

# CRIMINAL VICTIMIZATION ON LARGE-SCALE INVESTMENT SCAM IN INDONESIA

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## **Abstrak**

*Penipuan investasi skala besar menghasilkan penderitaan berkepanjangan bagi banyak korban. Artikel ini menelaah penipuan investasi skala besar berdasarkan metode yuridis normatif serta pendekatan kasus dan konseptual. Munculnya risiko tertipu oleh bujuk rayu investasi kosong (bodong) terbuka lebar seketika (calon) korban berinteraksi dengan pelaku dengan menerima penawaran yang sebenarnya dari awal sudah dapat diketahui memiliki cacat logika, tidak sesuai dengan akal sehat bahkan bertentangan dengan peraturan perundang-undangan. Korban seringkali menerima tawaran yang diberikan karena terbujuk janji keuntungan tinggi dan cepat dengan modal-investasi rendah. Bahkan ketika penipuan ini terbongkar, pemerintah dan hukum tidak mampu memunculkan skema pemulihan hak korban yang pasti dan jelas. Korban dalam kasus investasi bodong jelas menderita kerugian ekonomi dengan dampak emosional, psikologis dan fisik yang berkepanjangan. Penanggulangan kejahatan dan penanganan korban yang seringkali lamban dan tidak efektif memperpanjang derita korban.*

## **Kata Kunci:**

*penipuan, investasi bodong, penanggulangan-penanganan korban investasi bodong*

## **Abstract**

Mass scale investment fraud (Ponzi) schemes result in protracted suffering for the victims. In this article the author investigates this crime from a juridical normative, case, and conceptual approach. From the very start potential victims may fall to promises of lucrative and safe investment schemes. In the eyes of the more prudent, it would or should be obvious that the collaborative business offers as presented contains logical flaws, running against common sense and is at the outset illegal. Notwithstanding, victims seems to fall easily into this trap, lured by the promise of getting easy, quick, and huge investment returns. In the end, even when this fraudulent investment scheme unravels, the government of law enforcement seems to be unable to act decisively and offer a satisfactory solution. Slow and ineffective government response in the end exacerbate economic loss and victims suffering.

## **Keywords:**

fraud, fraudulent investment schemes, treatment of victims

## **Introduction**

Fraud or scam simply relies on the concept of cheating, deception, or dishonesty in obtaining profits on the one hand and/ or damaging others. Sticking to the concept, fraud will cover various types of acts, ranging from embezzlement,

extortion, money laundering, corruption in the misuse of assets and various other financial crimes.<sup>1</sup> This concept of fraud will also refer to various violations of criminal offences, including violations of regulations in Indonesia. Apart from the concept of fraud and various related criminal offenses, the study in this article would like to focus on investment scams that result in victims and losses on a large scale. Based on its generic characteristics, the perpetrators in this modus are corporate owners or business perpetrators which are responsible for business relations with a large number of customers/investors. The perpetrators optimistically and creatively will offer an investment opportunity in certain business or project activities that tend to be unique and very profitable.<sup>2</sup>

Perpetrators of investment scam will certainly succeed in collecting large funds/assets from investors by hiding the original situation of business activities in the investment scheme offered. In reality, these business activities could be designed as sham business ventures, which means that the promised business/project activities never exist.<sup>3</sup> The perpetrators design a company and business activities that appear to be legitimate, registered with the relevant authorities, have legitimacy of establishment and operation based on regulations. After the funds are collected, the perpetrators immediately take off the funds and try to disappear without leaving a trace. For the sake of eliminating this trace, the perpetrators usually form a shell company in state jurisdictions that provide tax haven or secrecy jurisdiction facilities. Moreover, investment scamsters may indeed carry out real business activities, but these business activities will never be able to run as expected because they use forbidden schemes such as Ponzi

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<sup>1</sup> Osei-Assibey Mandella Bonsu et al., Corporate Fraud: Causes, Effects, and Deterrence on Financial Institutions in Ghana, *European Scientific Journal*, ESJ 14, No. 28, 315, 2018.

Khairul Anuar Abd. Hadi, Halil Paino, and Suria Fadhillah Md Pauzi, The Legal Overview on Falsification, Fraud and Forgery, *Procedia Economics and Finance* 31, No. 15, 581–586, 2015.

<sup>2</sup> Tamar Frankel, *The Ponzi Scheme Puzzle: A History and Analysis of Con Artists and Victims*, Oxford University Press, New York, 2012, p. 101-103.

<sup>3</sup> Arjan Reurink, "Financial Fraud A Literature Review," MPIfG Discussion Paper 16/5, 1-81, p. 39, 40, 2016.

schemes.<sup>4</sup> This scheme is prohibited and identified with certainty as investment scam because sooner or later it always leads to loss and bankruptcy.<sup>5</sup>

In Indonesia, investment scam cases have repeatedly occurred and according to the characteristics described, victims of crime can be recorded in the hundreds of thousands of people with losses reaching billions of up to trillions of rupiahs. One example is a case of an investment scam committed by the founder and management of a *koperasi* (Indonesian cooperative business) named KSP Pandawa Mandiri Group. This cooperative runs micro-lending and investment activities to raise funds from the community with a promise of a 10% (ten percent) profit every month for one year and a multi-level marketing system. The cooperative operated from 2011 to 2016, chaos began to emerge because new customers' deposits were difficult to channel, while the corporation still had to return profits according to the agreement. Customers no longer receive the promised benefits, nor can they even withdraw their investment funds. These customers then report the case to the Financial Services Authority (*Otoritas Jasa Keuangan*) and the Police.<sup>6</sup> The perpetrators were subsequently examined and found guilty of banking crimes related to the collection of funds and money laundering as was the latest judgment in the Supreme Court of the Republic of Indonesia. The victim in this case was estimated at 39,068 people with an estimated loss of 3.32 trillion rupiah.<sup>7</sup>

Based on study of victimology, the investment scam cases mentioned above place the victim in a distinctive position that is important to analyzed. This investment scam creates particular victimization characteristics that differentiate it from conventional fraud or other economic driven crimes. In investment scam or conventional fraud or other economic driven crimes, the victim's problems both begin with suffering in the form of material loss related to assets. In

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<sup>4</sup> Supra no. 2, p. 103.

<sup>5</sup> Claire Angelique R. I. Nolasco, Michael S. Vaughn, and Rolando V. del Carmen, "Revisiting the Choice Model of Ponzi and Pyramid Schemes: Analysis of Case Law," *Crime, Law and Social Change* 60: 375–400. p.378, 2013.

<sup>6</sup> Depok Court Decision No. 424/Pid.B/2017/PN.Dpk, Bandung High Court Decision No. 37/Pid.Sus/2018/PT. Bdg, and Indonesia Supreme Court Decision No. 1208/K/Pid.Sus/2018.

<sup>7</sup> Id.

conventional fraud or other economic driven crimes, the victim's suffering can be recovered faster than investment scam, related to the characteristics of the victims that are small numbers, the amount of the losses are not diverse and not complex. It is different with investment scam, the suffering of the victim does not stop at the material loss. These sufferings lead to a series of negative excesses, including but not limited to factors originating from the legal system in Indonesia itself. These negative excesses and sufferings in turn form a complex criminal victimization of the victim which will be explained in the following analysis. The study of criminal victimization is needed to answer the main problem in victims of the investment scam cases, so that on the subject of the problem, a criminal justice system can be formulated which is not only able to prosecute the perpetrators, but also to restore the rights of victims or at least not to degrade or even eliminate victim's rights to recover their losses.<sup>8</sup>

### **Large-Scale Investment Scam Cases and the Factual Problem of Victims**

Before crime victimization can be analyzed, it is important to identify several examples of investment scam cases in Indonesia. Examples of factual cases along with the presentation of the modus and scale of the number of victims and losses that occurred can be used as a basis for determining the profile of victims and the problems faced by victims.

The first case identified was an investment scam with the investment modus by the owner and management of the *koperasi* (Indonesian cooperative business) named Cipaganti Karya Guna Persada, which was carried out in the period between 2007 and 2014 in Bandung. The owner and cooperative management initially set up business entities in the form of cooperatives aimed at raising funds from the community to finance various cooperative business activities. Cooperative management raises funds to form a scheme of capital investment cooperation and management of business activities with the promise of periodic return of capital and profits as well as liability for losses if the business

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<sup>8</sup> James Dignan, *Understanding Victims and Restorative Justice*, Open University Press, New York, 2005, p. 23, 30-31.

activities managed by the cooperative experience a loss as outlined in the deed of cooperation between the cooperative and the investors or partners. So that more and more potential investors are interested in including their capital in the cooperative, the principals print many brochures, recruit and provide bonuses for marketers who have succeeded in obtaining many investors or partners (multi-level marketing system).<sup>9</sup>

In the case of Cipaganti's scam investment, the business activities of the actors described above are contrary to the provisions concerning to the cooperatives law (*Undang-Undang Perkoperasian*) and also do not obtain a permit according to the Banking Law which the perpetrator should have. Funds that have been collected from partners are in fact diverted or used for various other business activities established by the perpetrators with (not direct cooperative business activities), these funds also flow into the personal accounts of the perpetrators. In 2013, there were financial difficulties in the business activities of the perpetrators, then the cooperative was unable to pay profits and return the investors' funds. In the midst of the cooperative's financial difficulties, the perpetrators are even more aggressively encouraging marketing personnel to offer this cooperation program without providing honest and transparent information to investors about the circumstances and difficulties experienced by cooperatives in running their businesses. As a result, some investors continue to invest their fund in the cooperative. As a result, in the period between 2007 and 2014 the cooperative managed to raise around 4.7 trillion rupiah from 23,193 investors.<sup>10</sup> However, the perpetrators could not return 3.2 trillion rupiah of funds belonging to 8,738 investors or partners. The examination also showed that there were no financial reports, even income records on cooperative accounts obtained from the results of various cooperative businesses such as in brochures or agreements.<sup>11</sup>

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<sup>9</sup> According to the Bandung District Court Decision No. 198/Pid.B/2015/PN.Bdg, Bandung High Court Decision No. 238/Pid.Sus/2015/PT.Bdg and Indonesia Supreme Court Decision No. 173 K/Pid.Sus/2016.

<sup>10</sup> Id.

<sup>11</sup> Id.

The second case, related to an investment scam committed by the management and founder of PT. Golden Traders Indonesia Syariah (GTI Syariah) in the period 2011 to 2013. This corporation was established in 2011 by foreign citizens and obtained permission from the Investment Coordinating Board (BKPM) to trade gold, but along with the change of business activities into investment, this corporation also positions itself as a Syariah-based management corporation (in accordance with Islamic legal principles). Change to PT. The Syariah GTI was even supported by halal certification and recommendations given by the National Syariah Council, the Indonesian Ulema Council (MUI), and witnessed by the then Speaker of the Indonesian Parliament. PT GTI Syariah in its business activities offers investment schemes in the form of physical gold. Prospective customers are asked to purchase gold at a price higher than the market price, then each month the customer will get a certain profit of 1.5% to 2% and at the end of the investment period the money can be returned (buyback guarantee). PT GTI Syariah then also offers non-physical gold investment products, meaning that investors or customers do not hold the gold, only in the form of sales invoices. Customers who choose this type of investment are promised greater benefits, namely 4.5 percent per month for the 6-month program and 5.4 percent per month for the 12-month program.<sup>12</sup>

In the case of GTI Syariah, high profit margins, halal certification and support from the Indonesian Ulema Council and the Speaker of the Republic of Indonesia Parliament are subsequently used as promotional tools for the corporation to attract as many investors or customers as possible. On promotional media such as corporation websites and brochures aimed at prospective customers, the name of the Chairman of the Indonesian Ulema Council, Chairman of the DPR at that time, complete with photos and signatures as evidence of support for the corporation's business activities. In fact, PT. GTI Syariah also

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<sup>12</sup> Karvarino, "Tipu-Tipu Investasi Emas Berkedok Syariah," *Gatra*, 2013, <https://www.gatra.com/detail/news/25595-tipu-tipu-investasi-emas-berkedok-syariah>, accessed March 20, 2020, 19:20 GMT+7.  
Noverius Laoli, "Dua Petinggi MUI Terseret Investasi Bodong GTIS .," *Kompas.com*, 2014, <https://money.kompas.com/read/2014/09/12/090000126/Dua.Petinggi.MUI.Terseret.Investasi.Bodong.GTIS>, accessed March 20, 2020, 19:21 GMT+7.

mentioned that MUI, the Speaker of the DPR and a ruling party politician owned a 10% stake and became a corporate advisor, which was later denied by related parties as incorrect. Meanwhile, the majority shares are still held by the management and its founder who are foreign citizens. Before entering Indonesia, the founder of this corporation also claimed to have owned a gold investment business network in a number of countries with a company called GTI International. In addition, this corporation also offers investment products in various media, including by implementing a referral system where every customer is asked to find other customers through multi-level marketing (MLM).<sup>13</sup>

Customers who successfully obtain new customers will get a commission. Until 2012, the corporation managed to raise up to 45 trillion rupiah from 18,000 members. In 2013, problems began to arise, many customers complained about this corporation to the Financial Services Authority and the police because they felt cheated by this corporation. According to the customers, the promised benefits did not get and the investment money was not returned. After many reports were made, the police conducted an inspection and ensured that the founders of this corporation had fled abroad with 10 trillion rupiah of money owned by the customers.

The third case is a case committed by the founder and management of a corporation in the form of a cooperative (*koperasi*) called KSP Pandawa Mandiri Group. This cooperative was founded by a porridge entrepreneur who previously managed to obtain profits from the business of lending to small traders. For this business activity that has been running, this entrepreneur then formed a savings and loan business and obtained a license as a cooperative from the ministry in 2011. The business activity which initially took the form of micro-credit distribution developed into investment activities in raising funds from the public. Customers will be asked to sign an investment cooperation agreement with the promise of a 10% profit every month for one year. These funds are then played in

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<sup>13</sup> Liputan 6, "Fakta Menggelitik Dari Penipuan Investasi Emas GTI Syariah," 2013, <https://www.liputan6.com/bisnis/read/527856/fakta-menggelitik-dari-penipuan-investasi-emas-gti-syariah>, accessed November 11, 2019, 15:30 GMT+7.

a micro-credit scheme for traders in markets or food vendors in Jakarta, Bogor, Depok, Tangerang and surrounding areas with interest reaching 20% every month. To increasingly attract interest in prospective customers, this corporation also established a tiered marketing system with a pyramid pattern (multi-level marketing system). The corporation appoints leaders and gives them status according to the level of success in recruiting new customers. These leaders are also given the authority to manage funds from new customers. Based on a cooperation agreement that reached 1 million shares, the Pandawa Cooperative managed to get 569,000 customers with a total fund of Rp 2 trillion.<sup>14</sup>

In 2016, chaos began to arise because new customers' deposits were difficult to channel, while the corporation still had to return profits according to the agreement. Customers no longer receive the promised benefits, nor can they even withdraw their investment funds. These customers then report the case to the FSA (Financial Services Authority/ *Otoritas Jasa Keuangan*) and the Police. The results of the FSA examination found that all investment cooperation agreements were not signed in the name of the cooperative but directly in the personal name of the founder of the cooperative. The collection of funds and investments carried out by the founder of this corporation were also declared unlawful because the interest offered was clearly above the interest rate set by Bank Indonesia and its legal entity did not obtain permission from the FSA. This report was then continued with the police, who then arrested the founder of the cooperative and 26 other perpetrators who collaborated with the founder of the Pandawa cooperative. The perpetrators also use the funds raised for personal interests ranging from the purchase of houses, land, motor vehicles and other valuables. The perpetrators were subsequently examined and found guilty of banking crimes related to the collection of funds and money laundering as was the latest judgment in the Supreme Court of the Republic of Indonesia.<sup>15</sup>

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<sup>14</sup> According to the Depok Court Decision No. 424/Pid.B/2017/PN.Dpk, Bandung High Court Decision No. 37/Pid.Sus/2018/PT. Bdg, and Indonesia Supreme Court Decision No. 1208/K/Pid.Sus/2018.

<sup>15</sup> Id.



The fourth case is a fraud case of customer funds by the owner of a Hajj and Umrah travel agency called First Travel which was carried out in the period between 2015 and 2017. The owner established a travel agency business with headquarters in the Depok area, and often the development of his business was several. Branch offices were also established in Medan, Kebon Jeruk (West Jakarta), Kuningan (South Jakarta), TB Simatupang (South Jakarta), Bandung, Sidoarjo and Bali. At first, the company established by the perpetrators made a very cheap package for Umrah worship at a cost of 14.3 million rupiah per person in 2016, far below the stipulation of the Indonesian Ministry of Religion, which was 22.6 million rupiah. In fact, the company has also offered a number of 8 million rupiahs for Umrah. To support these efforts, they are aggressively promoting and forming marketing networks throughout Indonesia by recruiting partnership agents like the investment business, with a total of 1,173 agents, including 835 active agents. If these agents succeed in recruiting customers for Umrah and have paid a number of funds, then the agents are entitled to receive certain bonuses. The company also asked a number of artists to do promotions in exchange for sending artists and their families to do Umrah for free.<sup>16</sup>

In 2017, the main problem began to emerge in which many customers have paid their Umrah fees, but have not departed as scheduled in the agreement. The customers then demanded the perpetrators to depart them immediately, but the customers only received promises from the perpetrators and even the perpetrators asked for additional fees from the customers on the grounds of the cost of aircraft rental. As a result, from November 2016 to June 2017, only 29,985 people were dispatched. While the remaining 63,310 customers who have paid in full, with scheduled departure in November 2016-May 2017, none have departed. There was also no refund of the Umrah fee. The perpetrators' actions caused a loss of 905.3 billion rupiah, as a result of the calculation of the funds of 63,310 customers who did not leave Umrah and were not returned. Law enforcement

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<sup>16</sup> According to the Depok Court Decision No. 83/Pid.B/2018/PN. Dpk, No. 84/Pid.B/2018/PN. Dpk, Bandung High Court Decision No.195/Pid/2018/PT. Bdg, and Indonesia Supreme Court Decision No. 3096 K/Pid.Sus/2018 Indonesia Supreme Court Decision No. 3095 K/Pid.Sus/2018.

checks show that the funds deposited by the customers are proven not only to be used for the management of the company, but many also flow in the personal accounts of the perpetrators. These funds are then spent by the perpetrators for personal needs and the purchase of assets, ranging from motorized vehicles, to houses and land. The perpetrators were examined and found guilty of investment scam and money laundering crimes.<sup>17</sup>

Based on these cases, a key characteristic can be identified that large scale scam/fraud can result in a large number of victims and losses due to the collection or withdrawal of large amounts of funds from the developing community using the *ponzi* or money game scheme. This modus has the main characteristic in the form of payment of profits of previous customers (investors) using new customer's investment money plus offers or promises of large profits and tends to be irrational because it is not based on a clear business modus and is not in accordance with official investment rules.<sup>18</sup> This modus certainly requires a consistent flow of funds from customers or new investors, therefore business activities and offers are then supported by a variety of marketing techniques, ranging from the formation of marketing networks (such as schemes multi-level marketing), the establishment of branch offices, recruitment of marketing agents, hold a big promotion or even cooperate with parties who have a reputation and credibility in the eyes of the community (such as artists, political figures, religious leaders, and so on). The facts mentioned above were revealed at the trial based on the testimony of the victims.<sup>19</sup>

Victims problems begin to arise when investment funds and benefits that should be obtained by victims cannot be returned by the perpetrators. Such problems are certainly faced by all victims of any crime that has economic motives or crimes against assets, including investment scams. Victims will suffer material

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<sup>17</sup> Id.

<sup>18</sup> Catherine Carey dan John K. Webb, Ponzi Schemes and the Roles of Trust Creation and Maintenance, *Journal of Financial Crime* 24, no. 4, 589–600, p. 592, 2017. U.S. Securities and Exchange Commission, Ponzi Schemes, <https://www.sec.gov/fast-answers/answersponzihtm.html>, accessed on November 20, 2019, 15:30 GMT+7.

<sup>19</sup> Depok Court Decision No. 83/Pid.B/2018/PN. Dpk, No. 84/Pid.B/2018/PN. Dpk, No. 424/Pid.B/2017/PN.Dpk, Bandung District Court Decision No. 198/Pid.B/2015/PN.Bdg.

losses, both in the form of loss of assets and profits that should be obtained from the use of these assets in the future.

However, in the case of a scam investment, the problem of this suffering continues when the victim has to deal with the loss recovery or restitution system. This system must accommodate so many interests with calculations and distributions that are clearly not simple. In Indonesia, such problems become complex due to the legal system which in fact is unable to provide concrete solutions to the fulfilment of the restitution. When referring to Indonesia's positive legal system, there are various legal efforts that can be taken by victims to obtain the rights to fulfil their restitution, including efforts to merge restitution claims with criminal cases in accordance with Article 98-101 of the Criminal Procedure Code (KUHP)<sup>20</sup>, lawsuits against unlawful acts in accordance with Article 1365 Civil Code (KUH Perdata), efforts to request bankruptcy according to the Bankruptcy Act, and efforts to request restitution to the court through the Witness and Victim Protection Agency (LPSK). In addition, the victim's loss may also be recovered by a criminal sentence of confiscation of the perpetrator's property which is then handed over to the victims.

Based on the variety of legal efforts in the Indonesian legal system regarding the fulfilment of victim's restitution, there is no normative provision that comprehensively governs the elimination or restriction of other efforts if one of the efforts is made by the victims. These efforts are very likely to go hand in hand or continue with one another. In other words, the legal system provides complexity and overlapping legal efforts. This will be a complex problem in the case of a scam investment. The large number of victims both individually and in groups have the possibility to take each different effort according to the wishes and considerations that benefit each of them, both in the same period of time or go hand in hand or continue with each other. The more legal efforts that are taken by each victim, the more legal implications that arise and overlap, including legal consequences for the assets of the perpetrator of the crime which can be a source

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<sup>20</sup> Mahrus Ali and Ari Wibowo, "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana," *Yuridika* 33, no. 2, 260-289, p. 270, 2018.

of recovery for the victim's losses. This problematic explanation has a positive correlation with the facts about criminal decision and the legal efforts made by the victim to recover their losses suffered in the previous cases. These facts can be described in the table as follows:

**Table 1 : The Criminal Court Decision and The Legal Efforts Made by The Victim To Recover Their Losses Suffered in The Mentioned Cases**

No	Case	Criminal Court Decision	Legal Effort Filed by the Victims and its Result	Current Settlement Related to The Victims
1	Cipaganti	The perpetrators have been tried and found guilty based on a final and binding criminal court decision. <sup>21</sup>	<ol style="list-style-type: none"> <li>Several victims reported crimes to the police, became witnesses in criminal proceedings and hoped that the possibility of confiscation of the perpetrator's assets as a criminal punishment to be handed over to the victim.</li> <li>Several of the victims filed an lawsuit (also confiscation claim) based on unlawful act at the Civil Distric Court and the lawsuit cannot be accepted.<sup>22</sup></li> <li>Several of the victims filed an lawsuit (also confiscation claim) based on unlawful act at the Civil Distric Court, appeal dan review up to the Supreme Court. The result was unacceptable lawsuit.<sup>23</sup></li> <li>Several of the victims filed an application for bankruptcy at the Commercial Court and Cipaganti <i>Koperasi</i> was declared bankrupt.<sup>24</sup></li> </ol>	<ol style="list-style-type: none"> <li>According to the Supreme Court Decision (Criminal), the assets of the perpetrator of the crime were confiscated, auctioned off and the proceeds were distributed proportionally to the victim.</li> <li>According to the Commercial Court Decision, the assets of the Cipaganti <i>Koperasi</i> are under the control of the curator, hereinafter divided proportionally based on the legal standing of the creditor (victim).</li> </ol>
2	GTI Syariah	The perpetrators have not been tried and became fugitives. The perpetrators of crime are wanted person based on Interpol red notice.	Only reporting to the police.	No settlement for victims.
3	KSP Pandawa	The perpetrators have been tried and found guilty based on a final and binding criminal court decision. <sup>25</sup>	<ol style="list-style-type: none"> <li>Several victims reported crimes to the police and became witnesses in criminal proceedings and also hoped that the possibility of confiscation of the perpetrator's assets as a criminal punishment to be handed over to the victim.</li> <li>Several of the victims filed an application for bankruptcy at the Commercial Court and <i>KSP Pandawa</i> was declared bankrupt.<sup>26</sup></li> </ol>	<ol style="list-style-type: none"> <li>According to the Supreme Court Decision (Criminal), the assets of the perpetrator of the crime were confiscated, auctioned off and the proceeds are put in the State Treasury. The perpetrator's assets were not handed over to the victims.</li> <li>According to the Commercial Court Decision and its appeal decision, the assets of the <i>KSP</i></li> </ol>

<sup>21</sup> According to the Bandung District Court Decision No. 198/Pid.B/2015/PN.Bdg, Bandung High Court Decision No. 238/Pid.Sus/2015/PT.Bdg and Indonesia Supreme Court Decision No. 173 K/Pid.Sus/2016

<sup>22</sup> According to the Bandung Court Decision No. 05/Pdt.G/2015/PN.Bdg No. 170/PDT.G/2015/PN.Bdg

<sup>23</sup> According to the Bandung District Court Decision No. 05/Pdt.G/2015/PN.Bdg, Bandung High Court Decision No. 34/PDT/2016/PT.BDG, Indonesian Supreme Court Decision No. 3817 K/Pdt/2016 and No. 148 PK/Pdt/2019.

<sup>24</sup> According to the Jakarta Commercial Court Decision No. 06/Pdt. Sus, Pembatalan Perdamaian/2016/PN. Niaga. Jkt. Pst. Jo Nomor : 11 /PKPU/2014/PN.Niaga.Jkt.Pst

<sup>25</sup> According to the Depok Court Decision No. 424/Pid.B/2017/PN.Dpk, Bandung High Court Decision No. 37/Pid.Sus/2018/PT. Bdg, and Indonesia Supreme Court Decision No. 1208/K/Pid.Sus/2018

<sup>26</sup> According to the Jakarta Commercial Court Decision No. 37/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt.Pst.

			<ol style="list-style-type: none"> <li>3. Several victims, through a curator, filed a lawsuit to the prosecutor's office to change the decision that the perpetrator's assets which was previously confiscated by the state became bankruptcy property which must be distributed to creditors. The result of the lawsuit was granted and the assets of the perpetrator became the assets of the bankruptcy.<sup>27</sup></li> <li>4. Several victims filed a lawsuit against the criminal decision to return the confiscated asset as the victim's assets and the lawsuit was rejected.<sup>28</sup></li> </ol>	<p><i>Pandawa</i> are under the control of the curator, hereinafter divided proportionally based on the legal standing of the creditor (victim).</p>
4	First Travel	The perpetrators have been tried and found guilty based on a final and binding criminal court decision. <sup>29</sup>	<ol style="list-style-type: none"> <li>1. Several victims reported crimes to the police and became witnesses in criminal proceedings and also hoped that the possibility of confiscation of the perpetrator's assets as a criminal punishment to be handed over to the victim.</li> <li>2. Several of the victims filed an lawsuit (also confiscation claim) based on unlawful act at the Civil District Court and the lawsuit was rejected.<sup>30</sup></li> <li>3. Several of the victims filed an application for a postponement of their debt payment obligations (PKPU) to the Commercial District Court. The result is the reconciliation.<sup>31</sup></li> </ol>	<ol style="list-style-type: none"> <li>1. According to the Supreme Court Decision (Criminal), the assets of the perpetrator of the crime were confiscated, auctioned off and the proceeds are put in the State Treasury. The perpetrator's assets were not handed over to the victims.</li> <li>2. According to the Commercial Court Decision, perpetrators is required to restructure and pays its debts to the creditors (victims) according to the reconciliation proposal submitted.</li> </ol>

Source: Compiled by The Author from Various Court Decisions on Mentioned Cases.

Thus, the existing legal system would burden the victims with a variety of complex and definitely long time-consuming efforts, but the end remained in the negligence of fulfilling victims' restitution fairly. In fact, the criminal justice system in this case should not only put the victim only as a witness who helps law enforcement against the perpetrators. This system should also be able to protect the rights of victims, especially in terms of implementing restitution. In accordance with the United Nation Declaration on the Basic Principles of Justice for Victims of Crime and The Abuse of Power, compensation and restitution (victim's loss recovery) become the minimum standard rules that must be owned by the state to protect the interests of victims, in addition to provisions such as

<sup>27</sup> According to the Jakarta District Court Decision No. 11/Pdt.Sus-Gugatan Lain Lain/2018/PN.Jkt.Pst and Indonesia Supreme Court Decision No. 3 K/Pdt.Sus-Pailit/2019.

<sup>28</sup> According to the Depok District Court Decision No. 147/Pdt.Plw/2018/PN.Dpk and Bandung High Court Decision No. 498/ PDT / 2019/ PT. BDG.

<sup>29</sup> According to the Depok Court Decision No. 83/Pid.B/2018/PN. Dpk, No. 84/Pid.B/2018/PN. Dpk, Bandung High Court Decision No.195/Pid/2018/PT. Bdg, and Indonesia Supreme Court Decision No. 3096 K/Pid.Sus/2018 Indonesia Supreme Court Decision No. 3095 K/Pid.Sus/2018

<sup>30</sup> According to the Bandung Court Decision No. 52/Pdt.G/2019/PN.Dpk

<sup>31</sup> According to the Jakarta Commerical Court Decision 105/Pdt.Sus-PKPU/2017/PN Jkt.Pst.

access to justice, fair treatment and action other assistance for victims. Even though it is not an international instrument that has binding power through ratification, this declaration has been recognized as an important instrument which serves as the basis for fulfilling the obligation of recovery or reparation to victims.<sup>32</sup> Compensation and restitution are basically both a form of restitution for losses or burdens suffered by victims due to crimes committed.<sup>33</sup>

### **Primary Victimization, Victim's Reaction and Secondary Victimization on Large Scale Investment Scam**

As has been emphasized in the previous explanation that the problem of the victim's suffering does not stop when the crime has been committed or even when the perpetrator has been tried. The problem of victims continues in the overlapping and complex legal system for victim loss recovery. The existing system is built from regulations from various fields of law which are not limited to the criminal justice system, but also civil law and bankruptcy law.

The explanation above is proven in the cases that have been identified because until now the settlement of loss recovery has not been able to be carried out. This happened even long after the criminal case against the perpetrators of crimes had been decided with permanent legal force (final and binding) by the court. For example in the case of the KSP Pandawa. In this case there were two decisions relating to the perpetrator's assets confiscated for the victim. The Depok District Court (which was later strengthened by the Bandung High Court and Supreme Court Decisions) decided that the perpetrator's assets were confiscated by the State, while the Jakarta Commercial Court in the case of bankruptcy ruled that the perpetrator's assets were distributed to creditors (victims) who were entitled to be fair and balanced. The same thing happened in the case of First Travel. The assets of the perpetrators according to the court decision were also confiscated for the state, but on the other hand the victims also submitted an

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<sup>32</sup> Annex 1. Regulation of LPSK Concerning Standard Operational Procedures (SOP) For Application And Restitution Implementation No. 1 Year 2010.

<sup>33</sup> Mary L Boland, *Crime Victim's Guide to Justice*, Sphinx Publishing, Napperville, 2006, p. 9-10, 87-88.

application for postponement of debt payment obligations (PKPU). Upon this request, the Jakarta Commercial Court issued a reconciliation decision for the perpetrator to restructure the debt and make payments to the victim. Even though there have been decisions that have permanent legal force in each of these cases, in reality this does not guarantee that the victims will receive payment as real compensation to date.

This situation confirms the existence of a specific problem in the spectrum of legal certainty and results in victimization which is increasingly widespread in terms of study of victimology. Victimology itself, according to J.E Sahetapy, has been developed for a long time as a study or science that focuses on studying victims of events that occur and is not limited to victims of crime, including discussion of victimization in all aspects.<sup>34</sup> Victimization itself refers to events that make a person, society or certain institution suffer or be harmed in such a way, whether physically, psychologically, morally, socially or financially-materially.<sup>35</sup> The person, community or institution suffers as a result of their rights being violated or experiencing interference with their welfare.<sup>36</sup> In other words, victimization can be affirmed to contain two variables of understanding, namely victims who suffer and events related to that suffering.

The idea of who is included in the understanding of victims according to victimization also develops in 3 (three) phases. In the first phase, victimization is only devoted to the study of victims of crime or also referred to as penal or special victimology. The next phase is called general victimology, the study of victims is extended not only to victims of crime but also victims of any event, such as victims of accidents or natural disasters. The third phase is called new victimology with a study of the problems of victims of abuse of power and a review of human rights.<sup>37</sup> Apart from the different phases, victimization can be formulated concretely in discussions about the etiology (causes) of victimization, the impact of

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<sup>34</sup> J. E. Sahetapy, *Bungai Rampai Viktimisasi, Eresco, Bandung, 1995, p. 158.*

<sup>35</sup> Id.

<sup>36</sup> John P. J. Dussich, 131<sup>st</sup> International Senior Seminar Visiting Experts' Papers Victimology-Past, Present, and Future, Tokyo, November 2006, p. 118-120, unpublished.

<sup>37</sup> Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan, Graha Ilmu, Yogyakarta, 2010, p. 44-45.*

victimization, victim's rights and obligations, the legal system in handling and assisting victims, victims' rights, *victimogen* factors (factors that facilitate the emergence of victims) and how social elements, such as the mass media or community groups in dealing with and dealing with victims.<sup>38</sup> Large-scale investment scam constitute a victimization of crime or criminality, namely the result of absolute interaction between the components of the perpetrators (criminology) and victims (victimization),<sup>39</sup> or concretely the large-scale investment scam can occur and cause many victims and losses in large numbers as a form of interaction between the components of the perpetrator and the victim. If the discussion is focused on the victim component, several reviews of victimization, impacts and forms of victimization can be carried out.

First, criminal victimization in the form of large-scale scam can occur as a consequence of existing characteristics as explained earlier. If examined from the perspective of the victim, one of the dominant characteristics that caused large scale victimization occurred was the collection or withdrawal of large amounts of funds from the public. Large funds and resources that come from many members of the community, if misused, will form a special victimization, which is great suffering for many victims. The risk of this criminal victimization actually begins to arise when the victim interacts with the offender by accepting offers from the perpetrators. These offers, if reviewed again, actually have a logical flaw, not in accordance with common sense and even contrary to certain laws and regulations. However, the victim accepted the offer because of the fact that there was a very large promise of benefits, such as comparison between high profit and low capital ratio or being able to perform Umrah at a much lower cost compared to others. In addition, the victim accepts the offer due to marketing techniques carried out by the perpetrators such as the promotion of profits from schemes multi-level marketing and sales agents, or the influence of those who have a reputation and credibility in the eyes of the community who collaborate with the perpetrators,

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<sup>38</sup> Leah E. Daigle, *Victimology: A Text/Reader*, Sage Publication, Los Angeles, 2012, p. 1.

<sup>39</sup> Arif Gosita, *Masalah Korban Kejahatan Kumpulan Karangan*, Akademika Presindo, Jakarta, 1993, p. 39.



such as cooperation with MUI institutions in the case of the Syariah GTI or promotional cooperation with artists in the First Travel case.

The interaction between victims and perpetrators of crime that gives birth to criminal victimization is also supported by victimization factors (conditions that make it easier for someone to become a victim) from the aspects of the government and the existing legal system. The government, with all its supervisory powers, is unable to provide adequate instruments to detect, prevent or stop the crimes being committed as early as possible. For example, in the case of GTI Syariah, several state institutions such as the OJK and Bappepti, said that they were not authorized to supervise the business activities of GTI Syariah, because they did not fall within the scope of their authority.<sup>40</sup> Likewise in the case of First Travel, which had actually been identified from the start using the ponzi/ money game scheme, because the Umrah price fixing was outside the fair calculation (set by the government). The negligence of this supervisory authority is certainly an important *victimogen* for the victimization of criminal investment scams. This criminal victimization is then exacerbated when the legal protection for the recovery of victim's losses is also uncertain.

Second, related to the impact and form of victimization. Before describing the impacts of victimization, it is important to understand the elements of victimization that shape these impacts. James Dignan divides victimization into 3 sequential elements. The first element is called primary victimization, namely victimization which occurs as a form of interaction between the perpetrators and victims when the crime/ violation is committed, including all forms of impact arising from the interaction or the crime itself. The second element is the victim's reaction to the crime, including changes in perception and behaviour as a result of interactions with the crime and formal responses by the victim in positioning themselves and restoring their rights. The third element is victimization that occurs in the subsequent relationship between the victim and other parties,

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<sup>40</sup> *Fitria Rahmadani, Paramita Pranantyas, Siti Mahmudah, "Perlindungan Hukum Terhadap Investor Oleh Otoritas Jasa Keuangan Dalam Hal Terjadi Investasi Ilegal (Studi Kasus PT Golden Traders Indonesia Syariah)," Diponegoro Law Review 5, no. 2. 1-13, p. 8-10, 2016.*

including also with law enforcement officials.<sup>41</sup> In the first element, the impact of victimization consists of an impact on the victim directly, which means that victimization explains the specific forms of suffering or change experienced by the victim from an event that occurred (direct victimization), as well as the indirect impact experienced by parties other than the victim, which relates to victims (indirect victimization).

The direct impact of large-scale scam victims as criminal victimization is basically similar to other crimes. These direct impacts can generally be classified in several forms, namely physical impacts, emotional and psychological impacts, and economic impacts. Physical impact is the impact of victimization that affects the physical health of the victim, for example due to bodily injury, disability to the most severe is death. Emotional and psychological impacts are the effects of victimization that affect the health of the mind, emotions or mental health of the victim, for example feelings of anger, fear, humiliation, self-blame, prolonged sadness to depression, anxiety and post-traumatic stress disorder due to experiencing or witnessing crime as a terrible event.

Related to economic impacts, this can refer to many things, including direct economic losses such as loss of assets, damage to property or indirect economic losses such as loss of time to work, loss of ability to generate income, costs incurred for medical treatment, costs as a consequence of activities in the criminal justice system (being a witness for example), costs for carrying out legal efforts, including immaterial losses, i.e. decreasing the quality of life of victims.<sup>42</sup>

In large-scale investment scam crime, the most prominent and certain impact of victimization experienced by every victim is the economic impact. This loss can be specified in various ways, but concretely it can be summarized in two ways, first the loss of assets. In the cases that have been identified, this loss is money that has been deposited as an investment in the case of Cipaganti, GTI Syariah or Pandawa or money as Umrah costs in the Umrah First Travel investment scam case, which is entirely non-refundable to the customers. Based

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<sup>41</sup> Supra no. 8. p. 23.

<sup>42</sup> Supra no. 25, p. 71-86.

on calculations that can be proven according to the court decision, the Cipaganti case caused a loss of 8,738 investors with a value of up to 3.2 trillion rupiah, while in the First Travel case the loss reached 905.3 billion rupiah, as a result of the calculation of the funds of 63,310 customers. In the Pandawa case, the number of victims was estimated at 39,068 people with a loss of 3.32 trillion rupiah.<sup>43</sup> This loss of wealth can lead to indirect economic losses depending on each victim such as loss of capital to work or loss of time because they have to save money for Umrah. Second, the loss of costs incurred due to all arrangements or activities carried out by the victim due to the crime, starting from the beginning before the crime was exposed, an examination by law enforcement officials involving the victim, up to the verdict and management so that victims receive fulfilment of restitution. This arrangement or activity certainly makes the victims have to pay more costs, at least for their mobility.

Other impacts may vary in each victim, such as feelings of anger, trauma and depression as emotional-psychological impacts or changes in ways of thinking or behaviour on investment offerings or pilgrimage. The emotional and psychological impacts of the victims of fraud cannot be ignored. Some research show the emotional and psychological effects, especially depression because being a victim of fraud can affect the physical health of victims, even some of which lead to death.<sup>44</sup> Several victims of fraud who were depressed and died in the case of first travel are concrete proof of this victimization.<sup>45</sup>

Related to the indirect impact of criminal victimization, this is an impact felt by people around the victim, including family, relatives, friends, colleagues, or neighbours. Leah E. Daigle explained that victimization does not only affect victims, but also those close to or related to victims, which are called vicarious

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<sup>43</sup> Supra no. 21, Supra no. 25, Supra no. 29.

<sup>44</sup> Mark Button, Charis Lewis, and Jacki Tapley, "Not a Victimless Crime: The Impact of Fraud on Individual Victims and Their Families," *Security Journal* 27, no. 1, 36–54, p. 38-39, 2014.

<sup>45</sup> According to the interview with the victim. *Persiana Galih* "<https://nasional.tempo.co/read/645395/korban-cipaganti-ada-yang-cerai-stres-dan-tewas/full&view=ok>" *Tempo.co*, 2015, accessed February 20, 2020, 18.15 GMT+7 " Jayadi Supriadin, "Depresi, Korban First Travel Asal Garut Meninggal Dunia," *Liputan6.com*, 2017, <https://www.liputan6.com/regional/read/3072406/depresi-korban-first-travel-asal-garut-meninggal-dunia>, accessed February 20, 2020, 18.18 GMT+7 .

victimization or indirect victimization.<sup>46</sup> The impact on the people around these victims may vary. The form of the impact that arises is also classified the same as the form of a direct impact, except physical impacts such as the victims' family also feel the impact of economic losses because the victim's assets are also a source of livelihood for the family, or the victim's family can also experience emotional-psychological impacts, such as fear, anger, sad, traumatized or even depressed also because of seeing the condition of the victim. Such impacts can also be felt by the families of victims in large-scale scam, especially economic impacts. Victims experience loss of wealth that varies and not a few large enough numbers that affect the financial situation of the family. The victim's assets can be a source of livelihood or savings for the victims' family.

The victims' loss recovery system, namely victims' restitution or compensation that is regulated by law, is usually aimed at restoring the direct impact of crime as the primary victimization of a crime. In Indonesia, the system according to the Law on Witness and Victim Protection (Indonesian Law No. 13/2006 and Law No. 31/2014) accommodates 3 forms of restitution or compensation (both cumulative and alternative) that can be requested in an application made by victim, those are restitution/compensation for loss of or income (economic impact), restitution/compensation for losses arising from suffering directly related as a result of a crime (other direct impacts, for example on the family); and/or reimbursement of medical and psychological treatment expenses (physical, emotional, psychological health impacts). In the criminal justice systems of common law countries, such as the United States, Canada and Australia, the impact or loss of the victims is described by the victims themselves in a reports called victims 'victim impact statements' or 'victim impact evidence'. The subsequent report is an important consideration for the judge in deciding the restitution of the victim.<sup>47</sup> In Indonesia, restitution is carried out primarily,

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<sup>46</sup> Supra no 38, p. 81, 166.

<sup>47</sup> Shahrul Mizan Ismail, Halila Faiza, Zainal Abidin and Apnizan Abdullah, "Victim Impact Statement In Criminal Sentencing: Success Or Setback For The Criminal Justice Process?" *Current Law Journal* 8, 15-32, p. 26-27, 2017.

according to the government implementing regulations (Indonesian Government Regulation No. 7/2018 and No. 35/2020), the victim as an applicant for restitution/compensation must submit an application that not only contains a description of the actual loss suffered, but also attaches legalized evidence related to the loss. For example, related to restitution/compensation for the loss of wealth or income, the victim attaches evidence, such as, the proof of handover or transfer of funds to the perpetrator of the crime, the victim's salary slip or other assets that can be assessed by the appraiser.<sup>48</sup>

Meanwhile, related to reimbursemen for medical or psychological expenses including the depression, trauma and so on, the victim must also attach evidence such as notes or invoices for payment of medication, healing or treatment (hospital, doctor, medicine, therapy, rehabilitation expenses, etc.). The evidence also includes medical reports and mental health counseling reports as well as proof of purchase of other equipment needed for the treatment of victims, such as wheelchairs, stress relievers aquipment and so on. Thus, the calculation of the recovery of victims specifically for restitution and compensation, factually and concretely, is based on the evidence attached by the victim.<sup>49</sup> The victimization of massive scale fraud in Indonesia does not stop at direct and indirect impacts (economic impacts, emotional-psychological impacts). Apart from the unsolved primary victimization mentioned before, these problems of victimization continue to explain the following elements of victimization.

In the second element of victimization, the impacts that arise as victims' reactions include the social and consequential impacts. Social impact refers to the impact of victimization on the social life or lifestyle of the victim, such as changes in dress, work, or choice of place visited, while the consequential impact is changes in the perception or things felt and carried out by the victim to the risk of

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Kristine A. Peace and Deanna L. Forrester, "Gender, Emotionality, and Victim Impact Statements", *Journal of Criminal Psychology* 2, no. 2, 107-120, p. 107, 2012.

Mila Green McGowan and Bryan Myers, "Who is the victim anyway? The Effects of Bystander Victim Impact Statement on Mock Juror Sentencing Decisions", *Violence and Victims* 19, no. 3, 357-374, p. 357-358, 2012.

<sup>48</sup> Supra no 32.

<sup>49</sup> Id.

victimization in the future, such as the victim's self-perception of future crime, changes in the victim's fear of the risks of crime, or changes in the behaviour of the victim to anticipate future crimes against them, such as installing surveillance cameras on the home, not easily trusting people or other behaviours.<sup>50</sup> In large-scale investment scam crimes, the social impact on the victim can be in the form of influence or changes in work and lifestyle due to loss of assets due to the crime of social impact. A consequential impact can also arise, for example the victim changes her mindset and behaviour towards certain matters related to investment, becomes unbelievable, always hesitant to be alert to the activity. In addition, the juridical impact certainly also exists because the victim must have made various legal efforts to restore their rights, especially related to the fulfilment of restitution.

The third element of victimization, as explained earlier, is the element of victimization that occurs not as a direct result of crime, but as a result of the response of other parties, namely society, institutions or other individuals to victims of crime. There are various forms of community, institutional or other individual responses to victims of crime that actually provide suffering or other adverse effects for victims. In victimization studies, such victimization is examined as a form of secondary victimization. The suffering caused by victimization is also called social suffering or social injuries caused by various social institutions, ranging from people in the victim's environment (family, neighbours, friends, the wider community who know the victim), government institutions, religious institutions, institutions education or even law enforcement institutions.<sup>51</sup>

The suffering includes obtaining negative stigma from the community, being ignored as victims by the community, covering media that is inappropriate or disturbing personal rights, not getting services or information as victims based

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<sup>50</sup> Joanna Shapland dan Matthew Hall, *What Do We Know About The Effects Of Crime On Victims?*, *International Review of Victimology* 14, no. 2, 175–217, p. 175,179, 2007.

<sup>51</sup> Lorraine Wolhuter, Neil Olley, dan David Denham, *Victimology: Victimisation and Victims' Rights*, Routledge-Cavendish, New York, 2009, p. 47.

on the prevailing legal system.<sup>52</sup> Specifically, the criminal justice system has also been identified as bringing further suffering to victims of crime, for example giving harmful (insensitive) questions to victims, acts of rape by law enforcement officers, communication failures between law enforcement officials and victims, judgments of law enforcement officials to stop the case without explanation to the victim, refuse as a victim of crime, protracted process in fulfilment of victims' rights.<sup>53</sup>

Regarding the third element of victimization, this can be examined in the case of a system of fulfilling restitution for victims of large-scale scam in Indonesia. As explained earlier, the system of fulfilling restitution for the victims of large scale fraud in Indonesia has various problems. These problems have negative excesses or give birth to subsequent sufferings for victims as can be explained below:

1. In terms of certainty of the rule of law. The complexity and overlapping of rules related to legal efforts to fulfil restitution that victims can take, plus the void of norms that are able to resolve the complexity of the rules cause serious problems in the legal certainty space. Victims of large-scale scam do not get concrete solutions based on the rule of law, even though the state and all its instruments (institutions) as shaper rules should provide guarantees for this. The Indonesian Constitution in Article 28 D paragraph (1) has provided a constitutional basis for this right of legal certainty. Violation of victims' rights in terms of legal certainty clearly creates further suffering for victims and forms a separate victimization. Such victimization by JE Sahetapy is referred to as juridical victimization, namely the emergence of suffering to victims as a result of problems in the laws and regulations and the justice system.<sup>54</sup> Or in other words, victims arise from the formation of the law in this victimization, both because of the complexity or overlapping of rules and the vacuum of the rule of law.

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<sup>52</sup> Lesley Laing, "Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System," *Violence Against Women* 23, no. 11, 1314–1335, p. 1316, 2017.

<sup>53</sup> *Supra* no. 35.

<sup>54</sup> *Supra* no. 21.

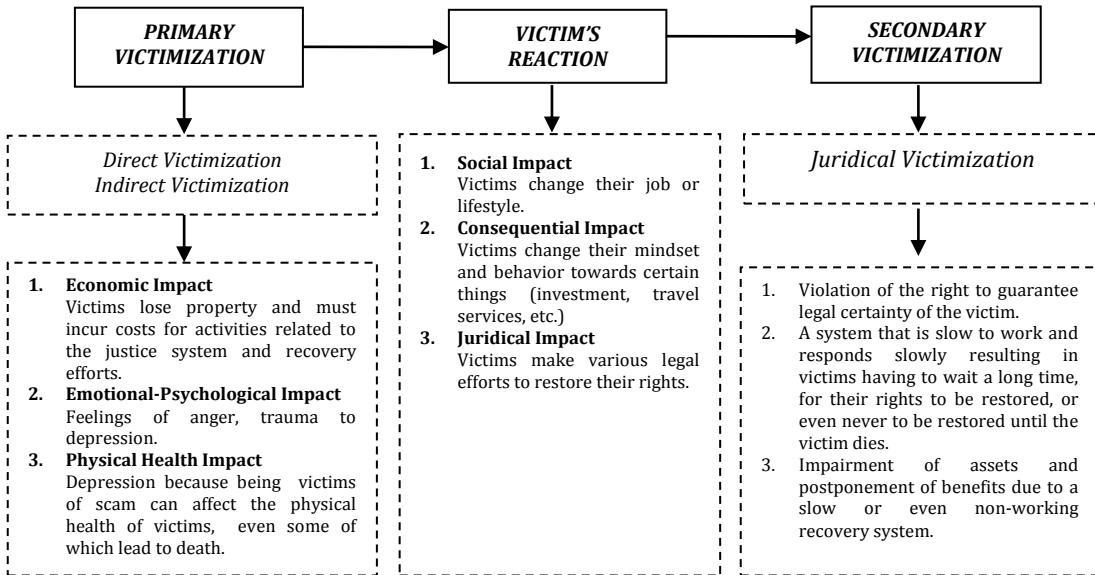
2. In terms of time, the issue of legal certainty as explained earlier has logical implications for the sufferings of other victims, one of which is related to the time of fulfilment of victims' restitution. The existence of legal certainty space issues causes the legal system to be slow to work and slow to respond to any legal efforts made by the victims. For example, if one group of victims submits a legal effort for a lawsuit and another group submits a request for bankruptcy, then there is the possibility of the judge delaying the claim and the request on the grounds of awaiting criminal justice proceedings. However, when the criminal justice process was completed, it appeared that the judge had not yet decided on anything related to the fulfilment of victim's loss recovery. So, the victims need more time to continue or take other legal measures so that the loss can be recovered. Another example relates to the distribution of assets of perpetrators of crime. If the perpetrators are unable to pay the victims 'losses, then legal action will be taken against the perpetrators' assets such as confiscation, seizure and auction. These actions can be carried out on every legal effort taken by the victims, regardless of the nomenclature of the action. If these actions are mutually determined and overlap with some or all of the same assets owned by the perpetrators of crime, then the authorities or authorities cannot immediately take action and execute the assets of the perpetrators. Officials or authorized institutions must coordinate and other concrete settlement actions, or the authorized officials or apparatus only wait for one another without any certainty of execution of the determined actions. In the end, this slow-working and slow-response system causes victims to suffer by waiting a very long time so that their losses can be recovered, or even not infrequently victims will not even receive any restitution.
3. In terms of the value of assets, the suffering of the time experienced by the victim brings the consequences of subsequent suffering to the value of assets as an economic loss for the victim. Based on the principle of time value of money (the time value of money), then the value of money today is worth more than the value of money in the future. This happens because of the effect of inflation (rising costs) and the reduced value of the money. Therefore, if the



calculation of the value of the economic loss suffered by the victim remains (unchanged), then this value will actually decrease over time. The longer the victim waits for the fulfilment of restitution, such as payment of money, the more the value of the money decreases. For example, one of the victims of fraud suffered an economic loss of Rp. 20 million. If the victim has to wait 3 years to receive fulfilment of the restitution, then Rp. 20 million is actually not the same value compared if the victim received Rp. 20 million in the first or second year. Not only based on these principles, the suffering of victims can also be seen from the value of the benefits of fulfilling the restitution. The faster the victim receives the fulfilment of the restitution, the faster the victim can feel the benefits of fulfilling the restitution, for example the victim can immediately use the restitution money for working capital, or to finance family needs and so on. Thus, the suffering of the victims continues to decrease the value of the assets and delay the benefits of these assets.

The explanation of the suffering of the victims above shows that the victims have experienced secondary suffering or suffering for the second time besides the basic suffering as a direct result of crime. These sufferings are the main consequences of the complexity and overlapping of rules related to legal efforts to fulfil recovery that victims can take, including the absence of resolving norms, which in turn has an impact on the response of officials and authorities in the implementation of efforts to fulfil this restitution. Based on this understanding, it can be concluded that the system of fulfilling losses related to the victims of large-scale scam in Indonesia today actually forms a secondary victimization of the victim. Victimization that occurs due to problems or negative excesses of the legal system for handling the victims themselves. The series of explanations ranging from the nature of criminal victimization, elements, impacts, to forms of victimization on large-scale scam crimes including the suffering suffered by victims can be understood in a criminal victimization scheme as follows:

**Figure 1 : Criminal Victimization on Large-Scale Investment Scam Crimes Scheme**



Source: Compiled by The Author Based on the Results of th Analysis

The problem with the large-scale scam investment victims' loss recovery system in Indonesia, which amounts to the form of juridical victimization and secondary victimization requires immediate formulation of resolution. The solution to this must target directly the main problem regarding the complexity and overlapping of regulations relating to legal remedies for the fulfillment of loss recovery, so that law enforcement officials and government are able to quickly and correctly respond to the task of fulfilling the right of the victims.

**Conclusion**

The victimization of large-scale invesment scam was formed due to one probable factor, spesifically activities to collect or withdraw large amounts of funds from the public (community) as a modus operandi of the crime. Large funds and resources that come from many members of the community, if misused, will form a distinctive victimization, which is diverse and great suffering for many victims. This victimization is then divided into 3 consecutive elements. The first element is primary victimization, which mainly consists of economic impacts accompanied by emotional, psychological and physical health impacts. The second

element of victimization, the impacts that arise as a victim's self-reaction include social impacts and consequential impacts such as changes in work, lifestyle, mindset and behaviour related to investment. The third element of victimization can be studied on the problem of the loss recovery system for victims of large-scale investment scam in Indonesia. The loss recovery system that exist in Indonesia currently creates secondary victimization of victims. Victimization occurs due to problems or negative excesses of the legal system for handling the victims themselves (juridical victimization). Facing such victimization problems, an integrative criminal policy is needed that is able to integrate various victim's loss recovery regulation, accompanied by detailed and rigid technical measurements with a certain period of time.

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