s41284-022-00356-z>.

⁶² Suhanda, "Penegakan Hukum yang Salah dapat Mempengaruhi Investasi," *RRI*, 16 August, accessed from <https://rri.co.id/nasional/hukum/1152489/penegakan-hukum->

employs a Ponzi or Pyramid scheme. This understanding does not only have to be owned by investigators in the police department. But also, prosecutors and judges so that the handling of money game cases with the Ponzi or Pyramid scheme is more precise and optimal. This kind of dissemination is important as the practice of money games occurs evenly in almost all regions in Indonesia. Investment cases also have high complexity and cannot be digested immediately. Moreover, the perpetrators of Ponzi and Pyramid schemes often change their guises so that it is often impossible to identify the crime immediately. This gap could still be covered by asking for expert opinion to clarify the issue. In order to eradicate money games more effectively from an early age, it is suggested that the role of the police should be prioritized. It is better that under the police there is a special division that focuses on handling this issue, where this unit is a kind of special police unit for chasing fraudulent investments.

4. Conclusion

The Ponzi scheme and its relation to criminal law will always be a fascinating topic to discuss. This study has outlined in broad and comprehensive ways how the Ponzi scam has claimed so many victims, with significant losses experienced. However, stakeholders must still complete a significant amount of work in all areas. One factor addressed in this study is the adoption of a distinctive legislation that controls the prohibition of Ponzi schemes in detail and explicit. The present restrictions are seen to be incompatible with the employment of Ponzi schemes in a business entity. Despite the fact that there are several cases prevalent today, particularly those involving the misuse of crypto assets and robot trading software. This

yang-salah-dapat-mempengaruhi-investasi?utm_source=news_read_also&utm_medium=internal_link&utm_campaign=General%20Campaign.

is worsened by the publics and even law enforcement officers' misconception that Ponzi schemes and pyramid schemes are the same thing. As a consequence of this confusion, law enforcement officials may be inaccurate in ensnaring an allegation against the perpetrators or may even assume the perpetrators are innocent. As a result, in addition to the necessity for a specific rule controlling the Ponzi scheme, it is also required to educate the public, particularly law enforcement personnel, about the distinction between Ponzi and pyramid schemes. As for initial guidance, the intended education can be achieved by looking at certain examples of legal enforcement against cases that are indicated to involve business operations with Ponzi or pyramid schemes, as addressed in this study.

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

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