

Prospects of Criminal Effort for Communities in Investing Using Financial Technology



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ABSTRACT: There are many losses experienced by the community due to investment activities that use financial technology. Legal facts show that non-litigation and civil litigation efforts have not been able to implement the legal objectives. The purpose of this study is to find the answer whether criminal legal remedies can the aggrieved party take in investing using financial technology to realize the value of benefits for legal purposes. This research is a normative juridical research. The results of the study indicate that criminal law efforts can implement legal objectives, if there is adequate competence from the police, prosecutors and judges regarding investment and financial technology.

KEYWORDS: Community, Investment, Legal, Litigation.

1. INTRODUCTION

Law and economics are two closely related terms. The close relationship between Law and economics can be demonstrated from the concept and practical aspects. The aspect of the idea can be studied from the notion of economics and Law. Economics is a human action to use a limited number of tools to satisfy needs by using a limited number of tools to meet requirements. The definition of Law is a guide to human behaviour that contains prohibitions and orders made by parties who have the authority, and there are concrete sanctions. The purpose of human action in the economic field is to gain profit, while the purpose of the Law is to obtain legal

protection. Based on the concept of legal and financial understanding, economic actors who aim to seek profit in their economic activities have potential obstacles in obtaining the goal of getting rights. Law which seeks to guarantee certainty in fulfilling the rights and obligations of economic actors becomes the right instrument in this situation. Thus, the presence of Law supports the achievement of the objectives of economic actors in carrying out economic activities.

Talcott Parson said that there are four sub-systems in life: the economic sub-system, the legal sub-system, the political sub-system and the cultural sub-system. Each of these sub-systems has its function. The economic sub-system has an adaptation function, the legal sub-system has an integration function, the political sub-system has a goal attachment function, and the cultural sub-system maintains patterns and structures (Latten & pattern maintenance).). Economic activity is a sub-system that affects other sub-systems and is essential in the sustainability of human life. It can be proven that the stability of the financial situation will be relevant to the cultural, legal and political crisis. Based on this, economic shocks from various perspectives are sought to be prevented and resolved quickly. As a concrete example in the statement, investment activity is one of the elements in the economy besides production, consumption and saving. People carry out investment activities to make goods and services more productive. Productivity in investment will significantly affect consumption, saving and, ultimately, people's income.

On the other hand, the purpose of investment as part of the economic element is to make a profit. In achieving investment objectives for profit, the community as the economic actor has the potential for conflict due to the large number of economic actors who have a profit-seeking goal. Potential disputes and conflict resolution must be prevented and resolved quickly to not interfere with the smooth running of financial mechanisms that should have an adaptation function within the sustainability of people's lives.

One form of investment that is currently developing is investment using financial technology. The facts in the community show that the loss is caused by the community having legal relations in carrying out economic activities with illegal and legal companies. Dishonest companies have the meaning that the company is a company that has formed a company regulated by Law in Indonesia but does not have a business license to operate in the field or a situation where the company has a form of company and a business license from the competent authority. Still, the business license does not follow the business practices undertaken. The Binomo case is one of the cases of investment using technology. Several other issues have been successfully handled by the Investment Alert Task Force, including the PT Saratoga Investama Reksadana and Prodan DNA Trading Robot. Pancake Trading Robot (Auto Trade Gold), which trades with direct sales without a permit. case

Prospects of Criminal Effort for Communities in Investing Using Financial Technology

FX Family, Farenheit case, Indonesia Crypto Exchange case and SmartGold/Smartavatar Co. Ltd. carry out futures trading activities without a permit (CNBC Indonesia, 2022). The empirical fact that emerges is that there are losses suffered by the community, which has good intentions to make investments that can benefit the community. The data shows that the public's loss to illegal investment is 117 trillion (www.merdeka.com, 2022) in 2021. The juridical facts in practice show that non-litigation resolution and litigation settlement efforts from the civil aspect cannot guarantee the return of the community's rights. From the perspective of the purpose of the Law, the legal obligation is to provide legal protection in the form of protection after the community experiences a loss. The purpose of Law is not only to realize legal certainty (rechmatigheid) but a sense of justice (gerechtigheid) and expediency (zwech matigheid) in society as stated by Gustav Radbruch. Based on

this description, this paper will discuss the prospect of criminal efforts to restore the community's rights. Prospect means possibility; hope (KBBI, 2022). The novelty of this research can be shown from previous research, namely, research conducted by Asep Saepudin Jahar et al. 1 (Asep Saepudin Jahar et al. 1, 2022), Fajri Anada et al. 1 (Candra Fajri Ananda, 2019), Imelda Easter Anita And Made Gde Subha Karma Resen (Imelda and Made, 2020), researched about financial technology with Law and also about the values of different legal objectives with the focus of this paper.

2. RESEARCH PROBLEM

In connection with the weak basis of civil relations between the public as investors and investment companies that use financial technology, they have many weaknesses in providing legal protection to the community. The legal issues in this essay are: What criminal legal remedies can the aggrieved party take in investing using financial technology to realize the value of benefits for legal purposes?

3. METHODS OF RESEARCH

This research is a type of normative juridical research. Normative juridical research is research that focuses on legislation or secondary data. Primary data were not used in this study. Data were collected, separated according to relevance to legal issues, described and analyzed using qualitative analysis techniques. The conclusion technique used is the deductive conclusion technique, concluding general things to specific things.

4. RESULT OF DISCUSSION

4.1. Economic Activities from the Legal Objectives

The function of the State is to defend the natural rights of individuals. The purpose of the Law is to maintain the natural rights of individuals that humans have from birth. If these rights are not transferred, it will create the potential for disorder in society. Understanding related to this concept of thought is the basis for the concept of individualism. Jeremy Bentham opposes this principle. Jeremy Bentham's theory of aiming for the greatest happiness contradicts the principle of inalienable natural rights of the individual, as expressed by John Locke.

According to Jeremy Bentham, the purpose of Law is basically aimed at achieving the greatest happiness in society. Jeremy Bentham, a thinker whose teachings are known as Utilitarianism, argues that something is considered good whether or not the consequences of that action measure it. Jeremy Bentham (Lorenzo Cello, 2020). The utility is a principle which, according to Bentham, is a principle. That approves or rejects any action that increases or decreases the happiness of the party affected by the action. Approving and rejecting the action is seen from whether or not the consequences of the action (Niessen, 2019). In this case, the government must increase the happiness that the community will enjoy. Bentham's famous phrase is "the greatest happiness for the greatest numbers". The goal of the Law is to achieve happiness for most people. According to Bentham, Law must serve the entire individual in a society. The ultimate goal of the legislation is the greatest happiness for society (Friedman, 1994). Utilitarian theory is associated with legislators or legislators, and the Law is a concrete form of Law. Legislators or legislators must try to make the Law can provide happiness for the community. Bentham defines the primary function of Law as providing a livelihood, obtaining abundant material, encouraging equality and maintaining security. Economic activity is a human activity in meeting the needs of his life by using a limited number of satisfying tools to get maximum satisfaction.

Economic activity is a vital activity in the sustainability of human civilization. When viewed from the field of life, aspects of life consist of social, cultural, political, security and economic aspects. Without ignoring the role of other fields, the economic sector has the most critical role in the sustainability of human civilization. A country can be said to be a developed country if the country's per capita income is high. The high income of a country will affect the various qualities of progress in other fields. Therefore, the economic sector gets the main focus of attention in every country. Likewise, in Indonesia, progress in the economic sector is also the centre of attention in policy and implementation. These economic activities include, among others, production, consumption and distribution activities. These activities require a relationship between economic actors in the form of companies. The company has one characteristic, namely, to seek profit. It is natural for a company that is active in the economic field in the form of a sole proprietorship or a partnership company. The relevance of Hart's opinion to economic activities is that the rigid and rigid legal rules

Prospects of Criminal Effort for Communities in Investing Using Financial Technology

that exist in the economic field are intended to provide clear guidelines for actors in economic activities. The procedural nature of Law in the field of economics is a must so that the Law can provide a sense of security for economic actors in their actions to benefit. However, the economic actions of these economic actors must be limited by laws that are not rigid, but laws that substantially acknowledge the existence of humanity. So that morals in the rule of Law can still support positive Law in economic activities.

The opinion on the importance of morals in Law is also stated by Dworkin (Friedman, 1994), who emphasizes that the Law, which is said to be rigid, rigid, and prioritizing procedural, actually contains moral values. With economic activities, the presence of Law in economic activity should stop regulating economic actors carrying out their activities. More than that, the presence of Law in the economic activity must radiate moral values that can place a sense of justice and benefit society. For example, the company has one element, namely seeking profit, which means that it must make a profit in its operations to maintain its sustainability. Due to the profit-seeking element, it becomes natural for a company to make many efforts to make a profit. This situation is supported by the justification that those with capital will have more opportunities than those without capital in carrying out economic Activities.

Laws that emit moral principles are seen not as "costs" but as "assets". Even if costs are needed in realizing laws that exude moral principles, the company will get good results in the form of greater profits in the long term. This description can be interpreted from the perspective of legal objectives. Law in economic activity does prioritize not only the value of certainty. But also the value of justice and the benefit for the community.

From the macro aspect, the State carries out its economic activities to achieve the goals of community welfare requiring laws to regulate the behaviour of economic actors in carrying out economic actions. As Eric said, legal needs in economic activities are urgent, especially in situations of imbalance, stagnant situations and unstable political conditions (Nina Boeger, 2018). A. Posner and E. Glen Weyl (Eric. A. Posner and E. Glen. Weyl, 2018) said, "Private property is an inherent monopoly and how we would all be better off if private ownership were converted into a public auction for public benefit". This opinion shows the intervention of the State in arrangements that will regulate certain economic positions in order to provide benefits to the community at large. Furthermore, Eric A. Posner (Eric. A.

Posner, 2014) said that life activities, especially economic activities require legal intervention that can be a guide for economic actors to ensure that economic activities always aim for the benefit of many people.

4.2 Legal Protection for the Community through Criminal Law and its Weaknesses

Legal protection is a guarantee for the implementation of rights and obligations. According to Philips H Jhon (Philipus M.Hajhon, 1987), types of legal protection can be divided into Preventive Legal Protection and Repressive Legal Protection. Preventive legal protection is the legal protection given by filing an objection or opinion before a government decision gets a definitive form. It can be interpreted that preventive legal protection is a legal protection that the State can seek in the form of regulations to prevent potential losses. The community can pursue this preventive legal protection in economic activities as economic actors by knowing the mechanisms and other things in the economic activity. In an investment or economic activity, people's understanding of the potential risks will be the basis for selecting existing investment alternatives.

Repressive legal protection is legal protection aimed at resolving disputes. Repressive legal protection is legal protection provided by the State to give rights to the community after a conflict occurs. Repressive legal protection can generally be carried out using non-litigation and litigation. Non-litigation channels known in Indonesia include deliberation to reach a consensus, negotiation, and arbitration mediation. Meanwhile, dispute resolution by bringing legal issues to law enforcement is repressive legal protection through litigation. The repressive settlement can be carried out with all the legal consequences.

Legal remedies through illegal means are legal remedies that can be taken by people who experience losses due to investments using financial technology, both legal and illegal. An illegal investment is an illegal company that has a form of company that is regulated by Law in Indonesia but does not have a business license to operate in that field or a company that has a business license from the competent authority. However, its business license does not follow the business practices undertaken. Judging from the Criminal Code (KUHP), Article 378 concerning fraud can be imposed to account for investment fraud cases, which will be processed according to the applicable provisions, namely based on the Criminal Procedure Code (KUHAP). After receiving reports of illegal investments, an investigation will be carried out based on Article 105 of the Criminal Procedure Code. An investigation is a process of knowing whether the incident is a criminal act. If the investigation finds an incident, in this case, an illegal investment, including a criminal act, the investigation will continue. The investigation is a process of collecting evidence and evidence so that the incident becomes apparent as a crime. The investigation report is made into an examination report which will be submitted to the Public Prosecutor to make an indictment, and the indictment will be presented to the court. In the Court of Criminal Procedure, evidence will be carried out based on the available evidence and the Judge's conviction to decide the case. In the court's decision, it is deemed unfair to be able to make an appeal and cassation.

The mechanism of criminal law efforts in the process and implementation has weaknesses. Weaknesses in the criminal process can be studied by the subject or parties in law enforcement in criminal proceedings. The first part is the police. The police have the authority to conduct investigations and investigations. In the case of illegal investment, if the investigator does not understand the investment problem, the investigation will be stopped because it is considered not the realm of criminal Law. The potential for weak

Prospects of Criminal Effort for Communities in Investing Using Financial Technology

knowledge of investment developments with the addition of online media, which is a means of investment, makes the purpose of Law to provide benefits, not only legal certainty, to be hampered. The second part is the Prosecutor. Based on the Indonesian criminal procedure law, only the public Prosecutor is authorized to carry out prosecutions. Besides that, victims, in this case, victims of illegal investments, are not empowered in the criminal justice process, so the victim's human rights are often neglected. If the victim is involved and allowed to be part of the criminal justice process, the victim can directly fight for justice. Victims become part of the criminal justice process, and law enforcement officers, in this case, the public Prosecutor, may take arbitrary actions with reasons in the name of the public interest. The third party is the Judge. Article 183 of the Criminal Procedure Code states that A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he/she believes that a criminal act has occurred and that the defendant is guilty of committing it. Based on the article, even though the evidence is sufficient if the Judge is not sure about the evidence, the Judge can decide to acquit the defendant. In the case of investment with the help of financial technology, the role of the Judge to understand investment and technology is the main factor in realizing the value of certainty, justice, and benefit as legal objectives.

5. CONCLUSION

The fact that occurs in society is that many investment companies use financial technology assistance in carrying out their economic activities. Another reality in society is that the community experiences losses. The loss factor is caused by bad faith, especially from companies that offer investment. The form of bad faith can be seen in the company's legality. Community losses are even caused by companies that have legality. Juridical facts show that non-litigation and litigation through civil processes cannot guarantee the return of community rights. There are other legal remedies for litigation, namely criminal litigation. The study results indicate a prospect or possibility of taking criminal legal action as a form of legal protection for the aggrieved party in an investment that uses financial technology, which is factually detrimental to the community. Criminal law efforts have the prospect of restoring the community's rights, provided that the competence factor is good for investment and financial technology, subjects who have an essential role in the criminal process, namely the police, prosecutors and judges. The existence of these factors will be able to support not only the value of legal certainty and justice but also the value of expediency.

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