(2023) Isu Khas/ Special Issue JUUM 19 - 28
https://doi.org./10.17576/juum-2023-SI-02

Enforcement Against Ponzi Scheme, the Fraudulent Method to Generate Easy Money in Malaysia

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ABSTRACT

Ponzi schemes are a type of investment fraud that offers investors great rates of return with no risk. Although various measures have been taken by law enforcement agencies as well as financial regulators to prevent this kind of problem, many people are still deceived by this kind of scheme. In Malaysia, there is no specific law mentioning Ponzi scheme. However, relevant laws such as the Penal Code, Financial Services Act 2013 and Direct Sales and Anti–Pyramid Scheme Act 1993 are some applicable laws that can be used to combat the Ponzi scheme. Hence, this article aims to examine the enforcement measures in Malaysia concerning illicit investment schemes and recommend various methods used by the United States and Australia for comparative purposes. Preventive measures and existing regulations used by the United States and Australia are also highlighted to compare the effectiveness of current enforcement done by the authorities in Malaysia. Findings show that despite Malaysia having a few laws in place to tackle this fraudulent scam, they are far from perfect. Therefore, more comprehensive regulations and strategies regarding this scheme are needed since it would assist the relevant authorities in preventing similar fraud. In conclusion, the Malaysian government needs to adopt proper regulation, education, and enforcement to reduce or prevent the number of Ponzi scheme cases in Malaysia. If left unaddressed, the situation will worsen, negatively affecting investors, creditors, and the public.

Keywords: Ponzi scheme; illegal investment scheme; fraud; law enforcement; preventive measures

INTRODUCTION

A Ponzi scheme is a type of fraud that involves luring investors and paying profits to earlier investors with money from more recent investors at high rates of return and no risk. The victim is led to believe that legitimate economic activities generate profits, and they are unaware that the funds come from other investors. This scheme usually offers unrealistic high short-term returns to attract new participants or investors. Similar scams are known in Malaysia as "get-rich-quick" schemes, which are among the most common frauds. This fraudulent investment scheme and many others have common characteristics, particularly in terms of the scheme's modus operandi, the roles of both fraudsters and victims and the causes inducing involvement in the scheme. In *Perry, Tamar et al. v. Esculier, Jacques Henri Georges et al.*,[1] Steven Chong JCA explained that the substance of a Ponzi scheme is the circulation of funds among the scheme's investors. Similar to all Ponzi schemes, some investors incur losses while others realise profits based on when they entered and exited the investment. Such a scheme is only sustainable so long as it can continue attracting sufficient numbers of new investors, and it is only a matter of time before it fails.

Ponzi schemes claim massive profits, but they require an ever-increasing quantity of financial flow to stay afloat. The system will eventually fail because the cash obtained by the organisers generates nearly no, or little, genuine income. However, due to suspected Ponzi schemes and their organisers selling unregistered securities, local authorities frequently interrupted the scam long before it failed. The likelihood of the scam attracting the attention of the authorities is increasing as more investors become involved. Furthermore, with the advancement of financial technology, the modus operandi becomes more complex and sophisticated.[2]

In the late 1980s, a scheme which is similar to Ponzi known as "Skim Pak Man Telo" was exposed in Malaysia. Pak Man Telo or Osman Hamzah, a former reporter, was in charge of the scheme. Nearly 50,000 investors are said to have lost RM 90.9 million as a result of this fraud.[3] He started the scheme in Taiping Perak then spread to other states. Police once froze Pak Man Telo's property worth RM70 million, and he was fined RM 250,000 when he first appeared in court. He was sentenced to one year in prison and

fined RM 500,000 the second time he was brought to court. He failed to pay the fine and had to serve a two-year prison sentence.

The Swisscash Mutual Fund scheme, with an estimated RM190 million loss in 2006, was another huge fraud in Malaysia.[4] JJPTR, MBI, VenusFX Forex, Richway Global Venture and many more are some recent schemes reported in Malaysia.[5] In 2017, the Commercial Crime Investigation Department of Polis Diraja Malaysia (PDRM) reported 408 cases with RM 70.1 million in damages in 2015, which increased to 1,151 cases with RM210.3 million in losses in 2016. This demonstrates that Ponzi schemes have been on the rise in recent years, and if left uncontrolled, the problem would worsen, causing harm to investors, creditors, and the general public.

The scheme was termed after Charles Ponzi, who became famous after immigrating from Italy to the United States in 1903 and employing this method. Ponzi was not the first to devise a scheme like this, but his activities raised such vast sums of money that he became well-known across the United States. Ponzi began a scheme in which investors could receive a 50% return in 45 days or double by purchasing discounted postal replies to coupons in foreign states and cashing them at face value in the United States.[6] Ponzi, as previously stated, did not use the money for legitimate investments; instead, he used it to pay earlier investors and kept some of the money for his own beneficial and interest. The cycle lasted for a while, but it eventually collapsed when new investors stopped contributing to the operation. Due to Charles Ponzi, the term "Ponzi Scheme" has become a household phrase. Before Ponzi, defrauding investors was relatively uncommon, at least to the general public.[7]

Ponzi schemes are usually distinguished by the promise of better investment returns than those offered by financial institutions. To stay afloat, the scheme requires a steady flow of continuous investment, which, if not provided, will result in the scheme's demise. This occurs when a substantial number of existing investors withdraw their funds, making it difficult to attract new investors. Many of the businesses that offer dubious schemes do so without a license. Cryptocurrency and forex trading, such as gold investment schemes, Bitcoin, commodities investment schemes, property investment schemes and multi-level marketing, are all common ways for these companies to hide their fraudulent schemes. Besides that, the majority of Ponzi fraudsters work as a syndicate by establishing a genuine company and registering it with the Registrar of Companies. When large sums of money are involved, the registration of the company must be effected in order to avoid being suspected by the authorities. In some circumstances, fraudsters have been discovered acting as company directors or appointing dummy directors.

METHODOLOGY

This article aims to discuss the enforcement actions taken by the regulatory authorities concerning illegal investment schemes, namely Ponzi schemes in Malaysia and suggest various strategies adopted by the United States and Australia for comparative purposes. As a qualitative researcher, one must use a naturalistic and interpretive approach to the world.[8] This method also requires the authors to observe occurrences in their natural contexts while making sense of and interpreting the phenomena in terms of the meaning the society brings to them. As such, this article employs a qualitative research method which studies various legal documents such as legislation, relevant policy and practices evidence, including case studies to know the existing regulations pertaining to Ponzi schemes. Data can be collected from primary and secondary data.[9] This article also relies on legislations as its primary sources. Hence, this study examines the extent and terms of key legislation governing the Ponzi scheme, as well as existing Ponzi scheme relevant rules comparable to the United States and Australian laws.

THE POSITION OF LAW GOVERNING PONZI SCHEME IN MALAYSIA

Currently, no rules or regulations in Malaysia deal specifically with Ponzi schemes, making it hard to categorize a scheme as a Ponzi fraud legally. Besides that, existing Ponzi schemes also could be violating a number of laws and are being investigated by three key authorities: the Securities Commission, Bank Negara Malaysia, as well as PDRM. These authorities serve as regulators, watchdogs, and law enforcers. Each body plays an important role in informing the public about the dangers of Ponzi schemes. Bank Negara Malaysia (BNM), for example, regularly posts investment fraud and scam alerts on its website and phone apps. Despite public warnings and various educational programmes to prevent fraud, the number of Ponzi schemes continues to arise. In addition, the number

of leakages of funds caused by Ponzi schemes has increased over time, putting investor confidence in the Malaysian capital market in jeopardy. As a result, the question of whether the general public is adequately informed about the dangers of such schemes and how the general public may assist in resolving the crisis emerges.

Bank Negara Malaysia is Malaysia's primary regulator in the fight against Ponzi schemes (BNM). The BNM is focused on stopping Ponzi schemes and various other criminal operations such as illegal forex trading, unlawful deposit-taking, illegal insurance, illegal money changing and illegal remittance. As a result, any schemes that involve any of these activities will be investigated by BNM, as they fall under the Bank's jurisdiction. The Financial Services Act 2013 and the Capital Market and Services Act 2007, respectively, are used by authorities like BNM and the Securities Commission to regulate matters pertaining to investment. These laws resulted in a number of convictions for Ponzi fraudsters.

In the case of *Public Prosecutor v. Raja Noor Asma bt Raja Harun*,[10] the judges of the Court of Appeal unanimously allowed the prosecution's appeal to forfeit the money in October 2013, proving that investors' claims must be *bona fide* claims, despite the Sessions Court and High Court sympathizing with the investors who had lost money. Raja Noor Asma was charged with defrauding investors and trading futures contracts without a license. She pleaded guilty, was found guilty, and was sentenced to five years in jail for the four crimes, plus a RM 5 million fine in lieu of six months in prison. She was also charged with violations under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA). She was sentenced to two years in jail for each of the 50 offences. Raja Noor Asma was sentenced to seven years in prison in total. The Securities Commission of Malaysia persuaded the court to impose a retributive and deterrent sentence on public policy grounds, such as to protect the public's interest, given a large amount of money at stake.[11] Nevertheless, to reclaim their money from the investment, the court concluded that the victims had failed to meet the burden of proof outlined in Section 61 (4) of the AMLATFA.

Another law that governs Ponzi schemes is the Malaysia Penal Code. This is because fraudulent investment schemes have the element of cheating, as stated by Section 420 of the Code:

> "Whoever cheats and thereby dishonestly induces the person deceived, whether or not the deception practiced was the sole or main inducement, to deliver any property to any person, or to make, alter, or destroy the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted in a valuable security, shall be punished with imprisonment for a term which shall not be less than one year and not more than ten years and with shipping, and shall also be liable to fine."

This definitely includes other Ponzi-like schemes such as 'get-rich-quick-scheme', pyramid-based direct selling as well as other similar schemes.

The Direct Sales and Anti-Pyramid Plan Act of 1993 is another legislation that applies to this type of scheme. This Act was enacted to regulate people who run anti-pyramid schemes or arrangements, chain distribution schemes or arrangements, or any other similar scheme or arrangement, as well as other concerns. The key provisions are included in Part VA of the Act, which outlines the charges and penalties for anybody participating in a pyramid scheme. A "pyramid scheme" is defined in Section 27 A as "any scheme, arrangement, plan, operation or chain process having all or any of the features specified in the Schedule."[12] In furtherance to that, section 27 B (1) of the Act states that it is illegal to promote or operate such scheme. Furthermore, Section 27 B (2) (a) specifies that if a corporation is found guilty of the act, it would be fined a minimum of RM 1 million and a maximum of RM 10 million. A penalty of up to RM 50 million can be levied for a second offence. A fine of not less than RM 500,000 and not more than RM 5 million, or imprisonment for not more than five years, or both, may be imposed on an individual offender. As stated in Section 27B(2)(b) of the Act, the perpetrator may be subject to a fine of not less than RM 1 million and not more than RM 10 million or imprisonment for a term of not more than ten years, or both, for the second or subsequent offence. It is important to note that, under Section 27 B (3) of the Act, the directors of the schemes are also subject to this penalty.

Next, the Financial Services Act 2013.[13] This Act gives the BNM additional authority to address potential financial sector vulnerabilities to financial stability, improve consumer protection, and foster competition in the larger financial services market, and keep up with global financial regulation developments. Section 137 of the act forbids the operation of any criminal financial schemes, where no one shall receive deposits unless he or she has

been given a licence as provided under section 10, regardless of whether the transaction is labelled as a loan, an advance, an investment, savings, a sale or a sale and repurchase, or by any other name. Anyone found guilty of the offence is subject to a sentence of imprisonment of not more than ten years or a fine of not more than RM 50 million, or both, according to the provision. Despite the Act's harsh penalties, this scheme keeps growing, and more individuals fall for its trickery. In this sense, it is vital to determine the Act's loopholes.

Furthermore, as provided by the Capital Market and Services Act (CMSA) 2007,[14] the Securities Commission (SC), as the regulator of capital, is empowered to take action against any illegal schemes. The SC is permitted to pursue civil and criminal procedures for violating the securities law under Section 210 of the CMSA, in addition to administrative actions. Investment frauds such as the Swiss Cash schemes, crude palm oil commodities futures, and Geneva gold future schemes are Ponzi schemes brought within the SC's jurisdiction. To ensure investor protection in the stock market, procedures were taken ranging from criminal prosecution and civil lawsuits on behalf of investors to pre-emptive actions to permit compensation.

An example of a Swiss Cash investment scam settlement is when on November 6, 2009, the SC entered into a consent judgment with Albert Lee and Amir Hassan, in which they agreed to pay the SC a total of more than RM30 million, which would be used to repay investors.[15] Kelvin Choo Mun Hoe and numerous other Swiss Cash-related entities were also named as defendants in the civil litigation filed by the SC. The SC acted in the investors' best interests by compensating them under the reparation system.

In the cases stated above, the criminals could fool investors in the scenarios mentioned above by delivering purposeful fake promises and misleading information. This is because access to confidential material was limited to only a small minority of people who could be trusted. Due to differing levels of trust and affinity depending on socioeconomic status, race or ethnicity, religion, or unique characteristics such as disability or seniority, most misled investors placed a high amount of faith and confidence in the promoters. The true nature of the fraudulent investments was either not exposed or given to the public, or it was only available to a limited group of people who misled the rest of the investors.

Even though various regulations are in place to regulate Ponzi schemes in Malaysia, it might be argued that these rules are insufficient to deal with the problem efficiently. As a result, the research recommends looking at the procedures that are used in other jurisdictions, such as the United States and Australian laws, to investigate the laws that govern Ponzi schemes.

THE POSITION OF LAW GOVERNING THE PONZI SCHEME IN THE UNITED STATES

As this scheme was originally started in the United States, the law governing Ponzi Scheme in the States will be discussed in this article for comparison purposes. This is due to Ponzi schemes, or chain referral schemes that have mushroomed across the United States. It is well estimated that almost one–half billion dollars of money were lost by the victims of this scheme in the United States alone. As such, the regulators need to do a better job in preventing this from happening.

In the United States, there is no specific federal law for the prosecution of a Ponzi scheme. However, the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC) are the two main enforcement bodies in the United States that deal with Ponzi schemes. FTC and SEC investigators can investigate scams beyond state lines according to federal jurisdiction authorities. For example, a company could be incorporated in Delaware, sell the majority of its goods in Los Angeles, yet keep its profits in Missouri. Prosecutors must consider each location and link-local activity to the wider plot.

As the SEC is one of the major regulators, the SEC of the United States has a three-part mission: to protect investors, ensure fairness, order efficient markets, and stimulate capital formation. The Congress passed the Securities Act and the Securities Exchange Act in 1933 and 1934, respectively. As a result, one of the main goals of these rules is to ensure that people who sell and trade securities, such as brokers, dealers, and exchanges, treat their customers fairly and honestly. This shows that the Ponzi schemes contradict the very foundations of these laws and, as a result, should be easily regulated and prosecuted. However, the fraudsters of this scheme frequently last until they collapse on themselves after no more investors are willing to take risks.

The SEC receives roughly 500 complaints yearly from unscrupulous investment marketers, with Ponzi schemes responsible for 25%.[16] However, state authorities, such as attorneys general and state-level regulatory agencies, file many Ponzi scheme accusations at the state level. Every year, the FTC closes around ten pyramid schemes and takes action against dozens of fraudulent investment opportunities in one way or another. While the SEC has the authority to prosecute both civil and criminal complaints, the FTC's powers are confined to civil remedies, such as injunctions and financial judgments for investor damages. Besides that, regardless of whether the investment is made in US dollars or a virtual currency, every investment in securities in the US is subject to the SEC's jurisdiction. Individuals selling investments are usually required to obtain federal or state licenses. Fraudsters may be tempted to utilize virtual currencies to commit fraud because virtual currencies offer better privacy and less regulatory supervision than transactions in traditional currencies.[17]

An example of a case regarding the Bitcoin Ponzi scheme is the case of the *Securities and Exchange Commission v. Shavers et al, No. 4*.[18] In this case, the SEC arrested a man from Texas and his company for defrauding the investors in a Bitcoin Ponzi scheme. Bitcoin is virtual money that can be exchanged for traditional currencies, such as the US dollar, over the internet or used to purchase goods and services. The Bitcoin Savings and Trust (BTCST) was originally owned by Trendon T. Shavers, who was accused of using the aliases "Pirate" and "pirateat40" to promote and sell Bitcoin-denominated products over the Internet, according to the SEC. Shavers raised almost 700,000 Bitcoin in BTCST investments, which amounted to more than $4.5 million at the time the investments were offered and sold, based on the average price of Bitcoin in 2011 and 2012. On the market, 700,000 Bitcoins are currently worth more than $60 million.

Furthermore, according to the SEC, Shavers guaranteed investors up to 7% weekly returns based on BTCST's Bitcoin market. This includes selling to those who want to purchase Bitcoin in large quantities or a hurry "under the radar." BTCST was, in fact, a fraud and a Ponzi scheme, as Shavers had been using the Bitcoin from recent investors to pay purported interest to the earlier investors. Shavers transferred investor Bitcoin to his account on a Bitcoin currency exchange for day trading and converted investor Bitcoin to US dollars to cover his personal expenses. The SEC then charged Shavers and BTCST for violating the securities laws' anti-fraud and registration provisions, particularly Sections 5 (a), 5 (c), and 17 (a), Section 10 (b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10 b-5. The SEC also had sought a court order freezing Shavers' and BTCST's assets, as well as additional measures such as permanent injunctions and monetary penalties. This case shows that Ponzi scheme has developed from time to time as it does not necessarily use actual money but instead a virtual money such as Bitcoin. However, this type of scheme still shares the same characteristics, such as high investment return with small or no risk, unregistered investment, unlicensed operators or companies, and overly consistent returns. In this case, Shavers has guaranteed high weekly returns to the investors and used the new investors' virtual money to pay the earlier investors. He then converted the virtual money to US dollars for his use and expenses. This case shows that the Ponzi scheme has grown rapidly as it involves virtual money, unlike before, where criminals mostly engaged with actual money to deceive investors. Aside from that, this case also highlights that modern technology has increased the chance of people getting harmed and scammed, although this kind of crime is a very old form of fraud.

THE LAW GOVERNING PONZI SCHEME IN AUSTRALIA

For comparative purposes, this article will also discuss the law governing Ponzi Schemes in Australia. Their laws impose diverse penalties on operators and prohibit participation in such schemes. More crucially, Australia considers the crime a strict liability offence, meaning that the perpetrators' guilty mind is not considered; in other words, the prosecutor does not have to prove a specific fault element. The government can protect the public from unethical conduct in their economic business and raise awareness among society to take preventive steps and precautions to avoid such illicit investment activity. Besides that, several legal actions have also been brought against the operators and participants of this type of scheme in Australian courts. This will guarantee that more convictions are obtained and prevent the offender and the participants from escaping punishment.

Anti-pyramid schemes are regulated in Australia under the Consumer and Competition Act 2010. Section 45 defines a pyramid scheme as one that

obtains or makes money through recruiting other people instead of selling genuine things or services, even if the scheme does contain product sales. New participants are required to pay a "participation payment" in order to join these schemes. New members are given payments in exchange for bringing in more investors or gamers. Pyramid schemes can sometimes be identified by evaluating how closely the membership fee or participation payment relates to the value of the products or services to which participants are entitled.

Aside from that, Section 164 identifies two sorts of violations: Involvement in a pyramid scheme and inducing other people to participate in such a scheme are both prohibited. If a corporation commits the act, the offender can be fined up to AUD 500,000 and up to AUD 10 million. Section (3) specifies that the charges are strict liability offences, meaning that the offender's *mens rea*, or guilty mentality, is not considered. Participation in a pyramid scheme, according to Section 44, entails establishing or promoting the plan and participating in the system in any capacity.

It is worth mentioning that the Act also provides different penalties and remedies for offenders. In accordance with Section 232, the court may also impose an injunction on the offender, along with imprisonment and fines. Furthermore, the offender also may be issued a public warning notice by the regulator under Section 223, which contains a warning about the offender's behaviour. This strategy is praised because it better safeguards the public interest. A civil court may also order the offender of a pyramid scheme to pay a monetary penalty.

Furthermore, in Australia, a director who runs a pyramid scheme and has been found will be barred from managing any company for five years. This rule is necessary in order to safeguard the public from dishonest, incompetent, or irresponsible corporate directors and other individuals. It helps create suitable standards of behaviour for business directors and other management staff and acts as a deterrent. More importantly, it will ensure that such criminals are never again able to participate in any fraudulent operations. This is in contrast to Malaysia, where there is no legal restriction on a director managing a new company for a fair amount of time after being found guilty of taking part in a Ponzi scheme.

An Australian case that can be referred to is the case *Australian Competition and Consumer Commission v Cosic Holdings Pty Ltd*.[19] In this case, the court has illustrated the offence and punishment for those who participate in such a scheme. Cosic Holdings was found guilty by the Federal Court of Australia of participating in the illicit international pyramid-selling scam, Emerald Passport which was managed by Emerald Passport Inc., a Panama-based company. It provided online delivery of self-help products including Mastering Money and Wealth Fundamentals. By offering participants in the scam the possibility to earn between US$ 1,000 and US$ 10,000 each time they brought on a new participant, Emerald Passport Inc. persuaded them to pay yearly fees. Additionally, they would receive commissions from subsequently recruited new members.

According to the Australian Federal Court, it was determined that Cosic Holdings engaged in the scheme by creating or maintaining websites that were relevant to the plan, creating marketing collateral, planning newspaper advertisements, and paying and receiving money from other scheme participants. The company's director, John Cosic, was also found to be a party to Cosic Holdings' infringement. As a result, the court issued orders prohibiting Cosic Holdings and Mr. Cosic from participating in similar schemes. Cosic Holdings was also ordered to place public announcements in several newspapers concerning their involvement in the scheme. The decisions undoubtedly improve public cognizance about the dangers of participating in pyramid schemes and associated businesses.

Another case that can be referred to is the case of the *Australian Competition and Consumer Commission v Worldplay Services Pty Ltd.*[20] In this case, the company violated the law by engaging in a global-scale pyramid selling scheme. The company used a website to run an unlawful pyramid scheme globally. The system was fragmented, with service businesses from the UK, the Netherlands, and Australia providing funding while ultimate management was exercised by a British Virgin Islands-based organisation. The Court additionally held that the Australian law will apply regardless of how dispersed the plan is to avoid jurisdiction. The scammers recruited the victims from a variety of nations, including Canada and Norway. This case shows the extent of the laws governing the Ponzi Scheme in Australia and how wide their regulation is.

FINDINGS AND RECOMMENDATIONS

Ponzi schemes may be prevented by enforcing stricter laws and regulations like in the US and Australia. Despite its relevance, the current lack of a specific statute to prosecute Ponzi fraudsters has made it difficult for competent authorities to act more quickly. As a result, Ponzi fraudsters have continued to operate their scheme, taking advantage of the current legislation's shortcomings in fighting fraud. Therefore, considering the rapid growth of Ponzi schemes in recent years, a new regulation on the matter is timely and highly warranted. This is because if the regulations remain unchanged or unamended, this scheme will continue to rise.

For the recommendation, the Ponzi scheme should be prevented and addressed by the authorities holistically. To prevent Ponzi schemes from taking hold and spreading swift and decisive regulatory action is essential. Regulators must be ready to work on multiple levels. Ponzi schemes, especially those run by unregulated businesses, are notoriously difficult to identify since many of them operate in an opaque, even secretive manner, asking for investor anonymity. Regulatory agencies should improve their efforts to detect Ponzi schemes by developing effective investigative tools, such as red flags indicating investment fraud, tools to facilitate research on the Internet and other forms of mass media, and mechanisms to receive and respond to public complaints.

Besides that, when a regulator has reasonable evidence of a Ponzi scheme fraud, the authorities should promptly seek emergency restraining orders, such as asset freezing, to safeguard investors' interests while the investigation is ongoing. This is because completing a comprehensive investigation to bring civil, administrative, or criminal charges can take a long period. During this time, the money of the scheme operators or investors may vanish. Therefore, the authorities must seek immediate relief to ensure that the money that the fraudsters have obtained is still available to compensate the victim. Apart from that, while filing files with criminal authorities, financial regulators should use the civil or administrative remedies available to them. The regulators should be ready to assist law enforcement in building a criminal case, or have the authority to file charges themselves. In terms of both the authority responsible for their prosecution and imposition, as well as the weight of proof required and the intensity of the sanction, civil or administrative remedies differ from criminal remedies.

As Ponzi schemes may be illegal under several of financial rules, many regulators may be involved. Close collaboration with the criminal justice system can result in more effective enforcement. Financial authorities require robust information-sharing and collaboration methods to combat unregulated schemes. As such, the International Organization of Securities Commission's international memorandum of agreement is becoming an essential tool. In addition, this unregulated scheme also can be prevented by broad financial literacy campaigns. Furthermore, regulators must keep the public informed through general warnings about the methods used to defraud investors, as well as the need to question potential investments' financial viability and only invest through licenced entities.

The prevention measures also can be governed by three main elements, which consist of regulations, enforcement, and education. It is crucial that these three elements are coordinated and communicated well to ensure effectiveness in preventing the Ponzi scheme. In the case of BNM, the majority of public education information may be accessed on their website. Their website, for example, provides consumer alerts and updates. The Financial Consumer Alert serves as a reminder of businesses or schemes that may have been misconstrued as being licenced or controlled by Bank Negara Malaysia (BNM). BNM updates the FCA List based on information provided by members of the public after conducting appropriate analysis of the reported businesses and schemes. Consumers can check the FCA List to see if an entity or a scheme has been identified as not authorised by BNM to offer BNM-regulated financial goods or services. The absence of an entity or scheme on the FCA List, or its subsequent removal, should not be seen as confirmation that the entity or scheme is or was licenced or regulated by BNM. Consumers should exercise precaution while investing in investment products, just as they do with any other financial investment.[21]

Besides that, BNM and SC also have set up mobile applications such as MyBNM, BNM MyLINK, InvestSmart.[22] These applications are quick to download and provide a convenient platform for public education. The public can also seek financial guidance and spending suggestions using these apps in order to exercise responsible financial management and prevent Ponzi schemes.

For instance, the InvestSmart app can help the public to take control of their financial management and assist them to exercise good judgment and discretion before making an investment. In addition, the PDRM also plays a major in role in combating Ponzi scheme. Various precautions and information can be communicated to the public through SMS, newspapers, and media socials to educate the public not to be defrauded and deceived easily. This demonstrates that, based on current awareness programmes such as public announcements and media coverage, the general public is believed to be well-informed on how to avoid Ponzi scams.

Moving on to the regulations, current relevant laws governing Ponzi schemes in Malaysia merely punish the operators of the scheme and not the investors. This resulted in this scheme continuing to increase from time to time. Hence, the authorities must enact more rigorous legislation to combat the crime. For instance, apart from punishing only the operators of the Ponzi scheme, the law should also be imposed against the participants or investors of the schemes. For instance, in the Crude Palm oil case or *PP v Raja Noor Asma bt Raja Harun*,[23] the steps taken by the Court of Appeal could be considered as a step backwards and not in line with the investors' protection. This way, the public would be more aware and take precautions before joining this scheme. This is because if the law only applies to operators, the investors will be left free although they joined and influenced other investors to join the scheme.

Another step that can be taken to prevent the Ponzi scheme is the publication of the entity of the fraudsters. This publication can be done through newspapers, social media, and websites. Besides newspapers, websites such as bnm.gov.my and semakonline.com also can be referred by the public to check if an entity or scheme has been identified as one that BNM has not authorized. According to BNM, there is a total of 438 entities and individuals who are currently on the alert list.[24] This kind of information will surely help the public to be aware before they make any investment in the future, especially those who offered high returns in a short span of time.

Furthermore, the publication of the entity of the fraudster also has been used as a measure in preventing participation from the public as per Australia's case, *ACCC v Cosic Holdings Pty Ltd.*[25] In this case, the director of the company, John Cosic has been ordered by the Court to be placed and published his identity in various newspapers. By doing this, the public will be more aware in the future and prohibit themselves from taking part in such fraudulent investment schemes. Apart from that, notices and listings of individuals or businesses that have or do not have a license to conduct financial activities, as well as a record of actions taken against specific persons or entities, should be made public. This is to ensure that the public can keep track of these fraudsters and their illicit investment schemes.

CONCLUSION

In conclusion, Ponzi schemes, which have been around since the late 1800s, continue to sprout up and do massive amounts of damage to both the financial industry and the general public. The strategy is straightforward: the fraudster entices people to invest in his business, which employs a secret technique. The investment will generate a significant and quick profit with almost no risk. In reality, there is no specific technique; the fraudster pays off previous investors with money from new investors, and the cycle continues in this manner.

Therefore, proper regulation, education and enforcement need to be adopted by the Malaysian government in order to reduce or prevent the number of Ponzi scheme cases in Malaysia. Stricter punishment should be imposed against the operators as well as the investors as long as it is proven that the investors invested in mala fide. It is indeed high time for the court to consider more stern actions.[26] A new law also should be enacted specifically for Ponzi schemes to ensure that this type of financial fraud and/or crime can be prevented wholly. As stated above, however, the laws, on the other hand, can only be used against the perpetrators of fraudulent schemes and not the participants. This is different in Australia, where under the Consumer and Competition Act 2010, the laws governing the Ponzi scheme are better regulated.

When compared to similar legislation in the United States and Australia, the law in Australia imposes a vast range of penalties on the schemers and prohibits the investors to participate in such schemes. More crucially, Australia considers the crime a strict liability offence, meaning that the perpetrators' *mens rea*, or guilty mind, is not considered. This demonstrates that, to combat this crime, stricter measures must be taken with the assistance of all agencies and authorities.

Furthermore, with the advancement of technology, it is also observed that recently, most fraudsters have used digital platforms to market their schemes. Postings on popular social media platforms such as Twitter, Facebook, and Instagram, as well as personal websites, revealed plenty of adverts for alleged investment schemes. Using the internet to promote their fraudulent schemes has allowed them to reach out to more prospective victims on a larger scale than they could use traditional offline means. Previously, the scammers used face-to-face gatherings, seminars, and conferences to promote Ponzi schemes. The use of the internet as a mode of operation has presented more hurdles to regulators and law enforcement, partially because it is a simple and relatively inexpensive means for fraudsters to conduct fraud. As a result, the authorities must use the internet for public communication for public announcements and warnings. In addition, legal practitioners should also equip themselves with latest technological development to affront the ongoing impediments.[27] In a nutshell, both regulators and law enforcement officers must be up to date on the latest communication technology in order to implement their preventative methods.

ACKNOWLEDGMENT

Authors thank and appreciate the Ministry of Higher Education (Malaysia) and Universiti Kebangsaan Malaysia for funding the research under GGPM-2021-041, UU-2021-012, and UU-2021-013. Special appreciation to the research group members, Faculty of Law of UKM and Fakultas Hukum, Universitas Janabadra, Indonesia.

NOTES

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