

# Study of Implementation of Criminal Law in Fake Investment Cases

Riza Endriyana<sup>1</sup>, Megawati Barthos<sup>2</sup>, Zudan Arief Fakrulloh<sup>3</sup>  
r\_endriyana@yahoo.com<sup>1</sup>, megawati\_barthos@borobudur.ac.id<sup>2</sup>, cclsis@yahoo.com<sup>3</sup>

Universitas Borobudur<sup>1, 2, 3</sup>

**Abstract.** The emergence of the influence of globalization on economic development has caused many crimes of fraud to occur with new types in the economic field. One that often happens is a fraudulent investment. The examination utilized in this study utilizes standardizing legitimate exploration techniques that have the object of concentrate in lawful principles and depend on essential legitimate materials, optional legitimate materials, and tertiary regulation. The misrepresentation that was done by one of the subsidiaries named Indra Kesuma or who is typically called Indra Kenz has carried out extortion and tax evasion violations in one of the exchanging applications, to be specific Binomo which is unlawful in Indonesia. For his activities, Indra Kenz was seen as at fault for abusing Article 45A passage (1) related to Article 28 section (1) of Regulation Number 19 of 2016 concerning Revisions to Regulation Number 11 of 2008 concerning Data and Electronic Exchanges and Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning Avoidance and Annihilation of Tax evasion Violations.

**Keywords:** TPPU Law, Money Laundering, Crime

## 1. Background

In today's modern era, the thing that cannot be avoided is the development of technology and information which is getting more advanced from time to time. The evolution of technology and information encourages improvement in the field of investment.[1] The investment itself is an activity carried out by a person or what has commonly anointed an investor by placing a portion of his assets which can be in the form of money or other forms of value and entrusted to a particular party or institution, the investment activity strives to gain profit or profit and can also be referred to as investors. The investment itself comes from the Italian, *investire* which means to use or use.[2]

The development of investment in Indonesia itself in 2017 has increased, and by that increasing in Indonesia, it makes people invest more than save, which aims to meet the needs of people's lives. The investment itself means a commitment to several funds or in terms of other resources and is carried out at this time, which aims to obtain several benefits in the future.[3] The results obtained or profits from the investment will be shared with investors by giving compensation to the manager according to the agreement between the two parties.[4] Investment fraud often occurs, many of which have emerged with various modes of fraud committed by irresponsible persons or fraudsters.[5] The goal of someone who invests is to maximize returns, and without forgetting what are the risk factors that will come when

investing. Return is also one of the factors that motivate someone to invest and is also a reward for someone for daring to take the risk of an investment that has been made.[6]

In general, investment can be divided into two, the first is an investment in financial assets obtained at a financial institution such as banking and capital markets and examples of financial investment are deposits, stocks, and *sukuk*. [7] Then the second is an investment in real assets which includes investment in immovable objects or fixed assets, an example of investment in real assets, namely land, property, precious metals, factories, or companies. [8] The illegal investment provides an offer to hand over a sum of money that the public has as investors or what is commonly called initial capital for investment, by promising unfair profits or unclear management of the funds, the investment is an investment with money game practices or money circulation with a purpose namely to control all the money from investors. [9] The emergence of the influence of globalization on economic development has caused many crimes of fraud to occur with new types in the economic field. One that often happens is a fraudulent investment.

The following discussion focuses on the function of criminal law, namely as a policy to tackle crime and as an integral part of policies that focus on providing social defense policy and community welfare. (Bendesa, 2019) There are many regulations regarding crimes and violations and their sanctions here. After that, according to the sample of the fraudulent investment case that was taken, the article on money laundering applies.

It is very important to discuss, discuss, and analyze money laundering under the guise of investment nowadays because it is now easier to do this crime. One of the reasons is of course globalization. Globalization marked by technological developments has brought changes to internet-based activities, one of which is in terms of transactions. The increase in the use of online transactions is of course triggered by the many benefits that can be felt by consumers who use online transactions, especially the ease of making transactions because it is more functional and there is no need to come to the Indonesia Stock Exchange (IDX) or other securities companies that investors usually do.

It is also undeniable that Indonesia is currently in the field of technological development and has not been able to match other technologically advanced countries. In addition, the social and cultural reaction of the people of Indonesia as a developing country is the main reason why awareness (social control) among fellow citizens is still not responsive in its implementation, in contrast to developed countries where the people themselves obey and are already rational towards the rule of law. Therefore, in most cases, the police still have difficulties fully tracing the real culprits in the layered online crimes which make law enforcement authorities less effective and efficient.

An example is the Binomo case which was suspected of being an act of money laundering by Indra Kenz, a social media celebrity, who is increasingly suspected of making fraudulent investments through the Binomo application platform. The case is being discussed in 2022 because Indra Kenz is a famous person and because many other parties have participated in initiating the Binomo trading website as an online investment platform that is quite well-known in the community. So we agreed to research the fraudulent investment case by Indra Kenz, with a research entitled "Application of Criminal Law Functions in Bodong Investment Cases."

## **2. Method**

Legitimate exploration or what is referred to in English as lawful examination is lawful examination led to find arrangements or lawful issues that happen, specifically by depicting what is proper for the issues introduced.[10] The exploration technique utilized in this study utilizes regularizing legitimate examination strategies which have the object of concentrate as legitimate principles and depend on essential legitimate materials, optional legitimate materials, and tertiary law.[11] The logical strategy utilized in this study utilizes a subjective information investigation technique that gathers information from writing studies and other web sources.

### **3. Results And Discussion**

#### **3.1 Online Crimes Related to Fraudulent Investments**

At present, there is very much news in the Indonesian television world about fake investments or scams under the guise of investments that are exposed through social media or platforms specifically provided as places for investment. These platforms provide attractive offers with the promise of large profits in a fairly short time. This causes many people to be interested in investing without considering and seeing the background of the platform. Unfortunately, all this investment capital instead of benefiting those who invest it suffers losses. Many people feel they are being harmed. This is because investors who entrust their money to be invested in an investment company but are not managed properly, only turn it over to other investors and even take it away for individual interests. Crime through money transactions is usually categorized as money laundering.

If explored further, the crime of money laundering is a form of crime by a corporation/personal who intentionally diverts, deposits, places, changes forms, exchanges currency, grants, exchanges assets for securities, or other actions to eliminate traces because the money is in suspect the result of a crime. Money laundering can also be said to be an act that intends to invest in various fields that are recognized as legal through legal channels, therefore the origin of the money cannot be identified.

The legitimate reason for the crook demonstration of illegal tax avoidance is contained in Regulation Number 15 of 2002 which was subsequently different to Regulation Number 25 of 2003 and presently Regulation Number 8 of 2010 concerning the Counteraction and Destruction of Tax evasion Violations applies.

The act of taking other people's assets or goods for one's benefit is not far from the notion of corruption. These two crimes are equally bad because an individual or an organization has seized the property rights of another person. This in itself is included in the violation of Human Rights (HAM).

Nowadays, the existence of individual human rights is increasingly being upheld in every country. Every violation of human rights receives strict sanctions and applies to all levels of society. Even a country can be sued by individuals if the country is proven to have violated the individual's human rights. Therefore, it is stunning that numerous crimes in Indonesia do not receive the rewards they deserve. The problem is evident in various cases where the majority involve state officials, wealthy people, or well-known figures. Instead of being punished, they became increasingly famous and appeared in front of the crowd with a big smiles as if they were proud of their medicine which caused harm to many of their victims.

Investment activity itself has the meaning of investing in certain companies or projects to create a profit. While the word "*bodong*" means fake. Actions taken by fraudulent investors are usually victims/consumers asked to invest in shares or provide capital in a product or a business that is not real or fake. Even though we can see whether an investment is registered with the

OJK or not, it is the OJK that oversees and regulates all matters relating to a service or business in the financial sector. However, often potential investors are tempted by the instant benefits offered so that instead of making a profit, they suffer losses after being deceived by fake lures.

An illustration of extortion that has been completed by one of the members named Indra Kesuma or who is generally called Indra Kenz has perpetrated misrepresentation and tax evasion violations in one of the exchanging applications, in particular Binomo which is unlawful in Indonesia. Infringement that the police call unlawful incorporate:

- a. Creating and appropriating content in regards to the Binomo application with recordings containing:
  - 1) Teach respondents to enlist and exchange Binomo
  - 2) Invite brokers to enroll by means of an outside reference
  - 3) Convey that the Binomo application is trusted
- b. The suspect opened an exchanging class or seminar on Binomo by paying a base passage expense of 1 million rupiahs and a limit of 4 million rupiahs, in which individuals get how to exchange on Binomo through web-based recordings.
- c. The suspect likewise came by results as a Binomo offshoot from individuals who joined through the suspect's outside reference.

### **3.2 Regulation of Money Laundering Crimes**

The term tax evasion in Indonesia is deciphered as illegal tax avoidance which is sorted as a wrongdoing, whether perpetrated by people or by lawful elements or enterprises. In Dark's Regulation Word reference by Henry Campbell Dark (1990), tax evasion is characterized as follows:[12]

*"Term used to describe investment or other money transfers that flow from extortion, drug dealing, and other illegal sources into legal channels so that their source cannot be traced."*

This term depicts tax evasion as saving or putting away cash or different types of moving or moving cash starting from coercion, opiates exchanges, and other unlawful sources through legitimate channels so the wellspring of the cash can't be known. or tracked.[13]

Welling stated that "money laundering is a process by which a person conceals the existence, unauthorized source, or unauthorized application of income and then disguises the income to make it appear legitimate". In the mean time, that's what frazer contended "Tax evasion is a genuinely basic cycle wherein "grimy" cash (continues of wrongdoing) is washed through "clean" or real sources and organizations so that "terrible individuals" can all the more securely partake in their disease. benefit.[14]

In the Assembled Countries Show Against Illegal Traffic in Opiates, Medications, and Psychotropic Substances of 1988 which has been approved by Regulation no. 7 of 1997, the term money laundering is defined in Article 3 paragraph (1) as follows: "Transformation or move of resources, realizing that the resources start from infringement or serious infringement (which can be indicted), or from taking part in such infringement or infringement, to stow away or mask unlawful resources or aiding anybody associated with carrying out said wrongdoing or a wrongdoing to stay away from the lawful results of his activities; or covering or camouflage of the real essence, source, area, demeanor, development, freedoms regarding or responsibility for property; realizing that the property began from serious infringement or infringement (which can be indicted) or from partaking in such infringement or infringement.[15]

The advancement of this wrongdoing of tax evasion has raised global concern since it is expected that it could upset the monetary solidness of the business world because of the fast course of a lot of assets starting with one spot then onto the next and even from at least one

nations to at least one different nations. The world local area by and large accepts that illegal tax avoidance exercises completed by criminal associations or by hoodlums are exceptionally impeding to society.

The beginning of tax evasion is executed by criminal associations which are in many cases known as the mafia. Illegal tax avoidance is normally completed in light of multiple factors, for example, on the grounds that the assets claimed are the consequence of robbery/defilement, continues of wrongdoing (for instance, in a crook organization), selling maryjane, prostitution, tax avoidance, etc. For that, the cash should be "washed" or executed to outsiders, through lawful substances, or underdeveloped nations. The cash could be gotten back by the first proprietor of the cash as though it came from lawful business results. For it is important to contract management with respect to the progression of assets, both the beginning of the source and the reason for utilizing the assets. The point is, as a matter of fact, to break and forestall the chain of the muddled progression of assets that is destined to be "washed" by the proprietor.[16]

Tax evasion exercises significantly affect both monetary framework solidness and the economy overall. The wrongdoing of tax evasion is multi-layered and transnational and frequently includes a sizable measure of cash. The wrongdoing of illegal tax avoidance is a coordinated wrongdoing in that the taking care of is the obligation of the condition of every country which is appeared in provincial or worldwide participation through two-sided and multilateral discussions.

Illegal tax avoidance exercises include extremely complex exercises. These exercises comprise of three stages, every one of which remains solitary yet is frequently completed together, to be specific situation, layering, and joining.

#### 3.2.1 Placements

Situation is characterized as an endeavor to put reserves created from crime. For this situation, there is an actual development of money either through cash pirating starting with one country then onto the next, joining cash beginning from wrongdoing with cash got from real exercises, or by putting expectation stores into the financial framework. for instance bank stores, checks, or through land, or offers, or additionally changing over into different monetary standards, or moving cash into unfamiliar monetary standards.

#### 3.2.2 Layering

Layering is characterized as isolating the returns of wrongdoing from their source, to be specific related crimes through a few phases of monetary exchanges. For this situation, there is a course of moving assets from a few records or certain areas because of position to different spots through a progression of perplexing exchanges intended to camouflage or beguile these unlawful wellsprings of assets. Layering should likewise be possible by opening whatever number imaginary organization accounts as would be prudent by using bank mystery arrangements.

#### 3.2.3 Integration

Incorporation is an endeavor to lay out a premise as a "genuine clarification" for the returns of wrongdoing. For this situation, the cash that was coerced through arrangement or layering was redirected into true exercises so it appeared to be totally inconsequential to the past crime which was the wellspring of the cash being whitewashed. At this stage, the brightened cash is returned to course in a structure that is in accordance with law and order.

The outcomes brought about by the strategy for tax evasion are of extraordinary premium to nations all over the planet, additionally, the assets utilized in illegal tax avoidance are continues from serious violations. These outcomes incorporate the wrongdoing of tax evasion which can possibly disturb public and global financial aspects since it jeopardizes the viable activity of the economy and makes defective monetary strategies, particularly in specific nations. The act of illegal tax avoidance likewise undermines the public economy since tax evasion could cause sharp variances in return rates and financing costs. Likewise, reserves coming about because of tax evasion can be moved from a country with a gainful economy to a country with a terrible economy. It can gradually obliterate monetary business sectors and decrease public confidence in the monetary framework, which can support expanded hazard and strength which brings about diminished world financial development rates.

As of now, the wrongdoing of tax evasion is controlled in Regulation no. 8 of 2010 concerning the Avoidance and Destruction of Tax evasion Wrongdoings. Already, the wrongdoing of tax evasion was controlled in Regulation no. 15 of 2002 concerning the Wrongdoing of Tax evasion and Regulation no. 25 of 2003 concerning the Wrongdoing of Tax evasion.

The regulation of money laundering in Indonesia can be observed from Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which is sought to prevent and eradicate crimes in the form of money laundering practices in Indonesia. It is intended so that the intensity of crimes that generate immense quantities of funds can be minimized so that economic stability and state security are sustained.

The Presence of Regulation No. 8 of 2010 concerning the Counteraction and Destruction of Tax evasion Violations gives an open door to policing conduct breakdowns of smart players to figure out the progression of cash produced. Furthermore, it can likewise be utilized as a reason for capturing scholarly entertainers who money and plan offenses, including predicates wrongdoings by leading examinations and examinations concerning the progression of cash continues from violations.

Predicate wrongdoing is a predicate wrongdoing of tax evasion. Predicate wrongdoing is communicated in Article 2 section (1) of Regulation no. 8 of 2010 concerning the Avoidance and Annihilation of Tax evasion Violations.

In Regulation no. 8 of 2010 concerning the Avoidance and Destruction of Tax evasion, matters that are remembered for the wrongdoing of tax evasion are controlled in Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, and Article 10. In the mean time, matters that are remembered for other crook acts connected with the wrongdoing of tax evasion are managed in Article 11, Article 12, Article 13, Article 14, Article 15, and Article 16 of Regulation No. 8 of 2010 concerning the Anticipation and Annihilation of Tax evasion Violations.

Definition of the Wrongdoing of Illegal tax avoidance in Regulation no. 8 of 2010 concerning the Anticipation and Annihilation of Tax evasion Wrongdoings contained in Article 3 of Regulation no. 8 of 2010 states that each individual who places, moves, moves, spends, pays, awards, stores, takes abroad, changes structures, trades with cash or protections or different activities on resources that he knows or sensibly thinks is the consequence of acts wrongdoing as alluded to in Article 2 section (1) to cover or mask the beginning of resources will be rebuffed for tax evasion with a most extreme detainment of 20 (twenty) years and a greatest fine of R. 10,000,000,000.00.

Article 4 of Regulation no. 8 of 2010 states that each individual who stows away or camouflages the beginning, source, area, assignment, move of freedoms, or genuine responsibility for that he knows or sensibly thinks is the consequence of a wrongdoing as alluded

to in Article 2 passage (1) will be rebuffed for the wrongdoing of tax evasion with a greatest detainment of 20 (twenty) years and a most extreme fine of Rp. 5,000,000,000.00.

Article 5 section (1) of Regulation no. 8 of 2010 states that each individual who gets or controls the situation, move, installment, award, gift, protection, use, or uses resources that he knows or sensibly thinks are the returns of a wrongdoing as alluded to in Article 2 passage (1) will be rebuffed with greatest detainment of 5 (five) years and a most extreme fine of Rp. 1,000,000,000.00 (one billion rupiah). With the arrangements of Article 5 passage (2) express that the arrangements alluded to in section (1) don't make a difference to detailing parties who complete revealing commitments as specified in the law.

Tax evasion violations can be done by people or enterprises. In Regulation no. 8 of 2010 there is a guideline in Article 6 passage (1) which makes sense of that on account of tax evasion as alluded to in Article 3, Article 4, and Article 5 completed by an enterprise, discipline is forced on the Company or potentially Corporate Control Personnel.

Article 6 section (2) of Regulation no. 8 of 2010 states that a sentence is forced on an enterprise assuming that the wrongdoing of tax evasion is carried out or requested by a Corporate Control Faculty, and is completed with regards to satisfying the points and goals of the company, is done by the obligations and elements of the culprit by the provider of the request, and is completed to give advantages to the partnership.

Regulation no. 8 of 2010 concerning the Avoidance and Annihilation of Tax evasion Wrongdoings has occurred perspective change in moves toward battle tax evasion. In the previous arrangement, the principle of "follow the suspect" was used, namely following the suspect. Currently, the paradigm for eradicating money laundering crimes uses the "follow the money" principle, namely following the proceeds of crime. This is seen as more effective because it can eliminate the motivation of the perpetrators of crime, the proceeds of crime "as the blood of the crime" is the weakest point of the crime chain, the difficulty of proving criminal acts and the responsibility of intellectual actors for crimes is overcome by tracing the proceeds of crime, and it is more just and far range.

### **3.3 Legislative Provisions Related to the Binomo Case**

Indra Kenz, who is the main actor in cases of fraud and online gambling carried out in the trader application, namely Binomo, is threatened with the provisions of Article 45 paragraph 2 relating to article 27 paragraph 2 regarding actions in online information and electronic documents containing gambling and its sanctions and/or Article 45 paragraph 1 regarding violations of decency through access to electronic information and electronic documents which are associated in the form of violations in the form of spreading misleading hoaxes or fake news that have the potential to cause harm to oneself and others. according to what is stated in article 28 paragraph 1 of the Electronic Transaction Information Law (ITE).

Associated with the menace of regulations linked to money laundering regulations, namely subsidiary Article 3 regarding all acts of violation with currency or securities including embezzlement, fraud, counterfeiting money, and gambling, and/or Article 5 and/or Article 10 concerning people who participate in violations referred to in Article 3, Article 4, and Article 5. Those articles are expressed in Regulation Number 8 of 2010 concerning the Anticipation and Annihilation of Tax evasion Wrongdoings (TPPU).[17] Indra Kenz is likewise accused of Article 378 of the Crook Code concerning false demonstrations which are connected to Article 55 of the Lawbreaker Code concerning support in executing criminal demonstrations.

Through these articles, Indra Kenz is jeopardized with confinement for 20 years and the confiscation of several movable and immovable assets worth billions of rupiah. This decision

does not only apply to Indra Kenz but to everyone who is directly or indirectly engaged in the case.

#### 4. Closing

It is very important to discuss, discuss, and analyze money laundering under the guise of investment nowadays because it is now easier to do this crime. One of the reasons is of course globalization. Globalization marked by technological developments has brought changes to internet-based activities, one of which is in terms of transactions. The increase in the use of online transactions is of course triggered by the many benefits that can be felt by consumers who use online transactions, especially the ease of making transactions because it is more practical and there is no need to come to the Indonesia Stock Exchange (IDX) or other securities companies that investors usually do. An illustration of misrepresentation that has been completed by one of the members named Indra Kesuma or who is typically called Indra Kenz has executed extortion and furthermore illegal tax avoidance in one of the exchanging applications, in particular Binomo which is banned in Indonesia. For his activities, Indra Kenz was seen as at fault for abusing Article 45A passage (1) related to Article 28 section (1) of Regulation Number 19 of 2016 concerning Corrections to Regulation Number 11 of 2008 concerning Data and Electronic Exchanges and Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning Avoidance and Destruction of Tax evasion Violations.

#### References

- [1] H. S. Jonkarlo, E., Sudirman, L., & Disemadi, "Market Manipulation On The Indonesian Stock Exchange By Market Maker: Investor Protection?," *J. Komun. Huk. (JKH)*, 2022.
- [2] K. D. Pramita, K. D., & Hendrayana, "Perlindungan Hukum Terhadap Investor Sebagai Konsumen dalam Investasi Online," *J. Pacta Sunt Servanda*, 2021.
- [3] D. T. H. Putri, "Analisis Kinerja Investasi Reksa Dana Syariah di Indonesia dengan Metode Sharpe, Treynor dan Jensen (Studi Pada Reksa Dana Saham Syariah yang Terdaftar di Otoritas Jasa Keuangan Periode 2015-2017) (Doctoral dissertation, Universitas Brawijaya), hlm 1.," 2018.
- [4] D. Disemadi, H. S., & Delvin, "Kajian Praktik Money Laundering dan Tax Avoidance dalam Transaksi Cryptocurrency di Indonesia," *Nusant. J. Ilmu Pengetah. Sos.*, 2021.
- [5] O. Nurdianti, "Skema Ponzi di Indonesia: Rekam Jejak Media Informasi vs Victim Profile (Studi Kasus pada Perusahaan QNET) (Doctoral dissertation, Jurusan Akuntansi Fakultas Ekonomi dan Bisnis), hlm 9," 2020.
- [6] N. Saputra, H. I., & Anastasia, "Jenis Investasi Berdasarkan Profil Risiko," *Finesta*, 2013.
- [7] A. Johan, S., & Ariawan, "Keterbukaan Informasi Uu Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form. Masalah-Masalah Hukum," 2021.
- [8] M. Hayati, "Investasi Menurut Perspektif Ekonomi Islam," *Ikon. J. Ekon. dan Bisnis Islam*, 2016.
- [9] E. Amanda, S., Noval, S. M. R., & Herlina, "Penegakan Hukum Terhadap Praktik Money Game Dengan Skema Ponzi Dalam Investasi Ilegal Pada Aplikasi Tiktok E-Cash di Indonesia," *Res Nullius Law J.*, 2022.
- [10] D. Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian," *Hukum. Nusant. J. Ilmu Pengetah. Sos.*, 2021.
- [11] Purnadi Purbacaraka dan Soejono Soekanto, *Perihal Kaedah Hukum*. Bandung: Citra Aditya, 1993.

- [12] B. Nasution, *Rejim Anti-Money Laundering di Indonesia*. Bandung: BooksTerrace & Library Pusat Informasi Hukum Indonesia, 2008.
- [13] Juni Sjafrin Jahja, *Melawan Money Laundering*. Jakarta: Visimedia, 2012.
- [14] Sutan Remi Sjahdeini, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*. Jakarta: PT. Pustaka Utama Gravity, 2007.
- [15] Yunus Husein, "Tindak Pidana Pencucian Uang (Money Laundering) Dalam Perspektif Hukum Internasional," *J. Huk. Int.*, 2004.
- [16] Hafis Mu'addab, "Sejarah Money Laundering", <http://hafismuaddab.wordpress.com/2012/05/30/sejarah-money-loundring.htm>, (Diakses 15 Maret 2023)."
- [17] "UU Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (TPPU)."