THE LEGAL PROTECTION FOR VICTIMS OF CRIMINAL ACTS IN BINOMO TRADING FRAUD (Case Study on Decision Number: 1240/PID.SUS/2022/PN.TNG)

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Abstract

The objective of this study is to analyze the recovery of assets and the protection of victims in cases of Binomo trading fraud under Indonesian criminal law. The research methodology employed is normative legal research, utilizing a literature-based approach. The findings of this study reveal that the decision made by the Panel of Judges in case number 1240: Pid.Sus/2022/PN.Tng was deemed unjust for the victims, leading to an appeal hearing resulting in decision number 117/Pid.Sus/2022/PT.BTN. According to this court decision, the confiscated evidence in the Indra Kenz case was to be returned to the victims through the United Indonesian Traders Association. However, the process of returning the evidence encountered complications due to internal conflicts among the victim association members. As a result, there is currently no clarity regarding the completion of the restitution of the victims' losses. The government, through the LPSK, regulates the restitution of victims' losses as stipulated in Perma Number 1 of 2022. Nevertheless, the LPSK is not involved in the process of returning the victims' losses, which is instead handled by the United Indonesian Traders Association.

Keywords: *Trading, Binomo, Return of Assets, Legal Certainty*

1. INTRODUCTION

Currently, trading has become a highly favored investment option among the general public. The widespread advertisements on social media have portrayed trading as a rapid pathway to wealth and success. This notion is further reinforced by numerous influencers who proudly proclaim their immense riches. These influencers often share stories about the sources of their wealth, captivating the attention of many individuals who aspire to emulate their success. One such influencer, Indra Kusuma, also known as Indra Kenz, hailing from Medan, has garnered significant attention in national news, serving as a prime example of a wealthy individual who has captivated the public's interest.

Indra Kenz's Binomo case first became public in February 202 when the victims reported it to the authorities (detik.com, 2022), the case went viral because it turned out that there were 144 victims with losses totaling up to IDR83,365,707,894. According to the Director of Special Crimes at the National Police Headquarters, Indra Kenz promotes Binomo through his social media where Indra Kenz promotes Binomo by showing how to play Binomo which has actually been manipulated so that he always wins and gets profits, of course this is attractive to the people who watch. Then in order to convince potential victims, Indra Kenz also said that Binomo was legal in Indonesia when in reality it was not (Arbi, 2022).

On August 12, 2023 Indra Kenz was tried in the Tangerang District Court with a judge's verdict lighter than the prosecutor's demands, namely a 10-year prison sentence. Then the Panel of Judges also had the opinion that the trader in this case was a gambling

player under the guise of Binomo trading, and the Panel of Judges ordered that the evidence from the criminal offense in the Indra Kenz case must be confiscated to the state. Then an appeal hearing was held at the Banten District Court where it was decided that the evidence number 220 to 258 which was previously confiscated by the state was returned to the victim.

The partiality of Indonesian law towards victims then becomes an issue that must be considered in the implementation of Indonesian law, where the Preamble of the 1945 Constitution (UUD 1945) has stated that the Indonesian government protects the entire Indonesian nation. However, if we look back at many cases that have occurred, the existence of the law focuses more on punishing the perpetrators of criminal acts rather than protecting victims.

To sum up, as we delve into the complexities of the Indonesian criminal system, it becomes clear that we must carefully consider the plight of victims. Victims, who are directly impacted by criminal offenses, endure hardships and losses that require recognition and resolution. Understanding the significance of addressing these issues, our research focuses on the legal protection for victims of Binomo trading fraud, specifically examining Decision Number: 1240/Pid.Sus/2022/PN.Tng. Our exploration is limited to unraveling the intricacies of the legal safeguards provided to victims in this particular context and understanding the regulatory framework for asset restitution in Binomo trading fraud cases under Indonesian criminal law. Through this research, we aim to provide valuable insights that not only shed light on the existing challenges but also pave the way for improved legal mechanisms to safeguard the rights and interests of those who have suffered from such criminal activities.

2. RESEARCH METHODS

Research is undertaken in order to obtain systematic, methodical, and coherent solutions to inquiries. The nature of research varies depending on the specific scientific domain being investigated. In this particular study, normative legal research is employed. Normative legal research is also referred to as doctrinal legal research (Amiruddin & Asikin, 2019). The research methodology employed in this study is library research, which involves the examination of literature or secondary data exclusively. The primary aim of this approach is to identify the fundamental concepts and principles within the realm of law (Soekanto & Mamudji, 2016).

3. RESULTS AND DISCUSSION

3.1. Legal Protection for Victims of Binomo Trading Fraud in Decision Number: 1240/Pid.Sus/2022/PN.Tng

The judge's decision in the judicial process should aim to achieve both legal certainty and a sense of justice and expediency. However, it is commonly observed that prioritizing legal certainty may compromise the sense of justice. Conversely, if too much emphasis is placed on the sense of justice, it may undermine legal certainty. It is worth noting that legal certainty is generally applicable to all, whereas the sense of justice is subjective to individuals (Indrawan & Munandar, 2022). Therefore, striking a balance between these two aspects is crucial in order to yield favorable outcomes (Margono, 2020).

As in the criminal case registered with Number: 1240/Pid.Sus/2022/PN.Tng and was tried on November 14, 2022. Where in this case Indra Kesuma Als Indra Kenz has been proven legally and convincingly guilty of committing the crime of spreading false and misleading news that results in consumer harm in Electronic Transactions and Money Laundering as regulated in Article 45A Paragraph (1) Jo Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

At the hearing, one of the things that attracted public attention was the verdict read out by the Panel of Judges, where the Panel of Judges decided that evidence 220 to 258 was confiscated by the state. This was with the consideration that the victims were involved in gambling. The decision then caused an uproar among the community, especially the victims. If the Panel of Judges decided that the victim Indra Kenz was involved in gambling, but in the verdict read out by the Panel of Judges it was not read out that Indra Kenz violated the gambling article.

Yenti Ganarsih as a TPPU expert does not agree that the victims of the Binomo Indra Kenz case are categorized as gambling offenders. She said that in criminal law the footing is always mens rea or the intention of the perpetrator and victim. From the beginning, the intention of the perpetrators was to trade, not gambling (Suwanti, 2022). Instead of being called gambling players, the victims of Binomo Indra Kenz are more accurately called victims of fraud. The crime of fraud is regulated in Article 378 of the Criminal Code, namely "Whoever, with the intention of unlawfully benefiting himself or others, by using a false name or false dignity, by deception, or a series of lies, moves others to deliver goods to him, or to give debts or write off receivables, is punishable by fraud with a maximum imprisonment of four years".

The victims through the Public Prosecutor finally filed an appeal hearing which was then held on January 10, 2023 at the Banten District Court. Where the decision of the hearing decided that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Traders Association (Deed of Establishment Number 21 Dated September 26, 2022 before Notary PPAT Musa Muamarta, S.H).

If we look at the decision of the first instance trial conducted by the Tangerang District Court, it can be seen that the current law is still too focused on punishing the perpetrators of criminal acts in the form of punishing the perpetrators. Whereas at present the meaning of punishment has shifted, if in the past punishment was considered as an effort to take revenge and torment the perpetrators of criminal acts, now the purpose of punishment is to correct public dissatisfaction (especially victims of criminal acts) as an effort to prevent criminal acts in the future. Another purpose of punishment is to obtain legal certainty. Where the existence of the principle of legal certainty is a form of protection for justice seekers against acts of arbitrariness, which also means that a person will and can obtain something that is expected in certain circumstances (Mertokusumo, 1999).

The disparity in decisions between the court of first instance and the level of appeal has created a breath of fresh air for the victims of Binomo Indra Kenz, where in the appeal hearing conducted by the Banten High Court a decision was made that evidence numbers 220 to 258 were returned to the victims. Where this evidence is then expected to be a substitute for the losses suffered by the victims. Indeed, the decisions made by judges

must reflect justice by not overriding the existing legal certainty. Decisions made by judges must actually reflect legal certainty in it, as well as the establishment of justice in society. because legal uncertainty will later cause chaos in people's lives.

3.2. Regulation of Returning Victims' Assets in the Crime of Binomo Trading Fraud under Indonesian Criminal Law

The discussion related to asset recovery will not be far from the discussion of eradicating corruption, where usually the discussion of asset recovery is on the return of assets by the perpetrators of corruption crimes to the state. However, if we look at the economic losses experienced by victims as a result of crimes with economic motives other than state losses, then people who are not state officials have the potential to suffer economically. Usually people are involved in fraud, embezzlement and money laundering and other criminal acts.

Like Indra Kenz's Binomo fraud case which was decided on January 10, 2023 with Number: 117/PID.SUS/2022/PT.BTN. Where the trial decision decided that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Trader Association / Association). So Indra Kenz's assets, which were previously confiscated to the state, were then returned to the victims and the return of evidence numbers 220 to 258 to the victims of Indra Kenz's criminal acts is an effort that can be made by the state to restore the material losses experienced by the victims of Indra Kenz's criminal acts. Because when the victim gets back his property in accordance with the amount of loss he experienced is one form of recovery to the victim (Karmen, 2001).

When referring to the concept of justice which according to Sarjono Soekanto in his book that the problem of applying the law cannot be separated from the problem of justice which is the mouth of the law itself (Soekanto, 2011). The victims will feel that they have received justice when finally, the evidence number 220 to 285 can be returned to the victims. This is related to the process of returning the losses suffered by the victims as victims of the criminal offense that occurred. This can be seen as a form of state responsibility for its citizens in the form of legal protection. The legal protection of victims of crime is part of the protection of the community, which can be realized in various forms, namely the provision of restitution and compensation, medical services and legal assistance (Yulia, 2021).

After the victims finally managed to get access to regain the losses they experienced by returning assets, the problem that arose later was the process of returning assets to each victim. Asset recovery is a theory that explains the legal system based on the principles of social justice that gives the ability, duty and responsibility to the state to provide protection and opportunities to the community in achieving welfare (Yanuar, 2007). In the case of Indra Kenz's Binomo case, in accordance with the judge's decision that the process of returning Indra Kenz's assets was fully submitted to the United Indonesia Trader Association. The judge's decision is expected to be able to compensate for all forms of material losses suffered by victims as a result of criminal acts committed by Indra Kesuma Als Indra Kenz.

However, it has been several months since evidence numbers 220 to 58 were handed over by the Tangerang District Attorney to the victims through the United Indonesian Traders Association, the process of returning the victims' losses has not been completed. In fact, in November 2023, news broke in the news related to the victims who later joined

the United Indonesian Traders Association / Association finally reported each other to the Police. This began with the suspicion of the association members (who later claimed to be the new management) against the old management regarding the alleged lack of transparency in the sale and distribution of the evidence. Not to mention some assets that have been sold and it is felt that the results of the sale are unclear and the assets that have not been sold are not clear who the buyer is. For this reason, the new PTIB management finally took over the management of PTIB and reported the old PTIB management to the authorities.

The unfortunate occurrence of PTIB members, who are both victims of Indra Kenz's criminal fraud, reporting each other is indeed regrettable. This incident poses significant disadvantages for the victims, as it hampers the process of selling assets that would have been utilized for compensation. Consequently, the only party that suffers from this situation is the victim themselves. The already time-consuming refund process, which involves discussions and asset sales, will now be further prolonged due to this dispute.

Reporting from Voi.co.id, LPSK has provided input for LPSK's involvement in returning victims' losses. This was conveyed by LPSK Deputy Chair Achmadi in his official statement to reporters. Achmadi said that victims can apply for protection to LPSK for an assessment of their losses (VOI.ID, 2022). Because according to the rules the victims should have submitted an application first to LPSK. As stated in Article 20 of PP No. 44/2008 that the application to obtain Restitution as referred to in paragraph (1) is submitted by the victim, the victim's family, or their attorney with a special power of attorney.

However, in the process of returning Indra Kenz's assets, LPSK was not involved, this refers to the results of the court decision read out at the appeal hearing at the Tangerang High Court on January 10, 2023. Where the Panel of Judges read out the verdict that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Trader Association (Deed of Establishment Number 21 dated September 26, 2022 before Notary PPAT Musa Muamarta, S.H).

Rules related to the compensation mechanism are regulated in Supreme Court Regulation Number 1 of 2022 concerning the Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Crime. Article 2 Paragraph (1) states that this Supreme Court Regulation applies to "requests for restitution in cases of serious human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, crimes related to children, and other crimes determined by LPSK Decree as referred to in laws and regulations".

The LPSK Decision is elucidated in Article 1 Paragraph 14, wherein it is expounded that the said decision is formulated by the LPSK and encompasses an account of the computation of damages as well as the quantum of restitution and/or compensation for the application put forth by the applicant in conformity with the stipulations of the prevailing laws and regulations. Consequently, the Supreme Court Regulation can be invoked in instances where the applicant (in this scenario, the victim) lodges an application with the LPSK.

The absence of LPSK involvement in the process of returning Indra Kesuma Als Indra Kenz's criminal assets indicates that the victims did not make any request to the LPSK, as concluded by the author. However, if the assets were returned to the victims through a third party with the authority, such as the LPSK as part of the government, it is

possible that the conflict within the United Indonesian Trader Association could have been prevented.

If the victims of Indra Kesuma Als Indra Kenz's fraudulent activities wish to seek assistance from the government in recovering their compensation, they have the option to submit an application to LPSK. This provision is outlined in Article 20 of the LPSK Law, which allows for restitution requests to be made either prior to or following the perpetrator's conviction as determined by a court decision that has attained permanent legal validity.

4. CONCLUSION

The recent approval and hearing of the appeal in the Indra Kesuam Als Indra Kenz case highlights the government's ongoing efforts to ensure legal protection for victims of criminal acts. Despite a lengthy process, the victims of Indra Kenz's crime will finally receive full compensation, setting a precedent for similar cases. In Indonesian law, the compensation provided by the perpetrator of a criminal offense to the victim is referred to as restitution. This concept is outlined in Law Number 31 of 2014, which amends Law Number 13 of 2006 on Witness and Victim Protection. The implementation of this law is further regulated by Supreme Court Regulation No. 1 of 2022, which outlines the procedure for settling requests and providing restitution and compensation to crime victims. Additionally, Government Regulation No. 44/2008 addresses the provision of compensation, restitution, and assistance to witnesses and victims.

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