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**Fraudulent Investments from the Perspective of Criminal Law and Islamic Law**

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**ABSTRACT**

Fraudulent investment is a serious threat to the people of Indonesia, massive technological developments have indeed had many positive impacts but there have also been negative impacts arising from these technological developments. Fraudulent investment is one of the negative impacts of these technological developments. This development makes investment or trading activities possible for anyone at any time, the rise of investment types offered to the public through public figures that are not accompanied by references to investment-related literacy is one of the factors in the many victims of fraudulent investment in Indonesia.

Keywords: fraud, investment, technology

**INTRODUCTION**

The pandemic conditions that have occurred in the last two years which have resulted in an economic crisis have made people look for alternatives to find other sources of income. The situation that requires all members of the community to work at home has an impact on the economic condition of the community. There are several efforts that can be made to stay alive (economically) in pandemic conditions, one of which is by investing. The main objective of trading itself is to obtain a high profit deficit (profit) from the difference between the purchase price and the selling price. Generally, a trader uses trends on shares with low purchase prices and these shares have the potential to experience a high price increase so that they can generate high profits (Hidayat, 2019).

It is recorded in Investor data that shares have increased from 2019, increasing by 53.47% in 2020, and experienced quite a significant increase in the 2020-2021 period, which experienced an increase of up to 103.60%, while in 2022 there was an increase of 15.96% (KSEI, 2022). The other side of this technological development also gives rise to several negative impacts in the form of fraud under the guise of investment or Bodong Investment which is detrimental to the Indonesian people. Fraudulent investments are made starting from investments in the form of binary options, trading robots, Ponzi schemes, to using MLM (Multi Level Marketing) systems.

A fraudulent investment usually does not have permission from CoFTRA, apart from that it also offers profits that tend to be unreasonable which makes people tempted to invest shares in these investment products. Illegal/fraudulent investments provide offers that must be fulfilled by handing over a certain amount of money from investors as initial capital to start investing, by promising unreasonable profits or unclear management and sources of funds, these investments are included in investments with Money Game practices or money circulation that The aim is to control all the money from the investors.

The Money Game practice is what is used in Ponzi and MLM schemes, where the way this practice works is by paying investor profits with initial capital from new members who have just joined, not obtained from company profits. Then members who have already joined will get a bonus every time a member joins (Abd Kadir Arno and Assad, 2017).

In Indonesia, this Ponzi scheme is rarely known by the majority of Indonesian people, so many people are still trapped in fraudulent practices under the guise of investment like this. The Investment Alert Task Force (SWI) recorded that losses suffered by the public due to fraudulent investments reached IDR 123.5 T in the period 2018 to 2022 covering various forms of investment ranging from trading with the binary option system, trading robots, Ponzi schemes, and MLM systems (SWI, 2022).

The success of a trading system with binary options which is quite a trend among the millennial

generation cannot be separated from the marketing strategy carried out by the trading platform. One of them is by collaborating with several famous influencers/artists who have millions of followers to promote the platform, and these influencers seem to be ordered to expose their luxurious lifestyles with the aim of flexing/showing off their wealth as if to show that it is the result of trading binary options with So people will easily be tempted and think that there are real examples of playing binary options trading where they can buy luxury goods (Hanindharputri and Putra, 2019)

The perpetrators of this fraudulent investment/trading also have arguments to defend themselves by arguing that this was an action carried out by the victim with full awareness so it was not entirely their fault. However, what they do to attract people to follow their investments by promising profits cannot be justified. In this action there was also an element of deception as regulated in Article 378 of the Criminal Code and an element of intentionally broadcasting false news to mislead as contained in Article 28 paragraph 1 of the ITE Law.

This of course must be of special concern to the government and related institutions that oversee futures market activities. If we refer to an investment which is a futures broker, Bappebti is the supervisor of all activities related to the capital market. It should be noted that CoFTRA is an official institution under the Minister of Trade and also has a role in the same direction as Bapepam (Capital Market Supervisory Agency), therefore CoFTRA has a vital role in supervising, both directly and indirectly, the course of transaction activities at futures brokers.

All ongoing transactions must comply with regulations/provisions from Bappebti (Bappebti, 2022). From several statements, several problem formulations emerged, including, 1) What is the legal construction of criminal acts related to fraudulent investments, 2) What is the Islamic view of fraudulent investments, and 3) What efforts can be taken to address the rise in cases of fraudulent investments or fraud under the guise of investment? . Therefore, the aim of this research is to understand the legal construction of criminal acts related to fraudulent investments, to understand the Islamic view of fraudulent investments, as well as efforts that can be made to prevent the many cases of fraud under the guise of investment.

There is nothing in any law that justifies fraud, including the law that applies in Indonesia, therefore, with several cases of fraud that have occurred in Indonesia, it is important for the public to understand the legal basis for the elements of criminal acts of fraudulent investment as well as Islamic views regarding investment. This is bogus both according to sources of Islamic law and the opinion of Islamic scholars, for this reason the author is interested in conducting further discussions regarding Bodong Investments from the Perspective of Criminal Law and Islamic Law.

## RESEARCH METHODS

A research method is a method or step taken to obtain data/information related to a problem in society with the aim and use of finding a solution to the problem and can be applied effectively (RanahResearch). In this case, what is used as a reference for formulating legal aspects and rules is positive or currently applicable law. The author's reasons for choosing this normative juridical approach include, among other things, to find out the elements contained in fraudulent investments when linked to criminal law, to find out whether trading platforms already have legality from Bappebti as supervisor, what consequences will arise if a fraudulent investment case occurs for country, and what efforts must be made to prevent an investment that leads to fraud.

The type of research used in this research is descriptive research. Descriptive research is research that describes legal events that occur in society in detail and in depth (Muhammad 2004). In this research the author uses secondary data which is divided into primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are legal materials that have authority and are binding in nature.

In this research the primary legal material consists of Law Number 8 of 1995 concerning Capital Markets, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to 11 of 2008 concerning Information and Electronic Transactions, Law -Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading, Criminal Code, Government Regulation Number 49 of 2014 concerning Implementation of Commodity Futures Trading, Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems .

Furthermore, secondary materials are legal materials in the form of understanding results from primary legal materials which consist of books or texts written by influential legal experts, legal journals, opinions of scholars, legal cases, jurisprudence, and so on. Tertiary legal materials are legal materials that provide instructions and explanations that support primary and secondary legal materials consisting of legal dictionaries and encyclopedias.

In this research, the method used in collecting data is by means of literature study, studying legal journals, the internet, newspapers and legislation related to the problem being studied. Everything mentioned above is used as a basis and guideline for the research. After all the data is collected, the data is then analyzed qualitatively. Qualitative data analysis is an effort carried out by working with data, organizing data, sorting data into a manageable unit, formulating what is important and learning and drawing conclusions.(Moleong, 2004.)

In terms of drawing conclusions in this research, the inductive method is applied. The inductive method is a method of analyzing data from specific statements to general statements, which in this thesis means that an event/reality in social life is drawn into a piece of legislation. So the conclusion is whether a criminal act contains all the criminal elements as contained in the law that regulates it.

## RESULTS AND DISCUSSION

A. Fraud is a type of criminal act that has been around for a long time. In its era, fraud was carried out using various modes or methods that followed the era. In this digital era, crimes are also committed by utilizing technology, one of which is the internet or what is called cyber crime. The existence of cyber crime has become a threat in the form of government stability, making it difficult to balance and monitor crime models that utilize technology, especially on the internet and intranet.(Ketaren 2016). Fraud can also be carried out through advertising/promotional efforts that are not actually in accordance with what is being promoted.

In Indonesia alone, smartphone users reach 90% of the population, which has resulted in promotions switching to digital media because the majority of the population no longer uses print media to search for information, and in fact Indonesia's digital advertising is the second largest in Asia after India. (HANDOKO, 2021).

Fraudulent investment is a criminal act, including fraud, which in its development is carried out using various methods to mislead the public. A fake investment itself also uses advertising media in its promotion by affiliating with artists or public figures by making the public figure a Brand Ambassador. A fake investment offers the promise of big profits in a relatively easy way in a relatively short time. (Hanindharputri and Putra, 2019).

In principle, a fraudulent investment is included in the elements written in the Criminal Code Article 378 concerning Theft which reads "Anyone who, with the intention of benefiting himself or another person, violates the rights, whether by using a false name or false pretense, either by means of artifice and deceit, or by composing false words, persuades someone to give something, creates a debt or writes off a receivable , convicted of fraud, with a maximum prison sentence of four years".

With several elements contained in this article, including the element "whoever" is a legal subject as a whole, namely everything that has rights and obligations in legal traffic. If it is related to crime, the legal subject is the person or *natuurlijke* person and also the legal entity or *rechtsperson*. The element of "with intent" is the intention or intention of the perpetrator which is manifested in the

attempt to commit the criminal act, the element of "gaining oneself unlawfully" is an effort to benefit oneself by taking advantage of the ignorance or carelessness of another party which in law is not justified because of these conditions. not balanced. The element of "using a false name, false dignity, deception, a series of lies", as well as the element of "moving other people to hand over something, giving debts or writing off receivables" which in cases related to fraudulent investments requires the victim to hand over a certain amount of money as initial capital. actually there is fraud in it.

Moreover, according to R. Soesilo regarding article 378, it is explained that in this article there are elements of criminal acts of fraud that need to be taken into account, namely persuading people to give goods, create debts or write off receivables; The purpose of the persuasion attempt is to want to benefit oneself or another person by going against the rights; to persuade them by using 1) a fake name or fake condition, which means the name used in the attempt to deceive is not a real name, 2) cunning or deception that causes a person with a normal mind can be deceived, 3) a composition of lies that is arranged in such a way that when it is concluded it is a story/sentence that seems to be true (Soesilo, 2013).

Even though several elements have been fulfilled in their entirety in article 378, if we refer to current fraudulent investment cases that use technology or are online-based, there are several elements that cannot be fulfilled in article 378, including the media element which is not mentioned in article 378 because of the investment Bodong now tends to be online-based where electronic media is not yet recognized in the Criminal Code or Criminal Procedure Code, apart from that there are limitations regarding the imposition of criminal liability on legal subjects in the form of legal entities or corporations as parties who commit an act of online fraud. (Prasetyo 2014).

The passage of technology through electronic media or what is called cyberspace, even though it is virtual, is categorized as a factual or real legal act. If viewed juridically, activities in cyberspace cannot be carried out using a conventional legal qualification approach, therefore it will result in things that escape legal enforcement.(Sidik 2013). Therefore, to follow up on this gap, it was issued Law Number 19 of 2016 concerning Amendments to 11 of 2008 concerning Information and Electronic Transactions which is regulated in Article 28 paragraph (1) which reads "Everyone intentionally and without right spreads false and misleading news which results in consumer losses in Electronic Transactions". This article does have several similarities with Article 378 of the Criminal Code, but there are differences in the element of "self-benefit" which in Article 28 paragraph (1) of the ITE Law is no longer included. The consequence is that whether the fraudster benefits or not does not eliminate the criminal element of the act provided that the act is proven to cause losses to other parties (Kumparan, 2021).

After looking at the comparison between the two provisions, there is a difference in the imposition of criminal responsibility (Rizki Dwi, 2014), if in Article 378 of the Criminal Code there is only a maximum prison sentence of 4 (four) years whereas in Article 28 paragraph (1) it does not directly mention in the article, however, it is stated in Article 45 paragraph (2) of the ITE Law which states that the maximum prison sentence is 6 (six) years and there is a sanction in the form of a fine of IDR 1,000,000,000 (One Billion Rupiah).

Regulations related to investment specifically, for example in banking law which is regulated by Law Number 7 of 1992 jo. Law Number 10 of 1998 (Banking Law) which requires a business license as a Commercial Bank or Rural Bank. Meanwhile, in fraudulent investments there are activities in the form of collecting funds from the public which is clearly contrary to Article 46 paragraph (1) of Law Number 7 of 1992 which reads "*Any person who collects funds from the public in the form of savings in the form of demand deposits, time deposits, certificates of deposit, savings, and/or other similar forms without a business permit from the Minister as intended in Article 16 and Article 17, is threatened with imprisonment for a maximum of 15 (fifteen) years and a maximum fine of Rp. 10,000,000,000,- (ten billion rupiah)*" and categorized as a crime. The law on investment in this case is more related to the Banking Law which explicitly threatens imprisonment and fines against perpetrators of fraudulent

investments which are guided by legal threats to parties who carry out business activities without permission by collecting funds from the public. (Mantulangi, 2017)

Moreover, if an investment uses a Ponzi Scheme as regulated in Article 105 of Law 7 of 2014 concerning Trade that "Distribution Business Actors who implement a pyramid scheme system in distributing Goods as intended in Article 9 shall be punished with imprisonment for a maximum of 10 (ten) years and /or a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)." The element contained in the article is "pyramid scheme" is a term used in business activities whose results are not from the sale of a product or goods. (Ikhsani and Chumbadrika, 2022). However, these business activities are carried out by paying investors' profits with initial capital from newly joined members, not obtained from company profits. Then members who have already joined will get a bonus every time a member joins. A scheme like this will fail/discontinue if no more people join because these fraudulent investment individuals no longer have the funds to provide profits to their members. (Arno and Assad, 2017).

- B. The majority of Indonesian people are Muslims, based on data the Muslim population in Indonesia reaches 231 million people (World Population Review). Placing Indonesia in first position as a country with the largest Muslim population. For this reason, it is necessary to have references to Islamic teachings regarding a criminal act to know the law so that you will be more careful in making decisions. Self-investment in Islam is highly recommended because Islam teaches its followers to strive for a prosperous life both in this world and the hereafter so that physical and spiritual prosperity can be created. (Abdul Aziz 2010), and one of the efforts to make this happen is by investing, as mentioned in QS. Lukman: 34 QS. Al-Baqarah:261, QS. An-Nisa:9, and QS. AL-Hasyr: 18, although not directly related to investment, makes an analogy of preparation for the future, because in fact no one knows about the future.

However, not all investments are recommended in Islam, only investments that are in accordance with Islamic law are recommended to Muslims (Sakinah, 2015). Islam as a religion not only regulates its followers in matters of worship and piety to Allah SWT, but also regulates relationships between humans.

One of the relationships between humans is buying and selling, the law of buying and selling in Islam is halal, as in the word of Allah SWT in QS. Al-Baqarah: 275 "And Allah has permitted buying and selling and forbidden usury" but the law of buying and selling can change if there is illat', for example in the prohibition of buying and selling which contains ambiguities. In this case, it is hoped that Muslims who wish to invest should pay attention to Islamic values and ethical norms that are in accordance with Islamic law. Apart from that, it is necessary to comply with positive laws in force, especially those that regulate investment, namely Law Number 21 of 2008 concerning Sharia Banking. (Hayati 2016).

This ambiguity can occur in the buying and selling process, starting from the contract, the price of the goods, the time of payment, or the goods being traded themselves. In Islam, buying and selling which contains ambiguity is called gharar', there are differences in the opinions of the ulama, there are those who prohibit buying and selling which are gharar in nature, there are also some ulama who allow buying and selling gharar with their respective illat (Ibnu Rushd).

*Gharar* in language it is al-khida (fraud), al-khathr (betting), and al-jahalah (obscurity) which means gharar is an action in which there is an element of obscurity. The Al-Quran and Hadith expressly prohibit all buying and selling which contains elements of gharar which can be in the form of fraud or lack of clarity, the occurrence of gharar is a condition where the information related to the object being traded is incomplete. (Ramadhina, 2021).

*Gharar* is something that connects two things, which are neither clearer nor visible (Ibn Taimiyyah). If we refer to the case of fraudulent investment, it is certainly included in the elements of gharar buying and selling because there is no clarity regarding the product being bought and sold. However, not all buying and selling gharar is prohibited, there are 2 things about buying and selling gharar that are permitted, including agreeing on what is prohibited in buying and selling that does not

yet have a form (*mad'um*) and agreeing on its permissibility, such as buying and selling with a house object with which foundation. The type, size and true nature are not yet known.

This is permissible because it is a unity and a necessity so it is impossible to escape from it. The scholars agree about the existence of *gharar* in buying and selling, but there are also differences of opinion among the scholars. Some of them, including Imam Malik, view their *gharar* as light, or that it is impossible to separate it from the need to sell it, so it is permissible. Meanwhile, according to Imam Syafi'i and Abu Hanifah, it is of the opinion that the *gharar* is large, and it is possible to remove it from it, so it is forbidden to buy and sell the *gharar* (*Almanhaj*).

- C. If we discuss prevention efforts regarding the rise of criminal cases, it will be divided into two parties who have an important role in dealing with it, namely the government/law enforcement and the community itself. The government or law enforcers have a very important role in requiring regulatory steps that can regulate community actions.

In this case, the government can also carry out outreach related to investment by collaborating with senior traders to share knowledge and knowledge about investment and the risks that investors will face through its law enforcers. There are several efforts made, namely "penal" and "non-penal", "Penal" countermeasures focus more on the repressive nature after the incident occurs, while "non-penal" refers more to prevention efforts before the crime occurs or is preventive in nature.

It is called a difference because a repressive action can essentially be seen as a preventive effort in a fairly broad sense. (Sudarto, 1981). Meanwhile, pre-emptive efforts are part of non-penal measures because they are carried out by instilling moral norms and values in the community so that with these efforts it is hoped that the public will know the importance of acting in accordance with applicable laws so that there is no intention of the community to violate the regulations that have been established.

There are several efforts to overcome fraudulent investments that can be made, namely strengthening the regulations regarding online trading so that they state clearly and in detail what requirements must be met in establishing a platform or company in the field of futures trading, obtaining official permits for the creation of online trading sites because recently what often happens is that trading occurs through illegal sites that require using a VPN to access them, of course this becomes a difficulty in monitoring online trading activities (Primantari and Sarna, 2014).

*Cyber Patrol*It can also be done by cyber parties, where this effort is made by reading movements or activities on the internet and if activity occurs which is indicated as fraudulent investment, it will be immediately blocked so that people can no longer access the site and avoid fraud. (Ikhsani and Chumbadrik, 2022).

Efforts to prevent this require the role of the community to increase financial literacy by reading information or knowledge about investing so that people will know the risks they will face. Apart from that, people also know which investments are suitable and in line with their financial goals and are not easily tempted by the lure of big profits offered by fake investments.

## CONCLUSION

That in principle a fraudulent investment meets the elements contained in Article 378 of the Criminal Code which regulates criminal acts of fraud. Online investment is widespread among the public that use technology or are online-based, there are several elements that cannot be fulfilled in article 378, including the media element which is not mentioned in article 378 because fraudulent investments now tend to be online-based, where electronic media is not yet recognized in the Criminal Code or Criminal Procedure Code, apart from that there are limitations. regarding the imposition of criminal liability on legal subjects in the form of legal entities or corporations as parties who commit an act of online fraud. A fraudulent investment also violates Article 46 paragraph (1) of Law Number 7 of 1992 concerning Banking. Banking is aimed at parties who carry out business activities without permission by collecting funds from the public.

Self-investment in Islam is highly recommended because Islam teaches its followers to strive for a prosperous life both in the world and the hereafter so that physical and spiritual prosperity can be created and one of the efforts to make this happen is by investing, as mentioned in the QS. Lukman: 34 QS. Al-Baqarah:261, QS. An-Nisa:9, and QS. AL-Hasyr:18. However, not all investment is recommended in Islam, only investment that is in accordance with Islamic law is recommended to Muslims in the Al-Quran and Hadith which strictly prohibits all buying and selling which contains elements of gharar which can be in the form of fraud or lack of clarity, the occurrence of gharar is a condition where information related to the object being traded is incomplete.

In efforts to overcome the latest cases of fraudulent investment, there needs to be continuity between the government and the community itself. The government can make efforts in the form of repression by holding seminars or outreach regarding investment science in collaboration with traders who are senior and experienced in the investment field. Apart from that, the role of law enforcement can be in the form of repressive measures or efforts made after a criminal act has occurred, in the sense of strengthening sanctions against parties who make fraudulent investments in order to provide a deterrent effect. The public also needs to increase their knowledge about investment by reading financial literature with all its risks so that they will understand what they will face. It is also hoped that the public will not be easily tempted by the lure of profits that tend to be unreasonable in a relatively easy way and in a short time.

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