



Investor Protection and Legal Enforcement: Defaults and Digital-Age Illegal Investments

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Abstract. This paper examines the current landscape of investor protection and legal enforcement in Indonesia, focusing on the rising prevalence of default cases and illegal investment schemes. As the Indonesian capital market expands, retail investors remain vulnerable to fraudulent financial products and contractual breaches. Using normative legal analysis combined with case studies of recent high-profile defaults, this research evaluates the effectiveness of the Financial Services Authority (OJK) and the existing regulatory framework in providing legal certainty. The findings suggest that although Indonesia has established comprehensive regulations, enforcement mechanisms remain inconsistent. Bureaucratic complexities and the absence of integrated digital monitoring often weaken implementation. The study also highlights challenges in asset recovery for victims of illegal investments, where legal proceedings frequently fail to restore financial losses. Strengthening investor protection requires more rigorous supervision, swifter judicial action, and greater public financial literacy to mitigate the impact of “shadow banking” and unauthorized investment entities.

Keywords: Digital Investment, Financial Literacy, Illegal Investment, Investor Protection, Legal Enforcement.

Abstrak. Makalah ini mengkaji lanskap perlindungan investor dan penegakan hukum di Indonesia saat ini, dengan fokus pada meningkatnya prevalensi kasus gagal bayar dan skema investasi ilegal. Seiring dengan ekspansi pasar modal Indonesia, investor ritel tetap rentan terhadap produk keuangan yang curang dan pelanggaran kontrak. Dengan menggunakan analisis hukum normatif yang dikombinasikan dengan studi kasus gagal bayar tingkat tinggi baru-baru ini, penelitian ini mengevaluasi efektivitas Otoritas Jasa Keuangan (OJK) dan kerangka peraturan yang ada dalam memberikan kepastian hukum. Temuan menunjukkan bahwa meskipun Indonesia telah menetapkan peraturan yang komprehensif, mekanisme penegakan hukum tetap tidak konsisten. Kompleksitas birokrasi dan kurangnya pemantauan digital terintegrasi seringkali melemahkan implementasi. Studi ini juga menyoroti tantangan dalam pemulihan aset bagi korban investasi ilegal, di mana proses hukum seringkali gagal untuk memulihkan kerugian finansial. Penguatan perlindungan investor membutuhkan pengawasan yang lebih ketat, tindakan peradilan yang lebih cepat, dan literasi keuangan publik yang lebih besar untuk mengurangi dampak “perbankan bayangan” dan entitas investasi yang tidak berizin.

Kata kunci: Investasi Digital, Literasi Keuangan, Investasi Ilegal, Perlindungan Investor, Penegakan Hukum.



1. Introduction

The development of the investment sector in Indonesia over the past decade has shown significant dynamics, particularly with rapid advancements in digital technology and the increasing participation of the public in financial instruments. The emergence of digital-based investment platforms, including financial technology (fintech), has broadened access for individuals to engage in investment activities more efficiently and practically.¹ This reflects a positive trend toward financial inclusion and democratization of investment opportunities. However, alongside these advancements, concerns have grown regarding the rising number of default cases and the proliferation of illegal investment practices that have caused substantial losses to the community. One of the central challenges within the Indonesian legal system lies not merely in the existence of legal norms, but in how effectively these norms are enforced amidst bureaucratic complexity and institutional fragmentation.²

From a normative perspective, Indonesia has established a comprehensive legal framework governing investment activities and investor protection. These include Law Number 8 of 1995 concerning the Capital Market, Law Number 21 of 2011 concerning the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*), Law Number 10 of 1998 concerning Banking, and Law Number 11 of 2008 concerning Electronic Information and Transactions (*Informasi dan Transaksi Elektronik/ITE Law*) as amended.³ Various implementing regulations and supervisory mechanisms have also been introduced to strengthen oversight of financial activities. Despite this regulatory completeness, the effectiveness of these laws remains questionable, particularly in addressing contemporary challenges such as digital investment schemes, cross-border transactions, and increasingly sophisticated fraud mechanisms.⁴

Empirically, the rise in default cases involving investment companies and non-bank financial institutions indicates structural weaknesses in the existing legal

¹ Iris HY. Chiu, "Fintech and disruptive business models in financial products, intermediation and markets-policy implications for financial regulators," *J. Tech. L. & Pol'y* 21 (2016): 55. See also, Daniela Gabor, and Sally Brooks, "The digital revolution in financial inclusion: international development in the fintech era," In *Material cultures of financialisation* (London: Routledge, 2020), 73.

² Simon Butt, *Corruption and law in Indonesia* (London: Routledge, 2017), 35.

³ Otoritas Jasa Keuangan, "Undang-undang Nomor 8 Tahun 1995 tentang Pasar Modal," Retrieved from Otoritas Jasa Keuangan: <https://www.ojk.go.id/id/kanal/pasar-modal/regulasi/undang-undang/Pages/undang-undang-nomor-8-tahun-1995-tentang-pasar-modal.aspx>, 1995.

⁴ Safina Callistamalva Arindrajaya, and S. Koos, "Legal Protection Against Cryptocurrency Investors: Overview of Indonesian Consumer Protection Law," *transactions* 2, no. 2 (2022): 115. See also, Butt, *Corruption and law in Indonesia*, 36.

protection system. Investors often experience significant financial losses due to mismanagement, lack of transparency, or fraudulent intent.⁵ This concern is reinforced by official data from the Financial Services Authority (OJK), which reported that through the Investment Alert Task Force (*Satgas Waspada Investasi*), a total of 8,149 illegal financial entities were shut down between 2017 and 2023. These included 1,218 illegal investment schemes, 6,680 illegal online lending and personal loan entities, and 251 illegal pawn service providers, reflecting the systemic nature of illegal financial activities in Indonesia. At the same time, Ponzi schemes and high-return offers without clear legal standing continue to proliferate, exploiting gaps in public financial literacy and regulatory oversight.

This situation highlights a fundamental gap between legal norms (*das sollen*) and their practical implementation (*das sein*). While the law formally guarantees investor protection, enforcement often fails to deliver optimal outcomes.⁶ Weak coordination among supervisory institutions, limited integration of monitoring systems, and overlapping authority between regulatory bodies contribute to this gap. Moreover, the absence of rapid and effective dispute resolution mechanisms exacerbates investor vulnerability, particularly in cases involving digital platforms where jurisdictional boundaries are blurred.⁷ Another critical issue is the low level of legal and financial literacy among the public. Many investors are drawn to high-yield offers without fully understanding the risks, making them susceptible to fraudulent schemes.⁸ The rapid spread of information through digital platforms and social media further intensifies this problem, as illegal operators exploit these channels to reach wider audiences. Thus, investor protection challenges are not only legal and institutional but also socio-cultural.

In addition, regulatory gaps remain within the current framework. Existing regulations are often general and do not fully accommodate the complexities of digital investment ecosystems, including peer-to-peer lending, equity

⁵ Rafael La Porta, "Investor protection and corporate governance," *Journal of financial economics* 58, no. 1-2 (2000): 13. See also, Herlina Manullang, and M. Citra Ramadhan, "Victim Protection Against Crimes Under the Guise of Electronic Investment in Indonesia," *Journal of Human Security* 19, no. 2 (2023): 458.

⁶ La Porta, "Investor protection and corporate," 14.

⁷ Andrea Kupfer Schneider, and Nancy A. Welsh, "Bargaining in the Shadow of Investor-state Mediation: How the Threat of Mediation Will Improve Parties' Conflict Management," *U. St. Thomas LJ* 17 (2020): 373.

⁸ Eugene E. Mniwasa, "Unmasking fraud in financial markets: a qualitative analysis of deceptive investment schemes in Tanzania," *Qualitative Research in Financial Markets* (2025): 12. See also, Tyler Moore et al., "The postmodern Ponzi scheme: Empirical analysis of high-yield investment programs," In *International Conference on financial cryptography and data security*, (Berlin, Heidelberg: Springer Berlin Heidelberg, 2012), 44.

crowdfunding, and cross-border transactions.⁹ Law enforcement mechanisms also tend to prioritize punitive measures against perpetrators rather than focusing on asset recovery for victims.¹⁰ In many cases, confiscated assets are absorbed by the state instead of being redistributed to affected investors, undermining the principle of restorative justice.¹¹ Previous studies have largely focused on normative legal analysis or specific sectors such as capital markets or banking, without comprehensively examining the relationship between default cases, illegal investment practices, and law enforcement effectiveness in the digital context.¹² Limited attention has also been given to systemic weaknesses in legal protection and the adaptability of regulations to evolving financial innovations.¹³ This gap underscores the need for a more integrated and critical analysis that combines regulatory, institutional, and practical perspectives.¹⁴

Based on these considerations, the urgency of this research becomes clear. Strengthening investor protection is essential not only for safeguarding individual financial interests but also for maintaining public trust and ensuring the stability of the national financial system. Without effective legal protection, systemic disruption caused by widespread investment fraud and defaults may increase, potentially affecting broader economic development. Accordingly, this study addresses three research questions: (1) how investor legal protection mechanisms are implemented in cases of default and illegal investment in Indonesia; (2) to what extent existing regulations and law enforcement mechanisms are effective in

⁹ Josua Halomoan Napitupulu et al., “An Integrated Legal Framework for Digital Investment Fraud Prevention in Indonesia,” *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (2025): 542. See also, Inda Rahadiyan, and Paripurna P. Sugarda, “Urgensi Pengaturan Prinsip Keterbukaan Dalam Equity Crowdfunding Dan Implikasinya Terhadap Perlindungan Investor,” *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (2022): 264.

¹⁰ Alexander Harryandi et al., “Regulating initial coin offering amidst the development of crypto assets in indonesia,” *Journal of Central Banking Law and Institutions* 1, no. 3 (2022): 538. See also, Asmarani Ramli et al., “The Importance of Non-Conviction Based (NCB) Regulations for Asset Confiscation in Illegal Investment,” *Journal of Law and Legal Reform* 5, no. 1 (2024): 11; Arindrajaya, and Koos, “Legal Protection Against Cryptocurrency,” 116.

¹¹ Putra Pratama et al., “The isds mechanism and standards of protection in the investment treaty,” *Lentera Hukum* 7 (2020): 153.

¹² Iwan Kusnawirawan et al., “Safeguarding Investor Rights: OJK’s Regulatory Framework Including Management and Challenges in Indonesia’s Capital Market,” *Jurnal Multidisiplin Indonesia* 4, no. 3 (2025): 195. See also, Katrina Martin, “The impact of recent OJK regulations on transparency, efficiency, and investor protection in Indonesia’s capital market,” *Anthology: Inside Intellectual Property Rights* (2025): 23.

¹³ Afif Noor et al., “Legal Protection in Sharia Securities-Based Crowdfunding: A Normative Review of Dual Regulation,” *Al-Manabij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 326. See also, Elvira Fitriyani Pakpahan et al., “Legal Analysis of Investor Protection in Corporate Green Bond Issuance,” *Indonesia Law Review* 14, no. 2 (2024): 7.

¹⁴ Butt, *Corruption and law in Indonesia*, 38.

providing investor protection; and (3) what key challenges and improvements are necessary to enhance investor protection.

Aligned with these questions, the objectives of this research are: (1) to analyze legal protection mechanisms available to investors in cases of default and illegal investment; (2) to evaluate the effectiveness of regulatory frameworks and law enforcement practices; and (3) to identify systemic weaknesses and propose recommendations for strengthening investor protection in Indonesia. Through this framework, the study aims to contribute both theoretically and practically by enhancing understanding of investor protection dynamics within Indonesia's legal system, while offering constructive recommendations for policymakers, regulators, and stakeholders.

2. Research Methods

This research employs a normative juridical design with a qualitative approach to analyze the legal framework governing investor protection in Indonesia, particularly in cases of default and illegal investment.¹⁵ The normative approach focuses on examining legal principles, doctrines, and regulations, while incorporating a limited empirical perspective through relevant case illustrations to enhance contextual understanding.¹⁶ The study applies three main approaches: statutory, conceptual, and case approaches. The statutory approach examines relevant laws and regulations, including Law Number 8 of 1995 concerning the Capital Market, Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 10 of 1998 concerning Banking, and Law Number 11 of 2008 concerning Electronic Information and Transactions, along with their implementing regulations.¹⁷ The conceptual approach explores legal theories related to investor protection, legal certainty, and the effectiveness of law enforcement, while the case approach reviews selected cases to identify patterns and practical challenges. In this context, the criteria for selecting default and illegal investment cases are based on their relevance, public impact, and availability of official documentation.

The study utilizes primary, secondary, and tertiary legal materials. Primary materials include statutory regulations and official documents issued by competent authorities such as the Financial Services Authority (OJK). Secondary materials consist of scholarly articles, legal journals, books, and previous research, while

¹⁵ Achmad Irwan Hamzani et al., "Legal research method: Theoretical and implementative review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3612.

¹⁶ Anatolii Matviichuk, "Human principles of law as a universal normative framework," *Cuestiones Políticas* 40, no. 75 (2022): 25.

¹⁷ Keuangan, "Undang-undang Nomor 8 Tahun 1995 tentang Pasar Modal," 1995.

tertiary materials include legal dictionaries and supporting references. Data collection is conducted through library research by systematically reviewing legal documents, academic literature, and official reports. The data are analyzed using a qualitative descriptive-analytical method, involving interpretation of legal norms, comparison of regulatory provisions, and evaluation of their implementation. A systematic and critical approach is applied to identify inconsistencies, regulatory gaps, and weaknesses in law enforcement mechanisms.¹⁸

3. Results and Discussion

3.1. Investor Legal Protection Mechanisms in Default Cases and Illegal Investment in Indonesia

Inequitable access to legal remedies, limited financial literacy, and the proliferation of fraudulent investment schemes particularly affecting retail investors and lower-income groups remain central concerns in investor protection in Indonesia.¹⁹ The rapid development of financial technology (fintech) has expanded public participation in investment activities, but it has also introduced complex risks, particularly in the form of default cases and illegal investment schemes.²⁰ These risks often result in financial losses, reduced livelihoods, and psychological distress for victims. Digital platforms, while enhancing accessibility, have also facilitated the emergence of “shadow banking” practices characterized by low transparency and weak oversight, gradually eroding public trust in the national financial system.²¹

From a regulatory perspective, Indonesia has established a relatively comprehensive legal framework governing investment and investor protection. This includes the Capital Market Law, the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK) Law, the Electronic Information and Transactions (ITE) Law, the Consumer Protection Law, and provisions within the Indonesian Criminal Code (KUHP). In particular, Articles 372 and 378 of the KUHP provide a legal basis for addressing fraud and embezzlement in investment activities.²² However, despite the existence of these regulations, their effectiveness remains limited in addressing modern investment crimes, especially those conducted through digital platforms.

¹⁸ Vesile Şenol et al., “Quality of life of elderly nursing home residents and its correlates in Kayseri. A descriptive-analytical design: A cross-sectional study,” *Health* 5, no. 2 (2013): 215.

¹⁹ Alifia Jasmine et al., “Initial Public Offering: Perlindungan Hukum Pemegang Saham Minoritas dan Pengaruh Terhadap Kinerja Perusahaan,” *Jurnal Hukum & Pembangunan* 54, no. 1 (2024): 154.

²⁰ Chiu, “Fintech and disruptive business,” 56. See also, Gabor, and Brooks, “The digital revolution in financial,” 74.

²¹ Mniwasa, “Unmasking fraud in financial,” 13.

²² Manullang, and Ramadhan, “Victim Protection Against Crimes,” 459.

Existing legal provisions tend to be general and have not fully accommodated the complexities of digital investment ecosystems, including cross-border transactions and technology-driven fraud.

Illegal investment practices present another major challenge, particularly in relation to asset recovery for victims. The current legal system tends to emphasize punitive measures against perpetrators rather than ensuring restitution for affected investors.²³ In this context, the concept of Non-Conviction Based (NCB) asset confiscation has emerged as a potential mechanism to accelerate asset recovery.²⁴ NCB allows authorities to confiscate assets derived from illegal activities without requiring prior criminal conviction. However, its implementation in Indonesia remains constrained due to the absence of a clear legal framework and procedural guidelines, as existing laws still require court decisions for asset seizure. As a result, victims often face difficulties in recovering their financial losses even after legal proceedings have concluded.

The increasing sophistication of digital investment fraud further highlights the need for a more integrated regulatory approach. Current legal instruments, including the KUHP and the ITE Law, are often inadequate to address emerging forms of fraud, such as algorithm-based schemes and cross-border digital transactions. This limitation suggests the need for regulatory reform that integrates financial, technological, and criminal law perspectives.²⁵ Comparative insights indicate that jurisdictions such as Singapore have developed more comprehensive frameworks to address digital financial crimes, providing a potential model for Indonesia. Without such reforms, the legal system risks lagging behind technological developments, thereby increasing investor vulnerability.

In addition to substantive legal frameworks, dispute resolution mechanisms play an important role in investor protection. Indonesia provides both litigation and non-litigation mechanisms to resolve investment disputes. Alternative Dispute Resolution (ADR), including arbitration under international frameworks such as the International Centre for Settlement of Investment Disputes (ICSID), offers a more efficient and flexible approach compared to conventional court proceedings. This approach aligns with Indonesia's cultural values of "*musyawarah mufakat*," emphasizing consensus-based solutions.²⁶ ADR mechanisms are generally faster, less formal, and more adaptable to complex financial disputes.

²³ Manullang, and Ramadhan, "Victim Protection Against Crimes," 460.

²⁴ Ramli et al., "The Importance of Non-Conviction," 12.

²⁵ Napitupulu et al., "An Integrated Legal Framework," 543.

²⁶ Delfiyanti, "The Dispute Settlement System of Investments in the ASEAN Comprehensive Investment Agreement (ACIA) Framework and the Implications for Indonesia," *Indonesian J. Int'l L.* 19 (2021): 137. See also, Daniel Hendrawan et al., "Effectiveness of alternative dispute resolution in resolving investment disputes in developing countries: Analysis of ICSID cases in Indonesia and Nigeria," *IKENGA: International Journal of Institute of African Studies* 25, no. 2 (2024): 34.

Furthermore, the Small Claims Court mechanism has been introduced to simplify dispute resolution for cases involving relatively small financial losses. This mechanism allows for the consolidation of claims related to unlawful acts and defaults, thereby reducing procedural burdens and improving access to justice.²⁷ However, in practice, these mechanisms still face limitations, particularly in handling complex financial cases and cross-border disputes, where jurisdictional and evidentiary challenges often arise.

Despite these mechanisms, significant regulatory gaps remain, particularly in emerging financial sectors such as Sharia-based crowdfunding and green bonds. These instruments operate within evolving regulatory frameworks that are often fragmented and lack strong enforcement mechanisms. In the case of Sharia-based crowdfunding, issues such as weak enforcement of Sharia compliance, limited data protection, and inadequate dispute resolution mechanisms persist. Strengthening regulatory oversight through binding Sharia standards and mandatory audits is therefore necessary.²⁸ Similarly, green bonds, although aligned with global sustainability initiatives, lack robust enforcement mechanisms to prevent greenwashing. The absence of mandatory independent verification and clear liability provisions exposes investors to risk and undermines market credibility.²⁹

Another important dimension of investor protection lies in international investment frameworks, particularly Bilateral Investment Treaties (BITs). These agreements provide legal protection for foreign investors through mechanisms such as Investor-State Dispute Settlement (ISDS). However, they often create imbalances between investor protection and state sovereignty, potentially limiting the government's ability to implement public policy measures.³⁰ This highlights the need for reform to ensure a more balanced framework that protects both investors and national interests.

Access to justice remains a critical issue in the Indonesian context. The litigation process is often complex, time-consuming, and costly, discouraging investors from pursuing legal remedies. This challenge is further compounded by the lack of specialized expertise among judges in handling financial and investment-related cases. Additionally, victims often face intimidation from fraudulent operators and receive limited support from legal aid institutions. Strengthening the

²⁷ Abd Hadi, and Suhartono Suhartono, "Ratio legis of combining illegal acts with default in small claim court cases," *Al'Adalah* 20, no. 1 (2023): 214.

²⁸ Afif Noor et al., "Legal Protection in Sharia Securities-Based Crowdfunding: A Normative Review of Dual Regulation," *Al-Manabij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 327.

²⁹ Pakpahan et al., "Legal Analysis of Investor," 9.

³⁰ Mira Nila Kusuma Dewi et al., "Analysis of the Legal Substance of Indonesia's Bilateral Investment Treaty (BIT): Balance of Rights and Obligations Based on National Interest," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 1 (2024): 3218. See also, Anugrah Muhtarom Pratama et al., "The Regulation of Disorgement in the Indonesia Capital Market: Remaining Concerns and Lessons from US," *JILS* 7 (2022): 585.

role of the Financial Services Authority (OJK) in representing investors and facilitating dispute resolution could help address these challenges.³¹

Institutional coordination also plays a crucial role in ensuring effective investor protection. The lack of coordination among supervisory agencies contributes to the proliferation of unlicensed financial entities, misuse of digital data, and financial crimes.³² This fragmentation creates systemic risks, particularly in the form of illegal investment schemes such as Ponzi schemes, which continue to exploit gaps in regulation and public awareness.³³ Factors such as rapid urbanization, increased mobile penetration, and the widespread use of social media further accelerate the spread of these schemes, creating a “domino effect” on household economies.

In this context, legal and financial literacy becomes an essential component of investor protection. Many investors are attracted to high-return schemes without fully understanding the associated risks.³⁴ The absence of effective early warning systems and public education initiatives further exacerbates this vulnerability. Therefore, enhancing financial literacy through continuous education and awareness programs is critical to preventing investment fraud and empowering individuals to make informed decisions.³⁵

Finally, the effectiveness of investor protection mechanisms is closely linked to the broader concept of legal legitimacy, which encompasses justice, fairness, and utility. These principles play a key role in shaping investor confidence and influencing investment decisions. A legal system that is perceived as fair, transparent, and effective is more likely to attract investment and support economic growth.³⁶ Conversely, persistent weaknesses in regulation and enforcement can undermine trust and hinder the development of a stable financial system.

³¹ Ema Rahmawati et al., “Re-conceptualizing the legal standing claim by Financial Services Authority (FSA): Its challenge in Indonesian capital market,” *J. Legal Ethical & Regul. Issues* 24 (2021): 1.

³² Ahmad Mufti et al., “Overlapping Authorities In Maritime Law Enforcement: A Case Study of Ternate City,” *Administrative and Environmental Law Review* 6, no. 2 (2025): 93. See also, Butt, *Corruption and law in Indonesia*, 39.

³³ Moore et al., “The postmodern Ponzi scheme,” 45. See also, Mniwasa, “Unmasking fraud in financial,” 15.

³⁴ La Porta, “Investor protection and corporate,” 15.

³⁵ Jasmine et al., “Initial Public Offering,” 155.

³⁶ Al Sentot Sudarwanto, and Dona Budi Budi Kharisma, “Comparative study of personal data protection regulations in Indonesia, Hong Kong and Malaysia,” *Journal of Financial Crime* 29, no. 4 (2022): 1444.

3.2. The Effectiveness of Regulation and Law Enforcement in Investor Protection in Indonesia

The effectiveness of regulation serves as a fundamental indicator in assessing the extent to which the law achieves its intended protective objectives. In the context of investment in Indonesia, this effectiveness can be examined through three primary pillars: legal substance, legal structure, and legal culture. Ideally, these three elements must operate in an integrated and harmonious manner. However, in practice, Indonesia continues to face significant challenges in aligning them, resulting in a gap between regulatory intent and enforcement outcomes.³⁷

From the perspective of legal substance, Indonesia has established a relatively comprehensive regulatory framework governing investment activity. Nevertheless, substantial weaknesses remain, particularly in the form of legal norms that are general, open to multiple interpretations, and insufficiently responsive to technological developments.³⁸ This limitation is evident in the inadequate regulation of cross-border digital investments, which increasingly dominate modern financial transactions. Furthermore, the implementation of the *Una Via* principle intended to integrate administrative and criminal enforcement remains suboptimal. Inconsistent application of this principle has led to fragmented enforcement and reduced legal certainty for investors.³⁹

Weaknesses in substantive law are also reflected in the handling of insider trading cases. Many cases are resolved through administrative sanctions rather than criminal prosecution, thereby failing to create a deterrent effect. This approach undermines both legal certainty and investor confidence, particularly when inconsistencies arise between different regulatory instruments, such as the Strengthening Financial Sector Law and the Capital Market Law.⁴⁰ Consequently, although legal provisions exist, their enforcement does not always provide effective protection.

The effectiveness of regulation is further influenced by the legal structure, particularly the capacity and coordination of enforcement institutions. In Indonesia, weak coordination among supervisory agencies, including the Financial Services Authority (OJK) and law enforcement bodies, remains a persistent issue.⁴¹ The lack of data integration and overlapping authority among institutions often results in delays in investigation and prosecution. This institutional fragmentation

³⁷ La Porta, "Investor protection and corporate," 16.

³⁸ Dewi et al., "Analysis of the Legal Substance," 3219.

³⁹ Fajar Sugianto, and Shintaro Tokuyama, "Beyond Administrative Sanctions: Reforming Insider Trading Regulation to Strengthen Investor Protection in Indonesia," *Jurnal Media Hukum* 32, no. 2 (2025): 211.

⁴⁰ Sugianto, and Tokuyama, "Beyond Administrative Sanctions," 212.

⁴¹ Kusnawirawan et al., "Safeguarding Investor Rights," 196.

reduces the efficiency of law enforcement and limits the ability of authorities to respond quickly to violations.⁴²

These structural challenges are compounded by limited human resources and technical capacity within enforcement institutions. The increasing complexity of financial crimes, particularly those involving digital platforms, requires specialized expertise that is not always available. Law enforcement agencies often encounter difficulties in verifying electronic evidence and establishing the authenticity of digital transactions, which are essential in prosecuting investment-related crimes.⁴³ As a result, many cases are either delayed or inadequately resolved.

The third pillar, legal culture, also plays a crucial role in determining regulatory effectiveness. In Indonesia, low levels of financial literacy contribute significantly to the persistence of investment fraud.⁴⁴ Many investors are attracted to high-return schemes without fully understanding the associated risks, making them vulnerable to illegal investment practices.⁴⁵ This condition not only increases the incidence of fraud but also complicates enforcement, as victims often lack the knowledge and confidence to pursue legal remedies.

The misalignment between legal substance, structure, and culture can be explained through Lawrence M. Friedman's legal system theory, which emphasizes that these elements must function cohesively. In Indonesia, a "decoupling" phenomenon frequently occurs, where legal substance is modernized in accordance with international standards, but institutional structures remain fragmented and legal culture remains underdeveloped. As a result, regulations risk becoming "symbolic law," existing formally but lacking practical effectiveness in protecting investors.⁴⁶

In the context of law enforcement, both preventive and repressive measures face significant constraints. Preventive efforts, such as monitoring and early detection of illegal investment schemes, are weakened by limited coordination and inadequate supervision systems.⁴⁷ Repressive actions, including investigation and

⁴² Mufti et al., "Overlapping Authorities In Maritime," 95.

⁴³ Manullang, and Ramadhan, "Victim Protection Against Crimes," 461.

⁴⁴ La Porta, "Investor protection and corporate," 19. See also, Jasmine et al., "Initial Public Offering," 157.

⁴⁵ Mniwasa, "Unmasking fraud in financial," 17.

⁴⁶ Muhammad Ilman Abidin et al., "Institutional framework for NFT governance in Indonesia: a proposal for a specialized NFT authority," *Cogent Social Sciences* 11, no. 1 (2025): 29523. See also, Hulman Panjaitan et al., "Strengthening Consumer Protection in Digital Transactions: A Legal Perspective on Click-Wrap Agreements Under the Consumer Protection Law," *Jurnal Hukum UNISSULA* 41, no. 3 (2025): 667.

⁴⁷ Sigid Suseno Didi Hayamansyah, and Elisatriis Gultom, "Strengthening Legal Enforcement in the Indonesian Insurance Sector: Regulatory Gaps and Policy Reform Agenda," *PRAWO i WIEŻ* 55, no. 2 (2025): 341. See also, Kusnawirawan et al., "Safeguarding Investor Rights," 199.

prosecution, are often hindered by lengthy procedures and evidentiary challenges.⁴⁸ The transition from conventional to digital investment platforms has created a “jurisprudential vacuum,” where existing legal frameworks struggle to address issues such as non-repudiation and the volatility of electronic evidence.⁴⁹

These challenges are particularly evident in cross-border cases, where jurisdictional complexities further complicate enforcement.⁵⁰ The overlap between the Civil Code (KUHPerdata) and the Electronic Information and Transactions Law (ITE Law) often creates legal uncertainty and procedural bottlenecks. Consequently, enforcement processes become inefficient and fail to provide timely protection for investors.

Another critical issue is the tension between the prudential principle and the promotion of financial innovation. The introduction of mechanisms such as the Regulatory Sandbox reflects the government’s commitment to fostering innovation and financial inclusion.⁵¹ However, this approach also introduces risks, as high-risk entities may operate with minimal regulatory requirements during the testing phase. This dualism creates a paradox: while the state encourages innovation, it lacks sufficient safeguards to mitigate risks when such entities experience default or engage in misconduct.⁵²

In addition to systemic challenges, sector-specific issues further weaken the effectiveness of investor protection. The regulatory framework for green bonds, for example, lacks strong enforcement mechanisms to prevent greenwashing, exposing investors to significant risks.⁵³ Similarly, Sharia-based crowdfunding faces regulatory gaps related to compliance enforcement, data protection, and dispute resolution mechanisms.⁵⁴ These weaknesses demonstrate the need for more robust and sector-specific regulatory approaches.

Challenges also extend to other sectors, including mining, environmental law, insurance, and intellectual property. Weak enforcement of environmental regulations in mining increases regulatory risks and discourages investment.⁵⁵

⁴⁸ Butt, *Corruption and law in Indonesia*, 40.

⁴⁹ Napitupulu et al., “An Integrated Legal Framework,” 546.

⁵⁰ Fifi Junita, “The foreign mining investment regime in Indonesia: regulatory risk under resource nationalism policy and how international investment treaties provide protection,” *Journal of Energy & Natural Resources Law* 33, no. 3 (2015): 243. See also, Dewi et al., “Analysis of the Legal Substance,” 3220.

⁵¹ Rahadiyan, and Sugarda, “Urgensi Pengaturan Prinsip Keterbukaan,” 265.

⁵² Abidin et al., “Institutional framework for NFT,” 29526. See also, Panjaitan et al., “Strengthening Consumer Protection,” 668.

⁵³ Pakpahan et al., “Legal Analysis of Investor,” 10.

⁵⁴ Noor et al., “Legal Protection in Sharia Securities,” 327.

⁵⁵ Utji Sri Wulan Wuryandari et al., “Weak investment law enforcement in land and forest fire cases in Indonesia,” *Substantive Justice International Journal of Law* 5, no. 2 (2022): 212. See also, Junita, “The foreign mining investment,” 245.

Meanwhile, gaps in insurance and intellectual property law enforcement enable fraudulent practices that undermine investor confidence.⁵⁶ These issues indicate that ineffective law enforcement is a systemic problem across multiple sectors.

A key weakness in the Indonesian system is the limited focus on asset recovery for victims. Law enforcement tends to prioritize punitive measures against perpetrators rather than ensuring restitution for investors. Mechanisms such as Non-Conviction Based (NCB) asset confiscation and disgorgement have the potential to improve asset recovery, but their implementation remains limited due to insufficient legal provisions.⁵⁷ As a result, many victims are unable to recover their losses, reducing the overall effectiveness of investor protection.

To address these challenges, comprehensive reforms are necessary. From a regulatory perspective, strengthening the legal basis for asset recovery mechanisms, including NCB and disgorgement, is essential to ensure that investor losses can be effectively restored.⁵⁸ In addition, regulatory frameworks for emerging financial sectors should be enhanced through mandatory verification, stronger liability provisions, and binding compliance standards.⁵⁹

Institutional strengthening is equally important. Improving coordination between OJK and law enforcement agencies, as well as enhancing technical and human resource capacity, can significantly improve enforcement effectiveness.⁶⁰ Furthermore, the integration of digital monitoring systems can support more efficient supervision and enforcement processes.

Finally, investor-centric policies must be prioritized to strengthen legal culture and public trust. Increasing transparency and accountability in regulatory decision-making, along with continuous regulatory evaluation, can improve confidence in the financial system.⁶¹ At the same time, improving financial literacy through education and awareness programs is essential to reduce investor vulnerability to fraud.

⁵⁶ Megawati Barthos, and Rineke Sara, “Dysfunctional IP infringements and ineffectiveness of enforcement mechanisms under Indonesian law,” *J. Legal Ethical & Regul. Issues* 22 (2019): 1. See also, Hayamansyah, and Gultom, “Strengthening Legal Enforcement,” 342.

⁵⁷ Pratama et al., “The Regulation of Disorgement,” 587. See also, Ramli et al., “The Importance of Non-Conviction,” 14.

⁵⁸ Abidin et al., “Institutional framework for NFT,” 29528. See also, Panjaitan et al., “Strengthening Consumer Protection,” 669.

⁵⁹ Noor et al., “Legal Protection in Sharia Securities,” 328. See also, Pakpahan et al., “Legal Analysis of Investor,” 11.

⁶⁰ Manullang, and Ramadhan, “Victim Protection Against Crimes,” 462.

⁶¹ Pakpahan et al., “Legal Analysis of Investor,” 12.

3.3. Strengthening Investor Protection in Indonesia: Legal Reform, Enforcement Challenges, and Future Directions

Investor protection must be established as a fundamental element of legal certainty to maintain national economic stability.⁶² Without robust legal frameworks and effective law enforcement, efforts to mitigate investment fraud and address systemic defaults will remain inadequate.⁶³ This condition highlights the urgency of safeguarding retail investors and preserving market integrity, particularly in an era where digital investment activities transcend national boundaries and increase socio-economic risks. Legal protection should not only function as a preventive mechanism but also as a corrective instrument that ensures justice for victims of financial misconduct.⁶⁴

In Indonesia, despite the existence of various regulatory frameworks and institutional mechanisms, the effectiveness of investor protection remains constrained by multiple systemic challenges. One of the primary issues lies in inconsistent enforcement and persistent legal gaps. The application of the *Una Via* principle in capital market law enforcement, which is intended to streamline administrative and criminal sanctions, has not been fully optimized. In practice, enforcement remains fragmented, with weak coordination between the Financial Services Authority (OJK) and law enforcement agencies. This fragmentation results in delays in handling cases and reduces legal certainty for investors.⁶⁵

In addition, insider trading regulations continue to exhibit weaknesses in enforcement. Many cases are resolved through administrative sanctions rather than criminal prosecution, thereby failing to provide a deterrent effect. The inconsistency between the Strengthening Financial Sector (SFS) Law and the Capital Market Law further complicates enforcement efforts, creating ambiguity in the application of sanctions and weakening the overall effectiveness of legal protection.⁶⁶ These issues demonstrate that the existence of legal norms alone is insufficient without consistent and coordinated enforcement.

Regulatory weaknesses are also evident in specific sectors, particularly in emerging financial instruments. The regulation of green bonds, for instance, represents progress in aligning with global sustainability standards; however, it lacks robust enforcement mechanisms. The absence of mandatory third-party verification and clear liability provisions creates opportunities for greenwashing, thereby exposing investors to significant risks.⁶⁷ Similarly, electronic investment

⁶² La Porta, "Investor protection and corporate," 20.

⁶³ Butt, *Corruption and law in Indonesia*, 41.

⁶⁴ Manullang, and Ramadhan, "Victim Protection Against Crimes," 463.

⁶⁵ Sugianto, and Tokuyama, "Beyond Administrative Sanctions," 213.

⁶⁶ Sugianto, and Tokuyama, "Beyond Administrative Sanctions," 214.

⁶⁷ Pakpahan et al., "Legal Analysis of Investor," 14.

platforms have become a growing source of fraud, highlighting the need for a more tailored and adaptive legal framework capable of addressing digital-based crimes.⁶⁸

Another critical issue relates to weak supervision and sanctions. In certain sectors, such as environmental and natural resource investments, enforcement mechanisms remain insufficient to deter violations. For example, investment laws often fail to impose strict sanctions on business actors responsible for environmental damage, such as forest and land fires. Weak government oversight further exacerbates this problem, creating regulatory uncertainty and discouraging responsible investment.⁶⁹ This condition illustrates that ineffective enforcement not only harms investors but also undermines broader sustainability objectives.

A further limitation in the current system is the lack of an effective framework for asset recovery. The absence of comprehensive regulations governing Non-Conviction Based (NCB) asset confiscation restricts the ability of authorities to recover assets derived from illegal investment activities. As a result, victims often fail to obtain restitution, even when perpetrators are successfully prosecuted.⁷⁰ This highlights a fundamental weakness in the Indonesian legal system, which tends to prioritize punitive measures over restorative outcomes.

Institutional and coordination issues also play a significant role in reducing the effectiveness of investor protection. Overlapping jurisdictions among regulatory bodies, combined with weak inter-agency coordination, create inefficiencies in law enforcement. This problem is not limited to the capital market sector but is also evident in other areas, such as environmental and maritime law enforcement.⁷¹ The lack of integrated data systems and clear division of authority often leads to delays and inconsistencies in handling cases, ultimately reducing the effectiveness of legal protection.

To address these challenges, a comprehensive reform approach is required. From a regulatory perspective, harmonization of laws is essential to eliminate inconsistencies and strengthen enforcement mechanisms. Aligning the provisions of the Strengthening Financial Sector Law with the Capital Market Law, for example, can provide clearer guidance for enforcement and reduce ambiguity in the application of sanctions.⁷² In addition, the introduction of clear criteria and

⁶⁸ Manullang, and Ramadhan, "Victim Protection Against Crimes," 464.

⁶⁹ Wuryandari et al., "Weak investment law enforcement," 213.

⁷⁰ Ramli et al., "The Importance of Non-Conviction," 16.

⁷¹ Francisca Rachel Alicia, "Implementation of environmental pollution and damage prevention instruments in Indonesia: Issues and challenges," *Indonesian Journal of Environmental Law and Sustainable Development* 3, no. 1 (2024): 128. See also, Mufti et al., "Overlapping Authorities In Maritime," 98.

⁷² Sugianto, and Tokuyama, "Beyond Administrative Sanctions," 218.

procedures for NCB asset confiscation is crucial to improve asset recovery and ensure that victims receive adequate compensation.⁷³

Capacity building within regulatory and enforcement institutions is also a key priority. Enhancing the technical and human resource capacity of OJK and other agencies can improve their ability to detect, investigate, and prosecute complex financial crimes. This includes developing expertise in digital forensics, data analysis, and cross-border financial investigations. Strengthening institutional capacity will not only improve enforcement effectiveness but also increase public confidence in the legal system.⁷⁴

Transparency and accountability are equally important in strengthening investor protection. Increasing transparency in regulatory decision-making processes can help build public trust in the capital market. This can be achieved through clearer disclosure requirements, public reporting mechanisms, and stronger oversight of regulatory actions. In addition, mandating independent verification and audits for financial instruments such as green bonds and Sharia-based crowdfunding can enhance accountability and reduce the risk of fraud.⁷⁵

Another critical aspect of reform is improving inter-agency coordination. Strengthening collaboration between regulatory bodies, law enforcement agencies, and the judiciary is essential to streamline enforcement processes and reduce institutional fragmentation. The development of integrated data systems and joint task forces can facilitate more effective information sharing and coordination, thereby improving the efficiency of law enforcement.⁷⁶

In line with the initial argument, investor protection in Indonesia must also adopt a more holistic and collaborative governance approach. This involves the active participation of government institutions, academia, and civil society in developing and implementing regulatory frameworks.⁷⁷ Such collaboration can help ensure that policies are more inclusive, evidence-based, and responsive to the needs of affected stakeholders. In particular, civil society organizations can play a vital role in advocating for investor rights and providing support to victims of financial fraud.⁷⁸

Furthermore, the adoption of a restorative justice approach is essential to enhance the effectiveness of investor protection. Unlike the current punitive-centric system, restorative justice focuses on restoring losses suffered by victims

⁷³ Ramli et al., “The Importance of Non-Conviction,” 18.

⁷⁴ Harryandi et al., “Regulating initial coin offering,” 539.

⁷⁵ Noor et al., “Legal Protection in Sharia Securities,” 329. See also, Pakpahan et al., “Legal Analysis of Investor,” 15.

⁷⁶ Mufti et al., “Overlapping Authorities In Maritime,” 98.

⁷⁷ Alicia, “Implementation of environmental pollution,” 129. See also, Kusnawirawan et al., “Safeguarding Investor Rights,” 200.

⁷⁸ Manullang, and Ramadhan, “Victim Protection Against Crimes,” 465.

and promoting accountability among perpetrators.⁷⁹ Integrating restorative justice mechanisms into the legal framework can help ensure that enforcement outcomes are more equitable and aligned with the principles of justice.

Finally, improving financial literacy is a critical component of investor protection. As digital investment platforms continue to evolve, investors must be equipped with the knowledge and skills necessary to assess risks and make informed decisions.⁸⁰ Large-scale financial education programs, supported by both the government and private sector, can significantly reduce the vulnerability of investors to fraudulent schemes. This approach not only complements legal and institutional reforms but also strengthens the overall resilience of the financial system.

4. Conclusion

This study demonstrates that investor protection in Indonesia, particularly in cases of default and illegal investment, remains constrained by significant gaps between regulatory frameworks and their practical implementation. Although Indonesia has developed a relatively comprehensive legal system, the effectiveness of investor protection is weakened by inconsistencies in legal substance, fragmented institutional structures, and low levels of legal and financial literacy. The persistence of illegal investment schemes, digital fraud, and difficulties in asset recovery reflects a system that is still predominantly punitive rather than restorative in nature. From a theoretical perspective, these findings reinforce Lawrence M. Friedman's legal system theory, highlighting that the misalignment between legal substance, structure, and culture leads to "symbolic law" that lacks real effectiveness. Practically, the study reveals that weak coordination among regulatory bodies, limited enforcement capacity, and inadequate adaptation to digital financial developments undermine the ability of the legal system to provide timely and effective protection for investors. This condition not only reduces investor confidence but also poses risks to broader financial stability and sustainable economic growth.

To address these challenges, regulatory reform should harmonize overlapping legal frameworks and introduce more detailed provisions for digital and cross-border investment activities, including peer-to-peer lending, equity crowdfunding, and green bonds. Institutional capacity must be strengthened through integrated digital monitoring systems and specialized training for judges and investigators in handling fintech-related cases. Restorative justice mechanisms also need to be

⁷⁹ Arindrajaya, and Koos, "Legal Protection Against Cryptocurrency," 117.

⁸⁰ La Porta, "Investor protection and corporate," 21.

prioritized, particularly by establishing a clear legal basis for Non-Conviction Based (NCB) confiscation and disgorgement so that victims can recover losses rather than seeing assets absorbed by the state. In addition, sector-specific safeguards such as binding Sharia compliance audits for crowdfunding platforms and mandatory third-party verification for green bonds are necessary to prevent misuse and greenwashing. Finally, continuous financial literacy programs and public awareness campaigns should be expanded to help investors detect fraudulent schemes early and make informed decisions.

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