

Supervision Of The Financial Services Authority's (OJK) Strategy In Counteracting Illegal Investment In The Community

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ABSTRAK

Penelitian ini dilakukan bertujuan untuk mengetahui bagaimana tugas, fungsi, dan kewenangan otoritas jasa keuangan dan bagaimana peranan otoritas jasa keuangan dalam melakukan pengawasan dan pencegahan terhadap penipuan investasi ilegal yang marak beredar di masyarakat. Dengan menggunakan metode penelitian yuridis normatif, Investasi dalam masyarakat pada umumnya sering dikenal dengan penanaman modal. Lain halnya dengan investasi ilegal adalah kegiatan usaha berupa pengumpulan dana dari masyarakat. Maka pengawasan otoritas jasa keuangan sangat diperlukan untuk memantau dan memberitahu informasi penting tentang syarat investasi yang baik dan benar.

Kata kunci: pengawasan, investasi, masyarakat.

ABSTRACT

This study aims to find out the duties, functions, and authorities of the financial services authority and how the role of the financial services authority in supervising and preventing illegal investment fraud that is rife in the community. Using normative juridical research methods, investment in society in general is often known as investment. Another thing with illegal investment is business activities in the form of collecting funds from the community. Therefore, supervision of the financial services authority is needed to monitor and inform important information about good and correct investment requirements.

Keywords: surveillance, investment, community

A. INTRODUCTION

OJK plays an important role in investment supervision to help the public avoid investment fraud. Illegal and legal investments are equally prone to occur, especially in ordinary people who lack information. Information about investment is widely spread through the internet and social media, making it difficult to distinguish legitimate investment offers or not. Although information only affects a person's perception, this perception can influence the decisions taken by investors. Therefore, OJK needs to provide the necessary information and monitor investment to avoid losses to the community. Investment is an investment to make a profit after a certain period. Illegal investment is a violation of banking law and is considered a crime. To avoid public losses, OJK must provide good and correct information and investment conditions.¹

Modern people's lives, there are many incidents that occupy the attention of the community, namely the incidence of illegal investment in the community. Illegal investment here means a company or item that is illegal. The importance of arrangements for certification and clear information regarding goods and contract terms in investing is contained in the law of the financial services authority. Because there are many cases of illegal investment, caution must be prioritized by the party who will invest. In order to avoid illegal investment losses with the prospect of getting large profits.

For more strategic supervision, in addition to the supervision carried out by the OJK, formed an Investment Alert Task Force (SWI) to carry out consumer protection and increase public trust in the financial industry. In the Investformulation Recommendationsting of OJK, the National Police of the Republic of Indonesia, the Prosecutor's Office of the Republic of Indonesia, the Ministry of Trade of the Republic of Indonesia (Kemenag), the Ministry of

¹ Abd. Kadir Arno “*Peran Otoritas Jasa Keuangan Dalam Mengawasi Resiko Pembiayaan Dalam Investasi “Bodong”*” *Al-Amwal: Journal of Islamic Economic Law* Maret 2017, Vol. 2 No. 1, Hal 85.

Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (Kemenkop and SMEs), the Ministry of Communication and Information of the Republic of Indonesia (Kemenkominfo), and the Investment Coordinating Board (BKPM) prevent and handle alleged unlawful acts both through formulation Recommendations for handling cases to relevant ministries and/or institutions or conducting joint examinations. that handles illegal investments.

Socialization is needed regarding various types of investments supervised by the Financial Services Authority and prevention of illegal investments that have spread in the community. OJK needs to provide more detailed information about investment, explain the institution, and provide directions to the public who will invest. Investment always has risks in the future, especially when there is illegal investment in the community, so OJK is asked to supervise, especially ordinary people who do not understand about investment. OJK also has an important role in conducting socialization and providing information to the public about raising funds and financing to tackle illegal investment. What is OJK's strategy in conducting supervision to prevent illegal investment in the community?

B. RESEARCH METHOD

This research was conducted using normative juridical research methods, which examine mere secondary materials, to produce useful information related to the supervision of OJK's strategy in counteracting illegal investment in the community.

C. DISCUSSION

According to Law of the Republic of Indonesia Number 21 of 2011 Article 1 Paragraph 1, the Financial Services Authority is an institution that is independent and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in the law. The Financial Services Authority is a

state institution established based on Law Number 21 of 2011 which functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector in general. It can be said that the Financial Services Authority was established to replace the role of Bapepam-LK to conduct strict supervision of financial institutions such as banking, capital markets, mutual funds, finance companies, pension funds and insurance.

The Financial Services Authority as a supervisory body in Indonesia's financial sector is very important. Therefore, OJK must be well prepared to support its existence. Laws governing the organization and governance of institutions that have regulatory and supervisory authority in the financial services sector, including provisions regarding the types of financial service products, limits on the activities of financial service institutions, criteria for financial service institutions, prudential arrangements, supporting services, and other sectoral laws, such as laws on banking, capital markets, insurance businesses, pension funds, and laws and regulations related to the financial services sector Other.²

Some of the concerns of the Financial Services Authority include supervision in the integrated financial services sector, the same consumer protection practices in all financial services sectors, actions that reflect moral hazard and not optimal consumer protection in the financial services sector. OJK in protecting consumers in the financial services sector aims to create a reliable consumer protection system, increase consumer empowerment and grow awareness of financial service actors is very important for consumer protection so as to increase public trust in the financial services sector³.

In Law Number 21 of 2011 concerning OJK in Article 28 it has been stated that for the protection of consumers and the public, OJK is authorized to

² Dasrol, "Fungsi Strategis Lembaga Otoritas Jasa Keuangan Dalam Pengawasan Perbankan Nasional Indonesia", *Jurnal Ekonomi* Volume 21, Nomor 2 Juni 2013, Hal 2.

⁴ Agus anita sari, *Analisis Peran Otoritas Jasa Keuangan Dalam Mengawasi Investasi Di Provinsi Lampung Dalam Perspektif Ekonomi Islam*, sekripsi, hal 48

take measures to prevent losses to consumers and the public including (a) provide information and education to the public on the characteristics of the financial services sector, services, and products; (b) Ask Financial Service Institutions to stop activities if these activities have the potential to harm the community; (c) other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

Supervision under OJK is based on the spirit to pay attention to protection and education for consumers and the public. This is because education and protection for consumers are necessary. Consumer education and protection must achieve two main objectives, namely increasing the confidence of investors and business activities in the financial services sector to provide opportunities and opportunities for the development of the financial services sector in a fair, efficient and transparent manner. On the other hand, financial consumers will have an understanding of rights and obligations in dealing with the financial industry. So in the long run, the financial industry itself will also get positive benefits to spur increased efficiency in response to the demand for better service to financial services. Likewise with the community, they become more aware of investment.

Investment is a form of investment to generate wealth, which will be able to produce returns both now and in the future. In general, investment can be divided into two types, namely investment in real assets and investment in financial assets. Investment in real assets can include land, gold, machinery, while investment in financial assets can include stocks, bonds. There are 2 ways to invest in financial assets (a) Direct investment, meaning by owning these securities (shares) the owner can determine the course of policy which also affects the investment of securities he owns (b) Indirect investment, meaning securities management is represented by investment management plus the ability to detect fraudulent investments by an agency or institution that processes the investments of its securities holders, for that it can generate satisfactory profits for securities holders.

Indirect ownership of assets is carried out through registered financial institutions that act as intermediaries. For example, buying mutual funds ⁴

In an investment activity carried out by the community, there must be risks that are ready to be borne by the community. There are several types of risks that arise in investing in the financial sector, including the following: (a) Interest Risk Rate, which is the risk arising from changes in interest rates, especially in the conventional financial system. That is, there is an interest rate that is a competition "price" in the choice of an investment; (b) Market Risk, which is the risk arising from changes in market trend conditions of one type of investment that affects other investment choices as a whole; (c) Business Risk, which is the risk arising from choosing a type of business in a particular industry field; (d) Inflation Risk, which is the risk arising from the increase in prices as a whole (inflation) which could be due to the relation to the increase in interest rates which causes a decrease in *purchasing power*; (e) Liquidity Risk, which is the risk for a certain type of financial product that has a character that is easy to change hands / easy to trade (liquid) thus if there is a price change in the financial product will affect its liquidity; (f) Exchange Rate Risk, which is the risk associated with fluctuations in foreign exchange rates that affect the return to be obtained; (g) Country Risk, which is a risk arising from a country's political stability or political risk.

Investment has risks; therefore, consumers must understand and accept the consequences that may arise. OJK conducts integrated supervision to protect consumers who use financial services sector services and those who do not. To achieve this goal, OJK has issued Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. According to Article 20 paragraphs (1) and (2) of the POJK, every company or financial service actor that markets or sells financial products or services must be registered

⁴ idit Herlianto, *investment management plus the skill of detecting fraudulent investments*. Wonosari Km, 6, Demblaksari RT 4, Baturetno, Banguntapan, Bantul, Yogyakarta) 2013, p 1.

and supervised by OJK. This step is a form of protection for investment and its management. With a business license from OJK, it is expected to create a system of regulation, guidance, and supervision that can provide protection for consumers and investors who invest in the financial services sector. .⁵

The main task of the Financial Services Authority (OJK) is to monitor investment activities in the community, especially illegal investments which are often a form of fraud by illegally collecting funds from the public. Investor protection is very important because many people are easily tempted and deceived by illegal investments due to lack of legal awareness, ignorance, or the drive to profit by unauthorized means. Legal protection efforts can be carried out through provisions such as Article 378 of the Criminal Code, Article 46 of Law No. 10 of 1998 jo Law No. 7 of 1992 concerning Banking, and Article 59 of Law No. 21 of 2008 concerning Sharia Banking. However, the prevention of illegal investment is not only the responsibility of OJK but must also involve preventive efforts such as increasing public awareness and understanding. People who fall victim to illegal investments generally have excess funds but are less cautious and easily fall into the trap of investing their money in obscure companies or new companies that have not been tested for existence as business entities.⁶

Investment, or investment, has become a familiar term for the public. However, nowadays, illegal investment practices, also known as fraudulent investments, are increasingly rife in society. Illegal investments promise fixed monthly profits even though the company is at a loss, and investors

⁵ Agus anita sari, *Analisis Peran Otoritas Jasa Keuangan Dalam Mengawasi Investasi Di Provinsi Lampung Dalam Perspektif Ekonomi Islam*, sekripsi, hal 32-35.

⁶ nando mantulangi, *kajian hukum investasi dan perlindungan terhadap korban investasi bodong*, lex administratum, vol. V/no. 1/jan-feb/2017, hal 110.

try to circumvent banking rules in collecting funds from the public in the form of deposits. A commonly used illegal investment scheme is a ponzi or money game scheme, which asks for funds from the public and pays bonuses to old consumers from the source of financing funds from new consumers, without any real business activity to make a profit. As a result, the participating people will lose money in a short period of time. Illegal investors also use public facilities to promote this practice with promises of very tempting profits or with interest that exceeds reasonable limits.

Investments have the potential to be misused or abused by economic actors, which can have a negative impact on the economy. Thus, supervision is crucial. Asymmetric information can lead to moral hazard, which is a situation where information is not evenly distributed among economic actors. This can result in adverse selection. Not only financial institutions, but also customers or households engage in moral hazard in the financial sector. This is due to the weak supervision system of financial institutions, caused by the inadequate financial supervision architecture system in Indonesia. As a result, there is a lack of data exchange and interfacing between financial institution supervisory institutions, and a high level of selfishness persists among them.⁷

It is felt that there is insufficient supervision and prevention carried out by OJK against illegal investments, so an organization, namely SWI (investment alert task force), up to several other preventive and repressive roles, has had a positive impact on investment activities in Indonesia, as a state institution that is independent and free from interference with other parties. In addition, it has the function of regulating the integrated regulatory

⁷ Abd. Kadir Arno “Peran Otoritas Jasa Keuangan Dalam Mengawasi Resiko Pembiayaan Dalam Investasi “Bodong” Al-Amwal : Journal of Islamic Economic Law Maret 2017, Vol. 2 No. 1, Hal 90-91.

⁹ Fallahudin Tsauki Takalamingan, Abdurrahman Konoras, Frietje Rumimpunu, *Peran Otoritas Jasa Keuangan Dalam Melakukan Pengawasan Dan Pencegahan Terhadap Pendirian Perusahaan Investasi Ilegal Di Tinjau Dari Undang-Undang Nomor 21 Tahun 2011 (Lex Et Societatis Vol. IX/No. 1/Jan-Mar/2021) Hal 29.*

and supervisory system on all activities in the financial services sector in Indonesia, playing an important role in handling cases in financial institutions that are currently developing in Indonesia such as illegal investigations.

Many people are lured into investments that are disguised as legal investments, and unfortunately, become victims of these schemes. This is harmful to the community and law enforcement is often limited in their efforts to address the issue due to the insufficient laws and regulations governing these activities. As a result, this can weaken legitimate businesses. To protect consumers and promote public confidence in the financial industry, the OJK established an investment alert task force (SWI). This task force, which includes the OJK, the National Police, the Prosecutor's Office, the Ministry of Trade, the Ministry of Cooperatives and Small and Medium Enterprises, the Ministry of Communication and Information, and the Investment Coordinating Board, is responsible for preventing and addressing alleged illegal investment activities. They do this by making recommendations to relevant ministries and institutions or conducting joint investigations.⁸

The public explained that illegal investment activities are activities that violate banking laws because the benefits offered are beyond the limits specified in banking law, positive law, and violate sharia law. When they know the company is illegal, they agree to leave the company and report it to the authorities and provide information to neighbors or close friends or other customers with the aim that there are not more victims.⁹

⁹ Syaeful Bakhri, Maburi Fauzi dan Watuniah, "Peran Otoritas Jasa Keuangan Dalam Upaya Perlindungan Masyarakat Dan Pengawasan Terhadap Investasi Ilegal" *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Islam* Vol. 4, No. 2, Desember 2019, Hal 291.

Therefore, the role of the Financial Services Authority (OJK) is needed to carry out functions, duties, and authorities, in regulating and supervising all financial service institutions in Indonesia. Therefore, the following is an explanation of the functions, duties, and authorities of the financial services authority (a) Functions of the Financial Services Authority (OJK).

Law Number 21 of 2011 in Article 5 states that OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. The OJK function departs from the integration system for all activities in the financial services sector through regulation and supervision. The scope of OJK which covers many fields which are also referred to as sub-systems or sub-sectors such as banking, insurance, investment and others requires centralized control procedures for the integration of legal and policy aspects of the implementation of OJK functions. (b) Duties of the Financial Services Authority (OJK). The general duties of OJK in Law Number 21 of 2011 stated in Article 6 that OJK is to carry out regulatory and supervisory duties on financial services activities in the banking sector, financial services activities in the capital market sector, financial services activities in the insurance sector, pension funds, financing institutions and other financial service institutions. (c) Authority of the Financial Services Authority (OJK) In Law No. 21 of 2011, in addition to regulating the authority to make regulations, it also regulates the authority of OJK in conducting supervision in the financial services sector, contained in article 9, namely, to perform supervisory duties, establish operational policies for supervision of financial services activities, and supervise the implementation of supervisory duties carried out by the Chief Executive.¹⁰

¹⁰ Fallahudin Tsauki Takalamingan, Abdurrahman Konoras, Frietje Rumimpunu, *Peran Otoritas Jasa Keuangan Dalam Melakukan Pengawasan Dan Pencegahan Terhadap Pendirian Perusahaan*

In relation to the concept of prevention and supervision of the establishment of investment companies, especially for illegal or fraudulent investments, it will be described as follows:

1. The establishment of the Investment Alert Task Force (SWI) as a step to supervise the OJK.

Law number 21 of 2011 on the Financial Services Authority (OJK) grants OJK the responsibility and authority to oversee financial service institutions in various sectors, including the capital market and non-bank financial industries such as insurance, pension funds, finance companies, and banks. OJK's role in supervising these institutions is further reinforced by OJK Regulation Number 1/POJK.07/2013, which governs consumer protection in the financial services sector. This regulation defines consumer protection as the safeguarding of consumers in relation to the conduct of financial service providers. Chapter V, articles 51 and 52, specifically address the supervision of consumer protection in the financial services sector.

2. OJK's preventive role is carried out to prevent, reduce or eliminate all possibilities that occur for an unwanted event in the future, which can threaten oneself or the group. Preventive means an action or preventive effort. In the big Indonesian dictionary, it is stated that what is meant by preventive is preventive (so that nothing happens)
3. The role of OJK in repression can be defined as an active measure taken to stop any deviation. Repression is defined as suppressive, restrained, or oppressive. However, in some cases, it can also mean healing. The term repression is used in various fields, and its meaning can differ depending on the context. In the legal context, repression refers to the final protection in the form of sanctions such as fines or

Investasi Ilegal Di Tinjau Dari Undang-Undang Nomor 21 Tahun 2011 (Lex Et Societatis Vol. Ix/No. 1/Jan-Mar/2021) Hal 31-32

imprisonment and additional penalties that can be imposed after a violation or dispute. OJK's repressive measures aim to prevent and crack down on companies involved in illegal investments. According to the law, OJK's repressive actions can include the following:

a. Company license revocation

According to Article 28 paragraph 2, financial service institutions can be asked to stop their activities if there is potential harm to the public. Paragraph 3 also states that OJK has the authority to take necessary actions in accordance with laws and regulations in the financial services sector. By having this article, OJK can provide legal protection by asking financial service institutions to stop their activities if they have the potential to harm the public. If there are complaints from consumers who have been harmed by illegal investment activities, OJK can take necessary actions, including revoking the business licenses of companies involved in illegal investments and imposing sanctions. Article 53 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 also provides provisions on sanctions for financial service actors who violate regulations related to consumer protection in the financial services sector.

b. Financial service actors and/or parties who violate the provisions in the regulations of the financial services authority (OJK) are subject to administrative sanctions, including written warnings. a) A fine is an obligation to pay a certain amount of money. b) Restrictions on business activities. c) Suspension of business activities; and d) Revocation of business activity license.

c. Sanctions as referred to in paragraph (1) huruf b, letter c, letter d and letter e may be imposed with or without the imposition of written warning sanctions as referred to in paragraph (1) letter a.

- d. Fines as referred to in paragraph (1) letter d may be imposed separately or jointly with the imposition of sanctions as referred to in paragraph (1) hruf c, letter d, or letter e.
 - e. The number of fine sanctions as referred to in paragraph (1) point b is determined by the financial services authority (OJK) based on provisions on administrative sanctions in the form of fines that apply to each financial services sector.
 - f. The Financial Services Authority (OJK) may announce the imposition of administrative sanctions as referred to in paragraph (1) to the public.
4. Open a complaint service.

Based on the provisions of article 29 of Law number 21 of 2011 concerning the Financial Services Authority (OJK) conducts consumer complaint services which include: a) Prepare adequate tools for the service of consumer complaints that are harmed by actors in financial service institutions; b) Create a complaint mechanism for consumers who are harmed by actors in financial service institutions; c) Accommodating consumer complaints that are harmed by actors in financial service institutions in accordance with laws and regulations in the financial services sector.

According to the article, the Financial Services Authority (OJK) has a duty to assist people who have been harmed by illegal investment activities carried out by companies. The OJK provides tools, complaint mechanisms, and facilities to resolve complaints, as stipulated in the circular letter of OJK no. 2/seojk.07/2014. Victims can submit complaints indicating disputes between financial service actors and consumers to the OJK in accordance with Law number 21 of 2011. The OJK will then follow up on the complaints by resolving them through apologies or compensation. However, illegal investment is a serious matter that requires attention to prevent the misuse of public funds. Therefore, the OJK has explicitly regulated

consumer complaints and the provision of complaint resolution facilities in its chapter III, as outlined in articles 40 to 46.

5. Dispute resolution

Transaction activities in the financial sector have the potential to pose risks or for disputes in the future, so the financial services authority (OJK) needs to regulate the obligations of actors in the financial services sector to resolve consumer complaints, because when resolving consumer complaints at financial institutions, there is often no agreement between the two parties in the financial sector complaint service. If the consumer is not satisfied with the handling of the complaint, the consumer can proceed with the complaint to the court or alternative dispute resolution institution. The regulation on dispute resolution mechanisms in the financial sector is also a mandate from or implementation of Article 29 (c) of Law No. 21 of 2011 concerning the Financial Services Authority, where the Financial Services Authority (OJK) is given the task of handling complaints from consumers who are harmed by financial services sector actors in accordance with the law and applicable regulations.¹¹

D. CONCLUSION

1. OJK is responsible for regulating and overseeing all financial services in Indonesia, making it an institution with significant authority and many duties and responsibilities. However, due to the large number of financial service institutions, some of them may not receive adequate supervision from OJK, which increases the opportunity for economic crimes to occur. To address this issue and protect consumers while enhancing public trust in the financial industry, the Investment Alert Task Force (SWI) was

¹¹ Fallahudin Tsauki Takalamingan, Abdurrahman Konoras, Frietje Rumimpunu, *Peran Otoritas Jasa Keuangan Dalam Melakukan Pengawasan Dan Pencegahan Terhadap Pendirian Perusahaan Investasi Ilegal Di Tinjau Dari Undang-Undang Nomor 21 Tahun 2011* (Lex Et Societatis Vol. IX/No. 1/Jan-Mar/2021, hal 33-35).

established. This task force comprises various government agencies, including OJK, the National Police, the Prosecutor's Office, and the Ministry of Trade, among others. It aims to prevent and handle suspected unlawful acts, including illegal investments, by formulating recommendations and conducting joint investigations. The Financial Services Authority (OJK) also provides sanctions such as fines, imprisonment, and additional penalties when violations occur, as part of its efforts to prevent and crack down on illegal investment activities.

BIBLIOGRAPHY

- Assad, A. Ziaul, Et Al. Peran Otoritas Jasa Keuangan Dalam Mengawasi Resiko Pembiayaan Dalam Investasi “Bodong”. *Al-Amwal: Journal Of Islamic Economic Law*, 2017, 2.1: 85-95.
- Bakhri, Syaeful; Faozi, Moh Mabruhi; Watuniah, Watuniah. Peran Otoritas Jasa Keuangan Dalam Upaya Perlindungan Masyarakat Dan Pengawasan Terhadap Investasi Ilegal. *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah*, 2019, 4.2: 286-295.
- Fungsi Strategis Lembaga Otoritas Jasa Keuangan dalam Pengawasan Perbankan Nasional Indonesia." *Jurnal Ekonomi Universitas Riau*, vol. 21, no. 02, 2013.
- Herlianto, Didit. Manajemen Investasi plus Jurus Mendeteksi Investasi Bodong 2013.
- Mantulangi, N. Kajian Hukum Investasi Dan Perlindungan Terhadap Korban Investasi Bodong. *Lex Administratum*, 2017, 5(1).
- Sari, Agus Anita. *Analisis Peran Otoritas Jasa Keuangan Dalam Mengawasi Investasi Di Provinsi Lampung Dalam Perspektif Ekonomi Islam (Studi Pada Otoritas Jasa Keuangan Provinsi Lampung)*. 2018. Phd Thesis. Uin Raden Intan Lampung.
- Takalamingan, Fallahudin Tsauki. Peran Otoritas Jasa Keuangan Dalam Melakukan Pengawasan Dan Pencegahan Terhadap Pendirian Perusahaan Investasi Ilegal Di Tinjau Dari Undang-Undang Nomor 21 Tahun 2011. *Lex Et Societatis*, 2021, 9.1.