
VTUBE INDONESIA'S BUSINESS ACTIVITIES: HOW CAN OJK'S INVESTMENT TASK FORCE TAKE ACTION AGAINST ILLEGAL INVESTMENTS

Shabrina Fadiyah Ghazmi*

Azeem Marhendra Amedi

Faculty of Law, Universitas Padjadjaran, Jl. Raya Bandung Sumedang KM.21, Hegarmanah,
Jatinangor, Kabupaten Sumedang, Jawa Barat 45363, Indonesia

Corresponding author*: shabrina17001@mail.unpad.ac.id

ABSTRACT

VTube is an electronic application that guarantees its users benefits easily by watching advertisement videos and recruiting people as new users. However, VTube was deemed as an illegal investment entity through a Press Release by the Investment Task Force (SWI) under the Financial Service Authority (OJK). This article will conduct an in-depth explanation and analysis regarding the legality of VTube Indonesia, from the legality of the company, their investment activities and SWI's action against VTube Indonesia, using the analytic descriptive method through gathering of data from primary and secondary legal sources. Numerous legal documents such as laws and regulations will be used to determine the legality of VTube as an investment entity, while sources like books, articles, and journals will be gathered to find theories on investments, the Ponzi scheme, and feasible solutions to implement. VTube was suspected to be using a Ponzi scheme to conduct their business, which is illegal according to the Trade Law. SWI OJK may have declared VTube as illegal, but their move was not firm enough and has not maximized the coordination between involved institutions. Moreover, OJK has the obligation to protect the public in the financial service sector.

Keywords: VTube, Ponzi Scheme, illegal investment

INTISARI

VTube Indonesia merupakan aplikasi elektronik yang menjamin keuntungan mudah hanya dengan menonton iklan dan merekrut anggota baru sebagai pengguna. Aplikasi yang diselenggarakan oleh PT Future View Tech ini dinyatakan sebagai entitas ilegal oleh Satuan Tugas Waspada Investasi (SWI) di bawah Otoritas Jasa Keuangan (OJK). Artikel ini disusun dengan metode deskriptif analitis yang berdasarkan data-data dari peraturan perundangan, putusan pengadilan, buku, artikel, jurnal, serta sumber lain. Metode tersebut dilakukan untuk menentukan legalitas kegiatan VTube dari sisi pendirian perusahaan, kegiatan investasi mereka, dan menganalisis bagaimana semestinya penindakan oleh SWI pada kegiatan VTube. Beberapa dokumen hukum seperti peraturan perundang-undangan akan digunakan untuk menentukan legalitas VTube sebagai entitas investasi yang sah, sementara buku, artikel, dan jurnal digunakan untuk mencari teori-teori investasi, skema Ponzi, dan solusi yang memungkinkan untuk dilakukan SWI OJK. VTube disinyalir menjalankan skema Ponzi dalam kegiatan bisnisnya, hal ini dipandang melanggar ketentuan dalam Undang-

Undang Perdagangan. SWI OJK menyatakan VTube sebagai entitas investasi ilegal, namun langkah penindakannya tidak tegas serta koordinasi dengan institusi terkait kurang maksimal, padahal OJK berkewajiban melindungi masyarakat dalam sektor jasa keuangan.

Kata kunci: VTube, Skema Ponzi, investasi ilegal

INTRODUCTION

VTube, an Indonesian electronic application has gained fame among some groups of people. An application developed by a company called PT Future View Tech was launched in 2020, and the application gained popularity for being an easy and quick “money generator”. VTube promises to give easy profits to their members just by making them finish a daily mission that can be done by watching advertisement videos in a day on the application, recruiting new members, and creating their own network of members. After those milestones have been accomplished, the profits will be given to the members.

However, by the 3rd of July 2020, the Financial Service Authority (“**OJK**”), through their Investment Task Force (“**SWI**”), deemed VTube and PT Future View Tech as illegal investment entities based on the Press Release No. SP 06/SWI/VII/2020. The reasoning behind it was VTube has got no permission to hold investment activities by giving their members easy profits ranging from Rp200.000 to Rp70.000.000 just by watching some advertisements. Hence, SWI coordinated with some institutions, namely Indonesian State Police (“**Polri**”) and the Ministry of Communication and Information Technology (“**Kemenkominfo**”) to stop VTube’s activities, closing their official website, and blocking access to the application until they have been granted the permission to operate.¹

Although SWI has declared VTube as an illegal entity, the users still insist on using the application. Up until 26th of January 2021, there have been ten million installations on Android phone users.² Moreover, members are still forming numerous forums and recruiting new members each day, but according to some sources, VTube uses a Ponzi scheme to gain profits. The scheme will have a big damage to the people using the application if their scheme collapses in the future, and their activities are not permitted by OJK.³

On the other hand, VTube’s status as an illegal entity through Press Release is not enough. Press Release is never a legal document that regulates or prohibits something, and in that case the announcement of the illegality of VTube by SWI does not have the power to stop their business

¹ Otoritas Jasa Keuangan, “Siaran Pers: Satgas Waspada Investasi Perkuat Koordinasi dengan Kepolisian RI Temukan 105 Fintech Peer-to-Peer Lending Tanpa Izin dan 99 Entitas Penawaran Investasi Tanpa Izin”, No. SP 06/SWI/VII/2020, 3 July 2020.

² Google Play Store installation statistics per 26 January 2021. <https://play.google.com/store/apps/details?id=co.vtube.fvtech>

³ Detik Finance, ‘Walah! Vtube Masih Berani Cari Anggota Meski Sudah Dilarang OJK’ (Detikcom, 25 January 2021), <<https://finance.detik.com/moneter/d-5347935/walah-vtube-masih-berani-cari-anggota-meski-sudah-dilarang-ojk>>, accessed 26 January 2021.

activities, hence VTube is still expanding up until now. Those issues raised some big questions to answer: is VTube actually illegal, from the formation of the company standpoint to their business operation? How should the SWI handle VTube's business activities? This article was created to answer those questions.

METHODS

The method applied in this article is analytic descriptive research. By describing the facts from the data gathered originating from various sources, the mentioned data then will be analyzed with various references. The data used in this article is qualitative data, ranging from basic principles and information in which they will be constructed systematically into a complete article. The data was gathered from sources such as primary legal sources (laws and regulations) and secondary legal sources (books, articles, and academic journals). This method will help to answer all the research questions, from the legality of VTube to how SWI can be better in taking actions against suspected illegal investments. The data gathered from books, articles, and journals are mainly used for giving basic theories about laws, regulations, and the Ponzi scheme. Meanwhile, the data from the laws and regulations, court decisions, and internet sources are used to analyze the legality of VTube, authorities of OJK and SWI, also feasible solutions to the problem.

RESULTS AND DISCUSSION

1. VTube and the Ponzi Scheme

1.1. Defining and Regulating the Ponzi Scheme

The company that operated VTube, PT Future View Tech, was suspected of using a Ponzi scheme. Ponzi scheme is considered as a "money game" since the scheme uses the method to circulate money from the members of the scheme. By taking some tariffs from the new members, the old members will gain bonuses from them. No actual business operation ever occurred in this scheme, because the money will always go to the older members. If one part of the scheme does not operate well enough or leaves the system, the system will collapse and result in massive loss. The Ponzi scheme is often confused with the pyramid scheme since the two have similarities in the way they recruit members. However, according to Craig J. Cantoni, the objectives of pyramid schemes are to gain profits from recruiting new members and selling products sustainably. That is never the case with Ponzi schemes, where there were no products sold and no bonuses were given to the new members. Ponzi schemes only focus on gaining profits from recruitments, none other form of business can generate profit in the mentioned scheme.⁴

Ponzi schemes use investors' fundings to fund other investors in order to retain their interest in the business. This, however, will make the whole scheme collapse if the capitals were not enough to

⁴ Bianca Janet, *et al.*, 'Praktik Skema Piramida dalam Sistem Distribusi Barang' [2020], Jurnal Ilmu Kepolisian Volume 14 Number 2, 136.

pay for the system to keep going. Promoters in a Ponzi scheme will convince the investors that all assets are going to be further developed with more funding coming into the company, and the promoters will share the profits gained from the business to the investors. Investors who deposit their capital in the Ponzi scheme will be given large dividends that are paid early. The large dividend is represented as the "profit" that comes from a successful venture. In reality, these large dividends are simply the return of a portion of the investor's money to them. This initial large dividend aims to attract additional investors and encourage early-time investors to increase their capital. To maintain a Ponzi scheme, the amount invested must exceed the amount required for dividends.⁵

Businesses with Ponzi schemes in Indonesia have not been specifically regulated in any statutory regulations, but the scheme can be included in what is meant by pyramid schemes according to Article 9 of Law Number 7 of 2014 on Trade (Trade Law). According to the explanation of the article, what is meant by a pyramid scheme is the term/name of a business activity that is not the result of the sale of goods. This business activity takes advantage of the opportunity for the participation of a business partner to earn rewards or income, especially from the participation costs of other people who join later or after the joining of the business partner. Article 9 of the Trade Law is enforced along with Article 105 of the same law, which regulated the prohibition of pyramid schemes for businesses conducting their business activities. According to Article 105, Distribution Business Actors who apply a pyramid scheme system in distributing goods shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp10,000,000,000.00 (ten billion rupiah).

Based on the definition given by the Trade Law with extensive interpretation and with some help from the theory of the Ponzi scheme as mentioned above, on both Articles 9 and 105, the pyramid schemes understood in this regard also includes the Ponzi scheme. This is because of the explanation of Article 9, that the schemes collect profits not from selling goods, but how many members are joining and investing in the schemes. The Ponzi scheme only takes advantage of recruiting new members and collecting funds from them, hence the scheme fits the general definition of a pyramid scheme according to Articles 9 and 105 of the Trade Law, so it shall be prohibited on that ground.

1.2 How VTube Operates Their Ponzi Scheme

VTube in its business scheme is considered to be using a Ponzi scheme because of the withdrawal of funds from new members by old members based on the "Referral" system in their application. In general, according to a website developed by a VTube member who has a *vtube.tech* domain, members who watch advertisements to complete daily missions in order to earn income will be subjected to more profit by leveling up. The increase in this level is determined by the number of "ViewPoints" (abbreviated as VP). This VP is calculated from how many points you earn from

⁵ Klarita Sadiraj and Arthur Schram, 'Inside Information in Ponzi Schemes' [2018], Department of Economics and Econometrics University of Amsterdam, 1.

watching advertisement missions, how many people you successfully recruit and have completed the mission watching ads, and how much you build a database of the results of that recruitment.⁶

The Ponzi scheme from the VTube application is apparent from how each old member must recruit new members through a referral code in order to reap greater profits than not recruiting at all. The recruitment of new members is accompanied by the purchase of VP from old members so that they can carry out missions because new missions can be carried out if they have been paid for with VP. Meanwhile, the purchase of VP is cashed with a value equivalent to US dollars (USD). Then, for each member who wants to get even more income, they can buy a package called "Star Package". This package functions to increase the coffers of points that can be generated from missions and member recruitment but can only be purchased with VP. If the VP is not sufficient, then you have to buy that VP from the old member.

Therefore, their business activities can be classified as a Ponzi scheme. They obligate each of their members to recruit newcomers to the scheme, paying a sum amount of money to the old members in order to pay them to execute missions and paying the older members to do the same, and for the new members to gain some profits, they must recruit more newcomers to their referral group. This is seen to be dangerous to their business sustainability, because if they cannot anymore newcomers to recruit, their scheme will crumble and it will cause insurmountable loss to the current members, because they depend on fundings collected from new members in order to stay afloat.

1.3 Previous Case of Suspected Conduct of a Ponzi Scheme

One of the most recent cases regarding the Ponzi scheme in Indonesia is the case of MeMiles. MeMiles is an investment application under the guise of a digital advertising business created by PT Kam and Kam. MeMiles' business activities were stopped in 2019 because the OJK SWI was determined to be an illegal business entity.⁷ MeMiles carries out its activities using a Ponzi scheme, where people who want to advertise must become members and are asked to deposit their money to get certain rewards. In addition, to be able to reap even greater benefits / bonuses, members are required to recruit more new members. Based on the Ponzi scheme, bonuses paid to old members are actually money deposited by new members, so the capital in the Ponzi scheme is simply turning from new members' money to old members, and so on. Therefore, the Ponzi scheme will be destroyed if there are no more members to deposit their money again, because no money will be turned around to pay the bonus again.⁸

⁶ Based on what was displayed on a site called VTube Web Support, not an official VTube website since it has been blocked by the *Kemenkominfo*. <<https://www.vtube.tech/panduan.html>> accessed 1 February 2021.

⁷ Tirto.id, 'Cara MeMiles Menipu Ribuan Anggota: Catut Google sampai Pakai Artis', (Tirto.id, 16 January 2020) <<https://tirto.id/cara-memiles-menipu-ribuan-anggota-catut-google-sampai-pakai-artis-es1B>> accessed 5 February 2021.

⁸ Merdeka.com, 'Investasi MeMiles Menggunakan Skema Ponzi, Ini Penjelasan OJK', (Merdeka.com, 20 January 2020) <<https://www.merdeka.com/peristiwa/investasi-memiles->

PT Kam and Kam as managers of MeMiles do not have permission from the OJK to raise public funds and manage investment. The licenses held by the company are limited to Trading Business Permits (*Surat Izin Usaha Perdagangan/ "SIUP"*). On the website of the Directorate General of General Legal Administration, the Ministry of Law and Human Rights, the MeMiles management company is only registered as a company engaged in advertising services that uses a direct selling system through the member network by joining Memiles. Even so, in carrying out their illegal investment activities, as reported on the MeMiles page, they combine three types of businesses, namely advertising, marketplace, and traveling.⁹

Due to the absence of an investment license, OJK stated that MeMiles was an illegal investment according to the SWI OJK Press Release Number SP 05/VII/SWI/2019 on August 2, 2019. The issuance of this press release marked the beginning of the closing of MeMiles electronic services by SWI in coordination with the *Kemenkominfo*. Then, at the end of 2019, MeMiles officials were reportedly suspected of having traded under the Ponzi scheme, which was thought to have violated the provisions of Articles 9 and 105 of Law Number 7 of 2014 on Trade (Trade Law), which prohibits carrying out business activities with a pyramid scheme, as well as violating Articles 24 and 106 in the Trade Law because they do not have a trade permit granted by the Minister. The prosecutors accused MeMiles of using the Ponzi scheme based on the fact that MeMiles had a membership programme which allowed their customers to get bigger profits by recruiting new members to use their service and invest some money to the previous customers with the membership. However, the judges considered the business scheme did not fit the definition of the pyramid scheme given by the Trade Law, hence the managing director of MeMiles and several of his top officials were declared acquitted by the Surabaya District Court.¹⁰

Based on that case, both VTube and MeMiles have got something in common, which is the use of the Ponzi scheme in their businesses. VTube promises benefits for its members just by watching videos in their application, while Ponzi Schemes on MeMiles promise benefits if members deposit large capital. The greater the paid-in capital, the greater the returns that are promised to be obtained. In addition, MeMiles members are also required to recruit new members. In its illegal investment activities, MeMiles combines three types of businesses, namely advertising, marketplace, and traveling. What makes MeMiles a bit different from VTube so that the Surabaya District Court acquitted their higher-ups from any kind of legal charges is that MeMiles are still selling services and making profits from the services, which is still in accordance with Article 9 of the Trade Law. Meanwhile, VTube does not make profits from selling any kind of goods and/or services, they only provide their members with an easy way to make profits just by watching advertisement videos on their application and recruit new members as a part of their mission to

menggunakan-skema-ponzi-ini-penjelasan-ojk.html> accessed 5 February 2021. See also Bianca Janet, *Loc. cit.*

⁹ *Ibid.*

¹⁰ See Surabaya District Court Decision No. 836/Pid.Sus/2020/PN Sby on MeMiles Director, Kamal Tarachand Mirchandani a.k.a. Sanjay. See also Surabaya District Court Decision No. 870/Pid.Sus/2020/PN Sby.

generate money. With that in mind, VTube can be prosecuted using Articles 9 and 105 of the Trade Law because of their use of the Ponzi scheme that is understood as a part of the general pyramid scheme according to the said law.

2. Legality of VTube and OJK's SWI Authority in Prosecuting VTube Activities

2.1. SWI OJK: The Investment Task Force to Reassure Investors' Safety

Otoritas Jasa Keuangan (OJK) is a government body that is independent and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation. Provisions concerning OJK specifically regulated in Law Number 21 of 2011 on the Financial Services Authority ("OJK Law"). According to this law, OJK has the duty of regulating and supervising financial service activities in the banking sector, capital market sector, and the non-bank financial industry (IKNB) sector. OJK's authority in the capital market sector is a transfer from the authority of the Capital Market Supervisory Agency (*Bapepam*) which was under and accountable to the Ministry of Finance in 2013. The transfer is based on the provisions of Article 55 paragraph (1) of the OJK Law: "Since 31st of December 2012, the functions, duties and authorities of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financing Institutions and Other Financial Services Institutions sector shifted from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to OJK".

OJK has a supervisory function in the investment sector, since the investment sector is the scope of the financial services sector, specifically in the capital market sector and closely associated with the capital market. Investment itself is defined as a number of funds or other resources that are carried out at this time, with the aim of obtaining a number of benefits in the future. Investment is also defined as an activity in the form of buying shares, bonds and immovable objects, after an analysis is carried out it will guarantee the invested capital and give satisfactory results.¹¹ Investment is closely related to the capital market. Meanwhile, the capital market is a market for various long-term financial instruments that can be traded, both debt securities (bonds), equities (stocks), mutual funds, derivative instruments and other instruments.¹²

However, investment does not always have to be in capital market activities. Investments can be divided into two, namely direct investment and indirect investment. Direct investment is an investment in the form of direct purchase of financial assets of a company which can usually be done in the money market, capital market, and derivative market. Meanwhile, indirect investment is in the form of buying shares from investment companies that have a portfolio of financial assets

¹¹ Syaeful Bakhri, Mabruhi Fauzi, and Watuniah, 'Peran Otoritas Jasa Keuangan Dalam Upaya Perlindungan Masyarakat Dan Pengawasan Terhadap Investasi Ilegal', [2019] Jurnal Al-Mustashfa 4 (2)], 293.

¹² Indonesian Stock Exchange, 'Pengantar Pasar Modal' (Indonesian Stock Exchange), <<https://www.idx.co.id/investor/pengantar-pasar-modal/>> accessed 5 February 2021.

from other companies.¹³ In consequence, investments can also be made in activities or institutions or companies that do not conduct public offerings on the capital market.¹⁴

It should be noted that the investment made should not violate the prevailing laws and regulations in Indonesia. Furthermore, an investment that involves many people as investors needs to be licensed or registered with the OJK as an independent institution that oversees activities in the financial services sector. Moreover, the rapid development of technology today that allows investment activities to be carried out digitally has increased the investment offered by financial service providers.

In response to the progressively growing investment in Indonesia, OJK believes they need to strengthen their control over investments done by various entities in Indonesia and increase the effectiveness in enforcing the laws regulating such activities. Therefore, OJK formed the Investment Task Force (*Satuan Tugas Waspada Investasi/SWI*) through the Decree of the Board of Commissioners of the Financial Services Authority (*Keputusan Dewan Komisiner Otoritas Jasa Keuangan*) Number: 01/KDK.01/2016 on the 1st of January 2016 as the basic legal framework of their formation. The formation of SWI is a way for OJK to be more effective in: (1) preventing illegal actions in the field of public fundraising and investment management, which includes education and outreach activities to financial service industry players and the public and monitoring the potential for unlawful actions in the field of public fund collection and investment management; and (2) handling allegations of illegal actions in the field of collecting public funds and investment management, which includes inventory of cases, analyzing cases based on statutory regulations, stopping or obstructing cases, conducting joint investigations and/or clarifications, conducting searches on sites that are suspected to be against the law and have the potential to harm the public; as well as formulating follow-up recommendations for handling allegations of illegal actions in the field of public fund collection and investment management.¹⁵

OJK has the authority to carry out consumer protection, as regulated in Article 28 of the OJK Law.¹⁶ SWI OJK is one of the efforts made by OJK to improve consumer protection in the financial services sector and increase public trust in the financial industry. Based on the Decree of the Board of Commissioners of the Financial Services Authority Number: 01/KDK.01/2016 regarding the formation of SWI OJK, SWI OJK is the result of cooperation between several related agencies which is divided into two, namely regulators and law enforcers. The regulators at the OJK SWI include the OJK, the Ministry of Trade, the Ministry of Investment/the Investment Coordinating

¹³ Jogyanto Hartono, *Teori Portofolio dan Analisis Investasi Edisi ke-11*, (BPFE Yogyakarta, 2017), 89.

¹⁴ See Trygve Haavelmo: *A Study in the Theory of Investment* (1st edn, The University of Chicago Press 1960) 177.

¹⁵ *Otoritas Jasa Keuangan* (OJK), '*Fungsi dan Tugas Satgas*' (Otoritas Jasa Keuangan) <<https://www.ojk.go.id/waspada-investasi/id/tentang/pages/Fungsi-dan-Tugas-Satgas.aspx>> accessed 5 February 2021.

¹⁶ Syaeful Bakhri, Mabruri Fauzi, and Watuniah, *op. cit.*, 291.

Board, the Ministry of Cooperatives and Small and Medium Enterprises, and the Ministry of Communication and Information Technology. Meanwhile, the SWI OJK law enforcers include the Indonesian Attorney General's Office and the Indonesian National Police.¹⁷ Numerous institutions are involved in coordination with SWI OJK because of the proliferation of various financial services, such as financial technologies (fintech). By involving and coordinating with the mentioned institutions, SWI OJK can be more effective in investigating illegal financial services, taking actions against them, and further advocating the dangers of illegal investment entities to the public. They can investigate and take actions against illegal entities which are still continuing their illegal practices by filing lawsuits or reporting to the National Police for any crimes. From investment to loan services, whether their activities are conducted conventionally and/or through fintech services like VTube, are under the supervision of SWI OJK in order to make their activities in accordance with laws and regulations. The formation of SWI OJK is also to provide the widest possible information to the public about which entities are legal and which are illegal, especially in terms of investing through digital platforms.¹⁸

People should be aware that not all existing digital investments have legality as stipulated by positive laws and regulations in Indonesia. There are many illegal investments that are still carrying out their activities today. One of the characteristics that distinguishes legal investment from illegal investment is the possession of legal permit documents from relevant regulators or supervisors, such as OJK, Bank Indonesia, *Bappebti* - Ministry of Trade, Ministry of Cooperatives and SMEs, and others. These licenses are related to business licenses for investment providers to collect public funds and manage investments as regulated in several related regulations, including:

1. Law Number 10 of 1998 on Banking: Any party that collects funds from the public in the form of savings, must first obtain a business license as a Bank from Bank Indonesia (starting 2014 the licensing and supervision of the Bank has shifted to OJK).
2. Law Number 8 of 1995 on Capital Market: The Investment Manager's business license is granted by Bapepam and LK. Investment Manager activities include managing Securities portfolios for clients or managing collective investment portfolios for a group of customers. Funds managed by the Investment Manager are invested in Securities instruments as referred to in the Capital Market Law, namely securities, namely debt acknowledgments, commercial securities, shares, bonds, proof of debt, Participation Units in collective investment contracts, futures contracts on Securities, and any derivatives (derivative products) of the Securities.
3. Law Number 32 of 1997 on Commodity Futures Trading: That the business license of a Futures Trading Broker (Futures Broker) is granted by Bappebti. This business license covers activities related to the sale and purchase of commodities based on futures contracts based on customer

¹⁷ *Ibid.*

¹⁸ Decree of the Board of Commissioners of the Financial Services Authority Number: 01/KDK.01/2016.

orders by withdrawing a certain amount of money and/or securities as margin to guarantee the transaction.

4. Law Number 17 of 2012 on Cooperatives: Cooperatives cannot carry out investment activities based on the collection of funds from cooperative members.

The ownership of these permits can be found on digital investment pages, where legal digital investments have the statement "Registered and supervised by the Financial Services Authority" or by other related institutions. Whereas for illegal digital investment, no such information was found. Hence, digital investments that are legal and have been registered with the OJK can be checked on the OJK website. Since its establishment in 2016, SWI OJK has taken action against many illegal investment providers in Indonesia, including the action against VTube which was carried out in 2020.

2.2. How SWI OJK Asserted Their Authority Over VTube

Based on the Press Release of SWI OJK No. SP 06/SWI/VII/2020 on July 3, 2020, VTube was announced as an illegal investment entity. The basis for determining the status of an illegal investment entity on VTube is that it is investing money without permission by offering a profit of IDR 200,000 to IDR 70,000,000 just by watching advertisements. As previously mentioned, SWI OJK has the authority to take action against any illegal investment practices in Indonesia. SWI OJK's actions in this case determined VTube as an illegal entity through a published press release. According to the Head of SWI, Tongam L. Tobing, VTube does not have a Certificate of Registration (*Surat Tanda Terdaftar/STTD*) from the OJK as a license to carry out investment activities. Tongam also said that their Electronic System Operation license registered with the *Kemenkominfo* has been revoked.¹⁹ The permits or legality that are owned only a Limited Liability Company (PT) Business Entity Permit,²⁰ Operational/Commercial Permit for Electronic System Operators, and Industrial Business Permits.²¹ Tongam also explained that even though it had been declared an illegal entity, SWI still gave them the opportunity to carry out normalization, namely to take care of all existing permits to carry out investment business activities.²² Thus, OJK through SWI still opens up opportunities for VTube to become a legal investment entity.

OJK's follow-up on VTube activities raises questions about the legality of investment organizers with the Ponzi scheme. As what has been analyzed in the previous part, the implementation of a pyramid scheme is prohibited in Indonesia through the provisions of the Trade Law. Theoretically,

¹⁹ Hesti Rika, 'Satgas Waspada Investasi Pastikan VTube Ilegal' [CNN Indonesia, 28 Januari 2021] <<https://www.cnnindonesia.com/ekonomi/20210128085550-78-599357/satgas-waspada-investasi-pastikan-vtube-ilegal>> accessed 13 February 2021.

²⁰ Based on the findings on the Directorate General of General Legal Administrations (Direktorat Jenderal Administrasi Hukum Umum), Ministry of Law and Human Rights website, www.ahu.go.id.

²¹ See VTube Tech website, <https://www.vtube.tech/>

²² Hesti Rika, "Satgas Waspada Investasi..." *Loc. cit.*

there is a difference between the pyramid scheme and the Ponzi scheme, namely in a Ponzi scheme the money is left to invest; in a pyramid scheme, money is handed over in exchange for the right to do something such as to open a franchise or to invite new members).²³ In a Ponzi scheme there are no products in the form of goods or services that are sold, so that the payment of commissions or rewards to members only comes from the circulation of existing funds. Therefore, Ponzi Schemes are always illegal; pyramid schemes sometimes, depending on how they are structured. However, ponzi schemes and pyramid schemes have something in common, namely they both collect public money through the continuous recruitment of new members. Based on the interpretation explained in the previous part,²⁴ VTube, which in its investment business activities to recruit new members does not involve the sale of an item, but rather to enlarge the network with the participation of new business partners in order to reap profits, should be dealt with strictly based on the provisions of the Trade Law. The article imposed on VTube is the article on the pyramid scheme in the Trade Law. This is because there are no regulations that specifically regulate the Ponzi scheme. However, the similarity between the Ponzi scheme and the pyramid scheme, which is both collecting public money through the continuous recruitment of new members, is one of the grounds for the application of Article 9 and Article 105 of the Trade Law to VTube's illegal investment activities.²⁵

As a supervisor and regulator in the financial services sector, OJK has an obligation to protect consumers in the financial services sector from illegal business conducts, including illegal investment using the Ponzi scheme that is against the Trade Law. This obligation is regulated in Articles 28, 29, and 30 of the OJK Law. Article 28 of the OJK Law states that in terms of preventing losses to consumers and the public, OJK can terminate the activities of financial services sector institutions that have the potential to harm society, and other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector. With all those promulgated laws regarding the power of OJK to oversee financial activities across the country, OJK is already the right authority to take action against the legality of VTube and its investment activities.

OJK and its authority can decide which investment entities are permitted to perform their activities, therefore they have the power to give permission to all investment entities. Along with the rapid development of technology, investments can also be made remotely through the intermediary of digital devices, therefore all digital investment platforms must be permitted by OJK. However, not all digital investments are legal and have permission from the OJK. Illegal digital investment organizers are not registered and do not have permission from the OJK to carry out their business.

²³ James Walsh, *You can't cheat an honest man: how Ponzi schemes and pyramid frauds work--and why they're more common than ever*, (Silver Lake Pub, 2003), 7.

²⁴ See Part 1.1.

²⁵ Martin Suryana and Associates, 'Larangan Skema Ponzi dan Skema Piramida Menurut Hukum Positif' [Hukum Online, 29 July 2020] <<https://www.hukumonline.com/klinik/detail/ulasan/lt57eb3c7080e65/larangan-skema-ponzi-dan-skema-piramida-menurut-hukum-positif/>> accessed 12 June 2021.

In general, these digital investment operators have the form of business entities such as Limited Liability Companies (PT) and Savings and Loans Cooperatives, and only have documents of Certificate of Establishment/Company Change (*Akta Pendirian/Perubahan Perusahaan*), Taxpayer Identification Number (NPWP), domicile statement from the local village head As for the legality of businesses that are usually owned in the form of Trading Business Permits (SIUP) and Company Registration Certificates (TDP).²⁶

Based on the Minister of Trade Regulation No. 26/M-DAG/PER/9/2007 concerning the Issuance of Trading Business Permits, it is stipulated that companies that carry out activities to collect public funds by offering promises of unreasonable profits (money games) are prohibited from using SIUP. In several cases, illegal investment companies were also found to admit and use other companies' business licenses in their operations.²⁷ Thus, the illegal digital investment platforms that are still operating will be reported to the National Police by SWI along with the *Kemenkominfo*. VTube, which has a web page and a digital application domain, must have legality in the form of an Electronic System Operator Permit granted by the *Kemenkominfo*, based on the Government Regulation Number 71 of 2019 on Implementation of Electronic Systems and Transactions. VTube has actually obtained the Electronic System Operator's license since 2020, but *Kemenkominfo* has now blocked both its web page and digital applications available on the Google Play Store,²⁸ as they have the legitimate authority to exercise blockade of any sites with illegal contents based on Articles 40 (2a) and (2b) of the Law Number 19 of 2016 on Electronic Information Systems and Transactions Law (UU ITE).²⁹ According to these two articles, the blocking of the application is an implementation of the provisions of Article 40 paragraphs (2a) and (2b), in which the Government is obliged to prevent the spread and use to prevent the dissemination and use in accordance with the provisions of the legislation. So that if there is Electronic Information and/or Electronic Documents that have contents that violate the law, the Government is authorized to terminate access and/or order the termination of access to Electronic System Operators.

Investment activities in Indonesia must also use the original Indonesian currency. This is regulated in Article 21 of Law Number 7 of 2011 on Currency, that every transaction carried out in the territory of Indonesia must use the rupiah currency. Meanwhile, the value of VP that is traded between VTube users is equivalent to the United States dollar (USD) without a clear conversion

²⁶ Otoritas Jasa Keuangan, '*Modus Operandi Penipuan Berkedok Investasi*' [Otoritas Jasa Keuangan] <<https://www.ojk.go.id/waspada-investasi/id/berita/Pages/Modus-Operandi-Penipuan-Berkedok-Investasi.aspx>> accessed 5 February 2021.

²⁷ *Ibid.*

²⁸ Danang Sugianto, '*VTube Menghilang dari Play Store, Ketua Satgas: Kami yang Minta Blokir!*' [Detikcom, 24 February 2021] <<https://finance.detik.com/berita-ekonomi-bisnis/d-5436290/vtube-menghilang-dari-playstore-ketua-satgas-kami-yang-minta-blokir>> accessed 1 March 2021.

²⁹ See also Articles 95, 96, and 96 of the Government Regulation Number 71 of 2019 on Organizing Electronic System and Transactions.

indicator. Therefore, SWI considers that VP does not use the rupiah currency as a means of exchange for transactions between its users, so it should be strictly prohibited.³⁰ This is because all foreign investments, if they are about to conduct their business in Indonesia, must complete all sorts of payments with rupiah as the main and official currency between all parties involved. With that in mind, not only national and multinational companies must abide by the laws of official national currency, even a startup company like VTube cannot continue their practice in using US dollar as their currency for every transaction between members, because the practice is clearly against the law.

3. How Can SWI OJK Improve?

3.1. Protection from Losses Suffered by Consumers

OJK as an institution that oversees the financial services sector through their authority should take more firm action by not only determining the status of an illegal entity yet still providing space for them to do activities, but also having to completely terminate it since it is contrary to the prevailing laws and regulations and business schemes, and their business schemes endangers the economy of the community as consumers. OJK has an obligation to protect consumers and the public in every activity in the financial services sector. This is as stated in Articles 28, 29, and 30 of the OJK Law. Other provisions regarding consumer protection in the financial services sector are also regulated in POJK No.1/ POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. As for consumer protection, referring to the provisions of Article 1 point 3 POJK Number 1/POJK.07/2013, is protection for consumers with a scope of behavior by financial service business actors.

Article 28 of the OJK Law regulates the powers that OJK can exercise to prevent losses to consumers and the public, which includes providing information and education to the public on the characteristics of the financial services sector, services, and products; ask financial services institutions to stop their activities if they have the potential to harm the community; and other actions deemed necessary by the provisions of laws and regulations in the financial services sector. In practice, the provision of information and education can mean two actions, namely preventive action, in the form of socialization and education to the public regarding the characteristics of fundraising activities and management of illegal investments and conducting knowledge sharing with law enforcers and regulators in the regions, as well as carrying out repressive actions, in the form of coordinative efforts between related agencies to accelerate the handling process through the OJK SWI cooperation framework,³¹ and with the release of information on taking action

³⁰ Vadhia Lidyana, '4 Syarat Agar Vtube Tak Lagi Masuk Daftar Investasi Ilegal', [Detikcom, 31 January 2021] <<https://finance.detik.com/moneter/d-5355364/4-syarat-agar--vtube-tak-lagi-masuk-daftar-investasi-ilegal>> accessed 1 March 2021.

³¹ Otoritas Jasa Keuangan, 'Peran OJK Melawan Penawaran Investasi Ilegal' [Otoritas Jasa Keuangan] <<https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/116>> accessed 21 March 2021.

against cases or illegal financial service institutions. OJK's follow-up to the VTube case through the OJK SWI press release was considered only as an announcement, without having any significant effect on VTube.

Despite not having any permissions as ordered by the OJK to conduct investment activities, VTube should have been strictly handled by OJK in terms of their legality. This is because OJK has the obligation to regulate, control, scrutinize, and investigate not only every financial service provider, but also in safeguarding the consumers and the public in general. Every consumer must be subjected to OJK's protection, as stipulated in Article 28 to Article 30 of the OJK Law and on the OJK Regulation No. 1/POJK.07/2013 on Protection of Financial Service Sector Consumer. OJK can also be a stand-in party to file lawsuits against illegal investment entities that have caused losses and other injuries to the consumer's private rights, so that the consumer who suffers from losses can get full protection from OJK and will be guaranteed legal remedies by both OJK and the court.

According to the mentioned OJK Regulation, consumers are parties that placed their capitals into/use the services provided by the financial service institutions, such as bank customers, stock market customers, insurance policy holders, and pension funds members, stipulated by the rules and regulations in the financial service sector. Based on that definition, VTube users can be categorized as financial service consumers, since VTube is an investment app and promises profits from becoming a member. Should there be any losses suffered by customers caused by VTube's business practices, they can report directly to OJK as stipulated in Article 29 of OJK Law and the mentioned OJK Regulation above. Article 30 of the OJK Law stated that in order to respond to any losses suffered by consumers, OJK has the obligation to provide legal protection to the consumers. This protection can vary from giving orders to the company, taking actions against the company causing the consumers' loss, or even settling the case by filing a lawsuit against the company to make them recover the loss sustained by the consumers. There will also be some compensation to the parties suffering from the loss. Up until now, there might not be any reports coming from users who have suffered from loss caused by VTube business practices yet, but the potential for it to occur to their members is still a big possibility, since the application uses Ponzi scheme as their business practice.

3.2. Stopping VTube Effectively and Immediately

SWI OJK's action to declare VTube as one of the illegal investment entities is not strict or powerful enough. Firstly, it was only a declarative action since the declaration of the status was done only by a Press Release. Secondly, a Press Release is not a legal document. A press release is neither a part of a legal decision (*beschikking*), a regulation (*regeling*), or a policy (*beleidsregel*), thus it is not legally binding to any parties. SWI OJK's press release is a form of a transparency and announcement document in order to inform the public about illegal investment actors and the actors themselves as a reminder to act in accordance with the laws and regulations. In response to this, SWI OJK shall take a more legally binding action to the parties that are deemed illegal, so it

must be done through issuing a decision. A decision has the characteristic to be a final and concrete legal document that can be more directed to specific parties,³² namely VTube. Therefore, by issuing a legal decision, as what has been promulgated as a part of OJK commissioners' authorities on the OJK Law, the execution on the prohibition of VTube's investment activities will be more effective. The coordination with some institutions involved with the case, such as with *Kemenkominfo* and the Police in order to stop all offline and online operations involving VTube and its members will be much more effective, also to help in the investigations of possible frauds and/or proofs of the violation of Articles 9 and 105 of the Trade Law as the effect of the materialization of the decision.

SWI OJK Press Release is not considered as a legal decision, thus it lacks the strength to legally bind the parties involved in that document. With that in mind, the preventive and repressive actions taken against illegal investment entities must be maximized. The coordination with other involved government institutions shall be optimized. Optimizing the coordination between government institutions is needed, considering various illegal investment practices are being operated by some suspected illegal financial service providers in carrying out their business. For example, though *Kemenkominfo* has blocked the access to VTube's website since 15th of February 2021, there are still plenty of VTube users' forums on social media, in which recruiting members and VP selling are still occurring. *Kemenkominfo* shall take action on stopping VTube members' from continuing their activities. With a collaboration alongside SWI OJK, they can further improve the public's awareness and prevent similar cases in the future by socializing the dangers of investing in illegal investment entities, the illegality of VTube, and a more widespread announcement to make the public more cautious of the dangers hiding behind illegal investment programmes in the society. Meanwhile, the National Police may receive reports from SWI OJK if there was any indication of criminal acts (scam, fraud, etc.) done by the company and/or its members, so they can directly investigate and collaborate with the Attorney General in order to prosecute the suspects from any criminal conduct.

As a repressive measure, OJK actually has the authority to submit torts against illegal investment providers, in this case VTube. Tort is governed under the Indonesian Civil Code in Article 1365, "Every unlawful act that causes damage to another person obliges the wrongdoer to compensate for such damage". According to Mochtar Kusumaatmadja, tort itself is defined as an act that causes legal consequences that are not desired by the legal subject of the perpetrator of the act, and the act is contrary to the principles and rules of positive law and causes harm to other legal subjects.³³ Tort lawsuit is taken to pursue the perpetrators of the assets to be returned to the victims of illegal investment activities. The filing of this lawsuit is a form of OJK's obligations in consumer protection, as stipulated in Article 30 of the OJK Law. The consumers who must be protected are not only consumers of financial service institutions registered and supervised by the OJK, but also

³² See Jimly Asshidiqie, *Perihal Undang-Undang*, (Raja Grafindo Persada 2010), 9-11.

³³ Mochtar Kusumaatmadja dan Arief Sidharta, *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, (Alumni 2009), 87.

consumers who are victims of illegal investment activities whose companies are not supervised by the OJK. At least until 2017, it is known that the authority to file a lawsuit has never been proposed by the OJK in taking action on cases in the financial services sector.

SWI OJK can also report VTube to be investigated by the Police for implementing Ponzi schemes as their business model, in which it has violated Articles 9 and 105 of the Trade Law. SWI OJK can file a report to the Police because of VTube's business practice. In other words, the action against VTube's Ponzi scheme can be processed according to the Indonesian criminal law. Using the extensive legal interpretation, Ponzi scheme can fit to the description of "pyramid scheme" given by the Trade Law, and to those who operate with the scheme will have to serve up to 10 (ten) years of imprisonment and/or a fine up to Rp 10.000.000.000,00 (ten billion rupiahs).

CONCLUSION

VTube with its own Ponzi scheme in their business operation only promises scam to their members. The scam comes from the promises to deliver benefits to their new members but by paying the old members to make the scheme sustainable, while also forcing the new members to recruit more new users to their schemes. Thus, OJK through their Investment Task Force (SWI) must have taken a stricter approach and a much stricter action, too. Besides not being able to comply with legal requirements which are obligated to all companies, VTube has violated the provisions on the prohibition of exercising pyramid schemes as their business models according to the authentic and extensive interpretations of Articles 9 and 105 of the Trade Law. Therefore, SWI OJK shall declare their status as illegal.

Without stricter measures being taken against VTube in the long term, it will open more doors to other illegal investment entities, hence there will be a bigger potential of proliferating numbers of scammed consumers. Press Release is not a concrete option to deem something as illegal, thus the SWI shall release a legal decree as a more legally binding document to declare VTube as illegal and stop any activities relating to it with immediate effect. While the company must stop their operations after that decision was passed, SWI OJK shall coordinate and collaborate with numerous involved institutions in the likes of *Kemenkominfo* and the National Police, in order to investigate the members' hidden activities, forums, and stop them immediately from continuing their practices.

OJK can also file a tort lawsuit against VTube if there is apparent proof of scams and losses suffered by their former customers. OJK can also legally prosecute VTube and similar scammers in the field of investment, to further protect the public from the dangers of illegal investment entities. The authority to file a lawsuit and to prosecute investment entities for illegal conducts shall be used to protect consumers, since the power to do so has been underutilized by them.

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