

INDONESIA LRWD

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WHO'S HAS THE AUTHORITY TO INVESTIGATE INVESTMENT FRAUD ?

Last week an alleged investment fraud exploits by PT Golden Trader Indonesia Syariah (GTIS) and Raihan Jewellery were on the media. Both companies were offering gold investment and had succeeded to collect a great sum of money of IDR 600 billion and IDR 13.2 trillion respectively. GTIS has stopped to give return of investment of 1.5%-5.4% per month since February 2013. Meanwhile, Raihan Jewellery has stopped to give return of investment of 1.5%-2.5% per month since January 2013.

The resurgence of investment fraud raises a question on which authorities that have power to investigate this kind of gold investment? Recently, authorities, such as Otoritas Jasa Keuangan (the Indonesia Financial Authority-OJK) and Bappebti (The Supervisory Agency for Future Trading) are avoiding responsibility to investigate this alleged case. OJK said that gold investment is not within their authority to investigate. While, Bappebti has similar things to say that GTIS and Raihan products gold investment are not under Bappebti supervision because they did not apply permission to Bappebti. Both agencies have same opinion that this alleged case must be brought to the Task Force for Investment Alert (Satgas Waspada Investasi) which comprises the elements of Ministry of Trade, State Ministry of

Cooperatives and small Medium Enterprise, The Coordinating Agency for (Direct) Investment (BKPM), The Supervisory Agency for Capital Market and Financial Institutions (Bapepam-LK), Ministry of Communication and Informatics, The Attorney General Office, The National Police and The Centre for Indonesian Financial Transaction Reports and Analysis (PPATK). However, the Task Force is not an enforcement agency; it only function as a coordinating forum amongst investment monitoring agencies stakeholders.

Referring to Articles 9 and 49 of Law No. 21/2011 on OJK and Articles 49 and 68 of Law No. 32/1997 on Futures Trading as amended with Law No. 10/2011, both OJK and Bappebti, besides the National Police, have authorities to investigate GTIS and Raihan Jewellery and save consumers' money. However, if we look on hierarchy level, function and history of agency making, OJK is the right agency to investigate all kind of fake and fraud Investment. Beside having power to investigate financial or investment fraud, OJK has the power to protect consumers and providing assistance to return consumers' loss.



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CRIMINAL PROCEDURE BILL AND NEW ROLE FOR JUDGES



Photos: www.baltyra.com

Criminal Procedure Code Bill will be discussed in the Parliament with one specific. The principle of legality is one of those issues. The principle of legality is important because formulation in current Criminal Procedure Code is less accurate. In this issue, the principle of legality is the equivalent of the principle of legality in Criminal Code or criminal law materiel, not the principle of legality as opposed to the principle of opportunity. In theory of the principle of legality, criminal procedure must be conducted based on the rule that regulated by law (*Strafvordering heft alleen plaats op de wijze bij de wet voorzien*). Therefore, lower regulation than the law cannot regulate criminal procedure.

The soon-to-be -discussed Criminal Procedure has one important issue concerning legality doctrine, since the one interpreted in the bill is inaccurate. According to legality doctrine, criminal law should proceed on the base of law (*Strafvordering heft alleen plaats op de wijze bij de wet voorzien*) not a lower level regulation. In addition to issues concerning the principles of legality, one issues which is also very interesting to be discussed is the position and urgency of the preliminary examiner judge. First, preliminary

examiner judge named comissioners judge. In the bill of criminal procedure law *per* November, 28th 2012, stated that duties and functions of preliminary examiner judge replace the pre-trial institution and given authority to assess the course of investigation and prosecution. This should be supported with the aim of limiting discretion or subjective authority including restricting arbitrary act by investigators. It should be a criminal process is executed with the principles of propriety and appropriate (due process of law) and intended to seek and find the objective truth. There must be great precision related to substance or process of discussing the bill on Criminal Procedure Law so the role of preliminary examiner judge was placed in accordance with their functions. (RMF & MSG)

Aside from legality doctrine, there's another issue the bill has. It is the urgency of commissioner judge in lieu of 'pre-court proceedings' as stated in the previous criminal procedure bill and to give him/her the authorization to make inquiries over investigation and prosecution. A due process of law is a compulsory in order to seek objectiveness which makes a role of commissioner judge obligatory in the future Criminal Procedural Bill. (RMF-MGS)

Parliament

THE LOGIC TO BUNDLE LEGAL SECTOR BILLS ACCORDING TO THE HOUSE OF REPRESENTATIVES

The Completion of Attorney Bill, the Supreme Court Bill, Penal Code Bill, and Criminal Procedure Bill are parliamentary targets on 2009–2014 period, mainly by Commission III. Those bill are part of the National Legislation Program (Prolegnas) 2010–2014 and also come out as priority in 2013.

We could name it a kind of “Law Package of Legal Sector” An informal way to name these bills as one bundle is ‘legal sector law package’ and it was optimistically planned by Commission III to be discussed simultaneously altogether by establishing 4 (four) working committees for each bill since they all considered as top priority.

Prolegnas completion practice still raises question about operational definition on what ‘annual priorities’ really are. If ‘annual priorities’ are settled to finish those four bills in one year; it would be logically impossible. The House only has less than one year for members to prepare the upcoming 2014 election, which will commence in April 2014. The House working years also should be reduce into recess, oversight/budgeting and other parliamentary functions throughout the year.

In the end of the day, Commission III should select wisely which from law package legal sector; which one has the most chance to finish first with uncompromising quality. Also, Commission III should assure us that the discussion doesn’t open any contradictory between each bills and they also has to consider that there’s no obligation for future MP’s to continue the bill discussion if it still left unfinished by now. (RR)



Photos: www.kompasiana.com

Parliament

ANOTHER COMPARATIVE STUDY IN THE END OF PARLIAMENTARY TENURE

Commission X of the House of Representatives will undertake a study visit to Turkey, Greece, and India for the Culture Bill and the Bill for Books. The main reasons from Commission X members why they choose India is because of the price of books is very cheap and the choose Turkey because the Turks resembles a good Islam culture and Greece because it has ‘good culture’. Under the Article 142 paragraph (5) Internal Regulation of the House, the comparative study should have the sense of urgency, usefulness and an order of relevance to the bill substance itself. There are no comprehensive arguments explained yet by the Parliament on why they choose each country as a comparative study objects.

For three countries, the total budget will costs us Rp.3.179.160.000 consists of India with Rp.516.780.000; Greece at Rp.1.592.370.000, and Ankara at Rp.1.070.010.000. If we check from 70 bills on the list of 2013 legislation priority (Prolegnas), there are many more important bills to be prioritized especially for the last parliamentary tenure. Seeing the trend of the Parliament legislation performance in the previous period, there was an indication that in the end of tenure less priority bills are legalized into laws; just keep a good record for quantitative performance and to absorb legislation budget. The cultural bill also received serious criticism from University of Indonesia School of Social Studies where they considered; the bill has narrow meaning of cultural discourse and it is not reflected the spirit of Indonesian culture. (SMR)