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Criminal Liability Towards The Crime Of Illegal Fundraising With Investment Mode

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ABSTRACT

One of the modes that has developed is the effort to raise funds for profit through investment or investment that is lured with very lucrative profits or with interest beyond reasonable limits. This research aims to analyze the implementation of criminal liability towards the crime of illegal fundraising with investment mode in Indonesia. This research uses normative legal research as a methodology where this approach is used in legal writing. The data source as a reference for this research uses secondary data. The result of this research shows that Legal arrangements regarding criminal threats to fraudulent investment and public fundraising with investment mode have different rules and different legal sanctions. The legal regulation on the collection of public funds with the investment mode is regulated in Article 46 of the Banking Law which reads the collection of funds with the investment mode. The person who gives orders and/or the party acting as the leader of a legal entity in the form of a Limited Liability Company, Association, Foundation, or Cooperative to collect funds from the public in the form of deposits, and without a business license from the Head of Bank Indonesia (currently the Head of OJK) as a Commercial Bank or Rural Bank, is defined as a bank criminal under Article 46 paragraph (2) of the Banking Law.

Keywords	*Criminal Liability; Fundraising; Investment*
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PRELIMINARY

Law is a tool of the state that has the aim of bringing order, reconciliation, and organizing the life of a nation to achieve justice and balance between rights and obligations. In principle, the law is a diverse reality and statement to ensure the adjustment of freedom and the will of one person with another, which regulates human relations in society based on diverse principles.[1]

The utilization of technology has become a means that has been attached to society now increasingly. The world of information cannot be separated from the internet,

[1] Herman et al. (2023). Kejahatan Carding Sebagai Bentuk Cyber Crime dalam Hukum Pidana Indonesia, Halu Oleo Legal Research, 5 (2), 633-646.

increasing technology has made people not outdated. Indonesian society is currently very intense in following technological developments in every activity.[2]

In the current era of globalization, where change is a certainty, humans need something that can be used as a tool to control the impact of these changes. In social life, of course, we will encounter various kinds of interactions and problems. Problems that arise can be simple but do not rule out the possibility of becoming more serious things such as crime. This happens if there is an inseparable relationship between regulations and society as citizens. Because of the comfortable relationship that occurs between regulations and society, the expression "Ibi societas ibi ius" emerged, and it implies "where there is society there are regulations.[3]

Fund-raising activities can also be said to be the process of finding sources of bank funds. Bank financial institutions are financial institutions that provide the most complete financial services. Non-bank financial institutions are sectors related to development financing in the form of providing medium or long-term credit and can also be in the form of equity participation and businesses aimed at meeting community needs. [4]

In investment activities carried out by the community, several business entities facilitate the community in carrying out investment activities, the establishment of a business entity that has the authority to raise funds must obtain permission from the competent authority. In reality, many business entities engaged in raising funds do not have an official license from the competent authority to issue them. This makes the fundraising done by these entities illegal.[5]

According to Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking, "Any party conducting activities to collect funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or Rural Bank from the Chairman of Bank Indonesia, unless the activities to collect funds from the public are regulated by a separate law," business entities that wish to collect public funds must first obtain a license from the relevant authority, which includes the head of Bank Indonesia.

Article 21 paragraph (1) of Law Number 10 of 1998 concerning banking specifies the legal form of the two banks, namely the legal form of a commercial bank can be a limited liability company, cooperative, or regional company. The two types of banks mentioned above are commercial banks and people's credit banks. A rural bank may be organized legally as a limited liability cooperative, regional business, or in another manner specified by law.

One of the modes that has developed is the effort to raise funds for profit through investment or investment that is lured with very lucrative profits or with interest beyond reasonable limits. In addition, to convince the public, the company tries to show that the investments made are real and are engaged in various business sectors such as trade, services, agriculture, animal husbandry, securities, foreign exchange and gold.[6] However, in reality, the business is nothing but rotating funds that have been collected from the public or investors to pay profits and installments of money that has been received. So the business is very dependent on the accumulation of funds coming in through new investors not through the profits earned by business activities.

These investment activities offer profits from the results of business activities that are fixed and high so that people without thinking about investing their money, commit criminal acts. This section discusses matters relating to criminal offenses in the field of banking as a

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[2] Keysi Veren Kumaat, et.al. (2023) Tinjauan Yuridis Terhadap Tindak Pidana Penipuan Online Dengan Modus Investasi Ilegal, Lex Administratum, 12 (2), 1-13.

[3] I Made Gede Adi Arya Natih, et.al. (2022). Sanksi Pidana Bagi Pelaku Penipuan dengan Modus Investasi Online, Jurnal Preferensi Hukum, 3 (3), 501-507,

[4] Kasmir. (2017). *Bank dan Lembaga Keuangan Lainnya: Edisi Revisi*. Jakarta: RajaGrafindo Persada, 61.

[5] Dewi Bunga, et.al. (2022). Rekontsruksi Budaya Hukum Masyarakat Dalam Menanggulagi Investasi Illegal. Yustisia, 16 (2). 161-169

[6] Tri Syafari and Basto D. Robo. (2019). Efektivitas Penegakan Hukum Tindak Pidana Penghimpunan Dana Masyarakat Secara Ilegal Dengan Modus Investasi di Kota Ternate. Jurnal Penelitian Humano. 10 (1), 397-406

form of criminal offense in the economic sector. The goal of investment is strongly opposed to the practice of fraudulent investment since it is harmful, impairing banking legislation and the legal framework for investments as well as impeding national economic activity.[7]

The expansion and development of national law infractions pertaining to the investment system, such as the provisions of Article 46 of Law No. 7 of 1992 and Law No. 10 of 1998 on banking, is essentially the negative effect of fraudulent investment. In terms of legal protection for the public against criminal acts of illegal fundraising, Law Number 10 of 1998 concerning Banking has provided complete arrangements about the mechanism of how the process of raising funds to criminal provisions when committing criminal acts of collecting public funds, so that in the application of law against perpetrators of criminal acts in the banking sector, this law can be fully applied following Article 63 paragraph (2) of the Criminal Code, namely: "if an act is included in a general act, it is also regulated in a special criminal rule, then only that special one is applied".

One of the cases that occurred in Sinar Galih Tasikmalaya, the perpetrator established an investment business under the name Profit Barokah in Sindanghurip Village Jatihurip District Cisayong Tasikmalaya Regency. To accommodate his business, the perpetrator formed a cooperative business entity under the name Barokah Karya Mandiri Joint Business Cooperative since November 12, 2010. To run his business, in addition to making efforts to attract investors through conventional efforts, namely by visiting the community and informing his business. The investment offers a regular one-month marketing program with profit sharing of 50% for Profit Barokah and 10% to 20% each month plus profits in the form of gold, dinars, and dirhams from the capital/investment invested.

It is also informed that this business is invested in various business activities such as the purchase of property assets, Etawa goat farming business, electricity and telephone account payment services, gold buying and selling, and foreign exchange. These conditions can damage the country's economic growth, cause huge losses, and cause a loss of public confidence to invest their wealth in cooperatives.[8]

Almost all illegal investment companies provide the lure of profits for participants or investors in very large and instantaneous amounts. Based on this description, the problem that the author raises is how the legal regulation of investment in Indonesia in the banking sector against the collection of funds with the investment mode, and how the legal liability for the crime of illegal collection of public funds with the investment mode.

METHOD

Finding the correct legal rules requires conducting legal research, which involves looking up legal doctrines, legal principles, and legal rules.[9] The process includes answering the legal issues at hand, and then the results of the collection of legal materials are analyzed prescriptively. The research approach is a method or way of conducting research.

This research uses normative legal research as a methodology where this approach is used in legal writing. The data source as a reference for this research uses secondary data. These resources consist of legal literature, such as books and essays. Although they can have an impact on how laws are made and interpreted, secondary sources are not conclusive.[10]

Following data collection, researchers organize and examine the information they have. Qualitative data analysis is the method employed. Describe, recount, and analyze situations, facts, events, social activities, attitudes, beliefs, perceptions, and thoughts either alone or in groups are the goals of qualitative research.

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[7] Mas Rahmah (2020). *Hukum Investasi*. Jakarta: Kencana, 21

[8] Amartha. 2022. Waspada! Ini Deretan Penipuan Investasi Indonesia dengan Kerugian Besar. Cited April 28, 2024, From https://amartha.com/blog/pendana/money-plus/waspada-ini-deretan-penipuan-investasi-indonesia-dengan-kerugian-besar/

[9] Peter Mahmud Marzuki. (2005). *Metode Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 35.

[10] Bachtiar. (2018). *Metode Penelitian Hukum*. Banten: Unpam Press, 81

RESULT AND DISCUSSION

Regulation Of Investment Law in Indonesia in The Banking Sector Against Fund Raising with Investment Mode

Raising funds is an active step taken by the offender to get the public to give their money to them to be deposited as savings accounts, demand deposits, certificates of deposit, or other analogous forms. In the meantime, "the public" refers to people, organizations, businesses, and other parties that deposit money. Deposits, which might take the shape of demand deposits, certificates of deposit, savings accounts, or other analogous forms, are money that the general public entrusts to banks following deposit agreements. Among other things, deposits have forms and qualities:[11]

a The public funds can be transferred into current account deposits; withdrawals can be made at any time using cheques, bilyet giro, other payment methods, or book entry; and rewards can be received in the form of money with a predetermined percentage.

b Deposits have the following features: money from the public is submitted; the depositor receives a billet or proof of deposit; withdrawals are permitted at specific times subject to the depositor's agreement with the bank; and there is a reward in the form of money with a specific percentage.

c The public submission of funds, the existence of a certificate of deposit that can be physically transferred or recorded as proof of ownership (for scriptless deposit types), the ability to make withdrawals at specific times by the depositor's agreement with the bank, and the availability of a reward in the form of money with a specific percentage are the features of deposits in the form of certificates of deposit.

d Savings deposits include several features, such as accepting contributions from the general public and allowing withdrawals under specific circumstances. However, cheques, billet giros, and other instruments for saving money cannot be taken from savings accounts.

Deposits are money that the general public entrusts to banks following deposit agreements. These funds can take the form of demand deposits, time deposits, certificates of deposit, savings accounts, or other such arrangements. This is stated in Article 1 Point 5 of the Banking Law. Therefore, even if the funds are gathered from the public, they are not "deposits" as long as the form does not require deposits, savings, certificates of deposit, or other forms that are equivalent to them.

This element highlights the requirement that only certain parties obtain a business license as a bank (Commercial Bank or Rural Bank) from the Head of Bank Indonesia (currently the Head of OJK) to engage in fund-raising activities. This is because public fund-raising activities are subject to regulations imposed by separate laws, such as those governing the Post Office, Pension Fund, or Insurance Company.[12]

According to Article 16 paragraph (1), unless the activities to collect funds from the public are regulated by a separate law, any party conducting activities to collect funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or Rural Bank from the Chairman of Bank Indonesia. The general rule that states non-bank entities are not permitted to accept deposits from the public on behalf of Indonesian banks is in effect. Stated differently, public monies can only be gathered by banks in the form of deposits. The Banking Law's Article 16 paragraph (1) outlines this idea.

Thus, there is a difference between public funds in the form of deposits and public funds that are not in the form of deposits. If funds are collected from the public by anyone

[11] Chainur Arrasjid, *Hukum Pidana Perbankan, ed. Tarmizi*. Jakarta: Sinar Grafika, 103

[12] bernadetha A. Oktavira. 2020. Aspek Hukum Pengumpulan Sumbangan dari Masyarakat. Cited April 28, 2024, From https://www.hukumonline.com/klinik/a/aspek-hukum-pengumpulan-sumbangan-dari-masyarakat-lt5e671df6a0221/

but do not need to be returned to the owner of the origin of the funds.[13] An example is the public funds collected by a party issuing bonds that are offered/sold to the public through the capital market or direct offerings and if the public funds raised in such a way are not intended to be channeled back to the public in the form of credit but are used for their business development, then these activities do not constitute activities to raise public funds in the form of deposits. But if the public funds raised through the issuance of bonds are used by the bond issuer to be distributed in the form of credit or loans to other parties, then the funds raised from the public through the issuance of bonds are funds in the form of deposits.

As a result, by Article 16 of the Banking Law and as detailed in Article 46 jo, these activities must seek a license from BI. Any individual or legal entity that conducts business as an intermediary institution is prohibited by Article 16 of the Banking Law from doing so unless they first receive a license as a bank (to do so, they must obtain a license from the Chairman of Bank Indonesia). Law No. 25 of 2007 addressing investment, which makes a broad distinction between foreign direct investment (FD) and indirect investment, serves as the foundation for Indonesia's basic legal framework governing investments.

Investment activity is a type of business activity where money is put with the expectation of making a profit eventually. In the case of banking law, for instance, the legal regulation of investments is specifically controlled and necessitates the obtaining of a business license for commercial banks, rural banks, Islamic commercial banks, and banks that finance the financial needs of the Islamic community.[14] Furthermore, the author would like to explain further the legal arrangements in conducting investment management according to the applicable laws and regulations are divided into several parts. Every party that raises funds by using a business in the form of a bank requires a license from Bank Indonesia, but this provision switched in 2014 when licensing and supervision switched to OJK.[15]

Based on Law No. 8 of 1995 concerning Capital Markets managed by Investment Managers in the form of stocks, securities, bonds, other securities, and any derivatives are managed by the OJK. Meanwhile, licenses and supervision for commodity futures trading such as mining products, energy, agriculture, and even Crypto Assets are regulated by the Commodity Futures Supervisory Agency (Bappebti). So that the handling of crypto asset investment on illegal crypto exchanges is the responsibility of Bappebti not OJK and also handling of crypto asset investments on illegal crypto exchanges is the responsibility of Bappebti.

OJK is permitted to take action to prevent losses to customers and the public, including the following, under Article 28 of Law No. 21 of 2011 governing the Financial Services Authority:

a. Provide information and education to the public on the characteristics of the financial services sector, its services and products;
b. Requesting financial service institutions to stop their activities if such activities have the potential to harm the public; and
c. Other actions deemed necessary following the provisions of laws and regulations in the financial services sector.

The effectiveness of the rule of law has been seen in the duties and role of the OJK in dealing with illegal investment.[16] In this instance, the OJK set up SWI, whose job it is to supervise investment activity, including illicit investments. The handling of cases and public complaints about illicit investments that are reported to the OJK shall be coordinated with

[13] Alfi Zakki Alfarhani. (2022). Peran Otoritas Jasa Keuangan (OJK) Dalam Penegakan Hukum Investasi Bodong. JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani, 4(1), 13–31.

[14] Thomas Liaw. (2012). The Business of Investment Banking: A Comprehensive Overview, 3rd ed. New Jersey: John Wiley & Son, Inc. 37

[15] OJK. 2023. Hati-Hati Janji Investasi Palsu. Cited April 28, 2024, From https://sikapiuangmu.ojk.go.id/frontend/cms/article/249

[16] Moody R.S Putra and Gavriele Liberty. (2024). The Role of the Financial Services Authority (OJK) in Overcoming Illegal Investment Cases According to the Capital Market Law. 3 (1), 1-12

SWI. The Bapepam Chairman's Decree, LK Number: Kep-208/BL/2007, issued June 20, 2007, established SWI for the 2007 operating period, which is renewed yearly. Following the transfer of responsibilities and powers from Bapepam and LK to OJK, the Investment Alert Task Force Decree was modified via the June 26, 2013, OJK Board of Commissioners Decree, Number: 01/KDK.04/2013.

Criminal Liability For Illegal Collection Of Public Funds With Investment Mode

The ability to be held accountable for a criminal event, there are many theories and opinions from legal experts and other experts. The reasons and arguments given by them as to why a person may or may not be held accountable for their actions. If it is carefully considered, it is generally based on two things, namely concerning the mentality of the perpetrator, and the second one is justified to commit the event because it is justified by the law.[17] Certain circumstances or conditions associated with the media of a perpetrator of a criminal event are considered to be a forgiving condition against the perpetrator. The extent to which forgiving conditions constitute grounds for the abolition of punishment against a person can be seen in the criminal law provisions contained in Book I of the Criminal Code as well as other provisions contained in the criminal law which are scattered.

However, it cannot be ignored that if a criminal act is committed by a person of free will, and if there is no element of forgiveness, then that person must be punished. Therefore, in the science of criminal law, the issue of guilt, intent, and negligence is still raised in every discussion, and this is very necessary because the perpetrator of a criminal event is a human being.[18] Why this needs to be emphasized because in a criminal event, the perpetrator of the event and the event has an inseparable relationship in the form of physical and spiritual.

Therefore, it is the individual who can be punished, although the latest developments in Indonesia are that legal entities can be subject to punishment, but it is the individual who carries out the duties in the legal entity who must carry out the punishment.[19] Why should this be so, namely the mental condition of a person when the criminal incident occurred, and when he was processed following the applicable criminal justice system, because it could happen that before the criminal incident was committed his mental condition was normal and stable, that is, there were no deviant mental disorders.

Based on the criminal system in Indonesia, the term criminal responsibility is known. Criminal responsibility is the forwarding of objective reproaches on actions based on applicable law, subjectively to the maker who meets the requirements of the law who can be punished for his actions. According to this definition, an act is considered criminally responsible if it satisfies the requirements outlined in the law and all of the elements of the offense specified in the article. Criminal responsibility is then placed on the legal subjects who are directly involved in the commission of the criminal act. According to Article 55 paragraph (1) of the Criminal Code, four categories of legal subjects are involved in criminal liability: those who commit the act (*pleger*), those who order to commit (*doen pleger*), those who participate in the commission of the act (*medepleger*), and those who encourage (*uitlokker*).[20]

Tipibank's designation as a crime is predicated on the use of harsher punishments in contrast to offenses. This is because banks are establishments that hold money that the general public has entrusted to them; therefore, it is imperative that activities that could undermine public confidence in banks be avoided at all costs. Law No. 10 of 1998 Concerning

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[17] M.H.N. Singadimedja, et.al. (2019). *Hukum Pidana Indonesia,* Jakarta: Adhi Sarana Nusantara, 160.
[18] Bernadetha A. Oktavira. 2023. Mengenal Unsur Tindak Pidana dan Syarat Pemenuhannya. Cited April 28, 2024, From https://www.hukumonline.com/klinik/a/mengenal-unsur-tindak-pidana-dan-syarat-pemenuhannya-lt5236f79d8e4b4/
[19] Rodliyah, et.al. (2020). Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia. Jurnal Kompilasi Hukum. 5 (1), 192-206
[20] Bagus Rahmadana and Kornelius Benuf. (2020). Hambatan Dan Upaya Pemberantasan Tindak Pidana Perbankan di Indonesia. Law, Development and Justice Review, 3 (2), 169-178

Banking does, in fact, control the imposition of criminal penalties against those who commit banking crimes, but this clause does not discourage the offenders—in fact, it encourages them.

The increase in banking crime is very clear from year to year. This is caused by several things, among others: the perpetrators believe that there is often a lack of care in the internal administration of banking, weak internal supervision, banks often cover up if there is a violation of the law in their bank to maintain the bank's reputation so that the perpetrators are kept secret and not resolved through judicial channels, collusion among the bankers themselves. This must also be addressed and eradicated as soon as possible.

Based on the provisions contained in the articles contained in Law No. 7 of 1992 and later amended by Law No. 10 of 1998, banking crimes can be grouped into types and businesses of banks; bank guidance and supervision; and bank secrecy. As previously mentioned, based on the Banking Law, banking crimes can be classified into 4 (four) types: those related to banking crimes with licensing, those related to bank secrets, those related to supervision and guidance, and those related to bank business. The behavior of this Business Entity in inviting victims by collecting public funds with the investment mode falls into several forms and types of banking crimes.

Law No. 14 of 1967 on Banking Principles was the first piece of banking legislation. Following that, Law No. 7 of 1992 on Banking, as modified by Law No. 10 of 1998 (Banking Law), took the place of the previous law. The Indonesian people's need for Islamic banking services that differ from traditional banking led to the issuance of Law No. 21 of 2008 concerning Islamic Banking, often known as the Islamic Banking Law. The Banking Law makes a distinction between crimes and offenses when referring to criminal penalties. The seven articles that make up Tipibank's criminal category are Articles 46, 47, 47A, 48 paragraph (1), 49, 50, and Article 50A. In the meanwhile, Tipibank, which is defined as an offense with a lesser criminal penalty than an actual crime, is limited to one article, specifically paragraph 48 (2).

Tipibank infractions are classified as crimes because they carry harsher punishments than other types of offenses. This is because banks are organizations that hold money that the general public has entrusted to them, thus it is important to always refrain from doing any actions that will erode public confidence in banks, which will ultimately hurt both the public and banks.[21] The eight articles of the Syariah Banking Law, which cover bank fraud, are numbered 59 through 66. The law does not distinguish between different types of bank fraud penalties. The idea of criminal responsibility in criminal law must be based on the mens rea doctrine of guilt.

In order to be criminalized, a person must fulfill two conditions, namely an outwardly prohibited act/criminal act (actus reus) and a mental attitude of evil (mens rea). Business entities that raise funds illegally against the public with the investment mode can be held accountable as a result of their activities to raise funds. Criminal offenses are committed by those who conduct bank activity without first acquiring a license from Bank Indonesia, which is now OJK. The term "dark bank crime" refers to this offense.

Severe "dark bank" criminal penalties are a threat to any entity that takes deposits from the general public without a business license from the Head of Bank Indonesia (now the Head of the OJK). This penalty can even be applied to corporations by prosecuting leaders or those who issue orders. Because it is directly related to the matter of Bank Indonesia's (now OJK) supervision of these operations, this clause demonstrates the requirement for a permit from the Head of Bank Indonesia (currently the Head of OJK) for actions to collect public funds.[22]

[21] Astrid Jansye Lestari. (2018). Kajian Yuridis Tindak Pidana Perbankan Terhadap Perhimpunan Dana Masyarakat Berdasarkan Undang-undang Nomor 10 Tahun 1998. Lex Crimen, 8 (3), 41-51

[22] Wandi Laiya, et.al. (2023). Legal Review of Donation-Based Crowdfunding System Arrangements in Indonesia. Disruption Law Review, 1(1), 16–31

About the public's interests whose funds are deposited with the party collecting the funds, any activity involving the collection of funds from the public must be overseen. This provision aims to protect public funds in that regard. Therefore, only entities that have secured a business license as a Commercial Bank or Rural Bank from the Chairman of Bank Indonesia (now the Chairman of OJK) are authorized to engage in the activity of collecting funds from the public in the form of deposits. Nonetheless, other institutions within the community also engage in the collection of public monies through deposits; examples of these are post offices, insurance firms, and pension funds.

According to the Banking Law's rules, these institutions' operations are not considered banking business activities. A different law governs the public fund-raising operations that these institutions carry out.[23] Based on the author's analysis, the process of accountability of legal entities as perpetrators of criminal events, including banking crimes, is studied in the criminal justice system, namely with an event called a criminal procedure. Therefore, liability is in formal criminal law and not in material criminal law. This needs to be stated first to avoid misunderstanding because the issue of criminal liability is different from the issue of legislation. Thus, it means that whether or not it is appropriate to apply punishment for those who violate the provisions of the criminal law will be determined in the applicable criminal procedure process.

Therefore, it must be clearly understood that when talking about responsibility, it is within the scope of criminal procedural law, because how far the responsibility is, namely the criminal event committed by a person is determined by a process of formal criminal provisions. In other words, the values contained in material criminal law are determined in the process of criminal law provisions. Without the existence of a criminal procedure whose provisions are determined by formal criminal law, it means that it is an obstacle to provide an assessment of the values contained in the statutory provisions, whether something is a criminal event or not, as well as how far the liability of legal entities as perpetrators of the event. As is well known, legal subjects are divided into two, namely legal entities and individuals.[24]

The ability to be responsible for a criminal event, there are many theories and opinions from legal experts and other experts. The reasons and arguments given by them, why a person can be held accountable for his actions or cannot be held accountable. It is generally based on two things, namely concerning the mentality of the perpetrator and the second one is justified to commit the event because it is justified by the law.

According to the author's analysis, in the science of criminal law, guilt, intent, and negligence are known in every conversation, and this is very necessary because the perpetrator of a criminal event, even though the legal entity that commits it, is still carried out by humans. Why does this need to be emphasized, in criminal events the perpetrator of the event and the event have an inseparable relationship in the form of physical and spiritual. Therefore, it is the individual who can be punished, although the latest development in Indonesia is that legal entities can be subject to punishment, it is the individual who carries out the duties of the legal entity who must carry out the punishment.

Based on this, it is said that an act can be held criminally liable if it meets the conditions stipulated in the legislation, and fulfills the elements of the offense listed in the article, and criminal liability is imposed on the legal subjects involved in the occurrence of this crime. Previously, the author has also explained that the actions of legal entities in collecting funds illegally are regulated in Article 46 paragraph (1) of the Banking Law.

In this example, the author concentrates on cooperatives, but the explanation of the article indicates whoever includes any party, such as persons or legal companies established

[23] Monica Sanli Putri and Nurul Hakim. (2022). Pertanggungjawaban Hukum Penggalangan Dana Secara Daring Terhadap Sistem Donation Based Crowdfunding Menurut Hukum Islam Dan Hukum Positif Indonesia. Jurnal Notarius, 1 (1), 73-83

[24] Laurence Diver. Legal Subject. Cited April 28, 2024, From https://publications.cohubicol.com/research-studies/text-driven-law/chapter-3/legal-subject-subjective-rights-legal-powers/legal-subject/

with the authority of the necessary government bodies to carry out specified operations. The next section of the article deals with taking money from the general public. "Collecting funds" refers to the active action taken by the offender to get the general public to give their money to them to be deposited as savings accounts, demand deposits, certificates of deposit, or other equivalent forms.

Because of the cooperative's behavior, which encourages victims—in this case, the public—to raise money unlawfully, Article 46 of the Banking Law has been satisfied, and those who engage in such behavior, represented by persons, may be held legally responsible. Per the author's comprehension, the notion of criminal responsibility necessitates the presence of the guilt doctrine, also referred to as mens rea. A person must commit two requirements to be considered criminal: an act that is forbidden or unlawful (actus reus) and an evil mental attitude (mens rea). Individuals acting as legal representatives may be held responsible for their involvement in unlawful fundraising.

CLOSING

Legal arrangements regarding criminal threats to fraudulent investment and public fundraising with investment mode have different rules and different legal sanctions. The legal regulation on the collection of public funds with the investment mode is regulated in Article 46 of the Banking Law which reads the collection of funds with the investment mode. The person who gives orders and/or the party acting as the leader of a legal entity in the form of a Limited Liability Company, Association, Foundation, or Cooperative to collect funds from the public in the form of deposits, and without a business license from the Head of Bank Indonesia (currently the Head of OJK) as a Commercial Bank or Rural Bank, is defined as a bank criminal under Article 46 paragraph (2) of the Banking Law.

Accordingly, the parties who give the order to collect funds, the party who acts as a leader or leader in the collection of funds, or both, are accountable or subject to prosecution if fund-raising activities are carried out by legal entities such as Limited Liability Companies, Associations, Foundations, or Cooperatives. In the meanwhile, people who are actively involved in the management of the business entity may be held legally responsible for the business entity in the case of non-legal entities or other entities.

BIBLIOGRAPHY

Books

Arrasjid, Chainur. *Hukum Pidana Perbankan, ed. Tarmizi*. Jakarta: Sinar Grafika.

Bachtiar. (2018). *Metode Penelitian Hukum*. Banten: Unpam Press.

Kasmir. (2017). *Bank dan Lembaga Keuangan Lainnya: Edisi Revisi*. Jakarta: RajaGrafindo Persada.

Liaw, Thomas. (2012). The Business of Investment Banking: A Comprehensive Overview, 3rd ed. New Jersey: John Wiley & Son, Inc.

Marzuki, Peter Mahmud. (2005). *Metode Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.

Rahmah, Mas. (2020). *Hukum Investasi*. Jakarta: Kencana.

Singadimedja, M.H.N. et.al. (2019). *Hukum Pidana Indonesia,* Jakarta: Adhi Sarana Nusantara.

Journal Manuscript

Alfarhani, Alfi Zakki. (2022). Peran Otoritas Jasa Keuangan (OJK) Dalam Penegakan Hukum Investasi Bodong. JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani, 4(1), 13–31.

Bunga, Dewi, et.al. (2022). Rekontsruksi Budaya Hukum Masyarakat Dalam Menanggulagi Investasi Illegal. Yustisia, 16 (2). 161-169.

Herman et al. (2023). Kejahatan Carding Sebagai Bentuk Cyber Crime dalam Hukum Pidana Indonesia, Halu Oleo Legal Research, 5 (2), 633-646.

Laiya, Wandi, et.al. (2023). Legal Review of Donation-Based Crowdfunding System Arrangements in Indonesia. Disruption Law Review, 1(1), 16–31.

Lestari, Astrid Jansye. (2018). Kajian Yuridis Tindak Pidana Perbankan Terhadap Perhimpunan Dana Masyarakat Berdasarkan Undang-undang Nomor 10 Tahun 1998. Lex Crimen, 8 (3), 41-51.

Kumaat, Keysi Veren, et.al. (2023) Tinjauan Yuridis Terhadap Tindak Pidana Penipuan Online Dengan Modus Investasi Ilegal, Lex Administratum, 12 (2), 1-13.

Natih, I Made G.A. et.al. (2022). Sanksi Pidana Bagi Pelaku Penipuan dengan Modus Investasi Online, Jurnal Preferensi Hukum, 3 (3), 501-507.

Putra, Moody R.S and Gavriele Liberty. (2024). The Role of the Financial Services Authority (OJK) in Overcoming Illegal Investment Cases According to the Capital Market Law. 3 (1), 1-12.

Putri, Monica Sanli and Nurul Hakim. (2022). Pertanggungjawaban Hukum Penggalangan Dana Secara Daring Terhadap Sistem Donation Based Crowdfunding Menurut Hukum Islam Dan Hukum Positif Indonesia. Jurnal Notarius, 1 (1), 73-83.

Rahmadana, Bagus and Kornelius Benuf. (2020). Hambatan Dan Upaya Pemberantasan Tindak Pidana Perbankan di Indonesia. Law, Development and Justice Review, 3 (2), 169-178.

Rodliyah, et.al. (2020). Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia. Jurnal Kompilasi Hukum. 5 (1), 192-206.

Syafari, Tri and Basto D. Robo. (2019). Efektivitas Penegakan Hukum Tindak Pidana Penghimpunan Dana Masyarakat Secara Ilegal Dengan Modus Investasi di Kota Ternate. Jurnal Penelitian Humano. 10 (1), 397-406.

Website

Amartha. 2022. Waspada! Ini Deretan Penipuan Investasi Indonesia dengan Kerugian Besar. Cited April 28, 2024, From https://amartha.com/blog/pendana/money-plus/waspada-ini-deretan-penipuan-investasi-indonesia-dengan-kerugian-besar/

Diver, Laurence. Legal Subject. Cited April 28, 2024, From https://publications.cohubicol.com/research-studies/text-driven-law/chapter-3/legal-subject-subjective-rights-legal-powers/legal-subject/

OJK. 2023. Hati-Hati Janji Investasi Palsu. Cited April 28, 2024, From https://sikapiuangmu.ojk.go.id/frontend/cms/article/249

Oktavira, Bernadetha A. 2023. Mengenal Unsur Tindak Pidana dan Syarat Pemenuhannya. Cited April 28, 2024, From https://www.hukumonline.com/klinik/a/mengenal-unsur-tindak-pidana-dan-syarat-pemenuhannya-lt5236f79d8e4b4/

Oktavira, Bernadetha A. 2020. Aspek Hukum Pengumpulan Sumbangan dari Masyarakat. Cited April 28, 2024, From https://www.hukumonline.com/klinik/a/aspek-hukum-pengumpulan-sumbangan-dari-masyarakat-lt5e671df6a0221/