

COMBATING PONZI SCHEMES: AN IN-DEPTH LOOK AT LAW ENFORCEMENT EFFECTIVENESS IN INDONESIAN CONTEXT

Rizaldy ANGGRIAWAN*

PhD student (University of Szeged)

Abstract

Ponzi schemes, infamous for their ability to exploit unsuspecting investors, continue to pose a significant challenge to financial authorities globally. Indonesia, with a burgeoning economy and a growing financial sector, is not immune to the threat of fraudulent activities. This study delves into the effectiveness of existing law enforcement measures in Indonesia to combat Ponzi schemes, shedding light on areas that need improvement. The research employs a mixed-methods research design, the study combines quantitative and qualitative data to comprehensively examine the issue. The findings reveal that while Indonesia has specific legal provisions to prosecute Ponzi scheme operators based on the sectoral laws and regulations, law enforcement still faces challenges related to evidentiary factors, witness factors, legal instrument, and limited resources. The reluctance of victims to report these schemes hinder successful prosecution. Law enforcement agencies often prioritize other criminal offenses due to resource constraints. To address these challenges, the study emphasizes the need for enhanced collaboration among law enforcement agencies and banking institutions, and the allocation of resources for these cases should be reconsidered. These reforms are essential to improve the state of law enforcement and protect potential victims of Ponzi schemes in Indonesia.

Keywords: Effectiveness Assessment, Financial Crime, Indonesia, Law Enforcement, Ponzi Scheme.

* ORCID: <https://orcid.org/0000-0002-7195-769X>

1. Introduction

The insidious nature of Ponzi schemes and their ability to exploit unsuspecting investors presents a formidable challenge to financial authorities worldwide. Indonesia, with its growing economy and expanding financial sector, is not exempt from the threat posed by these fraudulent activities. Data from the Central Statistics Agency (*Badan Pusat Statistik* or BPS) shows that Indonesia's economic growth in the second quarter of 2023 was recorded at 5.17% (yoy), an increase from growth in the previous quarter of 5.04% (yoy).¹ However, in recent years, there has been a growing concern regarding the prevalence of Ponzi schemes within the country, prompting the Indonesian government to implement regulatory measures aimed at detection and prevention. Coordinating Minister for Economic Affairs, Airlangga Hartarto, highlighted that there are still many cases in the financial services sector that need to be resolved so as not to harm the industry's reputation, such as in Ponzi scheme investments where it is stated that public complaints continue to increase reaching more than 130,000 complaints.²

Ponzi schemes, named after Charles Ponzi, the infamous scam artist of the early 20th century, continue to be a persistent menace to investors in Indonesia and across the globe. These schemes promise attractive, yet unsustainable, returns on investments, often leading individuals to part with their hard-earned savings.³ Ponzi schemes, particularly in the context of Indonesia, have garnered considerable attention from scholars, resulting in numerous studies that shed light on various facets of this intricate issue. In 2022, Amanda et al conducted a study that offers an insightful perspective by focusing on the prevalence of money games within the Tiktok E-Cash application. Their research underscores the significance of harnessing existing legal provisions for law enforcement in combatting these unlawful activities.⁴ Furthermore, the research conducted by Setiawan and Ardison in 2021 brings to the forefront the severity of large-scale investment scams, with a specific emphasis on Ponzi schemes, within Indonesia. Their comprehensive analysis of the problem provides valuable insights into the vulnerabilities of potential victims and the challenges faced by law enforcement and government agencies.⁵ In addition, the research conducted by Ghazmi and Amedi, which focuses on VTube as a case study of illegal investment activities, introduces another intriguing dimension. Their proposal for the issuance of a legal decree by the

¹ Ying Xian WONG: Indonesia's Second-Quarter GDP Growth Beat Expectations. *The Wall Street Journal*. August 7, 2023. <https://bit.ly/4dfArEM> (Accessed on 18 February 2024).

² Riantiza Meilanova DENIS: Kasus Jiwarsaya Hingga Skema Ponzi Jadi Sorotan Menko Airlangga. *Bisnis*. July 7, 2022. <https://bit.ly/3yswJZe> (Accessed on 18 February 2024).

³ Suwitho SUWITHO – Ikhsan Budi RIHARJO – Danang Ary DEWANGGA: The Nexus between Ponzi Scheme and Multi-Level Marketing Systems: Evidence in Indonesia. *Cogent Social Sciences* 9, 1. (2023), 1–17. <https://doi.org/10.1080/23311886.2023.2178540>

⁴ Shilvia AMANDA – Sayid Mohammad Rifqi NOVAL – Elis HERLINA: Law Enforcement Against The Practice of Money Games With Ponzi Scheme in Illegal Investments in The Tiktok E-Cash Application in Indonesia. *Res Nullius Law Journal* 4, 1. (2022), 57–76.

⁵ Peter Jeremiah SETIAWAN – Hansel ARDISON: Criminal Victimization On Large-Scale Investment Scam In Indonesia. *Veritas et Justitia* 7, 1. (2021), 1–30.

OJK's Investment Task Force (SWI) instead of solely relying on press releases sparks a debate. The legal implications of such a decree and the potential challenges in its enforcement warrant further examination.⁶ Lastly, the research by Hidajat and Phung delves into Ponzi schemes from the perspective of the perpetrators. It is fascinating to observe how Ponzi schemes have adapted to modern contexts, incorporating technology and disguises related to religion or belief in their investment schemes.⁷

While numerous studies have been conducted on the issue of Ponzi schemes in Indonesia, none have systematically assessed the effectiveness of current law enforcement measures and explored the factors influencing their efficacies. To address this research gap, this study aims to contribute by providing a thorough and comprehensive examination of the existing law enforcement mechanisms in Indonesia, as they pertain to combatting Ponzi schemes. By scrutinizing the regulatory landscape, the study aims to identify areas of requiring improvement, shedding light on the challenges in combating these fraudulent activities. Furthermore, the research begins with exploring the intricate nature of Ponzi schemes, emphasizing the importance of understanding their evolving tactics and the hurdles associated with their identification. By delving into the specific context of Indonesia, this study contributes to the discourse on Ponzi scheme, offering a nuanced understanding of the effectiveness of law enforcement measures in a rapidly developing economy. It serves as a reminder that, in the fight against Ponzi schemes, ongoing vigilance and adaptability are paramount to protect the financial interests of Indonesian investors and maintain trust in the nation's financial markets.

2. Unraveling the Intricacies of Ponzi schemes

The Ponzi scheme, named after Charles Ponzi, is a fraud investment scheme where the operator attracts new investors by guaranteeing attractive returns with minimal risk. The funds collected from new investors are then utilized to pay interest to those who invested earlier.⁸ Ponzi schemes are a form of fraud that operates on a deceptive financial model. These schemes are illegal for several reasons, including their unethical nature, their potential to cause devastating financial harm to individuals, and the negative impact they can have on the broader financial market. Ponzi schemes are not yet explicitly regulated in Indonesian law, but business actors using Ponzi scheme systems can still be charged under Indonesian criminal law and under Law Number 7 of 2014 on Trade. These schemes prey on the trust and vulnerability of investors,

⁶ Azeem Marhendra AMEDI – Shabrina Fadiah GHAZMI: VTube Indonesia's Business Activities: How Can Ojk's Investment Task Force Take Action Against Illegal Investments. *The Lawpreneurship Journal* 1, 2. (2021), 139–157., <https://doi.org/10.21632/tlj.1.2.139-157>

⁷ Taofik HIDAJAT – Thanh-Binh PHUNG: Ponzi Scammer: Old Wine in New Bottles. *International Business and Accounting Research Journal* 7, 2. (2023), 184–93. <http://dx.doi.org/10.35474/ibarj.v7i2.261>

⁸ Anding ZHU – Peihua FU – Qinghe ZHANG – Zhenyue CHEN: Ponzi Scheme Diffusion in Complex Networks. *Physica A: Statistical Mechanics and Its Applications* 479, (2017), 128–36. <https://doi.org/10.1016/j.physa.2017.03.015>

convincing them to hand over their hard-earned money under false pretenses.⁹ This illegal behavior undermines the foundation of trust that the financial industry relies on, eroding confidence in legitimate investment opportunities. Furthermore, when these schemes inevitably collapse, they can lead to catastrophic financial consequences for countless victims.¹⁰ Not only do individuals lose their savings, but the ripple effects of these scams can also destabilize the financial market, leading to a breakdown of investor trust and the potential for broader economic consequences. Therefore, Ponzi schemes are not only morally wrong but also pose significant threats to financial stability and must be vigorously combated and prosecuted.¹¹

Ponzi schemes follow a predictable trajectory as they evolve through distinct phases, ultimately culminating in their catastrophic collapse. These phases are essential to understanding the inevitable pitfalls of these fraudulent investment schemes (Figure 1).



Figure 1. The phases of Ponzi scheme

The establishment phase marks the scheme's inception. During this early stage, the perpetrators create the framework of the Ponzi scheme and actively seek out their initial investors. To garner trust and credibility, these early participants are often offered disproportionately high returns on their investments. These initial successes are crucial to set the stage for the scheme's expansion. The Establishment Phase is characterized by an air of legitimacy, as these early investors typically receive their returns as promised, further enticing others to join. As the scheme transitions into the expansion phase, it starts to gain momentum. Here, word-of-mouth referrals and, at times, aggressive marketing strategies are employed to draw in a growing number of investors. The promise of high returns, coupled with the endorsements of earlier participants, can be enticing, leading to an influx of new capital into the scheme. The perceived success of these early participants fuels the growth, attracting even more individuals who believe they have stumbled upon a lucrative investment opportunity.¹²

⁹ Massimo BARTOLETTI – Salvatore CARTA – Tiziana CIMOLI – Roberto SAIA: Dissecting Ponzi Schemes on Ethereum: Identification, Analysis, and Impact. *Future Generation Computer Systems* 102, (2020), 259–277. <https://doi.org/10.1016/j.future.2019.08.014>

¹⁰ Irfan ULLAH – Wiqar AHMAD – Arshad ALI – Shakir ULLAH: Red Flags of the Modaraba Scam-a Ponzi Scheme in Pakistan: Using Victim Accounts for Better Prevention. *Crime Prevention and Community Safety* 23, 3. (2021), 278–301. <https://doi.org/10.1057/s41300-021-00124-y>

¹¹ Taofik HIDAJAT – Ina PRIMIANA – Sulaeman RAHMAN – Erie FEBRIAN: Why Are People Trapped in Ponzi and Pyramid Schemes?. *Journal of Financial Crime* 28, 1. (2020), 187–203. <https://doi.org/10.1108/JFC-05-2020-0093>

¹² Melissa S. BAUCUS – Cheryl R. MITTENESS: Crowdfunding: Avoiding Ponzi Entrepreneurs When Investing in New Ventures. *Business Horizons* 59, 1. (2016), 37–50.

However, the expansion phase does not last indefinitely. As the scheme matures, it approaches the Saturation Phase, which is marked by a slowdown in the recruitment of new investors. During this phase, the scheme struggles to fulfill its financial commitments to the existing participants, as the flow of new investments can no longer keep up with the payouts promised to earlier investors.¹³ This results in growing financial strain and mounting pressure on the operators to keep the illusion of profitability intact. Finally, the collapse phase is an inevitable outcome of the Ponzi scheme's unsustainable model. In this stage, the scheme reaches its breaking point. The promised returns can no longer be maintained, leading to its ultimate collapse. This can transpire for several reasons, including the inability to attract new investors, regulatory intervention that exposes the scheme's fraudulent nature, or the perpetrators opting for a voluntary shutdown to evade detection.¹⁴ Regardless of the cause, the end result is always the same: significant financial losses for those involved, and the unmasking of the fraudulent activities that sustained the scheme throughout its existence.

Ponzi schemes, the tricky money scheme created with bad intentions of divesting investors of their hard-earned capital, exhibit a carefully structured system, artfully tailored to instill unwavering faith among the public. This duplicitous design entices individuals to commit their financial resources to seemingly lucrative yet fictitious investment opportunities. It is only when the orchestrator of this financial deception, often a charismatic leader or mastermind, senses the accumulation of wealth to be sufficient, that they vanish into obscurity, absconding with the investments of their unsuspecting victims.¹⁵

The bait employed by organizations adopting the Ponzi scheme modus operandi includes alluring promises, such as extravagant Returns on Investment (ROI) augmented by enticing bonuses and guaranteed rates of return. These returns, while undeniably appealing to prospective investors, are invariably presented with an aura of realism, carefully calibrated to elicit trust and belief.¹⁶

Ponzi enterprises, by design, are sustained through the continuous recruitment of new members, ensuring the constant inflow of capital. These financial inflows are not channeled into any substantive business or legitimate investment, but rather serve as

<https://doi.org/10.1016/j.bushor.2015.08.003>

¹³ Peihua FU – Anding ZHU – He NI – Xin ZHAO – Xiulin LI: Threshold Behaviors of Social Dynamics and Financial Outcomes of Ponzi Scheme Diffusion in Complex Networks. *Physica A: Statistical Mechanics and Its Applications* 490, (2018), 632–642. <https://doi.org/10.1016/j.physa.2017.08.148>

¹⁴ Darwin CORTÉS – Julieth SANTAMARÍA – Juan F VARGAS: Economic Shocks and Crime: Evidence from the Crash of Ponzi Schemes. *Journal of Economic Behavior & Organization* 131, (2016), 263–75. <https://doi.org/10.1016/j.jebo.2016.07.024>

¹⁵ Mervyn K LEWIS: New Dogs, Old Tricks. Why Do Ponzi Schemes Succeed?. *Accounting Forum* 36, 4, (2012), 294–309. <https://doi.org/10.1016/j.accfor.2011.11.002>

¹⁶ Marc HOFSTETTER – Daniel MEJÍA – José Nicolás ROSAS – Miguel URRUTIA: Ponzi Schemes and the Financial Sector: DMG and DRFE in Colombia. *Journal of Banking & Finance* 96, (2018), 18–33. <https://doi.org/10.1016/j.jbankfin.2018.08.011>

a reservoir for disbursements to prior members who have registered.¹⁷ The system's vulnerability becomes manifest when the recruitment of new members falters, leading inexorably to its demise. Scholars often identify Ponzi schemes as a variant of pyramid schemes due to their inherent similarities, despite having distinct structures. In a Ponzi scheme, investors are enticed with promises of high returns, a model that, interestingly, exhibits pyramid-like characteristics as early investors are paid with funds from subsequent ones. This parallel is significant when considering the hierarchical recruitment model of traditional pyramid schemes, where participants earn money through the recruitment of others. Both schemes share common traits, such as being unsustainable and facing collapse without a continuous influx of participants.¹⁸ Their deceptive nature, coupled with the absence of legitimate business activities justifying promised returns, renders both Ponzi and pyramid schemes illegal and subject to legal consequences for exploiting participants. The beneficiaries of this fraudulent stratagem are limited to early entrants, while subsequent investors, arriving late to the nefarious party, inevitably find themselves bearing the brunt of financial losses.¹⁹

A disconcerting statistic, as documented by the Financial Services Authority (OJK) Investment Alert Task Force (SWI), highlights the profound toll inflicted upon the public by fraudulent investments of this nature, spanning the period from 2011 to 2022. Cumulative losses, reaching approximately IDR 221 trillion, have been exacted upon countless individuals, numbering in the millions (Figure 2).²⁰

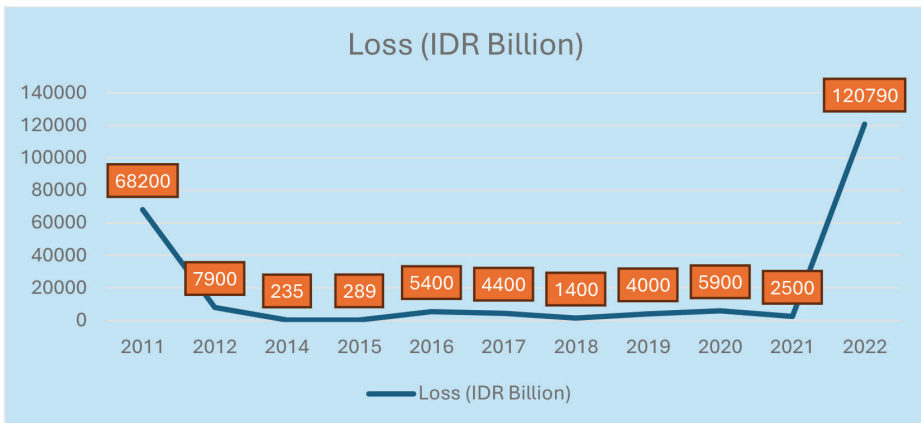


Figure 2. Cumulative financial damage resulting from illegal investments between 2011 and 2022.

¹⁷ Rebecca NASH – Martin BOUCHARD – Aili MALM: Investing in People: The Role of Social Networks in the Diffusion of a Large-Scale Fraud. *Social Networks* 35, 4. (2013), 686–698.

¹⁸ Pihu FENG – Xin LU – Zaiwu GONG – Duoyong SUN: A Case Study of the Pyramid Scheme in China Based on Communication Network. *Physica A: Statistical Mechanics and Its Applications* 565, (2021), 125548. <https://doi.org/10.1016/j.physa.2020.125548>

¹⁹ Smith FELICIA: Madoff Ponzi Scheme Exposes the Myth of the Sophisticated Investor. *University of Baltimore Law Review* 40, 2. (2010), 215–284.

²⁰ Kenzu SANJA: Public Losses Due to Illegal Investments Reach Rp17 Trillion: OJK. *Antaranews*, August 5, 2021, <https://bit.ly/3Wvdk1H> (Accessed on 18 February 2024).

Moreover, it is imperative to consider that the Ponzi scheme, in its characteristic operation, invariably engenders a substantial multitude of aggrieved participants. This phenomenon can be elucidated through a discerning exemplar, as graphically depicted in Figure 3. At the inception of this scheme, a solitary perpetrator initiates the process and subsequently lures and beguiles a cohort of six initial investors. In order for these six individuals to yield a return on their investments and recoup their capital, each of them is mandated to secure the participation of an additional sextet of investors. The ramifications of this cascading recruitment strategy reverberate through successive levels of the scheme.²¹ At the third tier, an aggregate of 36 novices enrolls. These 36 individuals, in a hierarchical fashion, emulate the recruitment endeavors of their predecessors, thus perpetuating this chain. This sequence extends downward until the scheme reaches its nadir, denoted as level 14, where an astonishing figure of 13,060,694,016 participants emerges. This staggering numerical influx surpasses even the global human population, thereby underscoring the prodigious scale of the Ponzi scheme's expansion.

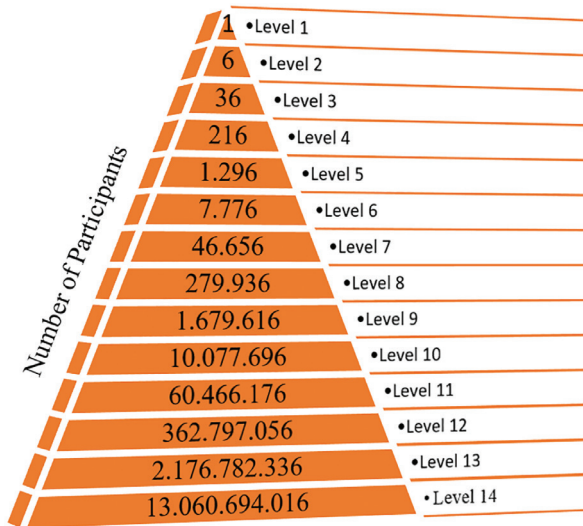


Figure 3. The illustration of exponential growth of a Ponzi scheme

Within enterprises that implement such stratagems, the ostensibly offered products merely serve as a veneer to conceal a nefarious underpinning. The revenue stream of these fraudulent schemes derives primarily from initiation fees assessed upon the recruitment of new participants.²² The augmentation of this income is contingent upon

²¹ David DOMEIJ – Tore ELLINGSEN: Rational Bubbles and Public Debt Policy: A Quantitative Analysis. *Journal of Monetary Economics* 96, (2018), 109–123. <https://doi.org/10.1016/j.jmoneco.2018.04.005>

²² Clinton FREE – Pamela R. MURPHY: The Ties That Bind: The Decision to Co-Offend in Fraud. *Contemporary Accounting Research* 32, 1. (2015), 18–54. <https://doi.org/10.1111/1911-3846.12063>

the expansion of the participant base, and this accrual is subsequently disbursed to the instigators and apex individuals within the scheme's hierarchical construct.²³ It is imperative to acknowledge that this design predominantly favors the early entrants, ensnaring them in the upper echelons of the pyramid.

A case in point is the scenario surrounding Wahyu Kenzo's trading robot, which amassed a membership base of 25,000 individuals while incurring losses amounting to IDR 9 trillion. Budi Hermanto, Chief of Police in Malang City, explained that the suspect initiated an investment venture involving trading robots in early 2020, amid the backdrop of the Covid-19 pandemic. Seizing upon the economic hardships afflicting the populace at that juncture, the suspect leveraged the circumstances to proffer collaborative opportunities under the guise of product distribution.²⁴ Notably, these products included Greenshake and Gluberry nutritional milk, bearing the imprimatur of PT Pansaky Berdikari Bersama (Pansaka), an enterprise overseen by the suspect. Intriguingly, as the narrative unfolded, the suspect veered toward soliciting members for joint efforts in product sales conjoined with a trading investment incentive mediated by the Autotrade Gold (ATG) application robot. The suspect dangled promises of biweekly investment returns, amounting to 2,000 US dollars or the equivalent of IDR 30 million. Members occasionally endeavored to amass investment capital from multiple recruits whom they enlisted into the ATG trading robot venture, thus engendering a network of entrants. However, Wahyu Kenzo failed to fulfill his promises, resulting in financial losses of IDR 9 trillion (equivalent to EUR 534 million) for 25,000 victims ensnared in his fraudulent scheme.²⁵

Furthermore, it is worth emphasizing that a defining trait of these Ponzi or pyramid schemes is that the distribution of commissions or bonuses remains disassociated from product sales volume and hinges upon the establishment of a pyramid-shaped network with a prescribed quota of members.²⁶ The accentuation gravitates towards member recruitment rather than product transactions, thus insulating the income streams from fluctuations in product sales. Concomitantly, the membership registration fees assume a substantial pecuniary magnitude, serving the dual purpose of subsidizing commissions for the recruiting members and the beneficiaries occupying the apex of the pyramid hierarchy.

In the case of the Jombingo e-commerce platform, which left users grappling with financial losses tallying in the hundreds of millions of rupiah, the modus operandi starkly diverged from conventional e-commerce paradigms. While most e-commerce

²³ Stacie BOSLEY – Kim K. MCKEAGE: Multilevel Marketing Diffusion and the Risk of Pyramid Scheme Activity: The Case of Fortune Hi-Tech Marketing in Montana. *Journal of Public Policy & Marketing* 34, 1. (2015), 84–102. <https://doi.org/10.1509/jppm.13.086>

²⁴ Werdiono DEFRI: Robot Trading Fraud, Wahyu Kenzo CS, Accused in Layers. *Kompas*, September 6, 2023, <https://bit.ly/46BOKus> (Accessed on 18 February 2024).

²⁵ Nugroho JOHANNES: Arrest of Indonesia's 'Crazy Rich Surabayan' Spotlights Risk of Robot-Trading Investment Scams. *South China Morning Post*, March 26, 2023, <https://bit.ly/3yqUwbO> (Accessed on 18 February 2024).

²⁶ Mervyn K LEWIS: *Understanding Ponzi Schemes: Can Better Financial Regulation Prevent Investors from Being Defrauded?*. Northampton, Edward Elgar Publishing, 2015. 1–5.

platforms afford users immediate purchasing capabilities, Jombingo mandated a prerequisite entailing the recruitment of new users prior to unlocking transactional privileges. The Jombingo victims had previously made a police report at the Resort and Crime Agency of the National Police Headquarters with Register Number LP/B/225/VIII/2023/SPKT/BARESKRIMPOLRI. It elucidated that a victim's ordeal commenced with the receipt of an email originating from zhangdandan33@gmail.com, extending an offer to participate in an application known as Jombingo, ostensibly an e-commerce platform underpinned by a commission-based framework. The victim, unfamiliar with the email's sender but under the impression that it emanated from the application itself, proceeded to install the application as per the instructions.²⁷ Subsequently, the victim was instructed to deposit funds and enlist additional individuals to partake in the application's functionalities, involving the acquisition of offered goods. As a preliminary step, the victim was mandated to replenish a specified sum of money, which, driven by confidence in the offer, culminated in an outlay of 20 million Rupiah, remitted in installments. However, with the passage of time, the victim's capacity to withdraw the remaining balance from their account dissipated, culminating in financial detriment.²⁸ This limitation is orchestrated by the individuals operating the fraudulent system, who strategically manipulate and restrict the victim's access to their funds, exacerbating the adverse consequences of the fraudulent activity.

3. Legal Framework for Addressing Ponzi Scheme

Ponzi scheme draws the attention of Indonesian law primarily through the legal tenets stipulated in Article 372 in conjunction with Article 378 of the Criminal Code concerning embezzlement and fraud.²⁹ This scheme, characterized by its inherently deceptive nature, carries the potential for those convicted to face a maximum prison sentence of four years. Furthermore, the prevailing legal recourse for addressing Ponzi scheme perpetrators within the Indonesian legal framework necessitates their prosecution under sectoral laws and regulations. This approach is exemplified in cases such as that of PT Cakrabuana Sukses Indonesia, which engaged in the unauthorized solicitation of public funds.³⁰ In doing so, this company violated the provisions articulated in Article 59 of Law Number 21 of 2008, a statute that pertains to Sharia Banking.³¹ Under the purview of Article 59, any entity involved in business activities

²⁷ Wildan NOVIANSAH: Rugikan Korban Hingga Puluhan Juta, Begini Modus Tipu-Tipu Jombingo. *DetikNews*, July 20, 2023, <https://bit.ly/4fu9dM1> (Accessed on 17 February 2024).

²⁸ Catriana ELSA – Sukmana YOGA: Jombingo Diduga Terapkan Skema Ponzi Berkedok E-Commerce. *Kompas*, June 30, 2023, <https://bit.ly/3YxQk4B> (Accessed on 17 February 2024).

²⁹ Pwee LENG – Handjaya A. HUGAN: Bank Criminal Act: Case of Fraud Using Letter of Credit-Bank as a Victim. *Chinese Business Review* 17, 3. (2018), 105–154. <https://doi.org/10.17265/1537-1506/2018.03.002>

³⁰ Dian ROKHMAWATI – Desman Serius NAZARA – Muhammad IRVAN – Deddy Novie Citra ARTA: The Role of Corporate Governance as a Moderating Variable in Relationship of Determinant Factors Stock Return. *JEMSI Jurnal Ekonomi, Manajemen, dan Akuntansi* 9, 1. (2023), 86–92.

³¹ Law Number 21 of 2008 on the Sharia Banking Law, serves as the primary regulatory framework for overseeing Islamic financial activities in Indonesia. One of its key features is the incorporation of criminal

related to Sharia Banking, Sharia Business Units, or the solicitation of savings and investments in adherence to Sharia principles, without having obtained the requisite license from Bank Indonesia, is held accountable for their actions. Those found in breach of Article 59 face imprisonment for a period ranging from a minimum of five years to a maximum of fifteen years. Simultaneously, they are liable to financial penalties, the quantum of which may extend from a minimum of IDR 10 billion to a maximum of IDR 200 billion.

Likewise, PT Dream for Freedom, a company involved in investment activities, and UN Swissindo, an organization promoting financial solutions through innovative models, both breached the regulatory framework due to their activities diverging from the permissions granted to them. Their transgressions, particularly their unauthorized collection of funds from the public in the form of savings, are addressed by the provisions delineated in Article 46(1) of Law Number 10 of 1998, which amends Law Number 7 of 1992 governing Banking.³² This legal statute explicitly stipulates that the act of accumulating funds from the public in the form of savings, without the requisite business license from Bank Indonesia, constitutes a criminal offense. Those found in breach of this provision are liable to stringent penalties. The prescribed consequences for such transgressions encompass the potential imposition of imprisonment, with a minimum duration of five years and a maximum of fifteen years. In tandem with the prison sentences, substantial financial penalties are also mandated. These financial penalties, ranging from a minimum of IDR 10 billion to a maximum of IDR 200 billion, serve as a deterrent against unlicensed financial operations and underscore the gravity of engaging in such activities without the necessary authorizations.³³

Moreover, in cases where Ponzi schemes transpire devoid of the essential approvals from the Financial Services Authority (OJK), the Indonesian legal system offers a robust mechanism for addressing such transgressions. This mechanism is embodied in Article 103 of Law Number 8 of 1995, which regulates Capital Markets.³⁴ Under this

law rulings to ensure compliance. In the context of Article 59, the criminal provisions underscore the severity of engaging in business activities related to Sharia Banking without the necessary authorization from Bank Indonesia. The law aims to safeguard the integrity of Sharia Banking practices by imposing legal consequences on entities that operate outside the established regulatory framework.

³² The main features of Law Number 10 of 1998 include stringent regulations to ensure the stability and integrity of the banking sector. Specifically, Article 46(1) of Law Number 10 of 1998 empowers regulatory authorities to take action against unauthorized collection of funds from the public, such as the activities undertaken by the mentioned entities. The criminal rulings associated with this law serve as a deterrent against activities that could undermine the financial system and jeopardize the interests of the public. By imposing criminal liability, the law aims to maintain the trust and confidence of the public in the banking sector, discouraging any actions that may compromise the security of funds entrusted to financial institutions.

³³ Otoritas Jasa KEUANGAN: Press Release: OJK And Investment Alert Task Force Uncover Two Illegal Investment Cases and a Loan Repayment Fraud. *OJK*. <https://bit.ly/3SD5IOP> (Accessed on 17 February 2024).

³⁴ Sylvana Murni Deborah HUTABARAT – Siti Nurul Intan Sari DALIMUNTHE – Wardani RIZKIANTI – Muthia SAKTI: Supervision of Financial Planning Companies in Consumer Protection Efforts. *Borobudur Law Review* 5, 1. (2023), 43–54. <https://doi.org/10.31603/burrev.7776>

legal provision, any entity engaging in capital market activities without the requisite permission, official approval, or registration is subject to rigorous legal sanctions. These sanctions encompass the potential imposition of imprisonment for a maximum period of five years. Simultaneously, significant financial penalties come into play, with the potential to reach a maximum amount of IDR 5 billion.

Furthermore, the legal framework in Indonesia encompasses a comprehensive prohibition against pyramid schemes, elucidated within Article 9 of Law Number 7 of 2014 concerning Trade. This statutory provision explicitly delineates that distribution business actors (individual or business entity) are unequivocally forbidden from implementing pyramid scheme structures in the distribution of goods.³⁵ The accompanying explanation of Article 9 provides an insightful definition of pyramid schemes, characterizing them as business activities that do not derive their basis from the sale of tangible goods. Instead, these schemes exploit opportunities for financial gains or rewards, primarily arising from the participation fees levied upon subsequent entrants or individuals who join the scheme after the initial business partner. This definition underscores the deceptive and unsustainable nature of pyramid schemes, which prioritize recruitment over legitimate product sales. Moreover, the legal framework does not stop at mere prohibition. Article 105 of the same law prescribes punitive measures aimed at curbing the utilization of pyramid scheme mechanisms by distribution business actors. These penalties are significant, encompassing the potential imposition of imprisonment for a maximum duration of ten years, thereby emphasizing the gravity of perpetuating pyramid schemes. In addition to imprisonment, substantial financial penalties are in place, with the potential to reach a maximum of IDR 10 billion.

Furthermore, the stringent prohibition against pyramid schemes is also firmly embedded in the legal framework of Indonesia, as evidenced in Article 21, subsection k, of Minister of Trade Regulation Number 70 of 2019, which regulates the Direct Distribution of Goods. This legal provision leaves no room for ambiguity as it explicitly bars companies that hold trading business licenses from participating in activities structured around a pyramid scheme. The imposition of penalty as stipulated by Article 105 or Trade Law is based on the criteria specified by the Article 30 of Minister of Trade Regulation Number 70 of 2019. Article 30 goes a step further by providing explicit criteria for identifying a pyramid scheme. According to this article, a pyramid scheme is characterized by the accumulation of commissions, originating from membership recruitment fees and marketing programs. These commissions are generated in the absence of any genuine goods being sold by the company. This legal foundation serves as a robust mechanism to curtail the proliferation of pyramid schemes within the business sector.³⁶ By clearly prohibiting companies with trading business licenses from

³⁵ Ridho Syahputra MANURUNG: Juridical Review on The Crime of Fraud in The Implementation of The Pyramid Scheme System of Business Actors. *Calitatea* 23, 188. (2022), 139–144. <https://doi.org/10.47750/QAS/23.188.20>

³⁶ Tri HIDAYATI – Masyithah UMAR – Fathurrahman AZHARI: Political Reorientation of Indonesian Sharia Economic Law: Legal Olitic of Trade Law on Sharia Multilevel Marketing. *Mazahib* 21, 2. (2022), 245–290. <https://doi.org/10.21093/mj.v21i2.4971>

engaging in such activities, it reinforces the importance of transparency and legality within the marketplace. Moreover, the detailed criteria set forth in Article 30 offer clear and objective benchmarks for identifying pyramid schemes, facilitating regulatory oversight and enforcement.

Furthermore, the legal framework in Indonesia provides for the prosecution of individuals engaged in fraudulent investment schemes, particularly those employing Ponzi schemes, under the ambit of Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Within the scope of this statute, the actions of these individuals, when analyzed in light of the statutory language, are characterized by the placement of investment funds obtained from victims. These funds are reasonably suspected to constitute the proceeds of fraudulent activities, with the subsequent intent to engage in money laundering. This multifaceted transgression carries the potential for significant legal repercussions. Specifically, those found guilty may face a prison sentence extending up to a maximum of twenty (20) years. In addition to imprisonment, the law also empowers the imposition of fines, with the quantum of such fines reaching up to IDR 10 billion. Given that the actions of perpetrators involved in Ponzi schemes align with the stipulations of Article 3, this legal recourse becomes a viable means of holding them accountable for their actions. It underscores the seriousness with which the Indonesian legal system views fraudulent investment activities and money laundering, and it serves as a powerful deterrent against individuals who seek to exploit financial systems for their illicit gains.³⁷

Furthermore, in the context of combatting illicit investments such as Ponzi scheme and ensuring legal accountability, the legal framework concerning corporate wrongdoing also assumes significant importance. This framework is delineated under Article 46(2) of Law Number 10 of 1998 in conjunction with Law Number 7 of 1992, which regulates the banking sector, and is further specified under Article 59(2) of Law Number 21 of 2008, which governs Sharia Banking. Article 59(2) of Law Number 21 of 2008 serves as a crucial legal provision, particularly when the activities specified in paragraph (1) encompassing banking and financial operations are conducted by a legal entity. In such cases, the legal entity in question, often structured as a limited liability company, becomes the focus of prosecution. However, the legal entity is not treated as an abstract entity but is instead held accountable through the individuals who issued orders for the actions in question and those who assumed leadership roles in executing these actions. This legal framework thus directs attention to the functions and responsibilities of various corporate organs within the entity. As limited liability companies are widely utilized in the banking sector, the roles and obligations of these corporate entities' organs gain paramount significance. In cases involving corporate wrongdoing, the legal system in Indonesia emphasizes the principle of individual

³⁷ Achmad SULCHAN – Ida MUSOFIANA – Althof RUSYDI: Implementation of Principles in Identifying Service Users Regarding the Prevention and Eradication of Money Laundering Offense. *International Journal of Law Reconstruction* 5, 1. (2021), 61. <https://doi.org/10.26532/ijlr.v5i1.15492>

accountability within the corporate framework.³⁸ This approach seeks to ensure that those who issue instructions and provide leadership in the commission of illicit actions bear legal consequences.

The legal framework surrounding corporate governance and accountability in Indonesia is well-defined, with specific roles and responsibilities attributed to various corporate organs. Law Number 40 of 2007 concerning Limited Liability Companies, in its Article 1, Section 2, provides a fundamental framework that outlines these corporate organs, specifically designating them as the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Each of these organs plays a distinct and crucial role in the corporate structure.³⁹

Article 1, Section 4 of this law clarifies the role of the General Meeting of Shareholders (GMS) as an organ vested with authority that extends beyond that granted to the Board of Directors or the Board of Commissioners. This authority is exercised within the boundaries defined by the law and the company's articles of association. The GMS holds a pivotal position in corporate decision-making and governance, serving as a forum where shareholders can collectively make significant decisions regarding the company's operation and management.⁴⁰ Conversely, Article 1, Section 5 identifies the Board of Directors as the corporate organ vested with full authority and responsibility for the day-to-day management of the company. This includes safeguarding the company's interests in alignment with its objectives and representing the company both within and outside the legal realm. The actions and decisions of the Board of Directors are conducted in strict accordance with the provisions outlined in the company's articles of association.⁴¹ The Board of Directors is, therefore, responsible for executing the company's strategy, managing its affairs, and ensuring its compliance with the law. The Board of Commissioners, as detailed in Article 1, Section 6, serves a distinct role. This organ is primarily responsible for exercising both general and specific oversight functions in accordance with the company's articles of association. Furthermore, the Board of Commissioners offers advisory support to the Board of Directors.⁴² This advisory role is vital in ensuring that the company's operations align with ethical, legal, and corporate governance standards.

³⁸ Ilham NURHIDAYAT – Bevaola KUSUMASARI: Strengthening the Effectiveness of Whistleblowing System. *Journal of Financial Crime* 25, 1. (2018), 140–154. <https://doi.org/10.1108/JFC-11-2016-0069>

³⁹ Patricia Rinwigati WAAGSTEIN: The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications. *Journal of Business Ethics* 98, 3. (2011), 455–66. <https://doi.org/10.1007/s10551-010-0587-x>

⁴⁰ Ulya Yasmine PRISANDANI: Shareholder Activism in Indonesia: Revisiting Shareholder Rights Implementation and Future Challenges. *International Journal of Law and Management* 64, 2. (2022), 225–238. <https://doi.org/10.1108/IJLMA-07-2021-0169>

⁴¹ Joni JONI – Kamran AHMED – Jane HAMILTON: Politically Connected Boards, Family Business Groups and Firm Performance. *Journal of Accounting & Organizational Change* 16, 1. (2020), 93–121. <https://doi.org/10.1108/JAOC-09-2019-0091>

⁴² Dedy ERYANTO – Iris van Eeden JONES – Karin LASTHUIZEN: The Troubling Impact of Political Interference in Indonesian Public Sector Institutions on Ethical Leadership Credibility. *International Journal of Public Leadership* 18, 4. (2022), 319–336. <https://doi.org/10.1108/IJPL-10-2021-0056>

The leadership role assumed by Directors within the organizational structure of limited liability companies is of paramount importance. Directors are central figures to whom all powers and instructions for conducting actions are directed.⁴³ Given their pivotal role in the decision-making process and management of the company, it is both appropriate and necessary to hold Directors of limited liability companies criminally liable for their involvement in or issuance of instructions to their subordinates to collect funds or investments, as is often the case in fraudulent investment schemes,⁴⁴ including Ponzi schemes.

The discussion of criminal liability within the context of fraudulent investments is articulated in the legal framework under Law Number 10 of 1998 in conjunction with Law Number 7 of 1992 concerning Banking. Article 48 of this legislation provides a comprehensive framework for addressing criminal liability in such cases, specifying the penalties that may be imposed, including imprisonment and fines. This legal provision emphasizes the need to hold individuals accountable for their involvement in fraudulent investment activities.⁴⁵ Furthermore, the legal framework extends its focus to encompass legal entities, such as limited liability companies, that become embroiled in fraudulent investment activities. As previously outlined, Article 142(1) of Law Number 40 of 2007 provides for the potential revocation of the legal entity status of such companies. This significant legal consequence underscores the gravity with which the Indonesian legal system views fraudulent investment activities and the determination to maintain the integrity of the corporate sector.

4. Assessing the Effectiveness of Legal Enforcement

The state of law enforcement vis-à-vis illegal investment in the Republic of Indonesia remains suboptimal, casting a shadow over the nation's regulatory apparatus. A comprehensive evaluation of the data spanning the last quadrennial period, commencing in the year 2017 and culminating at the denouement of May 2020, as disseminated by the Investment Alert Task Force (SWI), reveals a disconcerting statistic. Of the total of 986 illicit investment enterprises that were successfully dismantled during this time frame, a mere ten percent were efficaciously subjected to the rigors of justice.⁴⁶ This disconcerting figure underscores the formidable impediments faced in addressing the scourge of illegal investments within the nation.

⁴³ Muhammad Zubair ABBASI: Legal Analysis of Agency Theory: An Inquiry into the Nature of Corporation. *International Journal of Law and Management* 51, 6. (2009), 401–420. <https://doi.org/10.1108/17542430911005936>

⁴⁴ Joshua ABOR: Corporate Governance and Financing Decisions of Ghanaian Listed Firms. *Corporate Governance: The International Journal of Business in Society* 7, 1. (2007), 83–92. <https://doi.org/10.1108/14720700710727131>

⁴⁵ Ponadi PONADI: Legal Liability for Banking Criminal Actions That Are Not Members of the Justice Board of Commissioners. *International Conference on Law, Economics, and Health*. Atlantis Press, April 19, 2023, 257–264. https://doi.org/10.2991/978-2-38476-024-4_28

⁴⁶ Tobing Tongam LUMBAN: Investasi Ilegal Dan Permasalahan Penegakan Hukum Oleh: Tongam Lumban Tobing. *Hukumonline*, July 9, 2020, <https://bit.ly/4dsncQt> (Accessed on 18 February 2024).

The multifaceted complexities inherent in the realm of illegal investment law enforcement are predominantly attributed to the guileful stratagems employed by the perpetrators. Illicit investment schemes often proffer beguiling returns, frequently surpassing prevailing market averages, thereby beguiling prospective investors. Furthermore, these nefarious entities resort to the dissemination of a semblance of risk-free prospects, which present their investments as tantalizing opportunities.⁴⁷ Oftentimes, these entities lack the requisite licensure to proffer such investment products, further exacerbating the confusion faced by potential investors. Even when such entities do possess legal status, they are frequently found to be operating outside the ambit of the lawful parameters delineated for their specific business activities.⁴⁸ This quagmire confounds potential investors and renders the demarcation between licit and illicit investments a daunting task.

A multitude of cases that have garnered public scrutiny, such as the Pandawa Group, PT Cakrabuana Sukses Indonesia, and Dream For Freedom, exemplify this pernicious modus operandi. These entities have all lured investors with promises of exorbitant returns, devoid of the requisite business permits.⁴⁹ The deleterious consequences of these endeavors have ensnared hundreds of thousands of victims within the labyrinthine web of illegal investments, resulting in financial losses that have ascended to the trillions of Indonesian rupiah. Although punitive measures have been meted out to the purveyors of these unlawful investment schemes, the disconcerting statistic, revealing a ten percent progression to legal recourse, poignantly underscores the intricate nature of this quagmire.

It is imperative to underscore that law enforcement endeavors play a pivotal and indispensable role in the broader mission to extirpate illegal investments. Law enforcement serves as the lynchpin for the realization of cardinal legal principles, such as equality, expediency, and legal certainty, as enunciated by the venerable jurist Gustav Radbruch.⁵⁰ In the context of illegal investment cases, notably those involving Ponzi schemes, a panoply of interrelated factors precipitates a profound influence on the efficacy of law enforcement efforts. Within this thematic milieu, three principal factors assume a central role in the appraisal of the efficaciousness of law enforcement undertakings, namely, evidentiary factors, witnesses' factors, and law enforcement agencies factors.

The evidentiary factor revolves around the curation and presentation of compelling evidence requisite for the prosecution of illegal investment perpetrators. The successful adjudication of these cases often hinges upon the degree to which irrefutable evidence can be marshaled, encompassing transactional records, contractual documentation,

⁴⁷ Benjamin AMOAH: Mr Ponzi with Fraud Scheme Is Knocking: Investors Who May Open. *Global Business Review* 19, 5. (2018), 1115–1128. <https://doi.org/10.1177/0972150918788625>

⁴⁸ Christiaan Ernst HEYMAN: A Red Flag Checklist for Cryptocurrency Ponzi Schemes. *Journal of Financial Crime* 31, 3. (2023), 711–747. <https://doi.org/10.1108/JFC-05-2023-0118>

⁴⁹ Peter Jeremiah SETIAWAN – Hansel ARDISON: Criminal Victimization on Large-Scale Investment Scam in Indonesia. *Veritas et Justitia* 7, 1. (2021), 1–30. <https://doi.org/10.25123/vej.v7i1.3917>

⁵⁰ Gustav. RADBRUCH: Statutory Lawlessness and Supra-Statutory Law (1946). *Oxford Journal of Legal Studies* 26, 1. (2006), 1–11. <https://doi.org/10.1093/ojls/gqj041>

and communications that validate the perpetration of illicit practices. Moreover, the victim factor assumes a consequential role in the prosecution process, necessitating the provision of testimonies and the cooperation of aggrieved parties to elucidate the modus operandi employed in the illegal investment scheme. A heightened rate of reporting by victims augments the prospects for successful law enforcement interventions. The legal instrument factor encapsulates the regulatory and statutory framework that governs the sphere of illegal investments. Clarity and stringency in legal provisions, as well as the promulgation of rigorous regulatory frameworks, serve to facilitate law enforcement initiatives and provide a firm legal foundation for the prosecution of malefactors. Lastly, the law enforcement factor encompasses considerations of resource allocation, training, and the coordination of activities across disparate law enforcement agencies. The limitations of available resources, combined with competing priorities, invariably influence the allocation of attention to cases involving illegal investments. These factors, warranting meticulous analysis, will be expounded upon in the subsequent deliberations.

4.1. Evidentiary Factor

The pivotal role of evidentiary factors in the realm of law enforcement, particularly in the context of illegal investment cases, notably those involving Ponzi schemes, cannot be overstated. The efficacy of law enforcement hinges significantly upon the law enforcement agencies' capacity to amass compelling evidence that substantiates a legal case against the purveyors of illegal investment schemes. The arduousness of accumulating robust evidence often constitutes the foremost challenge confronted in the prosecution of illegal investment cases. Perpetrators frequently employ intricate and meticulous tactics to obfuscate their illicit activities.⁵¹ Such tactics encompass the utilization of counterfeit contracts, meticulous electronic data management, and spurious documentation designed to confound investigators. Consequently, expertise in evidence gathering and analysis assumes paramount importance in the quest for substantial evidence. Lacking such cogent evidence, investigators encounter substantial difficulties in ascertaining the culpability of perpetrators and, as a result, may confront challenges in advancing investigations to subsequent stages or pursuing legal recourse.⁵² In such circumstances, the role of investigators in procuring further evidence remains pivotal to ensure the success of law enforcement endeavors. Therefore, evidentiary factors stand as indispensable in ensuring that perpetrators of illegal investment activities are effectively subjected to the purview of extant legal provisions.

According to Law Number 8 of 1981 on Criminal Procedure, a suspect is defined as an individual who, based on preliminary evidence, can be reasonably suspected of

⁵¹ Gargi SARKAR – Sandeep K. SHUKLA: Behavioral Analysis of Cybercrime: Paving the Way for Effective Policing Strategies. *Journal of Economic Criminology* 2, (2023), 100034, <https://doi.org/10.1016/j.jeconc.2023.100034>

⁵² Richard A. POSNER: An Economic Approach to the Law of Evidence. *Stanford Law Review* 51, (1999), 1477.

having committed a criminal offense.⁵³ At this juncture, an individual is designated as a suspect based on initial information acquired through police investigations. However, in practice, amassing sufficiently robust evidence to prosecute an individual in a court of law often proves to be a formidable challenge. The protracted bureaucratic processes associated with evidence collection engender a sluggish and intricate landscape. In numerous cases, the police are compelled to navigate intricate procedures to secure written permissions or approvals from various stakeholders, including the Bank of Indonesia, to access requisite information. These hurdles can substantially delay investigations, affording perpetrators a window of opportunity to abscond or tamper with evidence. This dilemma is primarily attributable to banking regulations that impose stringent safeguards on customer data.⁵⁴ Within the context of illegal investment cases, these constraints pose a significant impediment to law enforcement agencies endeavoring to amass evidence in support of their legal cases.

The impediments posed by the challenges of accumulating preliminary evidence represent a formidable barrier to law enforcement efforts, particularly in the context of addressing illegal investment cases. An empirical case study conducted by Ismail et al concerning the handling of illegal investments such as Ponzi scheme within the jurisdiction of the Pohuwato District Police offers a tangible illustration of these challenges. In the interview, Brigadier Zukarnain Darise exemplifies the difficulties encountered by the police in collecting bank account data utilized by the purveyors of illegal investments. This process consumed a substantial duration, approximately six months, which constitutes a significant hindrance in the investigation of illegal investment cases, as it furnishes wrongdoers with ample time to erase their tracks or evade the law. This constraint is primarily engendered by banking regulations governing customer data disclosure. These regulations often impose stringent protections on customer information, and intricate legal processes must be adhered to in order to gain access to this data.⁵⁵ In the context of illegal investment cases, these constraints pose a serious challenge to law enforcement agencies striving to amass the evidence requisite for their legal cases. While the safeguarding of customer data is of paramount importance, it is equally crucial to strike a balance that enables effective law enforcement in combatting illegal practices that inflict harm upon numerous individuals.

Based on Article 1, paragraph (1) and (2) of Bank Indonesia Regulation Number 2/19/PBI/2000 concerning the Requirements and Procedures for Issuing Written Orders or Permissions to Disclose Bank Secrets, the police are exclusively authorized to request

⁵³ Suwarno SUWARNO – Sri Endah WAHYUNINGSIH: Urgency of Suspect Determining In the Investigation Process on Human Rights Perspective. *Law Development Journal* 2, 2. (2020), 241. <https://doi.org/10.30659/ldj.2.2.241-248>

⁵⁴ Bruce NIKKEL: Fintech Forensics: Criminal Investigation and Digital Evidence in Financial Technologies. *Forensic Science International: Digital Investigation* 33, (2020), 200908. <https://doi.org/10.1016/j.fsidi.2020.200908>

⁵⁵ Ista ISMAIL – Fence M WANTU – Avelia Rahmah Y MANTALI: Upaya Kepolisian Dalam Penanggulangan Kasus Investasi Bodong (Studi Kasus Wilayah Hukum Kepolisian Resor Pohuwato). *Journal of Comprehensive Science (JCS)* 2, 5. (2023), 1438–1446. <https://doi.org/10.59188/jcs.v2i5.362>

customer data pertaining to individuals who have become suspects or defendants. To obtain such data, investigators must secure written permission from the leadership of Bank Indonesia, subsequent to the formal designation of an individual as a suspect or defendant. This process must also commence with a written request from the Head of the Indonesian National Police.⁵⁶ While these provisions are underpinned by legitimate concerns for the protection of customer data, they, at times, hamper the investigative process. The constraints on police access to preliminary evidence in cases of illegal investment constitute a serious impediment to the curtailment of criminal activities. Hence, endeavors to reform the legal and banking systems warrant consideration to address this issue. Potential reforms may necessitate modifications in regulations that facilitate expeditious and efficient law enforcement efforts in the resolution of illegal investment cases, while concurrently upholding the legitimate privacy rights of uninvolved customers. Moreover, fostering enhanced collaboration among law enforcement agencies, the Bank of Indonesia, and banking institutions is imperative to ensure that requisite data can be accessed more efficiently, without compromising the privacy of customers not implicated in illicit activities.

4.2. Factor of Witnesses

The victim factor assumes a pivotal role in the domain of law enforcement concerning illegal investments, yet it frequently emerges as a primary obstacle in this process. Several reasons contribute to how law enforcement may be impeded by the reactions of victims, ultimately affording illegal investment operators continued operation without significant disruption. A major hindrance is the reluctance of victims to report instances of illegal investment to law enforcement authorities. Tongam Lumban Tobing, the Chairman of the Investment Alert Task Force (*Satgas Waspada Investasi*), has acknowledged the prevalent phenomenon of victims of illegal investments refraining from reporting such cases. Various rationales underpin this reluctance, wherein victims often harbor uncertainty or hesitation as to whether the illicit actions they have experienced genuinely amount to criminal transgressions warranting official reporting. They may perceive these issues as civil disputes or contractual conflicts amenable to extrajudicial resolution. In certain cases, Tongam has also indicated that victims might feel embarrassed or consider the losses they have incurred as too inconsequential to merit formal reporting. Moreover, some victims of illegal investments maintain a lingering hope of eventually reaping returns on their investments, despite the evident signs of fraud. They may entertain the belief that their capital injections will yield profits in the future and thus refrain from reporting unlawful activities so as not to jeopardize these aspirations.⁵⁷

⁵⁶ Putri ANGGIA: The Influence of International Tax Policy on the Indonesian Tax Law. *Yuridika* 35, 2. (2019), 343. <https://doi.org/10.20473/ydk.v35i2.16873>

⁵⁷ Diah Setiawan Sakina RAKHMA: Banyak Korban Investasi Ilegal Enggan Laporkan, Mengapa?. *Kompas*, September 9, 2017, <https://bit.ly/3YDK0si> (Accessed on 18 February 2024).

The Ponzi scheme case of PT Kam and Kam via the McMiles application in early January 2020 provides a tangible illustration of the challenges encountered in addressing illegal investments. The East Java Regional Police (*Polda Jawa Timur*) responded to this case by establishing complaint centers for victims both online and offline. Nevertheless, a significant disproportionality emerged between the number of victims involved and the number of complaints received. Only a small fraction of the 264,000 victims mustered the courage to report the case directly, amounting to a mere 28 individuals, while online reporting was similarly meager, comprising a modest 160 members.⁵⁸ The fear of being identified as complicit in this illegal scheme emerged as a primary factor elucidating the paucity of complaints. Victims may recognize their own roles as “agents” within this Ponzi scheme, entailing that they too derived benefits, such as cashbacks or merchandise, from participation in this fraudulent investment. This predicament triggers a moral quandary in which victims may experience feelings of shame or apprehension about disclosing their involvement in the illegal scheme.⁵⁹ Furthermore, the perceived threats emanating from the operators of illegal investments can exert influence over victims’ decisions to report the cases. They may harbor concerns regarding potential reprisals by the perpetrators of illegal investments or may harbor doubts about the degree of protection they will receive post-reporting. The confluence of shame, doubt, and fear can attenuate victims’ motivation to engage in law enforcement processes, even when they have suffered as victims within the ambit of illegal investment schemes.

The modus operandi of PT Kam and Kam illustrates a complex and alluring structure within illegal investment schemes. Two principal schemes employed within this practice entail “top-up balance” investment packages, ostensibly facilitating participation in an advertising business with the anticipation of monetary returns. Active members would purchase these packages and were incentivized to recruit additional participants. The introduction of allurements in the form of rewards such as mobile phones, motorcycles, automobiles, houses, and the like, promised members opportunities to attain these rewards through successful recruitment efforts. Furthermore, the second scheme proffered a 10 percent commission on the turnover generated by members recruited by active participants.⁶⁰ This offered financial incentives for members to persistently recruit new participants, thereby augmenting their earnings. The promises of profit and material incentives induce some members to hesitate in reporting these illicit practices due to feelings of entrapment within the scheme and apprehensions regarding potential legal sanctions. This case reflects how factors such as fear, promises of profit, and material incentives can impact the number of reported cases in Ponzi investment

⁵⁸ Karina DINA: Tega! Di Tengah Pandemi, Investasi Bodong Buat Masyarakat Rugi Rp 5,9 T. *Kompas*, April 14, 2021, <https://bit.ly/3Ak9tNm> (Accessed on 18 February 2024).

⁵⁹ Deddy SUNANDA – Topo SANTOSO – Eva Achjani ZULFA – Muhammad YUSUF: Concept of Benefit Owner’s Responsibility in Crime in Indonesia: Charging Criminal Actors Behind Corporates. *International Journal of Engineering Business and Social Science* 1, 5. (2023), 363–371. <https://doi.org/10.58451/ijebss.v1i05.62>

⁶⁰ Gunawan CANDRA: Misusing Marketing Management In Money Games. *Management Technology and Security International Journal* 2, 1. (2021), 56–69.

schemes. Victims frequently feel ensnared within the web of illegal investments, and the pressure exerted by illegal investment operators to continuously recruit new members fosters concerns about legal repercussions.

4.3. Factor of Legal Instrument

The legal framework, notably legislative regulations, plays a pivotal role in the enforcement of laws pertaining to illegal investments involving Ponzi schemes. Law enforcement agencies often encounter obstacles in delineating the applicable legal provisions for prosecuting perpetrators of illegal investments employing Ponzi schemes. This predicament is exacerbated by the inherent ambiguity or limitations within existing statutes, which do not always encompass the diverse array of evolving illicit schemes. The existing laws frequently neither explicitly govern illegal investment practices nor contain provisions adequate to address investments employing Ponzi schemes. Law enforcement resorts to general statutory provisions, such as Article 378⁶¹ concerning fraud and Article 372⁶² concerning embezzlement under the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*), to prosecute perpetrators of illegal investments. However, these provisions may not consistently align with the intricacies of violations occurring within the context of Ponzi investments, which are often marked by heightened complexity.

Bhima Yudhistira, an economist and the Executive Director of the Center of Economic and Law Studies (CELIOS), expounds upon the evolution of Ponzi schemes over time, wherein their modus operandi become increasingly diverse. These schemes may encompass investment propositions promising substantial and instantaneous returns, counterfeit employment offers, or other intricately structured schemes that elude the purview of existing legal regulations. Hence, the need for adaptability within the legal framework to contend with the continual mutations in illegal investment practices under Ponzi schemes becomes apparent.⁶³

In line with Bhima Yudhistira's opinion, the author suggests that a specific regulation should be established to define and penalize criminal acts related to Ponzi or pyramid schemes. Although Articles 372 and 378 of the Criminal Code (KUHP) can be applied to Ponzi cases due to elements of fraud or embezzlement, it is necessary to emphasize the prohibition of pyramid scheme activities in Indonesia by creating a clause defining such schemes. This clause should also include severe sanctions or penalties for Ponzi

⁶¹ Article 378 of the Indonesian Criminal Code (KUHP) regarding fraud states, "Anyone with the intention of benefiting themselves or others unlawfully, by using a false name or false authority, through deception, trickery, or a series of lies, induces another person to hand over any property to them, or to provide a loan or cancel a debt, is threatened with imprisonment for a maximum of four years for fraud."

⁶² Article 372 of KUHP regarding embezzlement states, "Anyone who intentionally and unlawfully possesses something that wholly or in part belongs to another, but is in their possession not as a result of a crime, is threatened with imprisonment for a maximum of four years or a fine of up to nine hundred Indonesian Rupiah."

⁶³ Geordi Oswaldo IGNACIO: Apa Itu Skema Ponzi Yang Dipakai Rihana-Rihani Hingga Rugikan Korban Rp 35 M?. *DetikFinance*, July 4, 2023, <https://bit.ly/4duigdz> (Accessed on 18 February 2024).

scheme operators. This consideration arises because Articles 372 and 378 of the KUHP only prosecute embezzlement and fraud, carrying a maximum prison sentence of 4 years with minimal fines. However, looking at previous cases discussed, the losses caused by these schemes are significant, impacting hundreds to thousands of victims.

Imposing severe penalties on Ponzi scheme operators aims to create a deterrent effect on the perpetrators and prevent others from contemplating the same criminal activities. In the effort to enforce heavy penalties, the police sometimes employ layered charges against Ponzi operators. Apart from applying Articles 378 or 372 of the Criminal Code (KUHP), the police also use sectoral regulations corresponding to the type of business conducted by the Ponzi operator. If the Ponzi scheme involves financial or banking institutions, the police typically apply Article 46 of the Banking Law⁶⁴ or Article 59 of the Sharia Banking Law.⁶⁵ Furthermore, if the Ponzi operator is engaged in product distribution, the police may use Article 9 of the Trade Law.⁶⁶ Even if money laundering is suspected as a result of the criminal activity, the police will invoke anti-money laundering laws.

Although Ponzi scheme operators receive significant penalties through layered charges in their prosecution, the author believes that all these articles have limitations in defining the pyramid scheme itself. This creates difficulties for law enforcement in applying articles that accurately correspond to actions suspected to be Ponzi schemes. Conversely, if a specific article is created to regulate the definition of a pyramid scheme along with its corresponding penalties, law enforcement authorities will find it easier to prosecute Ponzi scheme operators because the legal basis is clearly defined. This is also crucial in the realm of the judiciary to ensure that judges do not have doubts about whether the act constitutes a criminal case or a civil case due to involving investment activities and contractual obligations. The existence of this specific regulation provides a very clear legal basis for prosecuting Ponzi operators as it explicitly constitutes a criminal offense regulated by the laws of Indonesia.

A salient exemplification of this complexity is the case of Indosurya Savings and Loans Cooperative, masterminded by Henry Surya, involving approximately 23,000 clients incurring total losses amounting to IDR 106 trillion. With the enticement of a 10% interest rate, they managed to accrue this staggering sum, rendering the Indosurya case the largest fraud case in the history of the Republic of Indonesia. Regrettably, in the

⁶⁴ Article 46 states, "Anyone who collects funds from the public in the form of deposits without a business permit from the leadership of Bank Indonesia, as referred to in Article 16, is threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, as well as a minimum fine of Rp10,000,000,000.00 (ten billion Indonesian Rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion Indonesian Rupiah)."

⁶⁵ Article 59 states, "Anyone engaging in Sharia Banking, Sharia Financial Institutions, or fundraising activities in the form of Savings or Investments based on Sharia Principles without a business permit from Bank Indonesia, as referred to in Article 5 paragraph (1) and Article 22, shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, as well as a minimum fine of Rp10,000,000,000.00 (ten billion Indonesian Rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion Indonesian Rupiah)."

⁶⁶ Article 9 states, "Business operators in distribution are prohibited from implementing a pyramid scheme system in distributing goods."

initial trial, the defendant Henry Surya was acquitted of charges relating to fraud and embezzlement of funds within the Indosurya Savings and Loan Cooperative (KSP).⁶⁷ Chief Judge Syafrudin Ainor at the West Jakarta District Court deemed Henry Surya's actions to constitute a civil matter rather than a criminal offense.⁶⁸ The judge believes that the legal relationship between the cooperative and its customers is a contractual relationship. In this case, the cooperative promises a significant margin of investment profit to its customers. However, until the agreed-upon time, the cooperative is unable to fulfill this promise. However, this decision subsequently elicited public outrage after Henry Surya was initially acquitted by the West Jakarta District Court, and later, in a cassation trial at the Supreme Court, the verdict was overturned, sentencing Henry Surya to 18 years in prison.⁶⁹

Moreover, the inherent complexity is compounded by the disparate regulations dispersed across various statutes and differing legal provisions, thereby creating confusion regarding the appropriate regulations and their applicability in cases of illegal investments. This represents one of the principal challenges encountered by law enforcement when grappling with the ever-diversifying and intricate landscape of illegal investment practices. Regulations concerning investments are scattered across various statutes and laws, including the Trade Law, Banking Law, Capital Investment Law, Commodity Futures Trading Law, and Consumer Protection Law. This diversity can engender legal ambiguity and complexity, often perplexing the determination of suitable legal courses of action in cases of illegal investments. Budi Hariyanto, Director of the Special Economic Crime Division at the National Criminal Police Department (*Badan Resort dan Kriminal Kepolisian Negara Republik Indonesia*), contends that many illegal investment cases, particularly those entailing Ponzi schemes, are frequently couched in the form of civil cases.⁷⁰ This signifies that these illicit practices are often perceived as civil matters, such as contractual violations or contractual disputes among the parties involved. In the context of criminal law, this may impede the pursuit of illegal activities with commensurate sanctions.

4.4. Factor of Law Enforcement Agencies

The law enforcement factor constitutes a crucial element in the endeavors to enforce the law concerning illegal investments such as Ponzi schemes. However, in many instances, several impediments stand as significant barriers to addressing this issue. According to Tongam Lumban Tobing, the Chairman of the Investment Alert Task Force (*Satgas Waspada Investasi* or SWI), one of the primary challenges encountered

⁶⁷ Eny MARYANA: The Concept of Alternative Justice In The Form of Cumulative Criminal Sanctions For Corporate Crimes: Adopting The Concept of Justice of Thomas Aquinas. *International Journal of Social, Policy and Law* 4, 2. (2023), 10–19.

⁶⁸ West Jakarta District Court Decision Number 779/Pid.B/2022/PN Jkt.Br, 2023.

⁶⁹ Supreme Court Decision Number 2113 K/Pid.Sus/2023, 2023.

⁷⁰ Tri Nastiti PAMUJI: Kepolisian Mengalami Banyak Kendala Berantas Investasi Ilegal. *Bisnis.Com*, September 20, 2017, <https://bit.ly/46yWzqS> (Accessed on 18 February 2024).

in this regard is that the handling of illegal investment cases often does not take precedence for law enforcement agencies. The prioritization of law enforcement efforts frequently gravitates towards common criminal offenses, such as theft, violence, or narcotics-related crimes, primarily due to the greater volume of cases and their broader societal implications.⁷¹ This assertion finds reinforcement through data sourced from the National Crime Information Center (*Pusat Informasi Kriminal Nasional* or Pusiknas) of the Indonesian National Police (*Kepolisian Negara Republik Indonesia* or abbreviated as POLRI), wherein a total of 574,764 criminal cases were recorded throughout 2022-2023, with the majority of these cases being dominated by general criminal offenses (Figure 4).⁷²

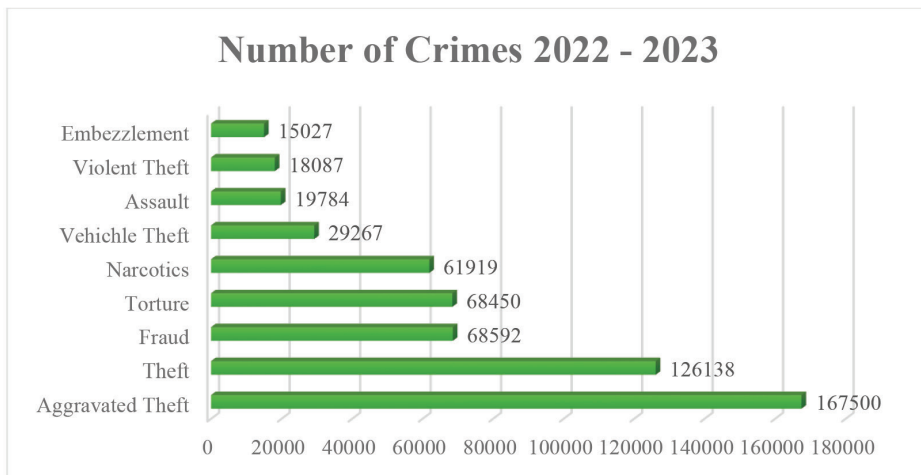


Figure 4. Overview of criminal cases in Indonesia (2022-2023)

Furthermore, this situation can be attributed to personnel limitations, compelling law enforcement agencies to make arduous decisions in selecting which cases to prioritize. The scarcity of human resources also impacts the ability of law enforcement agencies to respond swiftly and effectively to illegal investment cases. The current number of police personnel remains inadequate in comparison to the demand. The exodus of officers or their retirement significantly outpaces the recruitment of new personnel. This condition was elucidated by Hari Haryadi, the Head of Rank and Assignment Affairs (*Kabag Pangkat ASDM*) at the Indonesian National Police (POLRI). In his presentation, he conveyed that the POLRI boasts a force of 460,000 personnel, a number that merely satisfies 68 percent of the requisite figure. Conversely, the annual recruitment figures do not match the number of departures or retirements, with 11,000

⁷¹ Samaniatun MUTIAH – Rani APRIANI: Penegakan Hukum Terhadap Investasi Ilegal. *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, 4. (2022), 1991–2001.

⁷² National Crime Information Center of the Indonesian National Police: Data Kejahatan. 2023, https://pusiknas.polri.go.id/data_kejahatan (Accessed on 18 February 2024).

personnel exiting the force each year, while recruitment numbers stand at 10,000. Consequently, even without any members retiring, it would take an estimated 30 years to reach the ideal personnel complement within the POLRI.⁷³

Neta Pane, the former Chairman of the Presidium of the Indonesia Police Watch (IPW), as quoted in Parawangi's research, he assesses that the Indonesian National Police (POLRI) currently faces a shortage of personnel in the Sub-officer (*Perwira Menengah*) ranks. This shortage is evidenced by the delayed arrival of police at crime scenes when handling incidents. According to Pane, the POLRI's concept of rapid response stipulates that police officers should arrive at the scene within 15 minutes of receiving a report from the public, a standard that is consistently unmet. It is worth noting that the POLRI still faces a deficit of 270,068 personnel, primarily in the Sub-officer (*Perwira Menengah*), Officer (*Pama*), and Non-commissioned Officer (*Bintara*) or Enlisted (*Tamtama*) ranks.⁷⁴

Moreover, the handling of illegal investment cases can entail exceedingly high costs, particularly in instances where the cases are complex and necessitate in-depth investigations. Law enforcement agencies often have to allocate substantial resources for evidence gathering, coordination with financial institutions, and case processing through the legal system. This process can be time-consuming and costly, particularly if the suspects employ legal maneuvers to impede the judicial process. Consequently, it places a significant strain on budgets that should otherwise be allocated to other law enforcement activities. According to the Attorney General, Burhanuddin, as discussed in Ahmad and Warsono's research, that in numerous complex financial crime cases, such as corruption and investment fraud, the costs of law enforcement are perceived as disproportionate to the losses suffered by the victims. Especially when the losses are relatively small in comparison to the resources required to address the case, law enforcement agencies may incline towards other cases deemed more pressing or beneficial to the state.⁷⁵

5. Conclusion

Indonesia has established a multifaceted legal framework to address fraudulent financial schemes, with a particular focus on Ponzi schemes. While there are specific legal provisions to prosecute those involved in Ponzi schemes, the regulatory landscape for such schemes remains underdeveloped, highlighting the need for comprehensive legislative instruments tailored to address the unique attributes of Ponzi schemes.

⁷³ Setiawan HILMI: Polri Kekurangan Personel, Rekrutmen Baru Tak Sebanding Dengan Yang Keluar. *Jawa Pos*, June 21, 2023, <https://bit.ly/3LTXFUU> (Accessed on 18 February 2024).

⁷⁴ Anwar PARAWANGI: A Model for Handling Act 'Begal' Violence at the Police of Makassar City. *The 1st International Conference on Research in Social Sciences and Humanities (ICoRSH 2020)*. Atlantis Press, (2021), 957–960.

⁷⁵ Mashun AHMAD – Hardi WARSONO: Revitalizing the Role of the Regional Government Internal Supervision Apparatus (APIP) to Realize Clean Governance in Indonesia. *Proceedings of the Proceedings of the 4th International Conference on Indonesian Social and Political Enquiries ICISPE 2019*, Semarang, 21–22 October 2019. <https://doi.org/10.4108/eai.21-10-2019.2294403>

And most importantly, the state of law enforcement concerning illegal investment in the Republic of Indonesia is facing significant challenges, resulting in suboptimal outcomes and casting a shadow over the nation's regulatory apparatus. The efficacy of law enforcement efforts is influenced by four principal factors: evidentiary factors, witness factors, legal instrument factors, and law enforcement agencies factors. Evidentiary factors play a crucial role, as the successful prosecution of illegal investment cases depends on the ability to gather compelling evidence. However, perpetrators often employ intricate tactics to obfuscate their activities, and the legal processes for accessing evidence can be cumbersome. Furthermore, the witness factor is significant, as many victims are reluctant to report illegal investment cases due to uncertainty, embarrassment, and hopes of recouping their losses. Victims may also fear retribution from the perpetrators or legal consequences for their own involvement in illegal schemes. In addition, the legal instrument factor highlights the inadequacy of existing legal frameworks to address the evolving landscape of illegal investment schemes, which often fall outside the scope of current laws. The lack of clarity and coordination across various statutes creates confusion regarding which regulations are applicable. At last, the law enforcement agencies factor reveals that illegal investment cases often do not take precedence due to limited resources, personnel shortages, and budget constraints. The prioritization of other criminal offenses further hinders the efforts to combat illegal investments effectively.

In light of these challenges, there is a pressing need for legal and regulatory reforms to facilitate efficient law enforcement efforts while upholding the privacy rights of uninvolved customers. Furthermore, enhancing collaboration among law enforcement agencies and banking institutions is crucial. Moreover, legal frameworks need to adapt to the ever-evolving landscape of illegal investments, and the allocation of resources to address these cases should be reconsidered. Addressing these issues is essential to improve the state of law enforcement and protect potential victims of Ponzi investments in Indonesia.

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