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JURIDICAL REVIEW ON THE CRIME OF FRAUD IN THE IMPLEMENTATION OF THE PYRAMID SCHEME SYSTEM OF BUSINESS ACTORS

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ABSTRACT

The crime of fraud with the pyramid scheme system in Indonesia has recently become rampant. The more recent the development of information technology, the more up-to-date the forms and modes of perpetrators of crimes will be. The formulation of the problem in this thesis is: how is the case of the decision of the Supreme Court of the Republic of Indonesia Number 106 K/Pid/2018, the reasons for the consideration of the Supreme Court and the analysis of the decision of the Supreme Court. One of the legal products in the form of legislation that regulates economic problems is Law Number 7 of 2014 concerning Trade. The interesting thing in this law is contained in Article 9 of Law Number 7 of 2014 which reads "Business actors are prohibited from implementing a pyramid scheme system in distributing goods". Pyramid scheme is a term or name of a business activity that is not the result of the sale of goods but this activity takes advantage of the opportunity for participation of business partners to obtain rewards or income. Pyramid scheme fraud is an illegal business system where the profits obtained by a number of people who are in the top position of the pyramid come from the funds of new members who are in the bottom position of the pyramid. This paper is descriptive analytical with normative juridical research, while the research method used is library research with data collection techniques using secondary data types consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Whereas in the case of the defendant's position it is proven that he has committed a criminal act of fraud against the use of the pyramid scheme system. The reasons for the judge's consideration must pay attention to the juridical, economic, interests and legal certainty aspects. Based on this, the author's analysis is that it is more appropriate if the defendant is subject to Article 105 of Law Number 7 of 2014 concerning Trade with a sentence of 10 years in prison and/or a fine of Rp. 10,000,000,000.00-(ten billion rupiah).

Keywords: Fraud, Pyramid Scheme System, Business Actors

INTRODUCTION.

In connection with the increasingly rapid development of science and technology (IPTEK) currently has a major influence on changes in behavior and law in society. Advances in information technology do not only occur in developed countries, but also in developing countries including Indonesia.

Advances in science and technology create very tight competition in an effort to find work, resulting in an imbalance between the rate of increase in labor and available job opportunities. Efforts to minimize this inequality is to create new jobs.

The use of technology plays an important role in the creation of new jobs and has encouraged rapid business growth, because various information can be presented in a sophisticated and easy-to-obtain manner, and through long-distance relationships by utilizing telecommunications technology it can be used to make business steps. The presence of the internet has had a huge influence on economic development.

Trading system by utilizing internet facilities (interconnection networking), hereinafter referred to as E-Commerce. Apart from being caused by the development of technology and information, E-commerce was born on the demands of the community for fast, easy services and practical. The rapid development of internet technology has caused new crimes in this field to emerge. The more recent the development of information technology, the more up-to-date the forms and modes of perpetrators of crimes will be. In Article 1 paragraph (3) of the Constitution of the Republic of Indonesia

Indonesia in 1945 reads "Indonesia is a State of Law". Law enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality. One of the legal products in the form of statutory regulations that regulate economic activity issues is Law of the Republic of Indonesia Number 7 of 2014 concerning Trade (hereinafter referred to as the Trade Law). What attracts attention in this Trade Law is the provision regarding the prohibition on the use of the Pyramid Scheme System in the Distribution Business. What is meant it with "Pyramid Scheme" is a term of business activity that is not the result of the sale of goods but the activity takes advantage of the participation opportunities of business partners to obtain rewards or income, especially from the participation fees of other people who join later or after the merger of the business partners.

The pyramid scheme according to WFDSA (WORLD FEDERATION OF DIRECT SELLING ASSOCIATION) is defined as follows: "Pyramid Selling Is Fraud. It is a mechanism by which promoters of so-called "investment" or "trading" schemes enriched themselves in a geometric progression through the payment made by recruits to such schemes. Related deceitful schemes have been described in a various international jurisdictions as a chain letters, chain selling, money games, referral selling, and investment lotteries".

This means that a pyramid scheme is a form of fraud carried out by the promoter in an activity referred to as "investment" or "trade" with the aim of enriching oneself. The advantages that has been obtained through the payment of funds by people who have been formed through recruitment that is structured and placed in such a way that form a pyramid. Pyramid schemes in various jurisdictions internationally known as borrowing money, letters chain, money games, and gambling investment.

The perpetrators of criminal acts in the trade sector will be processed through criminal justice in accordance with the stages of the judiciary, namely: investigation, investigation, prosecution and examination before the court, as regulated in the Indonesian Criminal Procedure Law Number 8 1981 concerning the Criminal Procedure Code. Concrete law enforcement is the application of positive law in practice as it should be obeyed. The subsystems that work together in the criminal justice system are the Police, Prosecutors, Courts and Corrections.

That the name of the defendant is Fili Muttaqien, 34 years old, date of birth 15 April 1982, Gender, Male, Nationality, Indonesia, Place of residence Jl. KH Wahid Hasyim Rt. 028/Rw.007, No. 1003, Palembang City, South Sumatra; 2. Royal Mediterania Apartment, 30th Floor, West Jakarta; Religion, Islam, Employment, Entrepreneurs, together with Derrick Adhi Pratama (DPO), at least in a place where the West Jakarta District Court has the authority to hear this case, have committed several actions that must be seen as continuing actions, namely distribution business actors who apply pyramid scheme system in distributing goods as referred to in Article 9 of Law Number 7 of 2014.

Around January 2015 the Defendant together with Derrick Adhi Pratama, Erwin and Febri created an online system called Dream For Freedom or D4F where the Defendant made the D4F business process formulation, while Derrick Adhi Pratama formulated the accounting and IT aspects; The formulation of the D4F business process is that someone who is interested in joining as a member must fill in personal data, pay the ticket money submitted to the member or the up line that invites.

Through witness Sandy Ariesta opened bank accounts using other people's names where witness Sandy Ariesta then ordered witness Satrio Utomo Santoso to collect a photocopy of his ID card, even though the owner of the ID card did not know that his name was used to open a bank account and neither the passbook nor the ATM been handed over to people whose names were used to open accounts.

There are 81 (eighty one) people who have paid the ticket and package money as promised by the Defendant and Derrick Adhi Pratama, but have not received the promised profit or bonus so they have suffered a loss of approximately Rp. 6,380,800,877, (six billion three hundred eighty million eight hundred thousand eight hundred and seventy seven rupiah);

Based on the West Jakarta District Court Decision Number: 360/Pid.B/2017/PN.Jkt.Br the defendant was sentenced to 4 (four) years in prison, based on the DKI High Court Decision Number 259/PID/2017/PT DKI Strengthens the Court's Decision West Jakarta District Number 360/Pid.B/2017/PN.Jkt.Br dated July 17, 2017, for which the appeal was requested, Based on the Decision of the Supreme Court of the Republic of Indonesia Number 106 K/PID/2018 Rejecting the cassation request from Cassation Petitioner I/General Prosecutor at the Prosecutor's Office West Jakarta State and the Petitioner for Cassation II/Defendant Fili Muttaqien.

Based on the foregoing, the Supreme Court Judge's Decision agrees with the District Court's decision which sentenced the defendant Fili Muttaqien to 4 years in prison in accordance with the Decision of the West Jakarta District Court number 360/Pid.B/2017/PN.Jkt.Br which was strengthened by the decision of the DKI High Court number 259/PID/2017/PT DKI.

Based on the data or description above, the authors are interested in researching this problem in the form of a thesis entitled "Juridical Review of the Crime of Fraud in the Enforcement of the Pyramid Scheme System for Business Actors (Study of the Supreme Court of the Republic of Indonesia Number 106 K/Pid/2018)".

LITERATURE REVIEW.

2.1. Case Of The Decision Position Of The Supreme Court Of The Republic Of Indonesia Number 106/K/Pid/2018

Whereas the name of the defendant is Fili Muttaqien, age 34 years old, date of birth 15 April 1982, Gender Male, Nationality of Indonesia, Residence Jl. KH Wahid Hasyim Rt. 028/Rw.007, No. 1003, Palembang city, South Sumatra, Royal Mediterania apartment, 30th floor, West Jakarta, Islam religion, self-employed, the defendant has been indicted by the Public Prosecutor of committing a crime as stated in the indictment No. Reg. PDM-80/Jkt.br/02/2017 case, dated 17 February 2017, with the following description

That he is the Defendant Fili Muttaqien as the founder of the community or Chairman of the Indonesian National Social Economics Association (NESIA) as stated in the Deed of Establishment of the NESIA Association Number 42 dated 20 October 2015 and the Decree of the Ministry of Law and Human Rights Number AHU-0014034.AH.01.07 2015 dated 6 November 2015, the shareholders of PT. Promo Indonesia Mandiri as stated in the Deed Number 06 dated June 3, 2015 and the shareholders of PT. Counter Indonesia Mandiri as stated in Deed Number 37 dated 27 August 2015.

Shareholders of PT. Anugrah Indonesia Mandiri as stated in Deed Number 21 dated 14 December 2015 and shareholders of PT. Buana Indonesia Mandiri according to Deed Number 25 dated 14 December 2015 and holders of Trading Business Permit (SIUP) Number 287/24.1PM/31.75/-1.824.27/e /2016, together with Derrick Adhi Pratama (DPO), from July 2014 to January 2016 or at least other times from 2014 to 2016.

Located at Pullman Central Park Mall Hotel, Podomoro City Jalan Letjen S. Parman Kav. 28, Tanjung Duren Selatan, West Jakarta, at APL Tower Central, Taman Anggrek Mall, Jalan Letjen S. Parman Kav. 21, Tanjung Duren Selatan, West Jakarta, at the office of PT. Dwi Tunggal Putra Cyber Building 9th floor, Jalan Kuningan Barat No. 8, Mampang Prapatan, South Jakarta, at the PT. Master Web Network Cyber 1 Building 10th floor, Jalan Kuningan Barat, No. 8, Mampang Prapatan, South Jakarta, at the Bumi Wiyata Hotel, Jalan Margonda Raya Depok, West Java.

At the Balai Sartika Hotel, Jalan Suryalaya Indah, No. 1-3, Buahbatu, Bandung, West Java, at Mega Glodok Kemayoran Jalan Angkasa Kav. B-6, Kemayoran, Central Jakarta, at Ibis Styles Hotel Jakarta Mangga Dua Square, Jalan Gunung Sahari Raya Pademangan, North Jakarta, at Horizon Hotel Lampung Jalan Kartini No. 88 Tanjung Karang Bandar Lampung, Lampung, at the Indonesia Convention Exhibition ICE BSD City Jalan BSD Grand Boulevard No. 1 Pagedangan Tangerang Banten, at The Grand Hill Hotel Puncak Bogor Jalan Raya Puncak KM. 84, Bogor, West Java.

At Bank Mandiri Podomoro City Jalan Letjen S. Parman No. 28, Tanjung Duren Selatan, West Jakarta, at Bank Danamon Podomoro City Jalan Letjen S. Parman No. 28, Tanjung Duren Selatan, West Jakarta, at Bank BNI Podomoro City Jalan Letjen S. Parman No. 28, Tanjung Duren Selatan, West Jakarta, at Bank BCA Podomoro City Jalan Letjen S. Parman, No. 28, Tanjung Duren Selatan, West Jakarta, at Bank CIMB Niaga Podomoro City Jalan Letjen S. Parman, No. 28, Tanjung Duren Selatan, West Jakarta,

At Bank Mandiri KCP Palembang, Jalan Captain A. Rivai, No. 1008 Palembang, or at least in a place where the West Jakarta District Court is authorized to adjudicate this case, has committed several actions that must be considered as continuing acts, namely distribution business actors who apply a pyramid scheme system in distributing goods as referred to in Article 9, which are carried out Defendant in the following ways:

1. Around October 2015 the Defendant together with Derrick Adhi Pratama, Erwin and Febri created an online system called Dream For Freedom or D4F where the Defendant formulates the D4F business process, while Derrick Adhi Pratama formulates the accounting and IT aspects;

2. The formulation of the D4F business process is that someone who is interested in joining as a member must fill in personal data, pay the ticket money submitted to the member or up line who invites or socializes D4F to be subsequently registered or registered in the D4F system and gets a membership account in the form of a username and password.;

3. In addition, prospective members also have to buy a package. The packages offered consist of:

1. Silver package worth Rp. 1.000.000,- (one million rupiah);
2. Gold package worth Rp.5.000.000,- (five million rupiah);
3. Platinum package worth Rp. 10,000,000, - (ten million rupiah);
4. Titanium package worth Rp. 30,000,000, - (thirty million rupiah);

4. The method of payment for the package is done by transferring gradually to account numbers that can be seen by prospective members or prospective members on their personal accounts on the D4F site, namely first paying 20% of the package value or called SDP (Send Down Payment).) while the remaining 80% of the package value is also repaid in the same way as settlement SDP (Send Down Payment) payments; After the entire package payment has been made, the member or members will receive a profit every fifteen days or one round of 1% per day of the package value purchased and after seven months or fourteen rounds, an order will appear to buy a package with the same value or re-register. Demands of the Public Prosecutor

2.2. The Public Prosecutor has indicted the defendant with alternative charges, namely:

First: Violating Article 105 of Law Number 7 of 2014 concerning Trade in Jo. Article 55 paragraph (1) 1st Jo. Article 64 paragraph (1) of the Criminal Code, Or Second : Violating Article 378 of the Criminal Code Jo. Article 55 paragraph (1) 1st Jo. Article 64 paragraph (1) of the Criminal Code. Considering, Whereas the defendant has been charged with an alternative charge where at the end of the Requisite (Criminal Prosecution) is of the opinion that the first indictment of the Public Prosecutor has been proven guilty of committing the crime of "a distribution business actor who applies a pyramid scheme system in distributing goods" and so that the defendant is charged with as stated at the end of the Public Prosecutor's claim.

Considering that in the second indictment of the Public Prosecutor, the defendant has violated Article 378 of the Criminal Code jo. Article 55 paragraph (1) 1st jo. Article 64 paragraph (1) of the Criminal Code, in order to be blamed, the following elements must be fulfilled:

1. Whoever.
2. With the intent to benefit oneself or others against the law.

3. By using a false name or false dignity, by deceit or by a series of false words to move others to hand over something to him, or to give debts or write off debts.
4. Those who do, order to do and those who participate in doing the deed.
5. As an action continues.

The first element: whoever Considering, Whoever is a person as a legal subject who supports rights and obligations with a sound mind and can be held legally responsible for what he has done.

The second element: With the intent to benefit oneself or others against the law. Considering, with the intention is the will of the perpetrator of the crime that is manifested in his actions. Meanwhile, against the law is an act that is desired by the perpetrator of a crime without any right and it is realized that the act is contrary to law or propriety. That from the facts revealed at the trial, the defendant's intent can be measured based on the evidence presented to the trial, namely the testimony of witnesses, the defendant's testimony, and letters.

The third element: Using a false name or false dignity, with deceit or with a series of lies to move others to hand over something to him, or to give debts or write off debts. Considering, whereas as considered in the second element, the Defendant ordered witness Sandy Ariesta, witness Satrio Utomo Santoso, witness Junaidi alias Ijun to obtain accounts where the collection of funds deposited by prospective D4F members uses a photocopy of another person's ID card, even though the ID card owner does not know that his name was used to open a bank account.

The fourth element: Those who do, order to do and participate in doing the deed. Considering, there are two or more perpetrators in the form of ordering them to do something (doen plegen middelijk dader), it is required that the person who is ordered (onmiddelijk dader) is only a tool and cannot be held criminally accountable, while participating in the act (medeplegen) requires awareness to cooperate . Fifth element: As a continuing action.

Considering, that since January 8, 2015 the defendant has been conducting road shows to various cities where in the road show the defendant held a meeting or a large event where the defendant conveyed the vision and mission of the association and an economic sharing system aimed at conveying the promises of mutual prosperity that were stated in the agreement. call it Dream For Freedom. That the act continued until the middle of 2016.

2.3. Matters Underlying the Enforcement of the Pyramid Scheme System Based on Legislation

Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi or known as Carlo Ponzi is an Italian immigrant who was born on March 3, 1882. He is known as one of the greatest fraudsters in history. United States of America.²⁴He has been jailed twice for being involved in fraud and forgery cases. After being released from prison he then moved to Boston in 1920. Then he found a way to get a lot of money by selling PostalReply Coupons (PRC).

PRC was originally issued by the Universal Postal Convention which is used in international correspondence as a substitute for postage for the delivery of letters or goods. The idea of ponzi is to buy PRC from Italy, then cash it in the United States. This idea actually failed from the start because the amount of investment received by Ponzi did not match the circulating PRC and the PRC itself could not be bought in large quantities.

The United States government then investigated the Ponzi business and the results stated that Ponzi had gone bankrupt. Its assets are only about US\$ 1.6 million, far below the amount owed to investors. Ponzi was eventually sentenced to 5 years in prison by a federal court on charges of mail fraud.²⁷

2.4. The Development of the Pyramid Scheme in Indonesia

The pyramid scheme business practice in Indonesia was first implemented by Jusup Handijo Ongkowidjaja in the Adil Makmur Family Foundation (YKAM) which was established in 1987 in Jakarta. Jusup Handojo introduced YKAM as a "mutual savings-borrowing" business that offers a credit package of Rp. 5,000,000 without any effort.²⁸

The condition is that participants only need to pay a registration fee of Rp. 50,000, and depositing Rp. 30,000 in savings seven times in one month. The loan can be repaid in installments over 15 years and

if it is paid off the borrower will be given a bonus of Rp. 9,600,000. This offer has succeeded in attracting many people, reaching more than 44,000 people with 70,000 registered packages spread across Jakarta and 27 other cities.

YKAM only lasted until February 1988 because Jusup Handoyo was having difficulty disbursing credit packages that were past due. Then he turned himself in to the police and was tried at the Central Jakarta District Court and sentenced to 15 years in prison.

METHOD OF RESEARCH.

This paper research is analytical descriptive, namely research that is expository and aims to obtain an overview (description) complete about the existence of certain social phenomena or certain legal events that occur in society to obtain factual legal truth. The type of research in this thesis is normative juridical, namely legal research which is principally carried out on the rule of law in legislation, jurisprudence and doctrine. qualitatively.²¹ Normative Legal Research is research that examines document studies, using various secondary data such as legislation, court decisions, legal theory, and legal expert opinions.

This study uses secondary data consisting of:

a. Primary Legal Materials, namely legal materials consisting of: the 1945 Constitution of the Republic of Indonesia,

Law Number 1 of 1946 concerning the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, Law of the Republic of Indonesia Number 7 of 2014 concerning Trade, Law Number 48 of 2009 concerning Judicial Power.

b. Secondary Legal Materials, consisting of: literature related books, legal journals, and materials from the internet.

c. Tertiary Legal Materials, consisting of: Big Indonesian Dictionary.

This study only uses library research (library research) or known as document study which includes legal materials primary, secondary and tertiary

The data analysis that the author uses in this thesis is a qualitative analysis, namely by processing the data, organizing the data and sorting it into manageable units.

ANALYSED AND RESULT.

4.1. Formal and Material Criminal Responsibility for Criminal Actors

Criminal responsibility basically leads to an understanding of the punishment of criminals. A crime is an act that can be subject to criminal penalties. Which act refers to the perpetrator or the consequences of his actions. In criminal law, the measure that determines a person can be responsible for his actions is the person's ability to be responsible, the ability to be responsible is based on a situation or condition the ability of the "soul" of the person.⁶⁵

In criminal law, the doctrine of mens rea is known which comes from the principle in English criminal law, actus reus, which reads "actus non facit reum, nisi mens sit rea". This means that "any act cannot make a person guilty unless it is done with evil intentions". From these sentences, it is important to note.

1. The existence of outward actions as the embodiment of the will (actus reus);

2. The condition of the soul, the bad faith that underlies the act (mens rea). The ability to be criminally responsible must have the following elements:

as follows :

1. The ability to think (psychisch) maker (dader) which allows him to control his mind, then allows him to determine his actions.

2. Therefore, he can determine the consequences of his actions.

3. So that he can determine his will according to his opinion.

The problem of the ability to be responsible is contained in Article 44 paragraph 1 of the Criminal Code which reads "whoever commits an act that cannot be accounted for by him because his soul is disabled in growth or is disturbed because of a disability, is not punished". Criminal liability is applied to punishment which aims to prevent criminal acts from being committed by enforcing legal norms for the sake of protecting the community, resolving conflicts that arise, restoring balance, bringing a sense of peace, socializing the convict with conduct coaching so that they become good people and free the guilt of the convict.

Based on the description above, it can be stated that criminal liability implies that anyone who commits a crime or violates the law, as formulated in the law, then that person must be held accountable for his actions. The thing that underlies criminal liability is that humans are creatures of God Almighty with reason and conscience.

With reason and conscience, humans have the freedom to decide their own behavior and actions and have the ability to be responsible for all the actions they take. Formal criminal law regulates the implementation of material criminal law. In Indonesia, formal criminal law arrangements have been ratified in Law Number 8 of 1981 concerning Formal Criminal Law.

If a criminal act occurs, the criminal justice mechanism in accordance with its stages, starting from investigation, investigation, prosecution, examination before the court must strive to provide legal certainty in the implementation of Law Number 7 of 2014 concerning Trade and the applicable criminal procedural law.

as regulated in Law Number 8 of 1981 concerning Criminal Procedure Code.

Article 1 point 2 of the Criminal Procedure Code reads "investigation is a series of actions of investigators in terms of and according to the method regulated by this law to seek and collect evidence which with that evidence makes clear about the crime that occurred and in order to find the suspect.

Article 1 point 3 of the Criminal Procedure Code states that "investigators are officers of the state police of the republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations".

In this case, the defendant is named Fili Muttaqien, place of birth in Palembang, age 34 years, date of birth 15 April 1982, male gender, Indonesian nationality, where he lives on Jalan KH Wahid Hasyim RT. 028/RW. 007, number 1003, Palembang city, south sumatra, royal mediterranean apartment, 30th floor, west jakarta, islamic religion, self-employed.

The defendant has been detained with the following types of detention based on a warrant/detention:

1. Investigator, dated October 18, 2016, number Sp.Han/89/X/2016/ Dittipideksus, since October 19, 2016 until November 7, 2016. Investigator extension by the public prosecutor dated 4 november 2016, number 615/E2/EPP.1/11/2016, from 08 november 2016 to 17 december 2016. Investigators extended by the head of the district court on 7 december 2016, number 1793/Pen.Pid/2016/PN.Jkt Brt, from 18 December 2016 to 16 January 2017 and 17 January to 15 February 2017.
2. Public Prosecutor, dated February 14, 2017 number Print-1204/0.1.12/EP.1/02/2017, from February 14, 2017 to March 5, 2017.
3. Judge, 27 February 2017 number 360/Pen.Pid/B/2017/PN.Jkt.Brt, from 27 February 2017 to 28 March 2017. Judge for extension by the head of the district court on 27 March 2017 from 29 March 2017 to 27 May 2017. The judge of extension by the chairman of the high court on 24 may 2017, number 965/Pen.Pid/2017/PT.DKI from 28 may 2017 to 26 June 2017. The second extension judge by the chairman of the high court on 15 June 2017, number 1099 /Pen.Pid/2017/PT.DKI from 27 June 2017 to 26 July 2017.
4. It has been sued by the public prosecutor who was tried on June 12, 2017.

4.2. Imposition of Penalty Sanctions for Criminal Acts

Law enforcement according to Sartjipto Raharjo is a process to realize the wishes of the law, namely the thoughts of the law-making bodies that are formulated and stipulated in legal regulations which then become reality.

In essence, there are several stages of policy enforcement, namely:69

1. The formulation stage, namely the law enforcement stage in abstracto by the legislature. This stage can also be referred to as the legislative stage.
2. The application stage, namely the stage of applying criminal law by law enforcement officers from the police to the courts. This stage is called the judicial policy stage.
3. The execution stage, namely the stage of concrete implementation of criminal law by the criminal implementing apparatus. This stage is called the executive or administrative policy stage.

Law enforcement, especially in the field of criminal law, is the process of implementing the law to determine what is legal, what is against the law, determine which actions can be punished according to material criminal provisions, instructions on actions and efforts that must be made for the smooth implementation of the law. Teguh Prasetyo, Criminalization in Criminal Law, Nusamedia, Jakarta, 2010, p.111 before and after the unlawful act occurs in accordance with the formal criminal provisions.70

Based on Article 105 of Law Number 7 of 2014 concerning Trade which reads "Business actors who apply a pyramid scheme system in distributing goods as referred to in Article 9 of Law Number 7 of 2014 concerning Trade shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 10,000,000,000.00.- (Ten billion rupiah)

4.3. Analysis of Supreme Court Decision Number RI 106 K/Pid2018

Against the Supreme Court Decision Number 106 K/Pid2018 which originally came from the DKI High Court number 259/PID/2017/PT DKI which upheld the decision of the West Jakarta District Court number 360/Pid.B/2017/PN.Jkt.Br.

Whereas the Decision of the West Jakarta District Court Number: 360/Pid.B/2017/PN.Jkt.Br the defendant was sentenced to imprisonment for 4 (four) years. After that, it was strengthened by the Decision of the DKI High Court Number 259/PID/2017/PT DKI. Then the Decision of the Supreme Court of the Republic of Indonesia Number 106 K/PID/2018 Rejects the Cassation Application from the Cassation Petitioner I/the Public Prosecutor at the West Jakarta District Attorney and the Petitioner for Cassation II/the Defendant Fili Muttaqien.

Based on the reasons for the rejection of the appeal by the Supreme Court of the Republic of Indonesia which stated that the judex facti/High Court that upheld the decision of the District Court was not wrong in applying the law in accordance with the applicable criminal procedural law and did not exceed its authority. Thus, in accordance with the decision of the Supreme Court of the Republic of Indonesia, the sentencing of the defendant Fili Muttaqien returned to the judex facti/High Court which then upheld the decision of the West Jakarta District Court Number 360/Pid.B/2017/PN.Jkt.Br with imprisonment for 4 (four) years.) year.

The author does not agree with the article handed down by the West Jakarta District Court Judge, considering that the defendant's actions have fulfilled the elements of acts prohibited in Article 9 of Law Number 7 of 2014 namely distribution business actors are prohibited from implementing a pyramid scheme system in distributing goods, namely business actors, distribution, and pyramid schemes. The author also does not agree with the Public Prosecutor's claim which demands the defendant to be sentenced to 8 (eight) years in prison because in accordance with Article 105 of Law Number 7 of 2014 the Defendant should have been sentenced to 10 years in prison.

That in the evidence at the trial there were no goods that were traded in the Dream For Freedom or D4F system. The profit that can be obtained from each new member registration fee is manipulated into a ticket purchase fee. This is in accordance with the explanation of Article 9 of Law Number 7 of 2014 concerning Trade which explains that a pyramid scheme is a term for a business activity that is not the result of the sale of goods but that activity takes advantage of the participation opportunities of business partners to obtain rewards or income, especially from the participation fee of people. others who join later or after the merger of the business partners.

The author agrees that the Panel of Judges sentenced the defendant Fili Muttaqien based on Article 105 of Law Number 7 of 2014 concerning Trade which reads "Business actors who apply a pyramid scheme system in distributing goods as referred to in Article 9 shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 10,000,000,000.00.- (Ten billion rupiah). This is in accordance with the case of the position that the author has described in this papers.

CONCLUSION.

1. Based on the case, the defendant's position was proven to have committed a criminal act of fraud against the use of the pyramid scheme system in Article 9 and Article 105 of Law Number 7 of 2014 concerning Trade in accordance with the demands of the Public Prosecutor.
2. The reasons for the judge's consideration in this case are as follows:

- a. From a juridical aspect, as the first and main aspect, it is based on the applicable law. Where the judge as the implementer of the law must understand the law, assess whether the law imposed is fair, there are benefits and legal certainty.
 - b. In terms of economic and business aspects, the economic subsystem is the cultivation of natural resources for the benefit of mankind.
 - c. In terms of aspects of interest and legal certainty, law enforcement carried out by law enforcement officers ranging from pre-emptive, preventive, repressive as one aspect of interest and legal certainty.
3. Based on the foregoing, the author's analysis is that it is more appropriate if the defendant is subject to Article 105 of Law Number 7 2014 concerning Trade with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 10,000,000,000.00.- (Ten billion rupiahs) based on facts and evidence, namely in the form of transfers of funds for the registration fee which was manipulated as the cost of buying tickets as well as witness testimony in the trial that there was no buying and selling of goods in illegal business Dream For Freedom (D4F).

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10
