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Restitution of Victims: Funds as Legal Remedy for Consumer in Illegal Digital Investments

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Submitted: November 11th, 2025

Accepted: December 15th, 2025

Published: January 5th, 2026

ABSTRACT

In this globalization era, digital investment has become a highly practical alternative for people to invest. This Research Discusses About refunding victims funds as a legal remedies for consumers in illegal investments. There are 3 (three) cases that have similarities, namely the illegal investment fraud mode in Indonesia. This article focused to analyze characteristics of fraudulent investments in digital investments. This article used normative research method with a statute approach, a conceptual approach, and a case approach. The results of the study indicate that digital investment players have shown significant growth in the trading volume of digital assets, such as cryptocurrencies. However, while the digital investment model offers enormous potential, there are also several risks related to market volatility and regulatory uncertainty. Restitution of victims funds as a legal remedy for consumers in illegal investments, as a form of legal protection for victims of illegal digital investment fraud, is a form of protection for the community. This can be realized in various forms, such as fulfilling victims rights, namely compensation, something given to the party who suffered a loss proportional to the amount of the loss.

Keywords: digital investment; cyber; fund; financial asset.

INTRODUCTION

The era of major transformation marked by the development of cyber technology has automatically created a society that is increasingly aware of the advancements in internet technology, which are increasingly easy to use. The era of globalization has also resulted in increasingly sophisticated information technology, thus influencing the emergence of various forms of crime.¹

Information technology can now be used for both good and bad, given its contribution to improving peace, growth, and human order, while also serving as an effective infrastructure for criminals. The increasing ease of internet use has made it easier for some criminals to carry out various methods of illegally gaining profits and causing significant harm to others, such as the recent surge

in digital investment fraud.² As stipulated in Article 1 number 5 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 27 of 2024 concerning the Implementation of Trading in Digital Financial Assets Including Crypto Assets (hereinafter referred to as OJK Regulation 27/2024), Digital Financial Assets are financial assets that are stored digitally, including crypto assets.

The rules used to provide rules regarding digital investment related to protecting the rights of digital investment victims in handling digital fraud cases, namely in addition to using Article 378 of the Criminal Code, also use Article 45 letter a paragraph (1) in conjunction with Article 27 paragraph (2) and 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 8 of 2008 concerning Information and Electronic Transactions and amended again by Law Number 1 of 2024 concerning the Second Amendment to Law Number

¹ Budi Suharyanto, *Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi Pengaturan dan Cela Hukumnya* (Jakarta: Rajawali Pers, 2012), p. 12.

² Maskun, *Kejahanan Siber (Cyber Crime): Suatu Pengantar* (Jakarta: Kencana, 2014), p. 29.

11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law).

The recent rise of digital investment has become a highly practical alternative for people to invest. This is because digital investment is an online trading system using internet technology, eliminating the need for investors to visit and/or communicate with brokerage offices. The entire investment process takes place with internet access and can be accessed anywhere, anytime. Illegal digital investment fraud schemes allow unscrupulous individuals to promise and achieve rapid profits, attracting people to these illegal investments, making them victims of fraudulent activities.

Regarding online trading platforms, there are additional regulations governing them, namely Financial Services Regulation No. 39/POJK.04/2014 concerning Trading Platform Sales Agents. Basic regulations regarding online trading platforms are contained in Law 4/2023 and additional regulations issued by the Financial Services Authority (OJK), namely regulations on online mutual funds. However, the OJK has not specifically included these regulations in a single regulation covering online trading platforms.

There are various forms of online fraud that need to be discovered regarding the National Research on Digital Fraud in Indonesia Mode, medium and recommendations.³ Showing the public's vulnerability to online fraud is very high, there are examples of illegal investments that often occur in Indonesia, namely fake investment fraud, there are a total of 64,219 accounts reported and a total of 28,568 blocked accounts to date, with reported losses of Rp. 994.3 billion with a total of Rp. 127 billion of blocked victim funds. The Indonesia Anti Scam Center (IASC) will continue to develop its capacity to be accelerated in handling fraud cases in the financial sector.⁴

There are 3 (three) cases that have similarities, namely the illegal investment fraud mode, namely in the case of Doni Salmanan in the Quotex trading platform case, Indra Kenz in the Binary Option case, and the case of Hendry Susanto in the Fahrenheit

Trading Robot case, as in the three cases, many criminals have legally and convincingly carried out the unlawful acts in question without the right to distribute false news (hoaxes) and deception which resulted in losses to consumers in electronic transactions and have committed the crime of money laundering.

An example is the Binomo case by Indra Kenz, an influencer suspected of committing investment fraud (fake investments) or illegal investments through the Binomo application platform. The problem initially occurred when eight victims of the illegal investment reported to the Criminal Investigation Agency (Bareskrim) of the police on February 3, 2022. The victims stated that they had suffered losses from illegal investments with the Binomo application, reaching Rp. 2,400,000,000 (two billion four hundred million rupiah).⁵ Not only did they report the application, but the victims also reported the owner and several partners who helped promote the trading application. In the case of the Binomo application fraud, the reported party, Indra Kesuma alias Indra Kenz, lost Rp. 25,630,725,124. Binary Option Affiliates have resulted in many victims and enormous losses, one of the factors why this happened was due to a lack of understanding of the fraudulent investment, such as how the game mechanism was not explained in detail by the affiliates. Binary Option Affiliate Victims are parties who are clients of Binary Option Affiliates who are incompetent.

Next is case number 3692 K/Pid.Sus/2023, the case of Doni Salmanan, who promoted a trading app called Quotex to the public and provided a method for trading to generate profits. Examining the above issues reveals legal ambiguity in resolving digital investment crimes. Victims are denied legal protection due to regulations that significantly regulate the restitution of losses suffered by victims, leaving them without legal certainty in seeking justice for their losses. Based on the previous problem description, this article examines the Characteristics of Fraudulent Investments in Digital Investments.

³ Warta, "Peneliti UGM: 66,6% Masyarakat Di Indonesia Jadi Korban Penipuan Digital," Pos Jateng, 2022.

⁴ Otoritas Jasa Keuangan, "Waspada Investasi Ilegal," OJK, 2022, <https://ojk.go.id/waspada-investasi/id/default.aspx>.

⁵ Tatang Guritno, "Berbagai Kasus Investasi Bodong Yang Diungkap Polisi: Binomo, Quotex, Fahrenheit, dan Evotrade," Kompas, 2022.

RESEARCH METHODS

This article used normative research method with a statute approach, a conceptual approach, and a case approach. The statute approach is implemented by examining the inherent material contained in the law and studying the ontological basis, philosophical principles, and ratio legis of the law.⁶ The conceptual approach, however, is implemented by reviewing the views and doctrines of scholars who have created legal understandings, concepts, and principles that are highly significant to the legal problem being studied. Case approach is used by analyzing several court decisions that have become final and binding.

DISCUSSION

Protection for Digital Investment Victims Who Experience Losses

Illegal investments, often referred to as fraudulent investments, have several elements that warrant vigilance. These elements include promises of high returns in a short time, claims of no risk, unclear company legality, and the practice of Ponzi or pyramid schemes. Illegal investment crimes are rampant because many people still lack understanding of investment and hope to gain large profits from investing. Perpetrators exploit this lack of public information, which seeks refuge under Article 16 of Law 10/1998.

Illegal investments in cryptocurrency are often characterized by several elements that make them potentially detrimental to investors. These elements include offers of unrealistically high returns, a lack of operational transparency, and a lack of clear regulation and oversight from relevant authorities.

Criminals can make illegal investments because many people still have minimal education about investment and investors who always expect big profits in investing. The perpetrators will take advantage of the public's lack of information by taking refuge in Article 16 of Law 10/1998, in essence, that the one who collects funds must be a bank with the permission of the head of Bank Indonesia, unless regulated by a separate law Article 16 of Law 10/1998, the words regulated by a separate law are used as a cover for institutions that "hide" behind a separate law, one of which is

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Pranada Media Group, 2019), p. 112.

a savings and loan cooperative institution, whose fundraising is regulated in Law No. 17 of 2012 concerning Cooperatives (hereinafter referred to as Law 17/2012) and Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 09 of 2018 concerning the Implementation and Development of Cooperatives.

Illegal investment is an act that fulfills the elements of a criminal act regulated in several Indonesian laws and regulations such as the Criminal Code, Law 10/1998, Law 7 of 2014 concerning Trade (hereinafter referred to as Law 7/2014), Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as Law 8/2010).

The growth of digital investment in Indonesia has significantly impacted consumer rights and welfare, increasing legal awareness, consumer protection regulations, and a focus on service and product quality. Data privacy and security are key areas of focus, with increased protection against cybercrime.⁷ Innovations in payment and transaction methods, such as digital wallets, provide consumers with more options, while transaction protection using security technology helps reduce the risk of fraud. Increasing consumer knowledge and government regulation dissemination also play a crucial role in protecting consumers and enabling them to make informed decisions.

Law 8/1999 provides protection for consumers, which means protection for the final consumer type. This is emphasized in the explanation of Law 8/1999 which states that the final consumer referred to in the definition in Article 1 number 2 8/1999, namely stating that the protection in Law 8/1999 does not provide coverage for all types of consumers, but only for the protection of the final consumer.

Therefore, for consumer protection law to be implemented, two steps must be taken. First, the lack of public awareness of the purpose of consumer protection law, which is to protect consumers, must be addressed through education. Consumer awareness remains low, leading to an imbalance

⁷ A.E Saragih & Bagaskar, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce," *Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 2, no. 2 (2023): 414.

between consumers and businesses. The public must be aware that the values held by Indonesian society are those of togetherness and mutual assistance, so that consumer protection is not only about protecting oneself but also about helping protect other consumers. This constitutes a legal culture that must be upheld by society. Discussing legal culture is the same as discussing legal awareness in general.⁸

The government, through designated institutions such as the National Consumer Protection Agency, will study the reports and rights of reply from both parties to prevent similar incidents from occurring to other consumers. This model for reporting consumer rights violations must be widely and comprehensively educated to the public, with the assistance of organizations or communities concerned with consumer protection. The purpose of this model for reporting consumer rights violations is to develop consumers' self-protection skills, both for themselves and for other consumers as a whole, which is essentially part of their role in implementing consumer protection. Consumers must have the ability to protect themselves, starting from themselves, so that "herd immunity" can eventually be established, or the ability of a group to protect its members. With herd immunity, consumers will automatically be protected by themselves.

Consumer protection related to digital assets is crucial, especially where customer data requires privacy protection. Effective regulations are key to addressing potential abuses of consumer rights. As digital investment grows, attention to consumer protection and appropriate regulations will foster a healthy and fair digital investment environment. Regarding consumer protection law, there are several definitions related to consumer protection. A.Z. Nasution defines consumer law as the overall principles and norms governing the relationship and issues of providing and using goods and/or services between providers and users in social life.⁹

However, the legal definition of consumer protection as a specific part of consumers is the entire principles and rules that provide rules and protect consumers in relations and issues of provision and

use in social life. Government Regulation Number 57 of 2001 concerning the National Consumer Protection Agency defines consumer protection as all efforts that guarantee legal certainty to provide protection to consumers.

It can be analyzed that crypto asset consumers have fulfilled the criteria as consumers in the regulations of Law 8/1999, namely the group of final consumers and crypto assets can be classified as commodities that have the form of goods and/or services so that Law 8/1999 has relevance to provide protection and guarantee the rights and obligations of crypto asset customers who have a position as consumers in digital crypto asset transactions.

Furthermore, crypto assets can be classified as specific commodities, as stipulated in Article 1, number 7 of the Futures Trading Supervisory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of Physical Crypto Asset Markets (crypto assets) on futures exchanges. It can be explained that crypto assets, in digital form, are classified as intangible commodities. As defined by Law 10/2011, commodities themselves are defined as all goods, services, rights, and other interests, and any derivatives of commodities that can be traded and are the subject of futures contracts, sharia derivatives, and others.

The development of technology still has both positive and negative impacts on society. There are examples of negative impacts, namely that business actors and consumers have an unequal position, because consumers in transactions in this digital era can be directed to a position as objects that are useful for obtaining maximum profits for business actors.¹⁰

The form of legal protection for victims of illegal digital investment fraud crimes is a form of protection for the community, which can be realized in various forms, such as the fulfillment of the victim's rights, namely compensation for something given to the party who suffered a loss in proportion to the loss they experienced, the return of goods that have been taken, replacing costs arising from the consequences of the crime or replacing damage arising from the consequences of the crime, there is other assistance, namely counseling, medical

⁸ Mohamad Syarhan, "Socio-Cultural and Legal Changes in Indonesia," *Jurnal Hukum Progresif* 9, no. 2 (2021): 135.

⁹ AZ. Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar* (Jakarta: Diadit Media, 2007), p. 87.

¹⁰ Eli Wuria Dewi, *Hukum Perlindungan Konsumen* (Yogyakarta: Graha Ilmu, 2015).

services, legal assistance and the provision of information.¹¹

To protect crypto investors, Law 4/2023 regulates financial sector reform, including strengthening consumer protection for the financial services sector in Indonesia. This law has at least three objectives: first, establishing a consumer protection ecosystem capable of creating legal certainty and handling complaints and resolving problems effectively and efficiently; second, creating an environment for financial sector business actors (PUSK) regarding responsible business behavior; second, fair treatment through protecting consumer assets, privacy, and data; and improving the quality of products and/or services for financial sector business actors. Third, increasing consumer awareness, capabilities, and independence regarding financial sector business products and/or services, as well as increasing consumer empowerment.

Prior to the enactment of Law 4/2023, Bappebti (Commodity Futures Trading Regulatory Agency) was responsible for overseeing crypto assets in Indonesia. However, after the new regulations regarding crypto asset supervision were enacted, the Financial Services Authority (OJK) took over this responsibility fully, as stipulated in Article 6 letter e of Law 4/2023. The OJK currently regulates capital markets, banking services, insurance, and pension funds, but is now tasked with overseeing activities in the Financial Technology Innovation sector, including digital financial assets and crypto assets. Article 213 of Law 4/2023 explains the scope of financial technology innovation, including payment systems, securities transaction settlement, capital raising, investment and risk management, fundraising and/or distribution, market support, activities related to digital financial assets, including crypto, and other digital financial services. The OJK can implement administrative systems, as stipulated in Article 285 of Law 4/2023, which states that the OJK has the authority to impose administrative sanctions on business actors who violate laws and regulations and their implementing regulations. The sanctions that can be imposed are written warnings, fines, cancellation of permits, revocation of permits,

and even the writing down of the names of parties involved in violations of people who are not fit to run businesses in the financial sector.

Legal Efforts to Refund Victims of Digital Investments

The definition of compensation in criminal acts is not a new concept. In corruption crimes, the concept of criminal compensation is known, where in this case the State can be considered as the victim in the crime. Compensation or legal remedy is a way of fulfilling rights or compensation given to parties who suffer losses due to the actions of another party as a result of negligence, error, or intentional mistakes according to a court decision. Compensation is a requirement according to a court decision. Compensation is a form of obligation and a form of accountability imposed on those who have violated the law and whose actions have resulted in losses to other individuals.¹²

Prejudice of Goodwill in the context of recovering illegal investments refers to legal disputes or issues that must be resolved before a decision can be made regarding the return of funds from investments deemed illegal. This often involves interconnected criminal and civil actions, necessitating the resolution of civil issues (e.g., breach of contract) before determining whether fraud or embezzlement has occurred.

Combining Prejudice of Goodwill with the NCB Asset Forfeiture by the Financial Transaction Reports and Analysis Center (PPATK), the Attorney General's Office, and the Supreme Court will result in a near-perfect recovery of assets and losses for victims of illegal investments. This is because all assets belonging to the perpetrators will be properly invested. The use of the Prejudice of Goodwill mechanism will ensure that decisions regarding the status of evidence conflict with criminal decisions, thereby achieving the goal of recovering and reimbursing victims of illegal investments or investment fraud.

There are several cases of digital investment crimes that have resulted in losses to the public,

¹¹ Arief Mansur, Dikdik M., Elisatri Gultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita* (Jakarta: Raja Grafindo Persada, 2007), p. 42.

¹² Erdianto Effendi, "Penjatuhan Pidana Ganti Rugi Sebagai Pidana Pokok Dalam Kejahatan Terhadap Harta Benda," *USM Law Review* 5, no. 2 (2022): 29.

and it is not uncommon for victims to not receive a refund of their funds.

Restitution or the return of funds from illegal investments is difficult to obtain due to various

factors, particularly the complexity of asset tracking, funds that are often already spent or hidden, and uncertainties in the legal framework that prioritizes asset seizure by the state over direct returns to

| No | Digital Investment Case | Indictments and Charge | Decision | Loss Refund Status |
|----|---|---|--|--|
| 1 | Digital Investment Crime by Indra Kesuma alias Indra Kenz. Case Number id.Sus/2022/PN case No.1240/Pid.Sus/2022/PN.Tng | <ul style="list-style-type: none"> Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of the ITE Law Article 45A paragraph (1) in conjunction with Article 28 of the ITE Law Article 378 of the Criminal Code Article 3 of the Law on the Prevention and Eradication of Money Laundering (TPPU) Article 4 of the Law on the Prevention and Eradication of Money Laundering (TPPU) | The Panel of Judges' Decision stated that the Defendant INDRA KESUMA alias INDRA KENZ had been proven to have legally committed the crime of spreading false news in electronic transactions, thus causing losses to the victim and also TPPU. | The District Court Judge ruled that the victim was not entitled to compensation. The High Court Judge granted the victim's request for compensation. |
| 2 | Investment crime committed by Doni Salmanan in case number 576/SUS/2022/PN/BLB | <ul style="list-style-type: none"> Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law Article 378 of the Criminal Code Article 3 of the Law on the Prevention and Eradication of Money Laundering Article 4 of the Law on the Prevention and Eradication of Money Laundering | The verdict on case No. 576/PID. SUS/2022/PN BLB declares that the defendant Doni Muhammad Taufik alias Doni Salmanan was proven to have legally committed a crime by spreading false and misleading news during electronic transactions, resulting in losses for the victim, as stated in the first indictment of the Public Prosecutor, and declares that the defendant was not proven to have committed money laundering as stated in the second indictment of the Public Prosecutor. | The victim did not receive compensation |
| 3 | Digital investment fraud perpetrated by Fakarich, also known as Fakar Suhartami Pratama, Indra Kenz's mentor. Case No. 1835/Pid. Sus/2022/PN Mdn | <ul style="list-style-type: none"> Article 45A paragraph (2) in conjunction with Article 27 paragraph (1) of the ITE Law Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law Article 378 of the Criminal Code | The verdict stated that the defendant Fakar Suhartami Pratama was proven to have legally carried out the crime of spreading false news in electronic transactions, causing losses to the victim and receiving or controlling the transfer or using assets which he knew or should have suspected were the proceeds of a crime. | Victims Receive Compensation for Losses |
| 4 | Fraudulent binary options instruments involving commodity futures brokers (PBK) on the OCTAFX online trading platform. Case No. 665/Pid.Sus/2022/PN JKT.SEL | <ul style="list-style-type: none"> Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law in conjunction with Article 55 paragraph (1) of the Criminal Code Article 378 of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code | The decision of the Panel of Judges stated that Defendant 1. Benni Setiawan and Defendant 2. Melissa Vincentia Jonathan have been proven to have intentionally and jointly committed the crime of spreading false and misleading news during electronic transactions, thus causing losses to the victim. | Victims Receive Compensation for Losses |
| 5 | Ponzi scheme gold fraud by Budi Hermanto Case No. 10 82/ Pid.B/2022/PN Tang | <ul style="list-style-type: none"> Article 378 in conjunction with Article 65 paragraph (1) of the Criminal Code Article 372 in conjunction with 65 paragraph (1) of the Criminal Code | The panel's decision stated that the defendant Budi Hermanto had committed the crime of fraud and money laundering. | Victims receive compensation |

victims. Key Factors Supporting Restitution Here are details of the challenges victims often face:

1. Assets Quickly Disappear or Disguise: Illegal investment perpetrators typically quickly spend or conceal the proceeds of crime, often through money laundering schemes. The longer a case takes to be processed, the less likely it is that the funds will be recovered and returned, Unclear Identities of Perpetrators: Many fraudsters operate under false or multiple identities, making it difficult for law enforcement to identify and prosecute the true perpetrators.
2. Funds Flown Abroad: If funds have been transferred to another jurisdiction, the asset recovery process becomes increasingly complex, requiring international cooperation and Mutual Legal Assistance (MLA), which can be lengthy. Victims Bear the Burden of Proof: Victims often must provide comprehensive evidence to support their claims, which is difficult if transaction records are incomplete.
3. Legal and Bureaucratic Complexity: The legal process for asset recovery is highly complex, involving numerous documents, hearings, and negotiations. Victims often struggle to navigate the maze of bureaucracy and complex legal procedures.
4. Assets Confiscated by the State, Not the Victims: In many money laundering cases in Indonesia, the proceeds of crime seized by authorities are often designated for confiscation by the state, rather than returned directly to the victims. This presents one of the biggest legal challenges for victims.
5. Limitations on Assets Recoverable: Often, the total amount of assets successfully traced and confiscated is far less than the total losses suffered by victims. 100% recovery is almost never achieved.

Article 1, number 11 of Law Number 31 of 2014, Amendment to Law Number 13 of 2006 concerning Witness and Victim Protection (abbreviated as Law 31/2014), states that restitution is compensation provided to the victim or their family by the perpetrator or a third party. Article 7A paragraph (3) states that a restitution application can be submitted before or after a court decision has

obtained permanent legal force through the LPSK (Lembaga Penitentiary Agency).¹³

It can be concluded that digital investment cases clearly result in losses for victims and lack of justice. Although the perpetrator of the crime has been sentenced to prison, the victim's perspective does not necessarily obtain what they desire from the perpetrator's actions. In principle, victims do not care about the perpetrator's punishment; the most important thing for them is obtaining compensation as a form of justice from society.¹⁴

CLOSING Conclusion

Refund of Victims' Funds as a Legal Effort for Consumers in Illegal Investments as a form of legal protection for victims of illegal digital investment fraud crimes is a form of protection for the community, which can be realized in various forms, such as the fulfillment of victims' rights, namely compensation, something given to parties who experience losses in proportion to calculating the losses they experience. The government has taken steps in the form of legal protection for victims of illegal investments who have suffered losses. This is emphasized by the existence of the OJK, this is in accordance with the provisions of Article 5 of Law 21/2011.

Recommendation

The government should provide special regulations for refunds to victims of illegal investment crimes so that if a digital investment crime occurs, victims who suffer losses as a result receive legal protection in the form of refunds.

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¹³ Kuswandi, "Gugatan Skema Ponzi Rp 1 T Dikabulkan, Aset 22 Korban Dikembalikan," Jawa Pos, 2022.

¹⁴ Liang Chen, Shirley S. Ho and M. O. Lwin in, "A Meta-Analysis of Factors Predicting Cyberbullying Perpetration and Victimization: From the Social Cognitive and Media Effects Approach," *New Media & Society* 19, no. 8 (2019): 182.

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