



The Role of the OJK (Financial Services Authority) in Preventing Illegal Investment Activities in Legal Entities in the Form of Cooperatives

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Abstract. The Financial Services Authority (OJK) is an institution established with the aim of supervising financial institutions and has a role in preventing and overcoming illegal fundraising that occurs in society. Supervision is carried out so that the financial institutions under supervision do not commit violations and do not harm the community. Indonesia is listed as a country prone to illegal/fraudulent investments. This study aims to determine the role of the OJK (Financial Services Authority) in enforcing law against fraudulent investment activities and to find out the constraints of the OJK (Financial Services Authority) in enforcing laws against investment activities. bulging. The type of research used in the research here is to use normative legal research with statutory and conceptual approaches. The results of the research here are that the Financial Services Authority (OJK) is an independent institution without the interference of other parties that has the duty to regulate and supervise financial service institutions and protect consumers. The role of OJK is to regulate laws and regulations and implement the OJK Law in the financial services sector by providing written procedures for the sector. In addition, it also supervises so that consumers are protected by assigning administrative witnesses if they commit a violation and OJK did not hesitate to revoke its business license and disband an institution in the financial services sector. Legal protection for customers as a result of illegal investments in the form of cooperatives is by returning customer funds using household budget funds or articles of association, in the case of time deposits with interest rates according to the contents of the agreement made by the cooperative with customer members.

Keywords: The Role of OJK, Fraudulent Investment, Cooperatives.

1. Introduction

Cooperatives are business entities that operate in the non-bank financial sector on a voluntary basis. Cooperatives have various types, one of which is savings and loan cooperatives. Savings and loan cooperatives in carrying out their activities have the principle of helping each other by assisting cooperative members if they experience financial difficulties, of course by setting low interest rates, because cooperatives are a financial sector. Recently, cooperatives have experienced many incidents of irregularities such as problems with bad credit and misappropriation of funds. Funds are a sensitive matter and must have strict supervision. Thus, the Financial Sector

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Development and Strengthening Law (UU PPSK) adds to the duties of the Financial Services Authority (OJK) to supervise cooperative institutions, especially savings and loan cooperatives with the aim of protecting the interests of the community as users of financial services by educating and protecting the public from matters - things that can be detrimental to society itself.[1]

The Financial Services Authority (OJK) is an independent institution tasked with carrying out micro-prudential supervision, inspection and investigation in the entire financial services sector as regulated in Law no. 21 of 2011. The main thing that led to the establishment of this OJK institution was so that an institution, especially an institution in the financial sector, in carrying out its practices could be fair, open and transparent regarding the allocation and use of funds collected from the public. The aim is to protect the public as consumers of financial institutions and create a healthy financial system to achieve stability and increase national economic growth in Indonesia. In carrying out its duties, the Financial Services Authority has the authority to make regulations, supervise business activities, grant operational permits, and provide sanctions for violations committed by financial services institutions. OJK also has the authority to take resolution action for financial services institutions that are experiencing financial difficulties or are threatened with bankruptcy. The role of the OJK is to protect consumers in the financial services sector with the aim of increasing understanding of the financial products and services offered.[2]

In the current era of globalization, we still encounter many investment practices that promise large or relatively high profits, so that as investment businesses in the financial services sector continue to develop, fraudulent investments are increasingly occurring. Illegal investment practices or what is often called fake investment, people are promised a fixed profit/interest every month even though the company makes a loss.[3]

We can find fraudulent investment through collecting public funds in the case of the Pandawa Group in Depok, West Java. In this case, the OJK and the investment alert task force decided to stop all fund-raising activities carried out by the Pandawa Group under the guise of a savings and loan cooperative because it had the potential to harm the public and was suspected of violating banking laws. Pandawa Group which is located at Jl. Raya Meruyung Number 8A, Rt 002/Rw 024, Meruyung, Limo, Depok City, West Java, is known to carry out activities to collect public funds by offering high interest or investment profits. Based on the research results, this activity shows that there is an agreement between the Pandawa Group and customers which was signed by the Pandawa Group Leader (Salman Nuryanto), as a way to seek profits from people/customers who do not understand and are easily persuaded. The fund collection was carried out personally by Salman Nuryanto and has nothing to do with the KSP Pandawa Group. This deceptive investment practice has claimed hundreds of thousands of victims with losses estimated at Rp. 6 Trillion.[4] From this case example, it illustrates that the lure of interest or rewards for fixed and high returns very easily influences potential investors. People are turning a blind eye because they want to quickly get instant profits without ensuring the security and legitimacy of the company in providing investment offers.

Based on the results of the description above, the author is interested in studying more deeply or more specifically regarding the role of the OJK in preventing illegal investment activities in legal entities in the form of cooperatives.

2. Problems

Based on the results of the background description above, a problem formulation can be drawn, namely:

- a. What is the role of the OJK (Financial Services Authority) in preventing illegal investment activities in legal entities in the form of cooperatives?
- b. What is the legal protection for customers as a result of illegal investment in the form of cooperatives?

3. Method

The type of research that the author uses in this research is normative juridical research, namely by looking at legal aspects based on statutory regulations, while normative research is research in the legal field to find legal rules and legal doctrines. to answer existing legal issues. The author chose normative juridical research because the author attempted to conduct a juridical analysis of the role of the OJK (Financial Services Authority) in preventing illegal investment activities in legal entities in the form of cooperatives. In this research, the author also uses a type of research approach to focus the research. The type of approach in research here uses a statutory approach and a case approach. The type of book material in normative juridical research itself uses primary legal materials obtained from laws and regulations regarding OJK, Banking, while secondary legal materials in research here are obtained from textbooks, journals, opinions of scholars, legal cases, as well as symposiums held by relevant experts.[5]

4. Discussion

4.1 The Role of the OJK (Financial Services Authority) in Preventing Illegal Investment Activities in Legal Entities in the Form of Cooperatives

A cooperative is a business entity consisting of individuals or a cooperative legal entity, basing its activities on cooperative principles as well as a people's economic movement based on the principle of kinship. In cooperatives there is a voluntary element, which is togetherness and instills a sense of trust in humans in achieving what they want and has economic considerations.[6] Cooperatives have several principles that are applied, including:

- a. Kinship, reflects the awareness of the mind, human conscience working together in cooperation by all for all.

- b. Mutual cooperation, that in cooperatives there is awareness and a spirit of working equally and taking responsibility together without thinking about oneself but always for the common good.

The function of cooperatives for Indonesia is stated in Article 4 of Law Number 25 of 1992 concerning Cooperatives, namely:

- a. Building and developing the economic potential and capabilities of members in particular and society in general to improve their economic and social welfare.
- b. Actively participate in efforts to improve the quality of human and community life.
- c. Strengthening the people's economy as the basis for the strength and resilience of the national economy with cooperatives as its pillars.
- d. Striving to realize and develop a national economy which is a joint effort based on the principles of kinship and economic democracy.[7]

Cooperatives have various types of activities, one of which is savings and loan activities with the principle of mutual help. However, in reality, the activities of savings and loan cooperatives are often misused by humans themselves by procuring funds in the form of illegal investments so that the principles implemented by cooperatives are not implemented properly.

Investment itself is defined as a company's investment in real assets or financial assets. What assets will be managed by the company is an investment decision. Investment is also a commitment of a certain amount of funds or other resources made at this time, with the aim of obtaining a certain amount of profit in the future.[8] Investments are made to meet the needs and desires of society, both individually, in groups and as a country, so investment is needed. Investment aims to meet people's needs and desires for goods and services.[9] The existence of illegal investment activities in legal entities in the form of cooperatives needs to be followed up with prevention efforts carried out directly by the OJK (Financial Services Authority) in order to protect other investments/cooperative customers themselves.

The Financial Services Authority (OJK) is an independent institution that is free from interference from other parties. The financial services authority has the functions, duties and authority to regulate, supervise, examine and investigate all activities in the financial services sector, including the banking sector, capital markets and non-bank financial services sectors such as insurance, pension funds, financial institutions, fintech and other financial services institutions as intended in Law Number 21 of 2011 concerning the Financial Services Authority. The Financial Services Authority (OJK) was formed on the basis of Law Number 21 of 2011 concerning the Financial Services Authority which was inaugurated on July 16 2012. This institution was formed to overcome weaknesses and deficiencies in supervision in the financial sector in Indonesia, but the actual implementation of this institution To achieve its goals is the most difficult thing and a challenge in itself for the Indonesian state. Another challenge faced by Indonesia is having a high commitment

in the process of forming the OJK to be able to carry out its tasks in legal reform and better politics.[10]

The establishment of the OJK Law is intended to separate the banking supervision function from the central bank to an independent body or institution outside the central bank. The legal basis for the separation of supervisory functions is Article 34 of Law Number 3 of 2004 concerning Amendments to Law Number 23 of 1999 concerning Bank Indonesia which states:

- a. The task of supervising banks will be carried out by an independent financial services sector supervisory institution, and is established by law.
- b. The establishment of a supervisory institution as intended in Paragraph (1), will be implemented no later than 31 December 2010.

Meanwhile, supervision is carried out on banks and other financial services sector companies which include insurance, pension funds, securities, venture capital and finance companies, as well as other bodies that manage public funds. This institution is independent in carrying out its duties and its position is outside the government and is obliged to submit reports to the Supreme Audit Agency and the House of Representatives. In carrying out its duties, this institution (supervisory board) coordinates and collaborates with Bank Indonesia as the Central Bank which will be regulated in the Law establishing the supervisory institution in question. This supervisory institution can issue provisions relating to the implementation of Bank supervision duties in coordination with Bank Indonesia and request an explanation from Bank Indonesia of the necessary macro information and data.[11]

Institutionally, the OJK is not part of the government, but this does not rule out the possibility of there being elements of government representation, because in essence the OJK is an authority in the financial services sector which has strong relations and links with other authorities, namely the fiscal authority (the Government cq. Minister of Finance) and the monetary authority (Bank Indonesia). Therefore, other institutions involve ex-officio representation of elements of fiscal and monetary authority. The existence of ex-officio is intended in the context of coordination, cooperation and harmonization of policies in the fiscal, monetary and financial services sectors. The existence of ex-officio is also necessary to ensure the maintenance of national interests in the context of global competition and international agreements, the need for coordination, and the exchange of information in order to safeguard and maintain the stability of the financial system. The Financial Services Authority (OJK) carries out its duties and authority based on the following principles:

- a. The principle of independence is independence in decision making and implementation of OJK's functions, duties and authority while remaining in accordance with applicable laws and regulations.
- b. The principle of legal certainty is a principle in a rule of law that prioritizes the basis of legal regulations and justice in every policy of implementing the Financial Services Authority.

- c. The principle of general certainty is a principle that defends and protects the certainty of consumers, society, and promotes general welfare.
- d. The principle of openness is the principle of opening up to the public's right to obtain correct, honest and non-discriminatory information about the implementation of the Financial Services Authority by paying attention to personal and group human rights, as well as state secrets including secrets as stipulated in statutory regulations.
- e. The principle of professionalism is the principle that prioritizes expertise in carrying out the duties of the Financial Services Authority while remaining based on the code of ethics and provisions of laws and regulations
- f. The principle of integrity is the principle of adhering to moral values in every action and decision taken in the administration of the Financial Services Authority.
- g. The principle of accountability is the principle that determines that every activity and final result of every activity of carrying out the Financial Services Authority must be accountable to the public.[12]

4.2 Legal Protection for Customers Due to Illegal Investments in the Form of Cooperatives.

Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive in nature, both written and unwritten. And textually legal protection by using legal means or protection provided by law. 5 In other words legal protection as an illustration of the function of law, namely the concept of law can provide justice, certainty and benefit. In addition, law is also a set of rules and principles that regulate human life in society.[13]

In this study, researchers used the theory of legal protection according to Philipus M. Hadjon, namely legal protection is divided into preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent the occurrence of a conflict or dispute, which directs government actions to be careful in making decisions based on discretion.[14] Preventive legal protection for the public as investors can be seen in Article 28 of Law no. 21 of 2011 concerning the Financial Services Authority, namely:

- a. Providing information and education to the public on the characteristics of the financial services sector, its services and products;
- b. Requesting Financial Services Institutions to stop their 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.

Meanwhile, repressive legal protection aims to resolve the occurrence of a conflict or dispute, including handling it in the judiciary. Savings and loan services in cooperatives do provide benefits in the form of interest, but keep in mind that these benefits are limited according to the performance of cooperative loans. The

performance of cooperative loans can be seen from the business activities funded, therefore it is very important to study the profile of the business being funded. Does the business provide a reasonable profit or not. If the returns offered are high, in a short time, and without risk it is very likely that this is a fraudulent investment offer.

The Law on Cooperatives does not specifically mention legal protection for customer funds, while for customers the protection is seen in Article 7 and Article 8 of Government Regulation Number 33 of 1998 concerning Participating Capital in Cooperatives. Article 7 stipulates that investors also share the risk and are responsible for business losses financed by participation capital to the extent of the value of the participation capital invested in cooperatives. And in Article 8 it is formulated that investors have the right to share profits from businesses financed by equity participation. But in the legal protection of customer funds before the problem occurs, it can be seen from the existence of an agreement made by the cooperative with customer funds. If the agreement is not implemented by one of the parties, then one of the parties can be sued in court (Article 1243 of the Civil Code). If the losses experienced by customers are due to policies that have been agreed upon at the members' meeting, then those who are responsible are all members or owners of the cooperative, or if the losses are caused by the negligence of the management, those who are responsible here are the management.[15]

An illegal investment practice that is often referred to as a fraudulent investment, the public is promised a fixed profit/interest every month even though the company is making a loss. This can be seen, this form of investment is clearly unreasonable, funds are highly speculative, and seek to circumvent banking regulations in raising funds from the public in the form of deposits. Without prior permission from the Financial Services Authority as a high institution in the regulation and supervision of the financial services sector, fraudulent investment activities are carried out by collecting funds from the wider community by deviating from banking regulations, which are activities that use public facilities to carry out their business activities. Thus, it is necessary to look at the authority possessed by the Financial Services Authority in providing protection for the public against fraudulent investment activities.[16]

Cooperatives are responsible for fraudulent investment in the actions of management, whether intentional or unintentional, by using household budget funds or the articles of association. This responsibility is carried out by returning customer funds in the case of time deposits with interest rates in accordance with the contents of the agreement made by the cooperative with the customer members. Based on Article 38 of Presidential Decree Number 80 of 2003, the methods adopted by the parties have been determined to resolve disputes that arise between them. The ways that can be taken to resolve disputes between service users and service providers, namely deliberation, mediation, conciliation, arbitration and through the courts in accordance with the provisions stipulated in the contract according to applicable law in Indonesia.

Many victims of investment fraud have suffered financial losses, therefore public literacy regarding investment activities is very important. In the opinion of

Abdullah Firmansyah Hasan, there are ways that can be done to avoid fraudulent investments, namely as follows:

- a. Looking for information related to investment offers from various sources, can be through close friends or professionals who have mastered the offer, so that as much of this information comes from being traced before making a decision;
- b. Ask various questions and find the answers in black and white like about track-records;
- c. Trying to be a critical thinker can therefore ignore most of the seductive enticements or seductions of fraudulent investment scammers;
- d. If fraudsters who make investment offers make false promises regarding returns with high yields or above the market average in a short period of time, chances are that the offer is mere promises that invite default.[17]

Responding to the rise of fraud under the guise of bulging investments, the Financial Services Authority established an investment alert task force as an effort to prevent and deal with allegations of unlawful acts in the field of public fund raising and investment management. This is necessary because OJK cannot handle fraud under the guise of investment alone because it is cross-sectoral, so there is a need for an investment alert task force from various stakeholders such as the police and prosecutors. In addition to this, there is also a need for long-term steps, namely by revising the Cooperative Law. This is because there are many modes of fraud and theft of people's money on behalf of cooperatives to collect customer funds. With the current regulations, the Ministry of Cooperatives and MSMEs cannot supervise optimally.

5. Conclusions

The role of the Financial Services Authority in preventing illegal investment activities in legal entities in the form of cooperatives is to carry out direct supervision of investment activities as regulated in Law Number 21 of 2011 concerning the Financial Services Authority which states that the authority and duty of the OJK is to supervise Financial Services Institutions (LJK) in the capital markets sector, non-bank financial industry sector (such as insurance, pension funds, financing companies, etc.). The Financial Services Authority carries out supervision based on the principles of independence, legal certainty, general certainty, openness, professionalism, integrity and accountability.

Legal protection for customers resulting from illegal investments in cooperatives is preventive and repressive protection which is carried out to increase public awareness and understanding of investment activities, in order to avoid losses to people who fall into fraudulent investments and legal socialization efforts need to be continuously carried out in order to expand the regional target in providing education and information to regions throughout Indonesia, because basically the

targets of fraudulent investment actors are rich people who have no knowledge about investment and financial institutions. The Financial Services Authority needs to increase more specific supervision of investors in order to procure funds for savings and loan activities at both banking and non-bank institutions. It is necessary to increase the principles of kinship and trust, especially towards cooperative customers, so that they are more careful in carrying out investment activities or savings and loan activities, in order to avoid illegal investment activities.

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