

**LEGAL PROTECTION OF ONLINE INVESTORS ON THE BINOMO  
APP BY ALERT TASK FORCE  
INVESTMENT FINANCIAL SERVICES AUTHORITY**

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**Abstract (Indonesia)**

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**Latar Belakang:** Secara garis besar, investasi adalah suatu komitmen atas sejumlah dana atau sumber daya lainnya seperti peralatan (*Equipment*), Asset tak bergerak, hak atas kekayaan intelektual, maupun keahlian. Investasi dilakukan secara pribadi maupun badan hukum. Investasi secara umum, memiliki beberapa tujuan yang pertama, untuk mendapatkan kehidupan yang lebih layak dimasa yang akan datang, yang kedua untuk mengurangi tekanan inflasi, yang ketiga untuk menghemat pajak.

**Tujuan:** Penelitian ini bertujuan untuk mengetahui serta menganalisis tentang perlindungan hukum terhadap Investor online pada aplikasi binomo oleh Satuan tugas waspada investasi otoritas jasa keuangan. Serta mengetahui serta menganalisis tentang.

**Metode:** Penelitian ini termasuk jenis penelitian normatif. Sehingga dapat diketahui bahwa perlindungan hukum terhadap investor oleh Perusahaan Pialang implementasinya belum cukup dapat mengakomodir kepentingan Investor.

**Hasil:** Dalam Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan (UU OJK), wewenang dan tugas OJK adalah mengawasi Lembaga Jasa Keuangan (LJK) di sektor pasar modal, sektor industri keuangan non-bank (seperti: asuransi, dana pensiun, perusahaan pembiayaan, dll) dan mulai tahun 2014 juga akan mengawasi sektor perbankan (Bank Umum dan Bank Perkreditan Rakyat).

**Kesimpulan:** Berdasarkan pemaparan di atas, maka dapat disimpulkan bahwa perlindungan hukum terhadap investor oleh Perusahaan Pialang implementasinya belum cukup dapat mengakomodir kepentingan Investor.

**Kata kunci:** Perlindungan Hukum, Investasi Online, Otoritas Jasa Keuangan

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**Abstract (English)**

**Background:** Broadly speaking, an investment is a commitment to a certain amount of funds or other resources such as equipment, immovable assets, intellectual property rights, or expertise. Investments are made personally as well as by legal entities. Investment in general, has several objectives, the first, is to get a more decent life in the future, the second is to reduce inflationary pressures, and the third is to save taxes.

**Objective:** This study aims to find out as well as analyze the legal protection of online Investors on the Binomo application by the investment alert task force of the financial services authority. As well as knowing and analyzing about.

**Methods:** This research belongs to the normative type of research. So it can be known that the legal protection of investors by brokerage companies has not been sufficiently able to accommodate the interests of investors.

**Result:** In Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), the authority and duty of the OJK are to supervise Financial Services Institutions (LJK) in the capital market sector, the non-bank financial industry sector (such as insurance, pension funds, financing companies, etc.) and starting in 2014 will also supervise the banking sector (Commercial Banks and People's Credit Banks).

**Conclusion:** Based on the above explanation, it can be concluded that the legal protection of investors by brokerage companies has not sufficiently accommodated the interests of investors.

**Keywords:** Legal Protection, Online Investment, Financial Services Authority

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## INTRODUCTION

The development of the globalization world in modern times has become a familiar thing for all countries and every corner of the world. As a result, it has a positive and negative impact, including in terms of the economy, both in the form of investment and investment that has positive and negative sides.

The many advantages obtained in investing make many people tempted to make investments, both in the form of savings, stocks, *forex trading*, and others. Broadly speaking, investment is a commitment to several funds or other resources such as equipment, immovable assets, intellectual property rights, and expertise.

Investments are made personally as well as by legal entities. Investment in general, has several objectives, the first, is to get a more decent life in the future, the second is to reduce inflationary pressures, and the third is to save taxes.

In Law Number 21 of 2011 concerning the Financial Services Authority, the authority and duties of the OJK are to supervise Financial Services Institutions (LJK) in the capital market sector, the non-bank financial industry sector (such as insurance, pension funds, financing companies, etc.) and starting in 2014 will also supervise the banking sector (Commercial Banks and People's Credit Banks) (*Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*, n.d.).

Companies or parties that make illegal investment offers are almost mostly not Financial Service Institutions (LJK) so the Company or party is not registered and supervised by the OJK. Thus, OJK cannot ensure the legality aspect of the company.

Related to this, to participate in countering illegal investment offers that harm and disturb the community. OJK has two strategies, namely: *Preventive*. Socializing and educating the public about the characteristics of fund-raising activities and *managing illegal investments Knowledge sharing* with law enforcement and regulators in the regions.

*Repressive*. Assist in coordinating efforts between relevant institutions to speed up the handling process through the cooperation framework of the Task Force for Handling Alleged Unlawful Acts in the Field of Fund Raising and Investment Management or better known as the Investment Alert Task Force.

Cases and public complaints related to illegal investments reported to the OJK will be coordinated with the Investment Alert Task Force for handling. This Investment Alert Task Force was formed by the Commissioner of the Financial Services Authority as stated in the Decree of the OJK Board of Commissioners Number: 01 / KDK.04 / 2013 dated June 26, 2013.

From the Decree of the OJK Commissioner, a Memorandum of Agreement between the Heads of institutions and members of the Investment Alert Task Force was prepared as the legal umbrella of the Task Force to strengthen the joint commitment between ministries/institutions in the implementation of the main duties of the Investment Alert Task Force (Decree of the OJK Board of Commissioners Number: 01 / KDK.04 / 2013 dated June 26, 2013).

The Memorandum of Understanding is contained in the Memorandum of Agreement of the Financial Services Authority Number: PRJ-07 / D.01 / 2016, Ministry of Trade of the Republic of Indonesia Number: 822 / M.DAG / MOU / 6/2016, Ministry of Communication and Informatics of the Republic of Indonesia Number: 1039 / MOU / M.KOMINFO / HK.03.02 / 06 / 2016, Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 09 / KB / M.KUKM / VI / 2016: Prosecutor's Office of the Republic of Indonesia Number: KEP – 459 / A / JA / 06 / 2016, Police of the Republic of Indonesia Number: B / 35 / VI / 2016, Investment Coordinating Board Number: 25 / KS / BKPM / 2016 Concerning Coordination of Prevention and Handling of Alleged Unlawful Acts in the Field of Community Fund Collection and Investment Management (*Nota Kesepakatan Itu Tertuang Pada Nota Kesepakatan Otoritas Jasa Keuangan Nomor : PRJ-07/D.01/2016*, n.d.).

Article 5 paragraph 1 of this memorandum of agreement explains that the Investment Alert Task Force carries out the task of preventing and handling suspected unlawful acts in the field of collecting public funds and managing investments.

Paragraph 2 of the same article explains that the membership of the Investment Alert Task Force is appointed by the parties and determined based on the Decision of the Board of Commissioners of the Financial Services Authority.

Furthermore, the Second and Third parts, articles 8 and 9 of this Memorandum of Understanding contain the prevention of unlawful actions in the Field of Community Fund Raising and Investment Management as well as the Handling of alleged unlawful acts in the Field of Community Fund Raising and Investment Management carried out by the Investment Alert Task Force.

Consumer and public protection are contained in Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority (*Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*, n.d.).

In its supervisory duties, OJK carries out two supervisory actions, namely the initial action, or called *preventive* action (to prevent). Then *repressive* acts (in an attempt to follow up on criminal proceedings) (Adrian Sutedi, 2014).

Nowadays, there are not a few illegal investments that are rampant. Recently, there has been a hot case involving a well-known *celebgram* named Indra Kenz or better known as *crazy rich* from Medan.

The Criminal Investigation Agency (CID) of the National Police Headquarters officially issued a detention warrant against *influencer* Indra Kesuma alias Indra Kenz after being named as a suspect in a case of alleged investment fraud through the Binomo application (<https://bisnis.tempo.co/read/1569472/6-modus-penipuan-investasi-bodong-indra-kenz-dan-doni-salmanan>, accessed on November 20, 2022, at 17.00 WIB).

Therefore, OJK as the Chairman of the Investment Alert Task Force asks the public before investing to understand things such as ensuring that the party offering the investment has a license from the competent authority for the business activities carried out. The victims of this illegal Binomo application are almost all over Indonesia.

## RESEARCH METHODS

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, 2007).

According to Peter Mahmud Marzuki (Marzuki, 2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in legislation or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Asikin, 2004).

## RESULTS AND DISCUSSION

### **Legal protection of online Investors on Binomo application by the investment alert task force of the financial services authority**

In Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), the authority and duties of the OJK are to supervise Financial Service Institutions (LJK) in the capital market sector, the non-bank financial industry sector (such as insurance, pension funds, financing companies, etc.) and starting in 2014 will also supervise the banking sector (Commercial Banks and People's Credit Banks).

Companies or parties that make illegal investment offers are almost mostly not Financial Service Institutions (LJK) so the Company or party is not registered and supervised by the OJK. Thus, OJK cannot ensure the legality aspect of the company.

Related to this, to participate in countering illegal investment offers that harm and disturb the public, OJK has two strategies, namely:

Protection preventively and repressively. Preventive protection is a type of protection whose purpose is to prevent disputes.

Meanwhile, repressive protection is implemented when a dispute has occurred and its purpose is to resolve the dispute. A business engaged in the financial sector is one of the businesses that are prone to traps because in this case, investors are easier to be harmed.

In addition, many people have bad intentions to get as much profit as possible.

Therefore, an instrument is needed to be able to protect consumers and victims who have been deceived by traps. In the civil domain, protection for victims or parties who suffer losses is regulated in Article 1365 of the Civil Code.

Article 1365 of the Civil Code is listed as follows: Everyone who commits unlawful acts is required to compensate for losses arising from his mistakes.

The above article is known as the article of tort (PMH) in the civil domain. The meaning of an act against the law is an act of doing or not doing which has been contrary to obligations or has violated the rights of others.

The definition of law here is expanded not only based on written legal rules but also unwritten ones included in it, such as decency and community norms. The second element of Article 1365 of the Civil Code is regarding the error.

In Rutten's opinion, a person can be held liable for unlawful acts if there is a mistake in it.

Mistakes are divided into two, namely errors with intentionality and errors due to negligence. Mistakes by intentionality as well as by negligence have the same consequences. The next element is loss.

In this case, the losses are both material and material. What is meant by material loss is a loss that has a tangible form while immaterial loss is a loss of benefit or profit in the future.

The last element in Article 1365 of the Civil Code is the existence of a causal relationship between the perpetrator and the victim of the losses suffered. This article may apply if there is a causal relationship between loss and tort.

If there is a relationship between the two, the perpetrator can be held accountable for his actions.

So that it can be concluded that legal protection for victims can be asked for losses if the elements of unlawful acts are met, there are errors, losses, and causal relationships.

Furthermore, what is meant by a victim is someone who experiences suffering, both physically, mentally, and economically due to a criminal act (Article 1 number 2 of Law Number 13 of 2006 concerning Witness and Victim Protection).

Meanwhile, in civil law, Saparovic stated that those who can be declared victims are not only limited to the occurrence of a criminal act but also victims of material and immaterial losses due to not doing a job.

Legal protection for victims is also known in Law Number 8 of 1999 concerning Consumer Protection, it is regulated because consumers are in a weaker position so they are prone to becoming victims of harmful actions.

As previously known, *binary options* are one of the activities where traders guess the price movement of an asset in a certain period.

It is called *binary options* because traders are required to choose one of two options, if the trader can guess correctly they will get a big profit or suffer a loss if he guesses wrong.

The value of *binary options derivatives* is determined by the price of the underlying asset, such as gold or foreign currency. In its development, binary options are traded *over the counter* which was previously required through the *Chicago Board of Option Change (CBOE)*.

That is, currently, the transaction is carried out in real-time where market participants transact directly such as Binomo, *Olymp Trade*, and *IQ Option*.

To be able to trade binary options, traders require investors to deposit a certain amount of money as an initial deposit or deposit. Using the deposit, investors can use it to "call" or "put".

The order is an agreement to deposit in the form of a contract on the selected option based on the commodities provided on the Binomo platform.

Furthermore, investors will be welcome to choose between two options regarding the price movement of an asset. If it is correct in guessing within a predetermined time, then the investor will find a return on the previously agreed price.

But if the investor guesses to deviate from the specified time, all the money deposited by the investor will be withdrawn so that it suffers a loss (*out of the money*).

*Binary Options* were introduced at the *Chicago Board of Option Change (CBOE)* press conference in 2006. Then, after two years binary options are increasingly popular with the general audience and even equated with the *Retail Forex Market*.

*Forex trading (foreign exchange)* is trading the currency of one country with other countries, for example in *forex trading* simultaneously buying euros and selling dollars (known as EUR / USD).

Meanwhile, what is meant by the forex market is the cash market where there is a country's currency that is traded non-stop.

The investment advantage of this forex trading is that there is a difference when buying and reselling the currencies of countries that have been traded previously.

This difference arises from price fluctuations. In forex, there is an element of speculation and certainty of predictions that form the stigma that forex is gambling.

Binomo is not a type of commodity futures trading because customers or users are required to deposit a certain amount of money beforehand which will be welcome to choose between two options regarding the price movement of an asset.

If it is true, it will get a profit and if not all the money deposited will be withdrawn.

A commodity is a real object that can be traded easily, stored for a certain period, exchanged for other products, handed over in physical form, and can be traded through an exchange.

The definition of commodities is contained in Article 1 number 2 of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading, which states that:

Commodities are all goods, services, other rights and interests, and any derivatives of the Commodity that can be traded and are the subject of Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts.

Binary options are not a thing. Therefore, it can be concluded that binary options do not include objects and there are no material rights attached to them.

Then to be able to find out whether binary options are commodities, it is necessary to pay attention to Article 1 of the Commodity Futures Trading Supervisory Agency Regulation Number 3 of 2019 concerning Commodities that can be used as the subject of Futures Contracts, Sharia Derivative Contracts, and/or Other Derivative Contracts Traded on the Futures Exchange.

Based on the article, it has been stated what can be the subject of futures contracts and *binary options* are not included in it.

Although in Article 3 the regulation *a quo binary options* have been fulfilled, namely the existence of stock indices, foreign currencies, and gold if understood further in Article 4 *a quo* states that commodities can only be traded if they have obtained the approval of the Head of BAPPEBTI.

Even though it has been well-known in Indonesia, it does not mean that *binary options* have been licensed to operate. In August 2021, 249 domains had been blocked by the Commodity Futures Trading Supervisory Agency (Bappebti), One of them belongs to Binomo as an application that uses a binary options system. This is also strengthened based on Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997

concerning Commodity Futures Trading which states that binary options practices are illegal transactions and are not recognized for their existence in Indonesia.

Based on the results of the analysis, it can be concluded that binary options are not one of the commodities that can be legally traded in Indonesia.

Therefore, the Futures Trading Act cannot provide a legal umbrella for existing transactions on this Binomo platform. This is exacerbated by the absence of Binomo branch offices in Indonesia, making it difficult to hold accountable.

In introducing the products offered, the Binomo platform that uses binary options conducts promotions through affiliates.

The purpose of a platform using the help of an affiliate is to make the platform known to a general audience so that its users are getting more and more widespread.

Each affiliate will get a link or referral code that will be accessed by prospective customers. The affiliate will get a commission if they get new consumers using the link or referral code.

In practice, the affiliate will invite potential customers by showing great profits to their success in running binary options so that many people believe in them.

However, the affiliate only shows the advantages of using the Binomo application but not the disadvantages or risks that will be borne by investors as users of the platform.

Based on the provisions of Article 9 paragraph (1) letter k of Law Number 8 of 1999 concerning Consumer Protection states that business actors are prohibited from offering, promoting, or advertising a good and/or service incorrectly, and/or as if offering something that contains uncertain promises.

Further regulated in Article 57 paragraph (2) letter d of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading which states that Each party is prohibited from directly, or indirectly influencing other parties to transact Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts by persuading or giving hope of profits beyond reasonableness.

However, the thing to note is that binary options trading is not legal to trade.

The Commodity Futures Trading Act does not include binary options as a commodity so this regulation does not apply to them.

Likewise, Law Number 8 of 1999 concerning Consumer Protection cannot apply anyway because customers of the Binomo platform are not consumers regulated in this law and binary options are not something legal to trade.

Although Law Number 8 of 1999 concerning Consumer Protection cannot shelter victims from Binomo, victims can apply for it in the criminal or civil realm.

In the civil realm, it requires victims to bring written evidence while the criminal realm requires a minimum of 2 pieces of evidence accompanied by the title of the case so that it can be known who the affiliate involved is.

These victims can also apply for restitution or compensation which are reported to the Witness and Victim Protection Agency (LPSK).

The assets of Binomo affiliates will be used as a substitute for the losses of the victims.

This is stated in Article 7A paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection which states that: Victims of criminal acts are entitled to restitution in the form of:

- a. indemnity for loss of wealth or income;
- b. compensation for losses incurred as a result of suffering directly related to a criminal act; and/or
- c. reimbursement of medical and/or psychological treatment costs.

Based on the article above, victims of binary options will get restitution for losses incurred as a result of a criminal act.

In this case, Binomo affiliates a medepleger (person who helps) criminal act of fraud. As a result of his actions, the affiliate can be entangled with Article 378 of the Criminal Code Jo Article 55 of the Criminal Code.

The sanctions imposed on perpetrators based on this law are imprisonment for a maximum of 4 years.

Because Binomo's affiliate uses electronic media, he is also subject to Article 28 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions Jo Article 45A paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions for fraudulent acts by making solicitation videos to others.

The Witness and Victim Protection Agency (LPSK) its authority can carry out compensation assessments in providing restitution and compensation. This is stated in Article 12 A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection.

These victims can report first to the Police so that they can then submit them to the Witness and Victim Protection Agency (LPSK) for the return of restitution.

## CONCLUSION

Based on the explanation above, it can be concluded that the legal protection of investors by brokerage companies has not been sufficiently able to accommodate the interests of investors.

Law Number 32 of 1997 only regulates the settlement of disputes and does not mention further the form of legal protection efforts that must be carried out by Futures Brokers.

Settlement of disputes between Investors and Futures Brokers is carried out by civil settlements including settlements within the Futures Broker, settlements through futures exchange institutions, and settlements through Bappebti.

Criminal settlements are carried out by Bappebti civil servant investigators or through the Police and Criminal Justice Institutions.

And the Financial Services Authority has collaborated with ministries and related institutions to reduce space in carrying out legal protection to investors as stated in the Memorandum of Understanding contained in the Memorandum of Understanding of the Financial Services Authority Number: PRJ-07 / D.01 / 2016.

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