

Legal Protection for Consumers Regarding Personal Data in The Event of Illegal Investments to Create Legal Certainty

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Abstract

The rapid development of information technology and digital finance has opened up significant opportunities for the growth of digital-based investments. However, this phenomenon has also led to a surge in illegal investment practices in Indonesia, particularly by non-bank financial institutions operating without a license from the Financial Services Authority. These illegal investments often exploit consumers' personal data without proper consent, thereby threatening consumer rights and security. This study aims to analyze the legal protection framework for consumers in the context of investment, and to evaluate the effectiveness of legal safeguards for personal data as a response to the growing trend of illegal investments, with the goal of establishing legal certainty in Indonesia. This research employs a normative juridical method with statutory, conceptual, case-based, and comparative approaches. The data used are secondary data obtained through library research, including legislation, legal doctrines, and other legal literature. The findings show that although the Consumer Protection Act and the Financial Services Authority Act regulate consumer protection, in practice, there remain significant legal loopholes exploited by perpetrators of illegal investments. Weak oversight, suboptimal law enforcement, and low public legal literacy are identified as major challenges. This study offers theoretical contributions to the development of consumer protection law and practical insights for policymakers in formulating stronger regulations and supervision mechanisms to ensure the security of personal data and legal certainty for consumers.

Keywords: legal protection, consumers, personal data, illegal investment, Financial Services Authority.

Abstrak

Perkembangan pesat teknologi informasi dan keuangan digital telah membuka peluang besar bagi pertumbuhan investasi berbasis digital. Namun, di sisi lain, fenomena ini juga melahirkan praktik investasi ilegal yang marak terjadi di Indonesia, utamanya oleh lembaga keuangan non-bank yang beroperasi tanpa izin Otoritas Jasa Keuangan. Investasi ilegal sering kali memanfaatkan data pribadi konsumen tanpa persetujuan yang sah, sehingga mengancam hak-hak dan keamanan konsumen. Penelitian ini bertujuan untuk menganalisis pengaturan perlindungan hukum terhadap konsumen dalam konteks investasi, serta mengevaluasi efektivitas perlindungan hukum atas data pribadi konsumen sebagai bentuk respons terhadap maraknya investasi ilegal, guna mewujudkan kepastian hukum di Indonesia. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang, konseptual, kasus, dan komparatif. Data yang digunakan adalah data sekunder yang diperoleh melalui studi kepustakaan, termasuk peraturan perundang-undangan, doktrin, serta literatur hukum lainnya.

Hasil penelitian menunjukkan bahwa meskipun Undang-Undang Perlindungan Konsumen dan UU Otoritas Jasa Keuangan telah mengatur perlindungan terhadap konsumen, namun dalam praktiknya masih banyak celah hukum yang dimanfaatkan oleh pelaku investasi ilegal. Lemahnya pengawasan, belum optimalnya penegakan hukum, serta kurangnya literasi hukum masyarakat menjadi kendala utama. Penelitian ini memberikan kontribusi teoritis terhadap pengembangan hukum perlindungan konsumen dan praktis bagi pembuat kebijakan dalam merumuskan regulasi dan pengawasan yang lebih kuat untuk menjamin keamanan data pribadi dan kepastian hukum bagi konsumen.

Kata kunci: perlindungan hukum, konsumen, data pribadi, investasi ilegal, Otoritas Jasa Keuangan.

A. Introduction

The nation's economy has been considered since the Indonesian nation was founded. This can be reflected in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which emphasizes that the economy is structured as a joint effort based on the principle of family. The birth of Article 33 of the 1945 UUD NRI is based on fundamental thoughts in society itself, such as mutual assistance and joint efforts, which differentiate it from capitalism, because adherents of capitalism, in managing the economy by relying on capital and its means of production, only seek large profits, but do not prioritize the condition of society. Economic development is carried out to change the lives of society, especially in developing countries such as Indonesia. The nature of development, both its direction, stages, and how society utilizes it, can be seen from how a country manages investment in its resources (Warren et al., 1998). Crowdfunding efforts are carried out so that the wheels of the economy continue to run in line with the progress of development. Companies operating in the financial sector have an important role in meeting capital needs, which is in line with their function, namely providing financial facilities to other businesses and it is rare to find a business that does not require capital, because capital is a fundamental problem for every company (Kasmir, 2002).

The provision of capital or the transfer process carried out by financial institutions uses a written agreement, either in the form of a deed or not, so that the agreement can be used as evidence in court if a dispute arises between the two parties in the future. The agreement between the two parties that has been signed must meet the requirements for the validity of the agreement that have been contained in Article 1320 of the Civil Code, namely the agreement of the parties, the ability to carry out legal acts, objects, and determination, cause or effect that is lawful. Based on the decision of the Minister of Finance of the Republic of Indonesia Number 792 of 1990 concerning "Financial Institutions", financial institutions are all bodies that have activities in the financial sector, collect capital, and transfer capital to the community, especially to finance business investment activities (Fahmi, 2014). In general, financial institutions can be classified into 3 large groups according to Sunaryo (2007), namely there are Bank Financial Institutions, Non-Bank Financial Institutions, and Financing Institutions.

A financial institution, which directly or indirectly collects funds primarily by issuing securities and distributes them to the public, primarily to finance

corporate investments to achieve prosperity and social justice, is a term used by non-bank financial institutions (Wihoho, 2014). The proliferation of non-bank financial institutions in the community has created a loophole for the establishment of illegal businesses and activities similar to non-bank finance. One of the concerns among the public is the existence of "fake investments." Many people have become victims because they are tempted by the high interest rates of 4 to 10% per month offered by these illegal investment companies. Profit sharing is based on a profit sharing between the investment company and the investor, and there is a risk sharing in the investment. Therefore, the public should check the legitimacy of non-bank financial institutions before investing. Companies that operate or provide services as financial institutions must obtain official permission from the OJK (Financial Services Authority) based on Article 55 paragraph (1) of the OJK Law. Since December 31, 2012, the functions, duties, and authority to regulate and supervise financial services activities in the Capital Market, Insurance, Pension Fund, Financing Institution, and Other Financial Services Institution sectors have been transferred to the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency to the OJK.

The rise of illegal investments has prompted the government to take firm and swift action by establishing a task force to handle cases of illegal investment. In addition to arrests and public notification, the Task Force has also undertaken several measures, such as blocking websites/applications and handing them over to the National Police Criminal Investigation Agency. Following the government's long-held discourse on the establishment of the Financial Services Authority, Law Number 21 of 2011 concerning the Financial Services Authority was enacted in November 2011, which regulates the establishment of the Financial Services Authority. The establishment of the Financial Services Authority was inseparable from the dark events of the 1997 economic crisis and, following the trend of Central Banks in several countries, including the United Kingdom (1997), Germany (1949), and Japan (1998), which desired an independent Central Bank free from interference from any party, the Financial Services Authority attempted to emulate several practices already used by other countries (Asikin, 2015). The Financial Services Authority (OJK) has established an independent organization, the Financial Services Authority, as a result of the restructuring of the organizational structure of institutions that carry out management and supervision functions in the financial services sector. The transfer of supervisory functions to the Financial Services Authority (OJK) was carried out due to the assessment that the bank supervision carried out by Bank Indonesia was deemed ineffective. This function is reflected in Article 6 of Law No. 21 of 2011 concerning the dual authority of the Financial Services Authority, for the elaboration of the authority and duties of the Financial Services Authority is written in Articles 8 and 9. The formation of this law is expected to enable OJK to realize a sustainable and stable financial system and to protect the interests of consumers and the public.

Consumer protection in Indonesia is regulated in the Consumer Protection Law Number 8 of 1999 (hereinafter referred to as the Consumer Protection Law), in Article 29 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, it is emphasized that the Government has the responsibility to encourage the implementation of consumer protection to ensure the achievement of consumer and economic actor rights and the fulfillment of consumer and business entity obligations. In addition to Article

29 paragraph (1) concerning consumer protection, there is Article 4 of the Consumer Protection Law, which regulates consumers' rights to obtain complete information and their rights. Consumers in Indonesia, in general, often encounter problems in fulfilling their rights, one of which is that they do not have a critical nature in fighting for their rights, but the government is also responsible for protecting consumers against serious problems that are followed up by the authorities.

B. Research Methodology

Research related to legal protection or consumer rights over personal data is formulated using a special research method, namely legal research examining documents or secondary data. In addition to using special research methods in compiling the research flow, a series of processes are used, known as normative juridical research, which has several stages, from the stages of research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history research, and comparative legal research.

The approaches used by researchers include a statutory approach, a conceptual approach, a case-based approach, and a comparative approach.

The normative legal research method utilizes secondary data obtained from literature studies, including laws and regulations, books, research findings (studies, theses, and dissertations), scientific articles (journals, articles, etc.), dictionaries, and encyclopedias. The collection of legal materials involves a series of steps or processes, beginning with an inventory of legal regulations, exploring various legal principles and concepts directly related to the research being studied, and classifying them legally. This research employs qualitative analysis with a systematic legal interpretation method to establish a link between laws and regulations and other laws.

C. Findings and Discussion

1. Result

Based on normative legal research on investment regulations and consumer protection, it was found that the absence of specific technical regulations regarding the protection of consumer personal data in the context of illegal investments is the main cause of the weak legal position of consumers in Indonesia. Despite the existence of Consumer Protection Law Number 8 of 1999 and the Financial Services Authority Law (Law No. 21 of 2011), consumer protection, particularly for those who become victims of illegal investments that unlawfully exploit personal data, has not been fully accommodated. Illegal investments are rampant, exploiting loopholes in law enforcement and low public financial literacy (Purwanti, 2021).

The Financial Services Authority (OJK) has actually carried out preventive duties through the establishment of the Investment Alert Task Force, but in practice, the repressive measures taken have not optimally resulted in criminal prosecutions because this Task Force lacks direct law enforcement authority. Furthermore, the OJK's limited role in prosecuting illegal investments that have exploited consumers' personal data is a major

obstacle to achieving legal certainty (Yuliana & Soeroso, 2020). Legal harmonization is needed between the Consumer Protection Law, the OJK Law, and the new Personal Data Protection Law (Law No. 27 of 2022) to avoid overlapping implementation.

This study concludes that reforming consumer protection legal policies in the financial sector is urgent, including strengthening the role of supervisory authorities and establishing a single complaint mechanism. Furthermore, it is necessary to strengthen consumers' legal and digital literacy to prevent them from falling victim to fraud by illegal investments, which often disguise themselves as legitimate non-bank financial institutions. In this context, legal protection of consumers' personal data must also be an integral part of the national consumer protection system, not only within the context of cybersecurity but also as a protection of basic civil rights (Putra, 2023).

2. Discussion

Legal protection for consumers in the context of illegal investments that use personal data is a pressing issue that requires serious attention. This phenomenon has emerged along with the increase in digital economic activity and weak oversight of non-bank financial institutions not registered with the Financial Services Authority (OJK). Consumers often fall victim, easily lured by promises of large profits, unaware that their personal data is being used illegally by illegal businesses. The protection promised in Law Number 8 of 1999 concerning Consumer Protection has not been fully effective in preventing and prosecuting crimes that develop through digital platforms (Putra, 2023).

From a positive legal perspective, Law Number 21 of 2011 concerning the Financial Services Authority (OJK) does regulate the supervisory function of financial institutions, but its implementation still faces obstacles because the OJK is not a law enforcement agency. As explained in the theory of authority by Ateng Syafrudin, the power held by state institutions must be supported by clear legal legitimacy and effective enforcement mechanisms so that the supervisory function is not merely administrative, but is able to guarantee legal certainty (Samsul, 2004). In cases of illegal investment, the OJK is only able to impose administrative sanctions and block platforms, without being able to directly charge perpetrators with criminal charges except through cooperation with the Police and the Prosecutor's Office.

Another aspect that has come under scrutiny is the protection of personal data, a legally protected consumer right. The enactment of Law Number 27 of 2022 concerning Personal Data Protection should strengthen the existing legal framework, but its implementation remains suboptimal. Many illegal investors exploit victims' personal data through digital channels, such as through unauthorized online lending applications, and then use it in fraudulent schemes disguised as investments. This demonstrates that legal protection for consumers is not yet comprehensive, particularly in ensuring the security of personal data, a key weakness in the era of digital transformation (Yuliana & Soeroso, 2020).

Thus, this study demonstrates the need for a more assertive and integrative reformulation of legal protection policies. Consumer protection regulations must address cross-sectoral issues, including personal data

protection and strengthened sanctions against illegal investment actors. The state needs to establish a dedicated institution to comprehensively handle consumer complaints with adequate enforcement authority. Furthermore, providing legal education to the public about their rights as consumers and improving digital literacy are essential preventative measures (Purwanti, 2021).

D. Conclusion

This research shows that the legal protection system for consumers, particularly in cases of misuse of personal data by illegal investors, still has many weaknesses, both normatively and in implementation. The absence of comprehensive technical regulations regarding the use and security of personal data in digital financial activities opens up loopholes for unlicensed non-bank financial institutions to commit massive legal violations.

Supervisory institutions such as the Financial Services Authority (OJK) have been mandated under Law Number 21 of 2011, but their limited administrative authority has resulted in suboptimal legal enforcement against illegal investors. Furthermore, Law Number 8 of 1999 concerning Consumer Protection and Law Number 27 of 2022 concerning Personal Data Protection have not been fully integrated into consumer protection policies in the financial services sector (Putra, 2023; Yuliana & Soeroso, 2020).

Thus, an integrative reformulation of legal policy is needed, emphasizing not only the regulatory oversight of financial institutions but also ensuring legal certainty regarding the substantive protection of consumers' personal data. The state, through its legislative and executive branches, needs to strengthen a legal framework that favors consumers and develop an integrated and responsive complaints system for illegal investment practices.

E. Recommendations

Based on the findings of this research, strengthening personal data protection in marketplace activities requires improvements at both the regulatory and implementation levels. *First*, the government needs to establish more comprehensive and specific technical regulations governing the collection, processing, storage, transfer, and deletion of consumers' personal data by marketplace providers. These regulations should clearly define the responsibilities and legal obligations of marketplace operators as personal data controllers or processors.

Second, marketplace providers should implement the principles of privacy by design and privacy by default in their digital platforms. The collection of consumers' personal data should be limited to data that is genuinely necessary for transactions and service delivery. Consumers should also receive clear information regarding the purpose, legal basis, duration, and parties involved in the processing of their personal data.

Third, stronger technical and organizational security measures should be required to prevent data breaches, unauthorized access, misuse, and illegal disclosure of consumer information. Marketplace providers should conduct periodic security assessments, risk assessments, and audits of their personal data

processing systems. In the event of a data breach, consumers must receive timely and transparent notification and appropriate remedies.

Fourth, regulatory authorities should strengthen supervision and enforcement against marketplace providers that fail to protect consumers' personal data. Administrative sanctions, compensation mechanisms, and, where appropriate, civil or criminal liability should be applied proportionately according to the seriousness of the violation. Effective enforcement is essential to ensure that personal data protection rules do not merely function as formal legal requirements.

Fifth, marketplace consumers need to be provided with effective mechanisms to exercise their personal data rights, including the right to access, correct, delete, and withdraw consent where legally applicable. Complaint and dispute-resolution mechanisms should also be simple, accessible, and responsive, particularly where consumers suffer losses as a result of unauthorized use or disclosure of their personal data.

Finally, cooperation among the government, marketplace providers, financial institutions, law enforcement agencies, and consumer protection institutions should be strengthened. Such cooperation is necessary because marketplace transactions involve interconnected digital, financial, and personal-data ecosystems. A comprehensive protection system should therefore combine clear regulation, technological security, effective supervision, consumer awareness, and accessible legal remedies. This approach would provide stronger legal certainty and ensure that digital economic development does not compromise consumers' fundamental rights to personal data protection.

References

Amiruddin dan Zainal Asikin, Pengantar Metode Penelitian Hukum, Jakarta: Raja Grafindo Persada, 2004.

Bank Indonesia, Unit Khusus Museum Bank Indonesia - Sejarah Bank Indonesia "Topik khusus tentang Kelembagaan BI", <http://www.bi.go.id/id/tentang-bi/museum/sejarah-bi/bi.pdf>, artikel, diakses tanggal 29 November 2020

Bank Indonesia, Unit Khusus Museum Bank Indonesia - Sejarah Bank Indonesia "Topik khusus tentang Kelembagaan BI" <https://tirto.id/daftar-investasi-ilegal-menurut-data-ojk-terbaru-update-april-2020-fDSp>, Diakses Pada tanggal 24 Juli 2022.

Irham Fahmi, Bank dan Lembaga Keuangan Lainnya Teori dan Aplikasi, Alfabeta, Bandung, 2014.

Jamal Wiwoho, Peran Lembaga Keuangan Bank Dan Lembaga Keuangan Bukan Bank Dalam Memberikan Distribusi Keadilan Bagi Masyarakat", Jurnal Masalah-Masalah Hukum FH Undip, Jilid 43 No. 1, 2014.

Kasmir, Bank dan Lembaga Keuangan Lainnya, Raja Grafindo Persada, Jakarta, 2002.

- M. Yahya Harahap, Segi-segi Hukum Perjanjian, Alumni, Bandung, 1986, hlm. 7 Peraturan Presiden Nomor 104 Tahun 2007 Tentang Penyediaan, Pendistribusian Dan Penetapan Harga Liquefied Petroleum Gas Tabung 3 Kilogram.
- Purwanti, D. (2021). *Perlindungan hukum terhadap korban investasi ilegal berbasis teknologi informasi*. Jurnal Rechtsvinding, 10(1), 35–49. <https://doi.org/10.33331/rechtsvinding.v10i1.137>
- Putra, A. D. (2023). *Urgensi integrasi perlindungan data pribadi dalam sistem perlindungan konsumen sektor jasa keuangan*. Jurnal Legislasi Indonesia, 20(1), 57–72. <https://doi.org/10.54629/jli.v20i1.103>
- Samsul, I. (2004). *Perlindungan Konsumen: Kemungkinan Penerapan Tanggung Jawab Mutlak*. Jakarta: UI Press.
- Sunaryo, Hukum Lembaga Pembiayaan, Sinar Grafika, Jakarta, 2007, hlm. 9.
- Warren C. Baum dan Stokes M. Tolbert, Investasi Dalam Pembangunan: Pelajaran dari Pengalaman Bank Dunia, UI-Press, Jakarta, 1988.
- Wiji Nurastuti, Teknologi Perbankan, Yogyakarta, Graha Ilmu, Yogyakarta, 2011.
- Yuliana, R., & Soeroso, A. (2020). *Tanggung jawab OJK dalam penanggulangan investasi ilegal di Indonesia*. Jurnal Hukum dan Peradilan, 9(3), 373–392. <https://doi.org/10.25216/jhp.9.3.2020.373-392>
- Zainal Asikin, Pengantar Hukum Perbankan Indonesia, Raja Grafindo Persada, Jakarta, 2015.