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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Analysis of the Reconstruction of the Human Dignity-Based Protection Model Towards the Human Rights Framework in Victim Protection

Ida Farida

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: idafarida.std@unissula.ac.id

Abstract. *Victim protection within the criminal justice system has undergone a paradigm shift from a retributive approach toward a human rights-based approach. The retributive approach, which primarily focuses on punishing offenders, has often failed to provide substantive justice for victims, particularly in terms of restitution, rehabilitation, and recovery. From a human rights perspective, victims are no longer mere objects within the justice process but legal subjects are entitled to justice, protection, and remedies that must be guaranteed by the state. This study aims to analyze the transformation of victim protection from a retributive approach to a rights-based approach within the human rights framework, examine the limitations of the retributive model in providing comprehensive victim protection, and formulate a more responsive victim protection model grounded in human rights principles. The research employs a normative juridical method with statutory, conceptual, and comparative approaches. Data were collected through library research involving legislation, international legal instruments, court decisions, and relevant academic literature. The data were analyzed qualitatively using descriptive-analytical and prescriptive methods. The findings indicate that the retributive approach still dominates the criminal justice system but is insufficient in ensuring optimal victim protection. A human rights-based approach introduces a new paradigm that positions victims as primary subjects entitled to recovery, justice, and protection. Therefore, a reconstruction of the victim protection system is required by integrating human rights principles at every stage of the criminal justice process.*

Keywords: *Criminal Law; Human Rights; Justice; Rights-Based Approach; Retributive; Victim Protection.*

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1. Introduction

In the modern era, technological developments have occurred in all areas of human life, facilitating investment systems. Advances in science and technology have significantly impacted criminal law. These developments, both directly and indirectly, have played a role in the development of crime, giving rise to many new dimensions of crime.¹

Technological advancements have brought about many changes, with the emergence of various foreign currency trading activities, known as binary options trading, on the Binomo platform. Binary options trading has become increasingly popular since its appearance in advertisements on social media in Indonesia.² There have been several cases in Indonesia involving binary trading that have resulted in many victims suffering significant losses because certain parties profited from the victims' losses.

One of the most recent online investment fraud cases is that of Doni Salmanan. He was named a suspect in a fraud case disguised as binary options trading (Binomo). The app, now known as Binomo, is an online gambling app disguised as trading and uses a binary options system.³ Binomo is an application that only benefits its Affiliates.⁴ Even suspected of online gambling. Doni Salaman was charged with Article 45 paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law, Article 378 of the Criminal Code, Article 3 paragraph (3) of Law Number 8 of 2010 concerning Money Laundering.

Many of the victims of these illegal investments are from the upper-middle class, who are actively investing their wealth in hopes of better fulfilling their needs and gaining future returns. Furthermore, investing has become a new lifestyle for some, prompting them to compete with the investment trends promoted by companies promising lucrative returns.⁵ So traders can estimate what the next price movement will be like.⁶

The term "investment" is not found in legislation. However, several experts have proposed a definition of investment law. Investment law comprises legal norms regarding investment possibilities, investment requirements, protection, and, most importantly, directing investment to achieve public welfare.⁷

¹Erdianto Efendi, *Indonesian Criminal Law*, ed. Aep Gunarsa (Bandung: PT Refika Aditama, 2014), 133.

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The rise in illegal investments discovered by the public through social media demonstrates the weakness of consumer (victim) protection. Legal protection for consumers is a collaborative effort between consumers, businesses, and the government, which establishes laws and regulations related to consumer protection. Efforts to provide consumer protection are aimed at enhancing the dignity and worth of consumers, ultimately achieving a balance in protecting the interests of consumers and businesses. Law is defined as principles and norms, and consumer protection is a key component of consumer law.⁸

Protection of victims' rights is simply regulated in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP), which are limited to the right to compensation. Developments in regulations governing victims' rights are contained in the Witness and Victim Protection Law, thus broadening the scope of victims' rights. However, weaknesses in the regulations on victims' rights result in victims not receiving maximum protection. Protection of victims' rights is essential as an effort to provide maximum protection and open wide access for victims to fight for the rights that have been violated due to a criminal act so that they can regain their rights.⁹

2. Research Methods

1. Types of research

This research is a normative legal research (doctrinal research), namely research that examines law as norms, principles, concepts, and doctrines that develop in

²Aman Budiman Hadisha Aisyah Sastraatmadja, Meria Suryani, Syarah Elsyadina, "Accountability of Perpetrators of Money Laundering Crimes Proceeding from Binary Options on the Binomo Platform," *Jurnal MAHUPAS: Mahasiswa Hukum Unpas* Vol. 1, no. 2 (2022): 19.

³Pancar Setiabudi Ilham Mukarromah., "Binary Option System on the Binomo Platform from an Islamic Law Perspective," *Jurnal Independent* (2021): 33.

⁴Bnu Arif Risyat, "Correlation Between Binomo Application Affiliates and Money Laundering Crimes," *JUSTITIA: Journal of Law and Humanities* 9, no. 6 (2022): 2998, <http://jurnal.um-tapsel.ac.id/index.php/>.

⁵Dian Husna Fadlia and Yunanto, "The Role of the Financial Services Authority (OJK) in Legal Protection for Investors Against Alleged Fictitious Investments," *Law Reform* 11, no. 2 (2015): 207.

⁶Rahma Marsinah, "Legal Awareness as a Tool to Control the Implementation of Law in Indonesia," *Scientific Journal of Aerospace Law* 6, no. 2 (2014): 86–96.

⁷MUHAMMAD ARIF PRASETYO PRASETYO, "The Role of Investment Law in Increasing Investment in Indonesia," *Ilmu Hukum Prima (IHP)* 4, no. 2 (2021).

⁸Kadek Ary Purnama Dewi, "Consumer Protection from Illegal Investment Advertisements on Social Media," *Jurnal Yustitia* 14, no. 2 (2020): 50–57.

⁹Adil Lugiarto, "Reconstruction of the Protection of the Rights of Victims of Crime," *Reconstruction of the Protection of the Rights of Victims of Crime* 43, no. 4 (2014): 38.



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the legal system, particularly regarding the protection of victims in the criminal justice system.

2. Research Approach

This research uses a normative juridical approach with several comprehensive legal approaches to analyze the transformation of the victim protection paradigm from a retributive approach to a human rights-based approach.

3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia, in particular provisions on human rights and protection of citizens;
- 2) Criminal Code (KUHP) and National Criminal Code;
- 3) Criminal Procedure Code (KUHAP);
- 4) Law Number 39 of 1999 concerning Human Rights;
- 5) Law Number 31 of 2014 concerning Protection of Witnesses and Victims;
- 6) Supreme Court regulations regarding restitution, compensation, and victim protection.

b. Secondary Legal Materials

- 1) Criminal law and victimology books;
- 2) Literature on victim protection and human rights;
- 3) National and international law journals;
- 4) Dissertations, theses, and related scientific research;
- 5) Opinions of experts in criminal law, human rights and legal policy;
- 6) Scientific article about the paradigm shift from retributive justice to a rights-based approach.

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4. Analysis Method

This research uses a normative legal qualitative analysis method, namely an analysis of legal norms, legal principles, doctrines, and human rights principles related to the protection of victims in the criminal justice system.

3. Results and Discussion

Human Rights (HAM) are inherent rights, ingrained in human identity, and therefore, no one is justified in revoking them. In other words, the morality of human rights affirms the twofold claim that each and every (born) human being has inherent dignity and is inviolable (not to be violated).¹⁰ Given that human rights are inherent in every individual, their existence applies universally. Everyone has these basic rights regardless of nationality, race, ethnicity, religion, or gender. The basis for human rights is related to the existence of humans as God's creatures endowed with reason and conscience.¹¹

The preamble to the 1945 Constitution of the Republic of Indonesia states that: "The state shall protect the entire Indonesian nation and its entire homeland, and shall advance the general welfare and enhance the intellectual life of the nation." This commitment must be elaborated more broadly by the government to meet the demands for human rights protection for every citizen in all aspects of life.¹²

A victim is simply defined as a party who is harmed or has suffered due to a crime.¹³ The definition of a victim itself is as stated in Article 1 number 2 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which states that a victim is a person who experiences physical or mental suffering and economic loss resulting from a criminal act.

Legal protection in this case is closely tied to the role of the government and related institutions, namely the Financial Services Authority (OJK) and the Indonesian Financial Services Authority (SWI). Preventing illegal investment

¹⁰Eman Sulaiman, "Consumer Protection from a Human Rights Perspective," *Journal of Thought, Legal Research, Pancasila and Citizenship Education* 9, no. 8 (2022): 143–149.

¹¹Sulaiman, "Consumer Protection from a Human Rights Perspective."

¹²Luhut MP Pangaribuan, "Human Rights," *Journal of Law & Development* 19, no. 6 (2017): 519.

¹³Mahrus Ali, *VVIKTIMOLOGY*, 1st ed. (Yogyakarta: Islamic University of Indonesia, 2020).

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requires both preventive and repressive measures. As the authorized agency, the OJK has two approaches:¹⁴

- 1) Preventive Conducting outreach and education to the public regarding the characteristics of illegal fundraising and investment management activities Knowledge sharing with law enforcement and regulators in the regions.
- 2) Repressive Assistance: Coordination efforts between relevant agencies are being undertaken to expedite the handling process through the collaborative framework of the Task Force for Handling Alleged Illegal Acts in the Field of Fundraising and Investment Management, better known as the Investment Alert Task Force. In theory, legal protection is already in place, starting with the existence of an institution that oversees illegal investments, and regulations regarding sanctions and closure of illegal businesses when illegal investments are operating.

4. Conclusion

The legal protection that can be provided by the government to victims of illegal online investment crimes is regulated in Article 378 of the Criminal Code (KUHP), and Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Meanwhile, the provisions that can ensnare perpetrators in gambling crimes are regulated in Article 303 bis Paragraph (1) of the Criminal Code. Based on the typology of victims and the factors causing illegal investments, both online and offline, the author concludes that there are three types of factors experienced by victims of illegal investments, namely Latent or Prodisposed Victims, victims whose causal factors are economic, Participating Victims, victims whose causes are low education, and False Victims, victims whose causes are consumer behavior. The recommendation from the results of this study is the need for legal reforms that include detailed provisions regarding online investments so that investors' rights can be better protected and the public is more confident in investing safely.

¹⁴Fadlia and, "The Role of the Financial Services Authority (OJK) in Legal Protection for Investors Against Alleged Fictitious Investments."



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