# Pyramid Scheme Crime: Problems and Oversight in Indonesia

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***Abstract***

Investment-based crimes in Indonesia are very high. Data from the Indonesian Financial Services Authority (OJK) in 2023 stated that the total value of public losses due to investment crimes from 2018 to 2022 reached IDR 126 trillion. Various models of investment crimes that are often carried out include illegal futures brokers, illegal investments, forex, and binary options carried out with pyramid schemes or Ponzi schemes. The data indicates that there are problems in handling crimes with pyramid schemes. This research is normative legal research that uses the statute approach method. The legal materials used include primary legal materials and secondary legal materials related to investment crimes. Based on the results of the study, it was found that there are various legal problems in handling crimes with pyramid schemes, including weaknesses in the formulation of regulations. The Trade Law still has limited reach both in terms of subjects and objects which can lead to weak law enforcement. Therefore, it is recommended for relevant stakeholders to reformulate the Trade Law that can accommodate broader subjects and objects.

## I. Introduction

According to data from the Indonesian Internet Service Providers Association (APJII), there were 215.63 million internet users in Indonesia between 2022 and 2023. [1] This figure represents 78.19% of Indonesia's total population. People's behavior habits have altered due to the widespread use of the internet, making them more reliant on digital services, especially those provided by the financial services industry. Considering these behavioral shifts, the financial services sector is being urged to embrace a range of technology innovations to maximize goods and services for customers who are based online.[2]

From the perspective of the consumer or community, there is still a significant gap between the degree of financial literacy and financial inclusion; in 2022, the former reached 85.10%, while the latter only achieved 49.68%. This suggests that a portion of consumers of financial services and products still lack sufficient knowledge about them. This increases the possibility that consumers may use financial products and handle their money improperly. Additionally, criminals use this to target fewer literate individuals by engaging in different fraudulent schemes and making illicit investment proposals, which ultimately lead to losses and a rise in complaints filed with the Indonesian Financial Services Authority (OJK).[3]

According to OJK data, between 2013 and May 31, 2023, 72,618 complaints—or 6.5% of all complaints—were made against fraudulent practices such as sniffing, phishing, social engineering, and skimming, totaling 1,116,175 services. According to data, the public suffered losses from illicit investments totaling IDR 126 trillion between 2018 and 2022.[4] Illegal online loans and investments are still being handled by OJK and every member of the Investment Alert Task Force (SWI) from 12 Ministries and Institutions. As of May 31, 2023, SWI has halted the operations of 15 organizations that made investment proposals without a permit and has followed up on the discovery of 155 illicit internet lending platforms.[5]

With the rapid development of technology, fraudulent methods and illegal investment offers are increasingly varied. One of the investment crime methods carried out is the pyramid scheme or Ponzi scheme. A pyramid scheme is a business model with an underlying direct sale of goods in a multi-level / multi-level marketing (MLM) manner

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[1] Indonesiabaik.id, Orang Indonesia Makin Melek Internet, Accessed in https://indonesiabaik.id/infografis/orang-indonesia-makin-melek-internet , access date 6 November 2024.
[2] Otoritas Jasa Keuangan (OJK), Waspada Modus Penipuan Gaya Baru, Accessed in https://www.ojk.go.id/ojk-institute/en/capacitybuilding/upcoming/2746/waspada-modus-penipuan-gaya-baru , access date 6 November 2024.
[3] *Ibid.*
[4] *Ibid.* Lihat juga Otoritas Jasa Keuangan (OJK), Infografis-Survei-Nasional-Literasi-dan-Inklusi-Keuangan-Tahun-2022. https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Infografis-Survei-Nasional-Literasi-dan-Inklusi-Keuangan-Tahun-2022.aspx, access date 7 November 2024.
[5] *Ibid.* Lihat juga Otoritas Jasa Keuangan (OJK), Stabilitas-Sektor-Jasa-Keuangan-Terjaga-di-Tengah-Dinamika-Perekonomian-Global. OJK. https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Stabilitas-Sektor-Jasa-Keuangan-Terjaga-di-Tengah-Dinamika-Perekonomian-Global.aspx , access date 7 November 2024.

that operates with a hierarchical structure where new members are required to pay a fee to join. With a business model like this, older members benefit from the fees paid by newer members, so that success in making a profit depends heavily on the ability to recruit new members and not on the sale of real products. Often many victims fall into the practice of a pyramid scheme system because of the unconscious nature of the fraud. Victims are moved to get involved based on a false business image, which promises financial gain only by recruiting new members, while in fact the potential for making a profit actually only belongs to a few members at the top of the pyramid. Without further recruitment, this system will collapse. In short, a pyramid scheme is a money transfer scheme where losses are accepted by most members and become profits for a small number of members at the top of the pyramid structure.[6]

As a country with a population of more than 265 million, Indonesia is a large market share for perpetrators of pyramid scheme practices to develop their crimes under the guise of running direct sales. Long before it developed in Indonesia, in many countries such as Taiwan, the United States and Malaysia this practice had already developed but along the way this practice received strict supervision and was considered disturbing and detrimental to the wider community because of the many reports from the community and its members regarding this practice. However, the still high data on crimes with pyramid schemes is an indication that there are still problems in handling crimes with pyramid schemes. In relation to this, this study aims to identify what are the legal problems in handling pyramid scheme crimes in Indonesia.

## 2. Research Method

This research is legal research or normative research that is prescriptive in nature. Such research is in accordance with the view put forward by Peter Mahmud Marzuki who stated that legal research or rechsonderzoek in Dutch is always normative. [7] The research approach is intended to obtain information from various aspects regarding the legal issues that are being tried to be answered. In this study, the approach used is the statute approach. The statute approach is used in this study because the law can be used as a reference for solving the issues raised in this study. These regulations include the 1945 Constitution, the Indonesian Criminal Code, the Indonesian Criminal Procedure Code, the Law on Trade and other related laws.

The sources of legal materials in this study are primary legal materials and secondary legal materials. Primary legal materials include legislation and court decisions that have permanent legal force and are related to the practice of the pyramid scheme system, while secondary legal materials include textbooks, legal dictionaries and journals.

[6] William W. Keep and Peter J. Vander Nat, Multilevel marketing and pyramid schemes in the United States An historical analysis, *Journal of Historical Research in Marketing,* Volume 6, Issue 2, 2014, h.197.
[7] Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, Cet. 14, Kencana Prenada Media Group, Jakarta, 2019, h.55.

## 3. Results and Discussion

In Indonesia, the existence of pyramid scheme practices is expressly stated as an act through Law of the Republic of Indonesia Number 7 of 2014 concerning Trade[8] as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, [9] (hereinafter referred to as the Law on Trade). Article 9 in conjunction with Article 105 of the Law on Trade states that "distribution business actors are prohibited from implementing a pyramid scheme system in distributing goods" with the threat of a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

In addition to being a form of protection for the community from the negative impacts of this practice (pre-emphasis) like the function of criminal law in general, the regulation of the prohibition of pyramid scheme practices in the Law on Trade is a form of strengthening through penal policies against activities that threaten the trade sector. Trade is the main driver of national economic development to realize general welfare, while referring to the statement from the Investment Alert Task Force (SWI), at least in the last ten years (2010-2020) illegal investment activities (including in the form of pyramid scheme practices) in Indonesia have resulted in losses of ± Rp. 92,000,000,000,000.00 (ninety-two trillion). [10] The magnitude of the financial losses incurred is a real threat to the stability of the country's economy so that the practice of the pyramid scheme system should be expressly stated as a criminal act.

The regulation of the prohibition of the practice of pyramid scheme systems in the Law on Trade, the main substance of which is the regulation in the field of trade (including licensing, government obligations in trade, standardization of goods and services, provisions on domestic and foreign trade) makes the provisions of the prohibition have special characteristics, namely as a means of

[8] Undang-undang Republik Indonesia Nomor 7 Tahun 2014 tentang Perdagangan (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 45, Tambahan Lembaran Negara Republik Indonesia Nomor 5512)
[9] Undang-undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2022 Nomor 238, Tambahan Lembaran Negara Republik Indonesia Nomor 6841).
[10] "Kerugian Investasi Bodong Capai Rp 92 Triliun dalam 10 Tahun", <https://money.kompas.com/read/2020/10/22/141100326/kerugian-investasi-bodong-capai-rp-92-triliun-dalam-10-tahun>, diakses 11 Februari 2021

operationalization/functionalization in enforcing administrative aspects of the distribution of goods in the field of trade by using criminal law as a means of compliance. [11] In other words, criminal provisions are only intended to provide criminal sanctions for regulations that lie outside criminal law (administrative). [12]

The practice of a pyramid scheme system is basically a criminal act that is not only limited to business actors engaged in direct distribution of goods and subject to administrative rules, but also committed by those who deliberately utilize the direct distribution model of goods as a means (underlying transaction) to disguise their true intentions, namely utilizing the recruitment system in order to exploit others. Given the existence of provisions prohibiting the practice of a pyramid scheme system in the Law on Trade which is extra-criminal in nature, [13] this creates a gap in law enforcement against this crime. The law on trade can only reach business actors who are subject to administrative rules in the implementation of direct distribution of goods, while those who are not subject to these rules often escape the clutches of the law or are punished with general criminal articles.

The limitations of the Law on Trade to cover other forms of pyramid scheme crimes further raises the question of how criminal law can play a role in dealing with this problem. Criminal law should function effectively in dealing with the practice of the scheme system, both those that are not and those that are subject to administrative rules in the field of trade, so as to provide justice, certainty and broader legal benefits to actions that are detrimental to society. What actions are prohibited, who can be considered guilty and the appropriate punishment in line with the crime committed is the task of criminal

[11] *Administrative Penal Law* pada hakikatnya merupakan hukum pidana yang memberikan sanksi atas pelanggaran administrasi. Hukum pidana administrasi terlibat dalam masalah administrasi karena pelanggaran terhadap administrasi tersebut menyebabkan adanya pelanggaran terhadap salah satu dari 5 (lima) kepentingan hukum yaitu: *nyawa manusia, badan/tubuh manusia, kehormatan seseorang, kemerdekaan seseorang dan harta benda*. Lihat Didik Endro Purwoleksono, *Hukum Pidana*, Airlangga University Press, Surabaya, 2014, h. 21., Lihat juga Didik Endro Purwoleksono, *Hukum Pidana Untaian Pemikiran*, Airlangga University Press, Surabaya, 2019, h. 5-9.

[12] Bambang Suheryadi, "*Kedudukan Sanksi Pidana dan Sanksi/Tindakan Administrasi Dalam Sistem Pidana dan Pemidanaan di Indonesia*. Tesis Program Magister Ilmu Hukum Undip, 2002, h.11.

[13] Undang-undang administrasi yang di dalamnya memuat ketentuan pidana disebut sebagai hukum pidana khusus yang bersifat "ekstra aturan pidana". Undang-undang pidana yang dapat dimasukkan sebagai hukum pidana khusus yang bersifat ekstra aturan pidana yaitu Undang-Undang Kehutanan, Undang-Undang Keimigrasian, Undang-Undang Perbankan, Undang-Undang Pasar Modal, Undang-Undang Ketenagalistrikan dan lain-lain. Undang-undang pidana yang bersifat ekstra aturan pidana inilah yang disebut sebagai "*Adminitrative Penal Law.* Lihat Indriyanto Seno Adji, "*Administrative Penal Law: Kearah Konstruksi Pidana Limitatif*", Makalah, Pelatihan Hukum Pidana dan Kriminologi, Yogyakarta, 23-27 Februari 2014.

law to define it, as thought by Herbert L. that "the rationale of the criminal law rests of three concepts: offense, guilt and punishment".[14]

In addition to having limited reach, the provisions regarding the prohibition of implementing a pyramid scheme system in the distribution of goods as stipulated in Article 9 Jo. Article 105 of the Law on Trade also have several weaknesses in their formulation. The formulation of the legal subject "distribution business actors" as entities that must meet various administrative requirements becomes problematic when faced with criminal liability. The hierarchical structure in the practice of the pyramid scheme system makes each member have a role in the operation of the system at every level so that each member in the network has the potential to become a perpetrator of a crime as well as a potential victim. This reality is not accommodated, because the Law on Trade does not regulate the form of role of members in the network to be held criminally accountable.

Another problem with the formulation of the provision prohibiting the implementation of the pyramid scheme system in the Law on Trade is the object of the act which only targets the goods distribution sector. The Law on Trade ignores the fact that the practice of the pyramid scheme system can also operate in the service sector even though this sector can be distributed and its substance is the object of regulation in the Law on Trade. The weakness of this formulation has created a legal loophole that can be exploited by perpetrators by using the service sector as a means to avoid the provisions of the pyramid scheme system practice in the Law on Trade which prohibits the practice of the pyramid system in the distribution of goods.

The weaknesses in the regulation of criminal acts of pyramid scheme practices in the Law on Trade will ultimately lead to inconsistencies in the application of these crimes. Some forms of pyramid scheme crimes can only be subject to criminal provisions in the Criminal Code or other relevant laws, or criminal provisions in the Law on Trade which are administrative violations with criminal sanctions but are not related to the pyramid scheme system. As a result of this inconsistency, it has created disparities in the treatment of perpetrators of pyramid scheme crimes, where one perpetrator and another

[14] Herbert L. Packer, *The Limits of Criminal Sanction*, Standford University Press, California, 2012, h.17.

may face different criminal threats even though the essence of the act committed is the same.

In response to the problematic nature of pyramid scheme criminal acts, a comprehensive criminal law policy is needed, which presents equality, justice and utility for the community through legal reform. According to Barda Nawawi Arief, the reform is not only about updating or replacing the formulation of articles textually but also the main ideas, concepts, and basic ideas of the law. [15] Therefore, it is hoped that there will be a need for regulatory reform of pyramid scheme criminal acts.

## 4. Conclusion

Handling of pyramid scheme crimes still has many problems, especially from the regulatory aspect. For example, in the Trade Law, the regulation regarding the crime of pyramid scheme practices still has limited reach. Some forms of pyramid scheme crimes can only be imposed with criminal provisions in the Criminal Code or other relevant laws, or criminal provisions in the Trade Law which are administrative violations with criminal sanctions but are not related to the pyramid scheme system. Therefore, a comprehensive criminal law policy is needed, which presents equality, justice and is useful for society through legal reform.

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[15] Barda Nawawi Arief, *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*, Badan Penerbit Universitas Diponegoro, Semarang, 2005, h. 4.

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