

Compensation Process for People Who Are Victims of Trading with Binary Option Systems

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ABSTRACT

Binary Option is the activity of determining the price movement of an asset within a certain period of time as chosen by the trader in the online trading terminal. assets that can be represented by company shares, stock indices, currency pairs (exchange rates from one currency to another), the price of goods in exchange for commodities, commodity options, and so on. This study aims to determine the legality and settlement process of compensation. loss to victims of binary options trading cases. The method used by the author in this research is using the normative juridical method. The normative juridical research is carried out by means of a literature study by basing its analysis on the applicable laws and regulations and is relevant to the legal issues that are the focus of the research, researching library materials or secondary materials with a statutory approach. invitation (Statute Approach) by reviewing all laws and regulations related to the problems (legal issues) being faced based on the research results obtained Legally, the legality in the Binary Option system does not meet the legal criteria because from a legal perspective binary options are prohibited by Bappebti because it is an activity prohibited by the PBK (Commodity Futures Trading) Law Article 1 number 8 of UU No. 10 of 2011 concerning Changes Based on UU No. 32 of 1997. Forms of legal protection for victims of losses suffered as a result of these crimes, there are three ways to take the right of restitution, victims can request restitution rights to LPSK, victims can claim compensation under Article 1365 of the Civil Code for unlawful acts and the rights of victims can be obtained by combining cases in court in accordance with article 98 of the Criminal Procedure Code.

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I. INTRODUCTION

The current phenomenon that occurs is cybercrime, the more the number, the more sophisticated the mode, the more varied the characteristics of the perpetrators, and the more serious the consequences. But the bright side now is getting money does not have to work in the office, working outside now money can be obtained by just sitting relaxed at home by using gadgets in the form of mobile phones, laptops and computers can already

get money, one of which is by trading. The existence of money today is more traded than used as a medium of exchange in trade.¹

Trading is the activity of buying at a low price and selling at a higher price with a short distance of time to get a quick profit. Commodities used in the form of stocks, foreign currencies, commodities, and so on. The trading time distance is from hours, minutes, days to weeks². Trading activities are included in transactions in the capital market so that regulations on trading include Law Number 8 of 1995 concerning the capital market, Bappebti Regulation Number 4 of 2018 concerning technical provisions of futures broker behavior, Law Number 10 of 2011 concerning amendments to Law Number 32 of 1997 concerning commodity futures trading, OJK Regulation Number 78 / POJK.04 / 2017 concerning securities transactions that are not prohibited for insiders.³

Binary Option is an activity to determine the price movement of an asset within a certain period of time as chosen by the trader on the online trading terminal. Assets that can be presented with company shares, stock indices, currency pairs (currency exchange rates to another currency), prices of goods with commodity exchange, commodity options, and so on.⁴ Binary Option trading is almost similar to trading in general, it's just that traders will predict or guess the price of an asset up or down in the hope of fast profits, generally a time span of 5 minutes. Binary options use a robot and applications such as Binomo, Forex, Quotex, Olymptrade, etc. Automatically, traders only guess a commodity will rise or fall and the robot plays a role in calculating, so because the method used is guessing, it can be said that it is the same as gambling.

Binary Option application is an application that uses the internet by requiring investors to enter a certain amount of money to make a deposit. based on the deposit, the investor can make a "Call" and "Put" to make a deposit in the form of a contract against any of the options provided on the application. If the user's prediction is correct, then the user gets the promised fund profit. If the prediction results are wrong, the words Out Of The Money will appear then the user will all the funds deposited⁵. Because it is very speculative or guessing, it is possible to be the same as online gambling.

This Binary Option system is the same as gambling because it works by determining the ups and downs of commodity prices within a specified time. Users can achieve profits (Fixed Payout) or even losses suffered.⁶

Victims can ask for compensation with the help of the LPSK (Witness and Consumer Protection Agency), this institution is tasked with providing protection and other rights to witnesses and / or victims as stipulated in the Law.⁷ In practice, the Binary Option case is a criminal case so that victims are difficult to get compensation personally because basically the seized assets will later be auctioned and the auction proceeds go to the state treasury, not for victim compensation, as a result it will cause injustice.

This has been anticipated by the existence of the Witness and Consumer Protection Agency (LPSK) through the regulation of Law Number 13 of 2006 concerning witness and consumer protection and Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning witness protection and consumers, the institution fights for the rights of victims who feel aggrieved as a result of criminal acts that occur. LPSK is regulated in Law Number 13 of 2006 and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning LPSK. Based on Law Number 31 of 2014 Article 7A, it is stated that victims of criminal acts are entitled to restitution in the form of:

- a. Indemnity for loss of wealth or income;
- b. Replace rugi caused by suffering directly related to the result of a criminal act;
- c. Indemnity of medical and/or psychological treatment costs.

Victims of criminal acts can ask for their right to get compensation in this case compensation in the case of Binary Options and it is legal because it is stated in articles 5-7B about what are the rights of victims and the rights of victim reconstitution.

Based on the background that has been described, the author is interested in raising the title "**Compensation Process for People Who Are Victims of Trading with Binary Option Systems.**"

II. RESEARCH PROBLEM

The formulation of the problem to be discussed in this Research Study is as follows:

- A. What kind of legal protection is provided to victims of binary options trading investments?

¹ Septi Wulan Sari , 2016 , Perkembangan dan Pemikiran Uang dari Masa ke Masa , *An-Nisbah* 3,(1)

² Ivan Jonathan Tjendra,2016 , Perancangann Buku Panduan Dasar Trading Untuk Pemula , *Jurnal Desain Komunikasi Visual Adiwarna* , hlm 2

³ Fadilah Haidar,2015, Perlindungan hukum bagi investor terhadap praktik kejahatan insider trading pada pasar modal di Indonesia , *Jurnal Cita Hukum* , 3 (1)

⁴ Pancar Setiabudi Ilham Mukarromah,2016, Sistem *Binary Option* pada Platform Binomo dalam perspektif hukum islam , Skripsi ,hlm 13-14

⁵ Eemi Kiiskinen, Risks vs Return with Binary Option Trading, Skripsi, Lahti University of Applied Sciences LTD, Lahti, 2016, hlm 6-7

⁶Eemi Kiiskinen, Risks vs Return with Binary Option Trading,2016, Skripsi, Lahti University of Applied Sciences LTD Lahti hlm 6-7

⁷ Erly Pangestuti SH.,MH. , Peran Lembaga Perlindungan Saksi dan Korban Dalam Memberikan Perlindungan Hukum Terhadap Saksi dan korban,2017, *Yustitia*, 3 (1) , hlm 11

B. What is the process of settling compensation to victims of binary options trading investments?

III. RESEARCH METHODS

The method used by the authors in this study is using normative juridical methods. Normative juridical research is carried out by means of literature studies by basing its analysis on applicable laws and regulations and relevant to legal issues that are the focus of research⁸, examine library materials or secondary materials with a statutory approach (Statute Approach) by reviewing all laws and regulations related to the problems (legal issues) being faced.⁹ Laws and regulations include Law Number 13 of 2006 concerning LPSK, Criminal Code (KUHP), Civil Code, Law Number 11 of 2008 concerning ITE, etc. Furthermore, the specifications of this study are descriptive by describing the object to be studied to then be analyzed qualitatively using legal theories and positive legal practice and and produce conclusions from the problems discussed.

IV. RESULTS AND DISCUSSION

A. Form of Legal Protection to Investment Victims of Binary Options Trading in Indonesia.

Binary Option is a trading system that uses an automated system or robot to move the value or an asset that moves up or down by determining the rise and fall of commodity prices within a specified time. Users can achieve profits (Fixed Payout) or even losses suffered.¹⁰

Binary Option application is an application that uses the internet by requiring investors to enter a certain amount of money to make a deposit. based on the deposit, the investor can make a "Call" and "Put" to make a deposit in the form of a contract against any of the options provided on the application. If the user's prediction is correct, then the user gets the promised fund profit. If the prediction results are wrong, the words Out Of The Money will appear then the user will all the funds deposited. Elements of Binary Options, including :¹¹

1) Trader

Is an actor who trades as an investor who buys an asset with a certain calculation. The binary option system consists of "(USD/EUR, AUD/USD, GBP/USD, IDR/USD), Commodities (Petroleum, Gold, Wheat, Copper, etc.), Stock Assets in the form of (Google, Microsoft, Facebook, etc.)"

2) Broker

Example apps are Olymp Trade, IQ Option. Brokers have the same role as Stock Exchanges. The difference is that the stock exchange is a direct market that brings together sellers with buyers, this broker is an indirect market, traders must use online media.

3) Predictor Robotic

Has a role as an analyst of market movements so that a Trader can make "Speculative Transactions" of asset prices with a predetermined period of time.

4) Option

Options are limited to the time distance taken by the Trader in conducting Trading Speculation. Options are directly proportional to the internet access owned by Traders and Trends in the exchange rates of currencies, assets, and commodities in the world ranging from different exchange rates 30 minutes later.

5) Deposit

Deposit is a virtual savings account belonging to a Trader. This is almost the same as the custodian bank which is a place to store assets or funds belonging to the Trader. The difference is that a Trader can control his deposit directly both in time and place without complicated processes.

The Internet acts as a tool for Traders to make transactions. The Internet and computer networks greatly determine the accuracy of the Trader in transactions. Types of Assets used in Binary Options: ¹²

- 1) Currency and foreign exchange, usually exchanged for US dollars to buy digital currency or crypto.
- 2) Stock Index, estimating the stock to rise or fall so that transactions can be made.
- 3) Commodities, are traded goods that include crude oil, gold, silver and copper.
- 4) Personal Shares, buying and selling shares for novice traders without buying shares of a company for real.

⁸ Kornelius Benuf dan Muhammad Azhar, 2020, Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan* 7(1) hlm.24.

⁹ Henni Mochtar, 2015, Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah dengan Hak Asasi Manusia, *Humanus*, 17 (1), hlm 82

¹⁰ Eemi Kiiskinen, Risks vs Return with Binary Option Trading, Skripsi, Lahti University of Applied Sciences LTD, Lahti, 2016, hlm 6-7

¹¹ Mengenal *Trading Binary Option*, 2018, <https://islam.nu.or.id/ekonomi-syariah/mengenal-trading-binary-option-d0Ryx>, diakses pada 15 April 2022 Pukul 08.00

¹² Apa itu *Binary Option* Indonesia, 2020, <https://www.sahamok.net/binary-option>, diakses pada 17 April 2022 Pukul 23.00 WIB

Trading robot applications or those who use binary option systems using affiliators, affiliators are someone who is paid by application providers to market, disseminate, add popularity to the application, usually recruited is an influencer or influential person who is popular on social media, an influencer will later be equipped with a luxurious appearance and an overview of the assets he has just by using the application. This is done so that more people are interested in downloading and using the application.

The role of the affliator is also an illegal practice because the affliator will get compensation in the form of bonuses or commissions whose amount depends on the provisions offered by the Binary Option platform. Binary Option Affliator is a person who carries out promotional activities to the general public regarding a trading application in Binary Options and its broker in buying and selling activities at brokers and investing in Binary Options.¹³

Binary Options is a gambling or guessing system, therefore there needs to be legal protection from the government so that victims who lose money do not increase. According to terminology, Legal Protection comes from the Merging of the definitions of "Protection" and "Law".

KBBI defines protection as an act that protects something. Law is defined as or customs and customs that are considered binding and formalized by authorized or government officials. Referring to this definition, legal protection can be interpreted as an effort to protect the government or ruler with a number of existing regulations. In short, legal protection is the function of the law itself providing protection.¹⁴

According to Soerjono Soekanto, legal protection is all efforts to fulfill rights and provide a sense of security to victims or witnesses in the form of manifestations through restitution, compensation and legal assistance.¹⁵ Article 28D of the 1945 Constitution explains that "every citizen has the right to recognition, protection, protection and just legal certainty and to be treated equally before the law."¹⁶

Protection is an action to prevent and solve something, in terms of legal protection, legal protection is an action or way that the government does to protect its citizens can be in terms of prevention. Binary Option system in Indonesia is an illegal activity that has been clarified by Bappebti, Bappebti is an institution that supervises and carries out futures trading activities as well as physical markets and services¹⁷. Bappebti was formed to supervise financial activities in the aspect or sector of trading, Bappebti is an official government institution whose power is under the Ministry of Trade, the legal basis for the enactment of Bappebti is contained in Law Number 32 of 1997 concerning commodity futures trading.

Bappebti as a government institution has preventive measures to prevent losses suffered by investors, Bappebti Regulation Number 5 of 2019 contains forms of protection by Bappebti against crypto assets, including in article 2 of Bappebti Regulation Number 5 of 2019 that crypto asset trading must contain the principles of good corporate governance, legal certainty of customer protection of crypto assets and facilitate innovation and physical development of crypto. The article explains that Bappebti provides information aimed at investors and the public to recognize the characteristics of the right investment platform is one of which meets the requirements of the regulation.

OJK (Financial Services Authority) has a duty, one of which is to ensure law enforcement in the consumer protection sector in the financial services sector. Investor Legal Protection in the capital market is an aspect of protection under the authority of OJK. Consumer protection is regulated in Law Number 21 of 2011 concerning OJK in articles 28, 29, 30 which regulates provisions regarding the form of consumer protection in the financial services sector.¹⁸

Legal protection provided by the Financial Services Authority includes:

- 1) Article 28 states that OJK provides protection to consumers, namely the public in the form of prevention in the form of information and education in the financial services sector, the public can ask OJK to stop these transaction activities if they are harmful, and other actions deemed necessary in the financial services sector.
- 2) Article 29 That OJK provides facilities for consumer complaints if they feel aggrieved.
- 3) Article 30 That OJK provides legal defense to aggrieved consumers.

Preventive protection is also contained in Law Number 11 of 2008 concerning ITE in article 9 that "Business actors who offer products through Electronic Systems must provide complete and correct information

¹³ Affliator Binary Option dan Korban Serta Perlindungan Hukumnya, <https://www.kompasiana.com/aslam38545/62009f7abb448677f3570b72/affliator-binary-option-dan-korban-serta-perlindungan-hukumnya>, diakses pada 27 Maret 2022, Pukul 22.00 WIB

¹⁴ Perlindungan hukum : pengertian, contoh, dan cara memperolehnya, 2021, diakses <https://www.hukumonline.com/berita/a/perlindungan-hukum-contoh--dan-cara-memperolehnya-1t61a8a59ce8062?page=1>, pada 07 April 2022 Pukul 13.10 WIB

¹⁵ Soerjono Soekanto, 1984, Pengantar Penelitian Hukum, Jakarta, UI Press. hlm. 133

¹⁶ UUD 1945 Pasal 28 D ayat 1

¹⁷ Peraturan Menteri Perdagangan RI Nomor 01/m-dag/per/3/2005, Pasal 652

¹⁸ Hilda Hilmiyah Dimiyati, 2014, Perlindungan Hukum Bagi Investor Dalam Pasar Modal, *Jurnal Cita Hukum*, 1(2), hlm.350

related to contract terms, manufacturers, and products offered."¹⁹ This is in accordance with Law Number 8 of 1999 concerning consumer protection in article 4 point 3 concerning consumer rights, that "the right to true, clear, and honest information regarding the conditions and guarantees of goods and / or services."²⁰

Based on commodity futures trading, the parties involved here are people and providers of these commodities, of course, for the sale and purchase of commodities there needs to be agreements and contracts that bind the parties contained in the contract and agreement. Book III of the Civil Code on engagement (Verbintenissen) in is an explanation of the engagement that arises as a result of an agreement or contract, Article 1313 explains the agreement is "A covenant is an act in which one or more persons bind themselves to one or more other persons." and further Article 1315 "In general a person cannot enter into an engagement or covenant other than for himself." Because contracts and agreements are legal consequences, it is necessary to know the validity of the agreement so that each party can be clear about the agreement and the contract they make, Article 1320 explains the terms of validity of the agreement:

- a) Agree those who bind themselves.
- b) The ability to make an engagement.
- c) A certain thing.
- d) A lawful cause.

The first point in article 1320 is agreement means that the agreement is made based on an agreement between the parties who make the agreement. If no agreement is reached, the agreement is invalid.

The second point is Proficiency, meaning that a person is said to be capable of doing a legal act and is certainly able to be responsible for his actions, as for a person who is said to be incompetent to do a legal act. Regarding the ability to act, article 1330 explains that those who are incompetent to make agreements are:

- a) A child who by law is not an adult.
- b) The person in custody.
- c) Married women who are legally prohibited from making certain agreements.

The third point, a certain thing that there is an object of agreement, the fourth point, a lawful cause that the object of the agreement does not contradict the applicable law.

That the conditions in article 1320 of the Civil Code if fulfilled then the agreement is legally valid but there are legal consequences that occur if one party does not implement the agreement, namely default. Default occurs if one party does not fulfill what is its obligation stipulated in the engagement, whether the engagement arises due to the agreement or law. Default can occur either intentionally or unintentionally. Inadvertently, this default can occur because it is unable to fulfill the achievement or is also forced not to do the achievement.²¹

The elements of default include:

- 1) The existence of a valid treaty (1320).
- 2) The presence of errors (due to negligence and willfulness).
- 3) there are losses, sanctions, can be in the form of compensation, resulting in cancellation of the agreement, transfer of risk, and pay case costs (if the matter goes to court).²²

There are four consequences of default, which are as follows :

- 1) The engagement remains.
- 2) The debtor must pay compensation to the creditor (Article 1243 of the Civil Code).
- 3) The burden of risk shifts to the debtor's loss, if the obstacle arises after the debtor defaults, unless there is a gap or gross error on the part of the creditor. Therefore, the debtor is not justified in holding on to force majeure.
- 4) If the engagement is born out of a reciprocal agreement, the creditor can exempt himself from his obligation to provide counter-performance by using article 1266 of the KUH Perdata.²³

Based on Article 1 Number 8 of Law Number 10 of 2011 concerning commodity futures trading "Option is a contract that gives the buyer the right to buy or sell certain Futures or Commodity Contracts at a certain price, amount, and period of time that has been determined in advance by paying a premium."²⁴ From the sound of the understanding of options above, it can be seen that in options there are traded in the form of commodities, these commodities can be in the form of gold, stocks, currencies, crypto currencies with a certain time range from this the government prohibits Binary Options because the commodities traded do not exist and there are no other

¹⁹ UU No.11 Tahun 2008 tentang Informasi Transaksi Elektronik

²⁰ UU No.8 Tahun 1999 tentang perlindungan konsumen

²¹ Ahmadi Miru, 2007, *Hukum Kontrak dan Perancangan Kontrak*, Jakarta: PT. Raja Grafindo Persada, Edisi Revisi, hlm 74

²² Niru Anita Sinaga, Nurlily Darwis, 2020, Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian, *Jurnal Mitra Manajemen*, hlm 51

²³ Niru Anita Sinaga, Nurlily Darwis, 2020, Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian, *Jurnal Mitra Manajemen*, hlm 52

²⁴ UU No.10 tahun 2011 tentang perubahan UU No.32 tahun 1997 tentang perdagangan berjangka komoditi

options such as financial statements, and so on. But there is only guessing up or down so that this is the same categorized as gambling which includes online gambling.

Based on Law Number 10 of 2011 concerning Futures Contracts, the Binary Option System does not meet the required criteria. If you look at the definition of commodities, this system cannot meet the elements that should exist. This element of Commodity refers to "a particular cause". Therefore, when looking at Article 1457 of the Indonesian Civil Code which states "surrendering an object", this buying and selling activity cannot be said to be buying and selling activities because there are no goods or commodities that become transactions only guessing that the chart will go up or down.

Article 1320 of the Civil Code of the Binary Option system does not contain one of the legal conditions of the agreement in point 3, namely a certain thing that is the object of the agreement, because it is generally mentioned the various assets used there are gold, forex, commodities, and stocks, but according to Bappebti and OJK the commodities traded do not exist or only decorations to make it seem as if there are goods or commodities.

In general, in agreements that occur verbally, in writing, or with certain symbols or silence, the agreement can occur in various ways, the most important of which is the offer and acceptance of the offer. In practice, Commodity Futures Trading (PBK) has its own characteristics with related parties, namely the parties do not know each other because the intermediary is through a futures broker to be traded on the futures exchange.²⁵ In buying and selling futures trading this is only figurative because the contract is not bought and sold in the true sense but is an agreement of the parties to the price offered.²⁶

Before investing in commodity futures trading, the public checks the legality of business actors in the PBK sector through the bappebti.go.id website OJK has never issued licenses for binary options and forex trading robots Crypto assets and commodity futures trading products such as gold, forex, forex and others are not financial products or services licensed by OJK.²⁷

Based on the law, the Binary Option system does not meet legal criteria because in terms of legality binary options are prohibited by Bappebti because it is an activity prohibited by the Law on PBK (Commodity Futures Trading) article 1 number 8 of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997.

B. Binary Option Investment Victim Compensation Process

The definition of loss according to R. Setiawan, is a real loss that occurs due to default. The amount of loss is determined by comparing the state of wealth after default with the situation if there is no default.²⁸ Indemnity also has elements contained in article 1246 of the Civil Code that "costs, losses and interest which the debtor may claim for reimbursement, shall consist generally of the losses he has suffered and the profits he should have enjoyed, without prejudice to the exceptions and amendments to be referred to below."²⁹

According to Purwahid, Patrik further elaborated on the elements of loss. According to Patrik, losses consist of two elements: Losses that are actually suffered (*damnum emergens*) include costs and losses. The second profit that is not earned (*lucrum cessans*) includes interest. Sometimes losses are only losses suffered, but sometimes they include these 2 elements.³⁰

We can distinguish the forms of loss into two forms, namely :

- 1) Material losses
- 2) Immaterial losses

The law provides only for material damages. It is possible that the loss causes losses that are immaterial, intangible, moral, idical, cannot be valued with money, are not economic, namely in the form of body pain, mental suffering, fear, and so on.³¹

Indonesian citizens should get legal protection for legal events or events that are being experienced by a person or group, therefore in the case of Binary Option criminal acts victims the state is obliged to provide protection for losses suffered by victims from trading through the Witness and Victim Protection Agency (LPSK).

The victim is a victim of a criminal act regarding Binary Option investment, so the perpetrator must first prove whether it is true to commit a criminal act because a person's actions can be punished if they are included

²⁵ Danastri Puspitasari, Faiq Rizqi Aulia Rachim, 2021, *Binary Option Sebagai Komoditi Perdagangan Berjangka di Indonesia*, *Jurnal Hukum Lex generalis*, 2(8), hlm 636

²⁶ Subekti. 1985. *Pokok-pokok Hukum Perdata*. Jakarta: PT Interamasa, Maria Ulfah, 2010, *Keberadaan Kontrak Berjangka Emas Sebagai Objek Transaksi dalam Perdagangan Berjangka Komoditi Berdasarkan Hukum Kontrak di Indonesia dan Undang Undang Perdagangan Berjangka Komoditi*. Tesis. (Bandung: Universitas Katolik Parahyangan).

²⁷ Rohmini Indra Lestari, Zaenal Arifin, 2022, *Godaan Praktik Binary Option Berkedok Investasi dan Trading*, *Jurnal Ius Constituendum*, 7(1), hlm.28

²⁸ R. Setiawan, 1997, *Pokok-Pokok Hukum Perikatan*, Binacipta, Bandung, hlm.17

²⁹ KUHPerdata Pasal 1246

³⁰ Purwahid Patrik, 1994, *Dasar-Dasar Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang)*, Mandar Maju, Bandung, hlm. 14.

³¹ Merry Tjoanda, 2010, *Wujud Ganti Rugi Menurut Hukum Perdata*, *jurnal sasi*, 16(4) hlm.48

in a criminal offense and the offense must meet certain elements. If only one element is not included or fulfilled, then the act cannot be associated with a particular offense. Similar but different elements, sanctions, and formulations are often encountered. Examples are such as Murder, Attempted Murder, Premeditated Murder, and others. The offense and the punishment are different.

Criminal law is very familiar with its legism and positivism. So if there is a principle that is not included in a criminal act unless it has been regulated in the previous criminal law, then legal progress and breakthroughs that are mainly carried out by a judge are important because they can be set a precedent in the future. In reality, criminal law cases and breakthroughs regarding bribery in the field of sports can be said to be static and even close to nothing in Indonesia

Law Number 8 of 1995 concerning the capital market explains the sanctions given to parties who violate the provisions regarding the capital market, including Chapter XIV regarding administrative sanctions article 102 and Chapter XV article 103 concerning criminal sanctions in articles 103-110 and in Chapter XVI article 111 another provision states that "Any Party that suffers losses as a result of a violation of this Law and/or its implementing regulations may claim damages, either individually or jointly with other parties having similar claims, against the Party or Parties responsible for such violations."³²

KUHP explains that the actions of the perpetrators, both affiliators and application providers, can be categorized as a criminal offense of fraud article 378 that "Whoever with the intention to benefit himself or others unlawfully by using a false name or false dignity (hoedanigheid) by deceit, or a series of lies, moves another person to deliver something to him, or to give a debt or write off a receivable, threatened, for fraud, with a maximum imprisonment of four years."³³ Article 379 states that "The act formulated in Article 378, if the goods delivered are not livestock and the price of the goods, debts or receivables is not more than twenty-five rupiah shall be punished as minor fraud with a maximum imprisonment of three months or a fine of not more than two hundred and fifty rupiah."³⁴

Law Number 11 of 2008 concerning ITE Article 28 paragraph 1 explains that "Everyone intentionally, and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions." The form of criminal sanctions is explained in article 45 paragraph 2 that "any person who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp.1,000,000,000.00 (one billion rupiah)." Fraud described in the Criminal Code is a criminal act of fraud committed not using electronics or in person, while the ITE Law describes the criminal act of fraud committed online.

The two regulations do regulate different things, namely Articles 378 and 379 of the Criminal Code regulate fraud and Article 28 paragraph (1) jo. Article 45 paragraph (2) of the ITE Law regulates fake news that results in consumer losses in Electronic Transactions. Even so, these two articles are often used together as alternative criminal sanctions, because there are no regulations that specifically regulate online buying and selling fraud, so it is expected that the elements of criminal acts can meet one of the two articles.³⁵

Binary Option system there are 2 laws that must be enforced both criminal and civil law, criminal law related to the punishment given to the perpetrator, but cannot return victim compensation, while civil law can return the victim's losses suffered, therefore it is necessary to combine cases in court, it is based on article 98 paragraph (1) of the Criminal Procedure Code states "If an act is the basis of an indictment in a criminal case examination If the district court causes harm to another person, the presiding judge of the trial at the request of that person may decide to combine the claim for damages into the criminal case"³⁶. " For this reason, the application for merging compensation cases based on the provisions of article 98 paragraph (1) of the Criminal Procedure Code is submitted no later than before the public prosecutor files criminal charges. In the event that the public prosecutor is not present, the request is submitted no later than before the judge renders a verdict.

This article explains that victims can seek compensation for unlawful acts experienced. If the person suffers losses due to a criminal act, to facilitate that person, the state provides a way to obtain compensation without having to go through the usual civil lawsuit process by combining compensation lawsuit cases into criminal cases regulated in the KUHP.³⁷ Through Article 98 of the KUHP, victims can file claims for

³² UU No.8 Tahun 1995 tentang pasar modal pasal 111

³³ KUHP Pasal 378

³⁴ KUHP Pasal 379

³⁵ <https://misaelandpartners.com/perlindungan-hukum-bagi-pembeli-dalam-hal-terjadi-penipuan-jual-beli-online/#:~:text=Kedua%20peraturan%20tersebut%20memang%20mengatur,kerugian%20konsumen%20dalam%20Transaksi%20Elektronik>
. Diakses pada 13 juli 2022 pukul 19.00 WIB

³⁶ KUHP Pasal 98 ayat 1

³⁷ Fauzy Marasabessy, 2015, Restitusi bagi korban tindak pidana : sebuah tawaran mekanisme baru, *Jurnal hukum dan pembangunan*, 45(1), hlm.55

compensation without waiting for the criminal inkracht. In addition, the evidence about losses is stronger because it is supported by evidence from the public prosecutor.³⁸

Justice and the rights of victims must be guaranteed by law, the thing that can be done if they feel aggrieved is to go to the LPSK, LPSK is an institution that carries out protection for victims of criminal acts for losses experienced. Protection given to victims or witnesses can be provided at the stage of investigation, investigation, prosecution, and/or examination in court hearings, on the initiative of law enforcement officials, security forces, and/or from requests submitted by victims.³⁹

Compensation for victims of criminal acts can basically be done in three ways, namely :

- a. Through the merger of indemnity cases.
- b. Through tort lawsuits.
- c. Through a request for restitution.⁴⁰

The criminal law system in Indonesia causes victims not to get their losses back because the current criminal justice system is more concerned with the aspect of punishing the perpetrator and not the interests of the victim and it can be seen from how the role of the victim in a trial is as an extra (witness) for the main player, namely the perpetrator.

Restitution is an implication of a paradigm shift in sentencing

from retributive justice-oriented to restorative justice. Restitution is one of the efforts to meet the interests and needs of victims that have been forgotten in the criminal justice system.⁴¹

The right to restitution in accordance with the Principle of Restoration in Original State (*restitutio in integrum*) is an effort that the victim of a crime must be restored to the condition in which it was before the crime occurred. This principle emphasizes that the form of recovery to the victim must be as complete as possible and cover various aspects arising from the consequences of crime. With restitution, victims can be restored their freedom and legal rights.⁴²

The right to restitution is regulated in article 7A⁴³ including :

- a. Victims of criminal acts are entitled to restitution in the form of :
 - 1) Indemnity for loss of wealth or income.
 - 2) Compensation for damages incurred as a result of suffering directly related to the criminal act.
 - 3) Reimburse medical and/or psychological treatment financing.
- b. Criminal acts as referred to in paragraph (1) are determined by LPSK Decree.
- c. Application for Restitution can be made before or after a court decision that has obtained permanent legal force through LPSK.
- d. In the event that an application for Restitution is filed before a court decision that has obtained permanent legal force, the LPSK may apply for Restitution to the public prosecutor to be included in its suit.
- e. In the event that an application for Restitution is filed after a court decision that has obtained permanent legal force, the LPSK may apply for Restitution to the court for determination.
- f. In the event that the Victim of a criminal act dies, restitution is given to the Victim's Family who are the heirs of the Victim.

Article 1365 of the Civil Code explains that "Every unlawful act, which brings harm to another person, obliges the person who by mistake published the damage, to indemnify it." Article 1365 is a legal consequence that occurs due to an engagement on an agreement, the legal consequences When there is one party who defaults, losses suffered by one of the parties arise, therefore the party who feels aggrieved can sue through tort claims and tort claims.

So the Criminal Code shows the form of settlement of compensation by punishing perpetrators who commit, in this case the affliator and provider of criminal services provided are described in Articles 378, 379 of the Criminal Code, Law Number 11 of 2008, Law Number 8 of 1995, Law Number 10 of 2011. Meanwhile, in the Civil Code, victims can file tort claims or unlawful acts for actions that cause losses to victims, this is stated in article 1365 of the Civil Code.

³⁸Mochamad Januar Rizki,2021,<https://www.hukumonline.com/berita/a/penggabungan-perkara-ganti-kerugian-dalam-persidangan-korupsi-bansos-lt60e6f7eec2628?page=2> , diakses pada 28 Juni 2022 Pukul 20.00 WIB

³⁹ Muhadar, 2010 ,*Perlindungan Saksi dan Korban Dalam Sistem Peradilan Pidana*, PMN, Surabaya., hlm.69

⁴⁰ Mila Surahmi,2019,*Perlindungan Hukum Bagi Korban Penipuan Investasi (Studi Kasus di Kota Palembang)*,*Jurnal Thengkyang*, 2(1), hlm.93

⁴¹ Sylvony Kakoe,Machruchin Ruba'I,Abdul Majid,2020,*Perlindungan Hukum Korban Penipuan Transaksi Jual Beli Online melalui ganti rugi sebagai pidana tambahan*,*Jurnal Legalitas*,13(2),hlm.124

⁴² Fauzy Marasabessy,2015,*Restitusi bagi korban tindak pidana : sebuah tawaran mekanisme baru*,*Jurnal hukum dan pembangunan*, 45(1),hlm.55

⁴³ UU No.31 Tahun 2004 tentang Perubahan atas UU No.13 Tahun 2006 tentang Perlindungan saksi dan korban

The correlation between criminal acts and civil losses can be overcome by combining cases whose provisions are described in article 98 of the KUHP. Through Article 98 of the KUHP, victims can file claims for compensation without waiting for the criminal inkraht. In addition, the evidence about losses is stronger because it is supported by evidence from the public prosecutor.

Enforcement of rights and justice for victims who suffer losses, victims can ask for their rights to be given through the LPSK, with the legal protection from the LPSK and the Law on Sex Workers, the guarantee of a sense of security for witnesses and victims has become clearer. In addition, other forms of legal protection that can be provided to victims are through the provision of compensation, retribution, and rehabilitation as stipulated in Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Retribution, and Assistance to Witnesses and Victims.⁴⁴

V. CONCLUSION

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims, which can be realized in forms such as through restitution, compensation, medical services, and legal assistance. Bappebti as a government institution has preventive measures to prevent losses suffered by investors, Bappebti Regulation Number 5 of 2019 contains forms of protection by Bappebti against crypto assets including in article 2 of Bappebti Regulation Number 5 of 2019 that crypto asset trading must contain the principles of good corporate governance, legal certainty, customer protection of crypto assets and facilitate innovation and physical development of crypto legally.

OJK (Financial Services Authority) has a duty, one of which is to ensure law enforcement in the consumer protection sector in the financial services sector. Investor Legal Protection in the capital market is an aspect of protection under the authority of OJK. In terms of consumer protection, it is regulated in Law Number 21 of 2011 concerning OJK in articles 28, 29, 30 which regulates provisions regarding the form of consumer protection in the financial services sector. OJK explicitly regulates consumer protection in the financial services sector, legality in the Binary Option system does not meet legal criteria because in terms of legality, binary options are prohibited by Bappebti because these activities are prohibited by Law Number 10 of 2011 concerning amendments to Law Number 32 of 1997 concerning Commodity Futures Trading.

Preventive protection is also found in Law No.11 of 2008 concerning ITE in article 9 that "Business actors who offer products through Electronic Systems must provide complete and correct information related to contract terms, manufacturers, and products offered." This is in accordance with Law Number 8 of 1999 concerning consumer protection in article 4 point 3 concerning consumer rights, that "the right to true, clear, and honest information about the conditions and guarantees of goods and / or services.

Civil protection is regulated in article 1320 on the terms of validity of the agreement, and article 1234 on engagement. When the conditions in article 1320 of the Civil Code are fulfilled, the agreement is legally valid but there are legal consequences that occur if there is a party who does not carry out its obligations in an agreement, this act is called default. Default occurs if one party does not fulfill one of its obligations in accordance with the applicable agreement, according to law, in addition to article 1365 of the Civil Code regulates unlawful acts that cause losses to a party.

The compensation process for victims of Binary Option investment includes according to the Criminal Code, the actions of the perpetrators both affiliators and application providers can be categorized as a criminal offense of fraud article 378 that "Whoever with the intention to benefit himself or others unlawfully by using a false name or false dignity (hoedaningheid) by deception, or a series of lies, moves others to hand over something to him, or to give debt or write off receivables, threatened, for fraud, with imprisonment for not more than four years."⁴⁵ Article 379 states that "The act referred to in article 378, if the property given is not livestock and the price of goods, debts or receivables is not more than 25 rupiah is threatened with minor fraud and imprisonment of at least 3 months or a maximum fine of 250 rupiah.

Meanwhile, according to Law Number 11 of 2008, articles 28 and 45 explain online fraud and its laws. The article does regulate different things, articles 378 and 379 of the Criminal Code regulate ordinary fraud and article 28 paragraph 1 jo article 45 paragraph 2 of Law Number 11 of 2008 regulates consumer losses in electronic transactions caused by false news spread. However, these 2 articles are often used as alternative crimes because there are no regulations that specifically regulate online buying and selling fraud so that one element can be fulfilled if there is a criminal case.

The Code of Criminal Procedure states "If an act which forms the basis of an indictment in a criminal proceeding by a district court causes harm to another person, the presiding judge of the hearing at that person's request may decide to combine the claim for damages into that criminal case." For this reason, the application for

⁴⁴ Saristha Natalie Tuage, 2013, *Perlindungan Hukum Terhadap Saksi dan Korban Oleh Lembaga Perlindungan Saksi dan Korban (LPSK)*, *Lex Crimen*, II, 2, hlm.58

⁴⁵ KUHP Pasal 378

merging compensation cases based on the provisions of Article 98 paragraph (1) of the Criminal Procedure Code is submitted no later than before the public prosecutor files criminal charges. In the event that the public prosecutor is not present, the request is submitted no later than before the judge renders a verdict.

The right to restitution is in accordance with the Principle of Restoration to the original state (*Restitutio in Integrum*) means that the victim of the crime must be returned to its original position when there was no crime. This Principle of Recovery affirms that efforts to reach victims must be as complete as possible that covers various aspects arising from the consequences of the crime committed. Efforts to compensate victims of criminal acts, namely :

- a. Go through the process of merging cases
- b. Passing a PMH (Unlawful Act) lawsuit.
- c. Passing the requested restitution request.

Article 1365 of the Civil Code explains that "Every unlawful act, which brings harm to another person, obliges the person who by mistake published the damage, to indemnify it." Article 1365 is a legal consequence that occurs due to an engagement on an agreement, the legal consequences When there is one party who defaults, losses suffered by one of the parties arise therefore the party who feels aggrieved can sue through tort claims and tort claims.

Suggestion

1. The government through OJK and Bappebti should re-socialize the dangers of binary options trading because in practice many people lose money due to the system which promises instant profits without any commodities traded.
2. The government through Kominfo cooperates with Bappebti and OJK to supervise and block access to websites related to the binary option system, indeed in the form of websites that have been blocked can be reopened when the website owner changes the domain but this should have been anticipated by Kominfo.
3. The public is expected to be wiser and more careful in choosing an investment platform, choosing those approved by Bappebti and OJK, seeing what commodities are traded and are required to read all terms and agreements in the investment platform.

REFERENCES

- Arief, Barda Nawai, 2008, *Kebijaka Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Kencana Prenada Media Group
- Lopa, Baharudin. 2001. *Kejahatan Korupsi dan Penegakan Hukum*. Kompas.
- Muhadar, 2010, *Perlindungan Saksi dan Korban Dalam Sistem Peradilan Pidana*, Surabaya PMN.
- Soekanto, Soerjono, 1984, *Pengantar Penelitian Hukum*, Jakarta UI Press
- Miru, Ahmad , 2020 , *Hukum Kontrak dan Perencanaan Kontrak*, Depok Rajawali Pers.
- Subekti, 1985, *Pokok-Pokok Hukum Perdata*, Jakarta PT. Intermedia
- Widodo. 2013. *Memerangi Cybcrime Karakteristik, Motivasi, dan Strategi Penanganannya dalam Perspektif Kriminologi*. Yogyakarta: CV. Aswaja Pressindo,
- R. Setiawan, 1997, *Pokok-Pokok Hukum Perikatan*, Binacipta, Bandung,
- Purwahid Patrik, 1994, *Dasar-Dasar Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang)*, Mandar Maju, Bandung.
- Kornelius Benuf dan Muhammad Azhar, 2020, Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan* 7(1)
- Henni Mochtar , 2015, Analisis Yuridis Normatif Singkronisasi Peraturan Daerah Dengan Hak Asasi Manusia , *Humanus* , 17 (1)
- Fauzy Marasabessy, 2015, Restitusi Bagi Korban Tindak Pidana : Sebuah Tawaran Mekanisme Baru, *Jurnal Hukum dan Pembangunan*, 45(1).
- Saristha Natalie Tuage, 2013, Perlindungan Hukum Terhadap Sanksi dan Korban Oleh Lembaga perlindungan Saksi dan Korban (LPSK), *Lex Crimen*, 2(2).
- Sylvony Kakoe, Machruchin Ruba'I, Abdul Majid, 2020, Perlindungan Hukum Korban Penipuan Transaksi Jual Beli Online melalui ganti rugi sebagai pidana tambahan, *Jurnal Legalitas*, 13(2)

- Mila Surahmi, 2019, Perlindungan Hukum Bagi Korban Penipuan Investasi (Studi Kasus di Kota Palembang), *Jurnal Thengkyang*, 2(1)
- Rohmini Indra Lestari, Zaenal Arifin, 2022, Godaan Praktik *Binary Option* Berkedok Investasi dan *Trading*, *Jurnal Ius Constituendum*, 7(1)
- Erly Pangestuti SH., MH. , Peran Lembaga Perlindungan Saksi dan Korban Dalam Memberikan Perlindungan Hukum Terhadap Saksi dan korban, 2017, *Yustitia*, 3 (1)
- Danastri Puspitasari, Faiq Rizqi Aulia Rachim , 2021, *Binary Option* Sebagai Komoditas Perdagangan Berjangka di Indonesia, *Lex generalis* , 2(8).
- Adwin Tista , Perkembangan Sistem Lelang di Indonesia , 2013 , *Al 'adl* , Vol V No.10, hlm 60
- Eemi Kiiskinen, 2016, *Risks Vs Return with Binary Option Trading*, Skripsi, *Lathi of University Applied Science LTD Lathi*.
- Septi Wulan Sari , 2016 , Perkembangan dan Pemikiran Uang dari Masa ke Masa , *An-Nisbah* 3,(1)
- Ivan Jonathan Tjendra, 2016 , Perancangann Buku Panduan Dasar Trading Untuk Pemula , *Jurnal Desain Komunikasi Visual Adiwarna* ,
- Fadilah Haidar, 2015, Perlindungan hukum Bagi Investor Terhadap Praktik Kejahatan *Insider Trading* pada pasar modal di Indonesia, *Jurnal Cita Hukum*, 3(1).
- Pancar Setiabudi Ilham Mukarromah, 2016, Sistem *Binary Option* pada Platform Binomo dalam perspektif hukum islam, Skripsi.
- Maria Ulfah, 2010, Keberadaan Kontrak Berjangka Emas Sebagai Objek Transaksi Dalam Perdagangan Berjangka Komoditi Berdasarkan Hukum Kontrak di Indonesia dan Undang-Undang Perdagangan Berjangka Komoditi, Tesis.
- Merry Tjoanda, 2010, Wujud Ganti Rugi Menurut Hukum Perdata, *jurnal sasi*, 16(4)
- Niru Anita Sinaga, Nurlely Darwis, 2020, Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian, *Jurnal Mitra Manajemen*,

Laws and Regulations :

KUHP.

KUHPerdata.

KUHAP

Undang-undang No. 19 Tahun 2016 Tentang Perubahan atas UU No.11 Tahun 2008 tentang ITE.

UU No.10 tahun 2011 tentang perubahan UU No.32 tahun 1997 tentang perdagangan komoditas berjangka

Undang-Undang No.8 Tahun 2010 tentang Tindak Pidana Pencucian Uang.

Undang-Undang Nomor 11 Tahun 2008 Tentang ITE

UU No.32 tahun 1997 tentang perdagangan komoditas berjangka

UU No.8 tahun 1995 tentang pasar modal

UU No.8 Tahun 1999 tentang perlindungan konsumen

Peraturan OJK No.78 / POJK.04 / 2017 tentang transaksi efek yang tidak dilarang bagi orang dalam

Peraturan Bappebti No.4 Tahun 2018 tentang ketentuan teknis perilaku pialang berjangka

Website :

Tersedia Dalam : <https://www.Dosensosiologi.com> , 2020 , pengertian preventif, ciri dan contohnya, (diakses pada 13 november 2021 pukul 06.09)

-
- Mochamad Januar Rizki, 2021, <https://www.hukumonline.com/berita/a/penggabungan-perkara-ganti-kerugian-dalam-persidangan-korupsi-bansos-lt60e6f7eec2628>, diakses pada 28 Juni 2022 Pukul 20.00 WIB
- Hukum menurut KBBI , 2022 , diakses <https://kbbi.web.id/hukum> pada 07 April 2022 Pukul 13.30 WIB
- Hukum Online, 2021, Perlindungan secara hukum dan cara memperolehnya diakses <https://www.hukumonline.com/berita/a/perlindungan-hukum-contoh--dan-cara-memperolehnya-lt61a8a59ce8062?page=2> , 07 April 2022 Pukul 13.10 WIB
- Apa itu *Binary Option* Indonesia , 2020 , <https://www.sahamok.net/binary-option> , diakses pada 17 April 2022 Pukul 23.00 WIB
- Affiliator Binary Option dan Korban Serta Perlindungan Hukumnya, <https://www.kompasiana.com/aslam38545/62009f7abb448677f3570b72/affiliator-binary-option-dan-korban-serta-perlindungan-hukumnya>, diakses pada 27 Maret 2022, Pukul 22.00 WIB
- Mengenal *Trading Binary Option* , 2018 , <https://islam.nu.or.id/ekonomi-syariah/mengenal-trading-binary-option-d0Ryx>, diakses pada 15 April 2022 Pukul 08.00
- Binomo ‘Makan’ 118 Korban ,Kerugian hingga 72 M , 2022 diakses <https://www.cnbcindonesia.com/investment/20220510165232-21-337911/binomo-makan-118-korban-kerugian-hingga-rp-72-m> pada 10 Mei 2022 Pukul 15.30.
- Kominfo Blokir Ribuan Konten Investasi Ilegal, Termasuk Binomo ,2022,diakses <https://katadata.co.id/desysetyowati/digital/62399d185a3ab/kominfo-blokir-ribuan-konten-investasi-ilegal-termasuk-binomol>, pada 07 April 2022, pukul 22.10 WIB
- Kasus Binomo Indra Kenz Baik ke Penyidikan , 2022, diakses www.youtube.com/watch?v=gOl4XqKcuIk , pada 07 April 2022 pukul 13.00 WIB
- Kominfo Blokir Ribuan Konten Investasi Ilegal, Termasuk Binomo ,2022,diakses <https://katadata.co.id/desysetyowati/digital/62399d185a3ab/kominfo-blokir-ribuan-konten-investasi-ilegal-termasuk-binomol>, pada 07 April 2022, pukul 22.10 WIB