

## LEGAL PROTECTION OF COMPENSATION FOR VICTIMS OF INVESTMEN CRIME IN THE PERSPECTIVE OF ISLAMIC LAW

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**Abstract:** *Illegal investment crimes take many victims and cause huge losses for the victims, which have implications for disrupting the country's economic stability. The perpetrators are not only from within the country but across countries by using digital facilities. Islamic law strictly prohibits fraudulent acts in business and trade transactions, Islam threatens the perpetrators with severe punishment in this world and in the hereafter according to the word of Allah SWT in Surah Al-Muthoffifin verse 1 which means; "Woe to those who cheat". To protect the public from becoming victims of illegal investments, strong regulations and institutions are needed and strict sanctions are imposed on the perpetrators. The perpetrator must be held accountable for his actions both civilly and criminally, this is in accordance with the concept of al-mas'uliyat (legal responsibility) which is meant in the Shari'a, both criminal liability and criminal liability. Illegal investment crimes are very contrary to the principle of maqashidu syar'iyah, therefore it is very appropriate to impose penalties on the perpetrators to compensate for the losses of the victims.*

**Keywords:** *investmen crime, mas'uliyat, compensation.*

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### Introduction

Illegal investment cases or investment crimes have claimed many victims, the practice is carried out solely with the aim of gaining as much profit as possible from society by means of fraud (KBBI, 2022), or is called investment fraud or investment fraud under the guise of investment, good investment crimes that have permits or do not have permits according to the provisions of the Investment Law, Banking Law and other regulations (Matulangi, 2017). Crimes that do not have permission from the regulator clearly aim to commit fraud against their victims, while business entities that have investment business licenses are only a cover to convince their victims, when public money has been collected it is time for the perpetrators to run away. Investment is actually the activity of placing or inserting capital in the form of money or other valuable assets by investors (investors) into an object, institution, or party acting as capital manager with the hope that investors will obtain profits after a certain period of time. Based on that time period, investments are divided into short-term investments and long-term investments, with forms that are popular among the public, including: deposits, stocks, bonds and mutual funds (OK Bank, 2023).

Cases of investment fraud in Indonesia are increasing like mushrooms growing in the rainy season. One of the main characteristics of fraud under the guise of investment is not having valid licensing documents from regulators (supervisors) such as the Financial Services Authority (OJK), Bank Indonesia, CoFTRA - Ministry of Trade, Ministry of Cooperatives and SMEs and others (OJK, 2022). The OJK itself released that it had closed illegal investments which reached very worrying figures, during the 2018–July 2022 period the OJK

had closed 1,064 illegal investment entities (Kusnandar, 2022). In the October 2022 period, OJK through the Illegal Investment Alert Task Force has frozen 18 illegal investments (Wikanto, 2022).

Therefore, legal certainty is needed for victims of investment crimes from the state to recover the losses they have experienced. Legal certainty in the opinion of Soedikno Mertokusumo is "justifiable protection against arbitrary actions, which means that someone will be able to obtain something that is expected in certain circumstances" (Mertokusumo, 1999). According to that opinion, the theory of legal certainty contains legal protection, where according to Philipus M Hadjon's opinion that legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. Furthermore, Hadjon classifies two forms of legal protection for the people based on the ingredients, namely preventive and repressive protection (Hukum Online, 2022).

Legal protection for victims of illegal investments is a necessity because victims are the ones who directly experience suffering. Opinion from Rena Yulia citing the opinion of van Boven basically states that victims are people who individually or as a group have suffered losses, including physical or mental injuries, emotional suffering, economic losses or real deprivation of their basic rights, either due to acts (by act) or due to negligence (by omission) (Yulia, 2010). This opinion is confirmed by the provisions of Article 1 point 3 of Law Number: 31 of 2014 concerning Amendments to Law Number: 13 of 2006 concerning Protection of Witnesses and Victims which states "Victims are people who experience physical, mental suffering, and/or loss economic consequences caused by a crime. So that victims must get legal protection with regard to restoring their condition as they were ready to lose, especially compensation for economic losses.

Islam requires criminals to be responsible for the crimes they have committed (Symsi and Farhat, 2004). The principle of protecting victims of crime can be learned from Al-Quran verse 178 concerning qishosh law which basically states that the perpetrators of illegal killings are subject to punishment in the form of having to be killed accordingly, but if the victim's family forgives the perpetrators then the perpetrator is required to pay a fine (diyat) to the victim's family. Based on this legal concept, the perpetrator of an illegal investment crime that harms the victim is required to compensate the victim. Researchers in this case are interested in examining how legal protection is for victims of illegal investments in the perspective of Islamic law.

## Literature Review

The word "investment" comes from the English word "investment" whose basic word is "invest" (Antoni, 2003), meaning "to plant", in Arabic "investment" is called "*istathmara*" which means "to make fruitful, develop and increase in number" (Pardiansyah, 2017). In Webster's New Collegiate Dictionary, the word "invest" is defined as "*to make use of for future benefits or advantages and commit (money) in order to earn a financial return*". The word "investment" can also be interpreted as "the outlay of money for income or profit". According to the Financial Capital Market Terms Dictionary, investment is defined as the activity of investing money or capital in a company or project for the purpose of obtaining profit "(Arifin, 2003). Meanwhile the Dictionary of Financial and Investment Terms provides a more complete definition of investment, investment as an activity of utilizing capital to generate money, either through means that generate income or through ventures that are more risk oriented designed to gain capital. Investment can also mean pointing to a financial investment (where an investor puts money into a facility) or pointing to an investment in a business or someone's time who wants to profit from the success of his work (Sembiring, 2018).

Some literature divides investment into two major categories, namely direct investment (direct investment) such as entrepreneurship/managing one's own business in the real sector (real sector) and indirect investment (indirect investment) investment in the non-real sector such as investment in Islamic banking (deposits). and Islamic capital markets through Islamic stock exchanges, Islamic mutual funds, sukuk, SBSN, and others (Hidayati, 2017).

Islam allows investment because assets owned must be productive, not only for storage, so that they can benefit the owner as well as the ummah (Hidayat, 2011). According to DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000 basically allows economic activity including investment which is included in the fiqh mu'amalah section so that the rules apply "*Basically all forms of mu'amalah including economic activity are permissible unless there is evidence that forbids it*".

The Prophet Muhammad SAW has plunged directly into the world of business and investment, the Prophet has set a perfect example for his people in doing business, how to act as a business manager (*mudarib*) or capital manager (investment) to generate profits. The Prophet has set an example of how to work professionally, *istiqomah*, honest, not breaking promises to capital owners. It was proven that the success of the Prophet in business was carried out until Khadijah and the rich people of Mecca entrusted their wares to the Prophet. Friend and amirul mu'minin, Umar bin Khattab also once said "*Whoever has money, he should invest it and whoever owns land should he plant it or manage it*" (Hidayat, 2011). The business activities carried out by the Prophet Muhammad SAW were more or less 25 (twenty five) years, either trading his own goods or other people's goods or by managing other people's capital by receiving wages (fee based) or by way of profit sharing (Antonio, 2007). The Prophet's hadith which tells about investment or capital unions includes: "From Abu Hurairah ra. that Rasulullah SAW said: Allah said: *I am the third person of two partners as long as one of them does not betray his friend. If someone betrays me, I will leave their (alliance)* (Narrated by Abu Dawud and judged to be authentic by al-Hakim). The assets invested have the potential to have benefits, Islamic teachings prohibit hoarding wealth, but in choosing a business field as a place to invest one must adhere to sharia principles, one must avoid businesses that have immoral elements (Sakinah, 2015).

Islam forbids parties who act fraudulently in carrying out business and trade activities, as the word of Allah SWT in Surat Al-Muthoffifin verse 1 which means; "*Woe to those who cheat*". The pronunciation of "*wailun*" according to Tafsir Al-Jalalain is interpreted as the name of the valley in hell that is intended for people who cheat. Meanwhile, according to the Ulama's interpretation of Imam Ibnu Katsir that the meaning of "*tatfif*" is cheating in transactions, making subtractions or additions from what should be (Kesan.id, 2021). Illegal investments are also called illegal investments (illegal). In the opinion of Y. Sri Pudyatmoko explained that a permit is an approval from a government agency that is authorized based on statutory regulations that apply to certain circumstances deviating from statutory prohibition provisions (Sentosa, 2018). Investment crimes certainly contain fraudulent acts, contain lies to deceive investors in order to steal as much wealth as possible, this is strictly prohibited by Islamic law. Even the sanctions promised by Allah SWT are very heavy.

The perpetrators of investment crimes from the perspective of Indonesian law can be subject to punishment to compensate for the losses suffered by their victims, in addition to being subject to basic punishment according to Article 10 of the Criminal Code. In addition, to obtain compensation, victims of investment crimes can apply for "restitution" to the Witness and Victim Protection Agency (LPSK) or to the court that tries the investment crime criminal case in question, the mechanism for requesting restitution is regulated in Law Number: 31 of the year 2014 concerning Amendments to Law Number: 13 of 2006 concerning Protection of Witnesses and Victims. According to Islamic law, can the perpetrator be subject to compensation for the victim?

According to Islamic law, compensation is known as “*dhaman*” which aims to be *raf’u al-darar wa izalatuha*, namely to eliminate losses suffered by the aggrieved party. *Dhaman* in Islam balances between the affairs of this world and the hereafter. World affairs, compensation related to psychology, honor, and property. Afterlife affairs, compensation is a debt that must be paid, so that it will not become a claim in the afterlife (Hengki, 2017). Sheikh Wahbah al-Zuhaily (contemporary fuqaha) calls compensation “*ta’widl*” which means an attempt to cover losses that occur and are caused by violations or mistakes (Al-Zuhaily, 1998). Punishment of compensation is a legal consequence of the crime that has been committed by the perpetrator. Al-Quran in Surah Al-Baqoroh, verse 194 states which means: “*So whoever commits an offense against you, then fight him with a similar violation that they committed against you. Then fear Allah. Know that indeed Allah is with those who are pious*”. The context of the verse with the present time is about compensation. Islamic Shari’a prohibits its adherents from committing acts that can harm or harm others or themselves (*la dhoror wala dhiror*), for the perpetrators they can be prosecuted for legal responsibility (*mas’uliyah*) against their victims.

Legal responsibility in Fiqh is termed “*mas’uliyah*” which means “accountability” (legal responsibility), then the term for civil liability is known as *mas’uliyah al-madaniyah*, criminal liability is termed *mas’uliyah al-jina’iyah*. Classical scholars such as al-Qurafi and al-Iz Ibn Abdi Salam use the term “*al-jawabir*” for civil compensation (*dhaman*) and “*al-Zawajir*” for criminal compensation, and many other terms used by Islamic scholars. Islamic law experts (Syamsul, 2007).

There are two elements of circumstances that can cause compensation (*dhaman*) for perpetrators who do not carry out their obligations, namely; [1]. Because of the Akad, such as buying and selling, leasing (*ijarah*) and others. If then things happen that are not desirable (damaged or lost) then there must be a party responsible for providing compensation. [2]. Due to the mastery of objects or goods (*yad*), which are classified into two namely; First; Mastery of goods not based on trust (*yad ghayru amanah*), such as possession of goods that are in the hands of a *ghoshib*, a person who buys and sells that does not meet the terms and conditions (*fasid*). Second; Mastery based on trust (*yad mu’tamanah*), such as deposit (*wadiah*), partnership (*shirkah*), partnership of capital (*mudharabah*) and others. This means that mastery because of this mandate if it is not used properly will turn into *yad dhaman*. That is, when the goods entrusted to him are damaged, he is obliged to replace them (Zarkasyi, 2000).

According to the Islamic conception, law aims to maintain or maintain *maslahah* which is [1]. *Maslahah ghairu dharuriyyah* (not the main benefit), including benefit that is fulfilling needs (*hajji*) to support work and raise living standards, and which is for improvement and refers to morals and ethics or aesthetics (*tahsini*), and [2]. *Dharuriyyah* benefit (core/principal). essential *maslahah* (*dharuriyyah*), which refers to the *maqashidu syar’iyyah* principle called *al-kulliyat al-khams* (five cores/principles) or also means that there are five fundamental objectives that must be achieved when establishing law, namely: **First**; Law aims to protect religion (*hifdz ad-Din*); namely as an *illat* (base) for jihad or war when religion is destroyed or damaged. **Second**; The law aims to protect the soul (*hifdz nafs*); as an *illat* (base) for determining *qishosh* law. **Third**; The law aims to protect reason (*hifdz aql*); as an *illat* (basis) forbidding consuming objects that intoxicate and or damage the mind (narcotics). **Fourth**; The law aims to protect property (*hifdz mal*); as an *illat* (basis) for the punishment of cutting off hands for thieves, as well as bribery or any act of devouring other people's property in a vanity way. and **Fifth**; The law aims to protect offspring (*hifdz nasl*); as an *illat* (basis) forbidding adultery and *qadzaf* which means accusing other people of adultery (Jauhar, 2013).

The law prescribed in Islam aims to create benefit in the midst of society, the perpetrators of crimes have actually damaged the benefit in the midst of society so that they

must be subject to sanctions (punishment). Investment crimes that cause economic losses (*tuqawwimu al-manqul*) with an element of wealth (*al-maliyah*) are very relevant to be subject to compensation penalties. Because in the concept of maqashidu syar'iyah the perpetrator's actions violate the principle of protecting property (*hifdz mal*) in Islamic law. Islam prohibits its people from taking other people's property in an improper or unlawful way, as emphasized in the word of Allah SWT, namely:

يَأْيِهَآ الذِينَ ءَمَنُوا لَاتَأْكُلُوا ءَمَوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ

Meaning: “O you who believe, do not eat each other's wealth between you in vain” (QS. Al-Nisa, verse; 29).

The perpetrators of investment crimes are classified as consuming other people's assets in an illegal way, in a way that violates the law or in a vanity way, as stated in the prohibition in this paragraph. Rasulullah SAW, in an Eid al-Adha sermon once said which means: “Verily, your blood and wealth are glorified for you (*haram violated*) layer seven.” Hadith narrated by Ahmad, Bukhari and Muslim from Siti Aisyah ra. A similar hadith was also narrated by Imam Bukhari from the Sanad path of Sa'id ibn Zaid. Imam Ahmad and Bukhari also have other narrations from Ibn Umar's chain of transmission. Imam Ahmad added another narration from Abu Hurairah *radliyallahu'anhu*". Such are the prohibitions and threats in Islam if there are parties who take other people's property in unjust ways or ways that are prohibited by the Shari'a. The reward in the afterlife is so powerful. Therefore, the perpetrators of investment crimes really deserve to be punished by compensating the victim for losses, the victim's suffering is so deep, the hope of getting the promised profit is lost. For victims who do not have any extra assets so that the only hope is from investment returns, the suffering is unimaginable.

The conception of the causes of *dhaman* is that there is an element of *ta'addi*, namely carrying out prohibited actions and/or not fulfilling obligations according to law, of course in cases of illegal investment there are actions that are prohibited by the Shari'a. *Ta'addi* can occur because it violates the agreement clauses in the contract that should be fulfilled. For example, the recipient of the deposit of goods (*al-muda*) does not take care of the goods as well as possible, an *al-ajir* (paid worker, hired person) and *al-musta'jir* (tenant) do not comply with the agreed contents of the contract. *Ta'addi* can also occur due to violation of sharia law (*mukhalafatu ahkâm syari'ah*) as in cases of damage to goods (*al-itlâf*), confiscation (*al-gasb*), or negligence or wasting goods intentionally (*al-ihmâl*). *Ta'addi* which obliges *dhaman* actually creates *dharar* (loss). If there is no loss, then there is no *dharar*, because in fact there is no *dharar* to be compensated for. However, there is an act by itself obliging *dhaman* such as *al-gasbu* (deprivation). According to Juhur Ulama, the perpetrators of confiscation must replace the benefits of the goods while they are in their control, even if they are not used. This opinion is based on the assumption that losses always occur in cases of confiscation. Losses or *dharar* will also be experienced by people whose freedom is restricted by the authorities or someone who is detained illegally according to the Hanabilah fuqaha. This opinion reinforces the rule that “*al-dharar syarthun liwujubi dhaman*” which means “*a loss is a condition for the obligation to compensate*” (Salam, 2015). With this description, with the concept of *ta'addi* investment crime can be categorized as a crime that requires the perpetrator to compensate the victim's losses, in practice it can occur in a business that is justified by the Shari'a but the capital manager commits an act that is prohibited by the Shari'a in the form of embezzling the investors' money, or the manager does not run the business as it should but designs it in such a way as to deceive investors that the business is really making a loss even though if it is run properly the business can generate profits, or the manager secretly diverts investor capital to businesses that are prohibited by Shari'a.

The Messenger of Allah really hates and threatens not to be part of his people for people who manipulate trade to look beautiful but in reality are full of lies that can cause harm to other parties. The story of Rasulullah in the market who found a fruit seller with his cart. He saw that the fruits on the cart were beautiful, but he was surprised when he saw water dripping from the cart. Rasulullah put his hand into the fruit on the cart. It turns out that the good fruits are only on top, while there are many rotten ones inside. When the Messenger of Allah said “*Who deceives us is not from our group*” (HR. al-Bukhari and Muslim from Hurairah) (Hengki, 2017).

It needs to be used as a record of the amount of compensation that can be claimed against the perpetrators, according to Sheikh Wahbah al-Zuhaily stated:

أما ضياع المصالح والخسارة المنتظرة غير المؤكدة (أو المستقبلية) أو الأضرار الأدبية أو المعنوية فلا يعوض عنها في أصل الحكم الفقهي لأن محل التعويض هو المال الموجود المحقق فعلا والمتقوم شرعا

Meaning: “*As for the loss of benefit and the emergence of losses that await and are uncertain (in the future) or losses that are adab (moral) or meaningful losses, then (in fiqh, all forms of losses) cannot be compensated. Because the object Compensation must be in the form of assets that can be stated (concrete) and can be proven empirically (real) and can be nominally (valuable) syara*” (Al-Zuhaily, 1998)

In the opinion of Sheikh Wahbah al-Zuhaily above, that the amount of compensation is for assets that are concrete, can be calculated mathematically, can be proven concretely through correct evidence. Meanwhile, compensation for moral losses that cannot be nominalized is not justified. Based on the opinion of Sheikh Wahbah Zuhaily, compensation in the Shari'a is correct if it is carried out for the following matters: **First**; Compensation for intentional or unintentional errors (negligence). **Second**; Losses due to loss of benefits of goods. **Third**; Losses that are immaterial (cannot be nominalized) cannot be compensated for. **Fourth**; The amount of compensation corresponds to the amount of loss that can be proven in real terms (Al-Zuhaily, 1998).

As long as the investment is not in a lawful business or is not affiliated with a business that is forbidden in Islam, the investment is permissible. If fraud occurs in the investment or investment crime occurs causing losses to the victims, Islam allows for imposing a penalty of compensating the perpetrators to pay for the losses suffered by the victims. This is a form of legal protection provided by Islam to its victims, but the amount of the loss must be nominal. Islam highly upholds the values of justice in society, Islam protects justice for victims on the one hand, and on the other hand the perpetrators should not be burdened with compensation that cannot be calculated in nominal terms.

## Method

This research is normative legal research (normative law research) or also called doctrinal legal research (dogmatic), researching and studying the concept of law as a norm or rule that applies in society and becomes a reference for everyone's behavior (Muhaimin, 2020). Using a statutory approach (legal approach) because the object to be examined is legal regulations which are the focus and central theme (Jonaedi and Ibrahim, 2021). Of course, it takes secondary data sources consisting of primary, secondary and tertiary legal materials, consisting of laws and regulations, books, journals, articles and literature related to the discussion in this study. In addition, this study uses revelation data consisting of the al-Quran and Hadis. The data collection tool used was library research. The analysis used in this study uses a qualitative analysis method (Mezak, 2006).

## Result and Discussion

Islamic law that has been prescribed aims to maintain the benefit of society, as meant in the maqashidu syar'iyah concerning the principle of safeguarding property (hifdz mal), because perpetrators of illegal investment crimes can be classified as violating the maqashidu syar'iyah principles, they must be subject to punishment according to sharia. In investment crimes, there is an element of loss (al-dharar) experienced by the victim in the form of property (*maliyah*). In the context of legal responsibility (mas'uliyat) regarding criminal law which is termed mas'uliyah al-jina'iyah, perpetrators of illegal investment crimes can be subject to sanctions (*uqubah*) to compensate their victims. This is a form of providing legal protection for victims based on the value of justice. Based on the principles and principles of Islamic law, Islamic criminal law regulations are needed that are integrated with state law to regulate sanctions (*uqubah*) for perpetrators to pay compensation for victims of illegal investments.

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