



Asset Recovery for Victims of “Binary Option” Case in Review of International Criminal Law

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Abstract

The Binary Options Trading Platform, also known as Binomo, is becoming increasingly popular due to the massive number of advertisements appearing on Youtube, affiliates who are influencers have caused many application users to disguise themselves as trading investments which then fall victim to it. Indra Kenz has been named a suspect in fraud and money laundering under the guise of Binomo investment. The flow of funds for this investment is indicated to a number of countries in the world, not only in Indonesia, so the Binomo case is included in the realm of international crime. In this case can the Binomo victim's money be returned? In this study, the empirical juridical method is used, referring to written regulations/laws and then analyzing how it is implemented in the field. This study emphasizes the rules in legal science (legal aspects) and the practice carried out in the field. This study also discussed crime without criminal prosecution by using the NCB Asset Forfeiture concept. This research is descriptive, using primary legal materials and secondary legal materials. Data collection techniques with a literature study of legal materials are also carried out. The results of the study found that it is necessary to expand and add international legal regulations in implementing the return of assets resulting from transnational crimes so that assets resulting from crimes with indications of money laundering can be confiscated and returned to victims, as well as an effective mechanism for returning assets



resulting from crimes, namely through civil lawsuits against assets.

A. Introduction

The capital market has a relatively important and strategic role in the national economy because the capital market is one of the sources of financing for the business world and is a vehicle for investment for the community. The development of the capital market sector in Indonesia is especially marked by the increasing number of transactions carried out daily. However, along with the development of the capital market, which is supported by advances in technology and information, the capital market becomes increasingly vulnerable to money laundering practices. Especially because the source of the flow of funds used by business actors in the capital market comes from or is the result of crime, including fraud, spreading false news (hoax), fraud, gambling, and so on. Based on data from the 2021 National Risk Assessment released by the Center for Financial Transaction Reports and Analysis (PPATK), the capital market sector is one of the riskiest areas to be used as money laundering media. Furthermore, based on the type of capital market criminal offense, it is known that market manipulation is also a high risk. The vulnerability of the capital market is also caused by several factors, including:¹

1. the number of actors involved in capital market transactions;
2. the nature of transactions that can be carried out remotely (remote trading) and scriptless;
3. various capital market products with quite complex business processes; and
4. high transaction value and capital market capitalization.

Binary Options Trading (binary options trading) or known as Binomo is a trading platform that can make money through the increase or decrease in foreign exchange (forex) exchange rates, stock prices, cryptocurrencies, and commodities². What is meant by an option is a way to participate in financial services trading without owning a real portfolio asset (derivative transaction), namely by guessing the price changes of a portfolio asset. While binary options trading or binary options trading is options trading by guessing only 2 (two) possibilities are available, namely between portfolio assets will go up or down (yes or no proposition).³ Therefore, this investment is called "binary," which is known as the binary number system or base two numbers.

The Head of the Indonesian National Police's Security Maintenance Agency (Kabaharkam), Commissioner General Arief Sulistyanto explained that the alleged fraudulent mode of the Binomo Trading Robot utilizes the services of "affiliation" or agents in Indonesia who are influencers to attract investors, while the servers are located overseas.⁴ The scheme used in Binomo is also suspected of using a Ponzi scheme or a system of giving benefits in stages for its members (members). Thus, there will be a circulation of money that the perpetrators of fraud then carry out by turning the money back through the recruitment of new investors.

¹Corruption Eradication Commission, Guidelines for Handling Money Laundering and Asset Recovery in the Capital Market, National Library of the Republic of Indonesia, Published in Cooperation: Corruption Eradication Commission (KPK), Australia Department of Home Affairs, Center for Law and Policy Studies (PSHK), Australia Indonesia Partnership for Justice (AIPJ), 2018, p. 6.

² Haidar, Muhammad Bagas, and Emillia Rusdiana. "KATEGORI BINARY OPTION TRADING SEBAGAI PERJUDIAN BERBASIS DALAM JARINGAN (ONLINE)." *NOVUM: JURNAL HUKUM*(2022): 162-163 <https://doi.org/10.2674/novum.v0i0.47607>.

³https://www.Hukumonline.com/klinik/a/apakah-binomo-legal-di-indonesia-lt5bee760dea39e#_ftnref1, accessed on 09 May 2022, at 11.00.

⁴ <https://www.cnnindonesia.com/nasional/20220209141710-12-757004/binomo-gunakan-affiliator-untuk-gaet-investor-server-di-luar-negeri>, accessed on 09 May 2022, at 11.22.

Indra Kenz alias Indra Kesuma who is an affiliate of Binomo in Indonesia is suspected of committing online gambling crimes and spreading false news through electronic media and fraud, fraudulent acts and Money Laundering (TPPU). Indra Kenz was charged with Pasal 45 ayat 2 *jo* pasal 27 ayat 2 and/or Pasal 45 ayat 1 *jo* pasal 28 ayat 1 Undang-Undang Informasi Transaksi Elektronik (ITE). Subsider Pasal 3 dan/atau Pasal 5 dan/atau Pasal 10 UU Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (TPPU). Then, Pasal 378 KUHP *jo* Pasal 55 KUHP.⁵

In the case of Binomo trading fraud, it was discovered that the flow of funds was overseas. Then, PPATK together with the Financial Intelligence Units (FIU) traced where the flow of illegal investment practice funds using the Binomo application was placed, it was found that the indications of the flow of money flowing into bank accounts located in Belarus, Kazakhstan, and Switzerland then allegedly flowed to the owner. Binomo. The search continues to the Caribbean Islands and the British Virgin Islands. The results of the PPATK search will then be submitted to the Indonesian National Police for an investigation into related cases.

In line with the determination as a suspect in tracing assets, the money of the Binomo victims should be returned through the investigation of money laundering offenses. However, the refund will depend on the ability of the authorities to track the assets owned by the suspect with appropriate and fast steps because these assets are easy to move and change. Therefore, if the eradication of money laundering offenses only prioritizes punishment for the perpetrators without recovering the assets of the victims who have suffered losses, then law enforcement will be further away from the essence of the purpose of justice, especially for victims of criminal acts to trace where the money flows (asset tracing) intending to recover it to the victim. Who have been disadvantaged economically.⁶

Losses suffered by victims of criminal acts can be requested for compensation as one of the victims' rights criminal acts:⁷

*Reparation by the offender to the victim shall be an objective of the process of justice. Such reparation may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury and psychological trauma, (3) payment for suffering, and (4) service to the victim. Repair should be encouraged by the corrective process.*⁸

This shows that as an international entity, the United Nations wants compensation by perpetrators of criminal acts to its victims, which should be the goal of the judicial process. The compensation includes the return of the stolen property, payment of a sum of money for the loss, damage, and injury as well as psychological trauma experienced by the victim, payment for suffering and assistance to the victim.⁹

Furthermore, in the national law of the Republic of Indonesia, compensation has been regulated in Article 1365 of the Civil Code (KUHPdata), where people who suffer losses caused by the actions of others against the law have the right to claim compensation. Suppose a person suffers a loss (victim) as a result of a criminal act to facilitate the victim. In that case, the state must provide a way to obtain compensation without going through an ordinary civil lawsuit process. Then this is done by combining a lawsuit for compensation with a criminal case as regulated in the Book of Criminal Procedure Law (KUHP).

⁵ <https://national.kompas.com/read/2022/03/06/08000491/indra-kenz-dalam-pusaran-pencepatan-uang-binomo-tesla-rumah-mewah-ti?page=all>, accessed on May 11, 2022, at 09.40.

⁶Satriawan Sulaksono, Widodo Tresno Novianto, and Supanto, Legal Protection in Asset Recovery for Victims of the Crime of Money Laundering Mixed with Perpetrators' Assets, Postgraduate Journal of Law UNS Volume VII Number 1 January - June 2019, 2019, page 108.

⁷Fauzy Marasabessy, Restitution for Victims of Crime: An Offering New Mechanism, 45th Year Journal of Law and Development No.1 January-March 2015, 2015, p. 54.

⁸Muladi, Human Rights, Politics and the Criminal Justice System, Semarang: Diponegoro University Publishing Agency, 2002, p. 177.

⁹Fauzy Marasabessy, Op.cit, p. 55.

In this case, it is a transnational crime, so it is necessary to use an international anti-money laundering regime. In the international Anti-Money Laundering and Prevention of Terrorism Financing (APU PPT) regime, there is an inter-governmental body, the Financial Action Task Force (FATF). FATF aims to set standards and promote effective implementation of regulations and operations, as well as legal action to combat the Crime of Money Laundering and the Financing of Terrorism (ML and TF) and other threats that impact the integrity of the international financial system.

Data collection techniques with a literature study of legal materials. The novelty of this research is this article will discuss Alternative Dispute Resolution Regarding Asset Recovery Against Victims of Binary Option Trading Cases Reviewed in International Criminal Law by using the empirical juridical method, which refers to written regulations/laws to then see how they are implemented in the field. This research is descriptive, using primary legal materials and secondary legal materials. This study emphasizes not only the rules that exist in legal science (legal aspects) but also the practice carried out in the field.

B. Discussion

1. *Trading Binary Options a Means of Money Laundering under the guise of Investment*

The development of the capital market in the world trade arena seems to be currently vulnerable to various forms of crime that can have a negative impact on the economy and national and even international stability. This is supported by advances in technology and information in the current globalization era, making it easy for users to make transactions in the capital market.

Capital market instruments are one type of trading in the form of investment. Money-laundering-motivated trafficking is a criminal attempt to disguise the proceeds of crime and drive value through the use of trade transactions in an attempt to legitimize their illegal origins. In the Financial Action Task Force, "Trade Based Money Laundering," it is stated that:¹⁰

"trade-based money laundering is defined as the process of disguising the proceeds of crime and moving value through the use of trade transactions to legitimize their illicit origin."

What is then interpreted as trading based on money laundering is defined as a process to disguise the proceeds of criminal acts and move value through using trade transactions to legitimize their illegal origin assets.¹¹ The definition was later revised to become the process of disguising the proceeds of a crime and moving value through the use of trade transactions in an attempt to legitimize their illegal origins or to finance their activities. Thus, the term "disguising" in money laundering-based trading practices is one of the acts of disguising wealth originating from the proceeds of crime into legal assets.

At first the term money laundering has been known since 1930 in the United States¹². At that time the mafia crime organizations had bought laundry companies to launder money generated from illegal businesses, which included prostitution, gambling and liquor. Money laundering has become an organized crime group that captures the world's attention with its broad and untouched organization. Meanwhile, Indonesia only criminalized this crime of money laundering in 2002 with the enactment of Law Number 15 of 2002 concerning the Crime

¹⁰Muhammad Rusdi, Money Laundering in Trade Transactions, IUS Journal | Vol IV | Number 2 | August 2016, 2016, p. 74.

¹¹ Tjung, Y. F. R." Kasus L/C Fiktif Bni: Penyalahgunaan Letter Of Credit Dalam Perdagangan Ekspor Impor Dalam Perspektif Tindak Pidana Pencucian Uang." *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, 6 No.3 (2022) <http://dx.doi.org/10.36312/jisip.v6i3.3365>

¹² Ansori, Gatot Subroto, "Peran PPATK Dalam Mencegah Dan Memberantas Tindak Pidana Pencucian Uang" *Unira Law Journal Vol.1 No. 1 (2022):37*

of Money Laundering,¹³ then on April 17, 2002 it was amended by Undang-Undang Nomor 25 Tahun 2003 and then revoked and replaced by Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Money laundering can happen anywhere and anytime, the process can be done sophisticatedly. Therefore, the crime of money laundering can be categorized as a form of transnational organized crime. This cross-border or international crime certainly requires many parties to work together to deal with and eradicate this crime. International cooperation involving several state institutions is an effective step to resolve the problem of these crimes. The term transnational crime became known in 2000 when the United Nations (UN) issued The UN Convention Against Transnational Organized Crime, according to MCFarlane¹⁴ to this document, the term transnational in the context of crime indicates four things:

- a. that the crime was committed not only in one country;
- b. the crime is committed in one country but most of its planning, execution and control takes place in another country;
- c. the crime is committed in one country but involves a criminal group that carries out criminal activities in more than one country;
- d. the crime is committed in one country but significantly impacts other countries.

The characteristics of the term "transnational" describe the existence of a network that crosses national boundaries.

The crime of money laundering which is then abbreviated as ML has been regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU PPTPPU),¹⁵ as a replacement for Undang-Undang Nomor 15 Tahun 2002 as amended by Undang-Undang Nomor 25 Tahun 2003. In the UU PPTPPU, several things have been formulated regarding the transfer of wealth with the intention of hiding or disguising the origin of assets known or reasonably suspected to be the result of criminal acts such as money laundering offenses. Sentence of 4 (four) years or more. In the crime of money laundering, at least two forms of crime are related. The first is in the form of a crime that produces illicit money, the second is the crime of money laundering itself.¹⁶ This UU PPTPPU also states that it strictly adheres to the principle of double criminality, namely where an act committed outside the territory of the Republic of Indonesia, as long as it is qualified as a crime according to the law in the country concerned, and according to Indonesian law is also a criminal act, it is considered a crime. Included in the category of predicate offenses as detailed in the UU PPTPPU.

In connection with this Binomo trading case, in general there are 3 (three) types of crimes in the capital market that often occur, namely: market manipulation, insider trading (insider transactions), and front running.¹⁷ *Trading Binomo* uses market manipulation techniques, namely by creating the activity of one or more parties to create an artificial market price. The purpose of these criminals in toying with stock prices is to obtain high profits. For stock prices to be manipulated according to the wishes of these criminals, they must control a significant

¹³Iwan Kurniawan, The Development of Money Laundering and Its Impact on the Economic and Business Sector, Journal of Legal Studies, Volume 3 No. 1, p. 1.

¹⁴John McFarlane, Regional and international cooperation in tackling transnational crime, terrorism and the problems of disrupted states, Journal of Financial Crime, Vol. 12 Iss: 4, 2005, pp. 301 – 309.

¹⁵ Satrya, Alda, Bastianto Nugroho, and Supolo Supolo. "Tindak Pidana Pencucian Uang Terhadap Perjudian Online." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4.2 (2022): 289 <https://doi.org/10.37680/almanhaj.v4i2.1863>

¹⁶Mas Ahmad Yani, Crime of Money Laundering (Review of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering), E-Journal WIDYA Yustisia Volume 1 Number 1 May-August 2013, 2013, p.25.

¹⁷ <https://katadata.co.id/yuliawati/indepth/5fadfd0d3576f/menggoreng-saham-dan-bagai-kejahannya-di-pasar-modal>, accessed on 13 May 2022 at 13:10.

number of shares. Therefore, stock manipulation often occurs in relatively small companies. Often, criminals who manipulate stocks work closely with corporate controllers. It could also be the controller himself did it. One type of stock manipulation often occurs is "pump and dump." This type of Binomo trading can also be categorized as fraudulent investment and online gambling.

The perpetrators of these crimes in addition to using the scope of the financial business, the proceeds of crime are considered legitimate, usually used by the perpetrators to spend their money on expensive products, such as property, cars, motorcycles, and others. Not infrequently, actors also invest money in businesses in the real sector, such as opening industrial businesses or helping with capital in companies. Similarly, what was confiscated by the police on assets owned by Indra Kenz, which consisted of several confiscated assets, including several supercars, such as a blue Tesla model 3 (three) cars, a red Ferrari, a California AT sedan, a 2012 model year of manufacture, money Rp1.1 billion in cash, up to 6 (six) units of houses and buildings in Tangerang and North Sumatra. The Binomo affiliate is currently being held at the Criminal Investigation Unit of the Police, South Jakarta. With being charged with Article 45 paragraph 1 jo Article 28 Law (UU) Number 19 of 2016 concerning Information and Electronic Transactions (ITE), Articles 3, 5, 10 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (TPPU), Article 378 of the Criminal Code (Regarding Fraud) with a penalty of 20 (twenty) years in prison.

In essence, the existence of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, Law Number 9 of 2013 concerning the Prevention and Eradication of the Crime of Terrorism Funding, the anti-money laundering and prevention of terrorism financing (APUPPT) regime is the responsibility of all components, be it Reporting Parties, Supervisory and Regulatory Agencies, Financial Intelligence Institutions, Law Enforcement Agencies, and all other relevant institutions. Even though the Financial Transaction Reports and Analysis Center (PPATK) is referred to as the focal point in this field, the commitment and cooperation of all parties are very much needed to ensure work in the field of preventing and eradicating criminal acts of money laundering, terrorist financing crimes,

2. Forms of International Cooperation in Handling the Crime of Money Laundering and Asset Recovery of Binary Options Trading Victims

International law is defined as a set of rules and provisions that bind and regulate relations between states and other legal subjects in the life of the international community.¹⁸ Legal relations between countries or between countries and legal subjects as objects regulated by international law indicate that with the existence of this international law, it is hoped that an orderly form in a state and nation society will be established in establishing cooperative relations between others. Cooperation between countries aims to meet the needs and goals of each party, thereby creating interdependence for the countries that participate in it.¹⁹ Mutual need between countries with one another in various fields of life results in the emergence of a permanent and continuous relationship. Also, it results in an interest in maintaining and regulating such relations.²⁰

Asset recovery is a process that includes tracing, securing, maintaining, confiscating, returning, and releasing criminal assets or state property controlled by other parties to victims

¹⁸Boer Mauna, *International Law Understanding Roles and Functions in the Era of Global Dynamics*, Bandung: PT Alumni, 2005, p. 1.

¹⁹Mochtar Kusumaatmadja and Etty R. Agoes, *Introduction to International Law*, Bandung: PT Alumni, 2003, p. 13.

²⁰Yudha Bhakti Ardhiwisastra, *Anthology of International Law*, Issue 1, Bandung: PT Alumni, 2003, p. 105.

or those entitled to at every stage of law enforcement.²¹ Asset recovery will be complex if it involves more than one country. This complexity will become even sharper if state relations between the parties concerned are not well established.²²

Various efforts to overcome crime continue to develop along with crime itself. However, efforts to uncover and arrest criminals on a global scale to be imprisoned to get a psychological effect in the form of a deterrent effect are gradually failing after failure, especially for crimes related to illegally obtaining personal/or group financial benefits. Efforts to recover assets resulting from crime constitute a significant concern for the global community in tackling this financial crime.

The regulation regarding the recovery of victims' assets in money laundering offenses is superior to criminal acts of corruption because the regulation on the recovery of money laundering offenses, which is further stated in the PPTPPU Law, has already regulated efforts to confiscate assets without punishment or known as Non-Conviction based (NCB) Asset Forfeiture.²³ This NCB is also the focus of the UNCAC because the legal tradition of each country is different, UNCAC proposes that each State party allows for the seizure of assets without criminal prosecution (Non-Conviction Based (NCB)) as a means to go beyond the differences in the legal system to seize the proceeds of assets corruption in all jurisdictions.

The way the NCB Asset Forfeiture works is to make assets resulting from or means of criminal acts positioned as legal subjects/parties²⁴ so that the parties consisting of the state represented by money laundering offenses investigators as applicants/prosecutors against assets suspected of proceeds or means of criminal acts as the respondent. This system allows the seizure of assets without waiting for a criminal verdict for the perpetrators of criminal acts.

In addition, in tracing crime assets and efforts to recover victims' assets, efforts have been made in the form of international cooperation related to the prevention and eradication of money laundering offenses, including:²⁵

- a. Cooperation in the form of information exchange (information exchange or information sharing)

This collaboration has been carried out by the Financial Services Authority (OJK) sector of the Republic of Indonesia, the following is a summary of the period of 2020:²⁶

- i) Until 2020, OJK has signed 24 (twenty four) cooperation agreements with foreign authorities whose scope of cooperation includes cross-border supervision and exchange of information as well as continuing cooperation with international institutions based on cooperation agreements signed by Bapepam-LK) and Bank Indonesia before OJK was formed.
- ii) In addition, OJK is also a member of the IOSCO MMoU where OJK has exchanged information with foreign authorities including with the Supervisory and Regulatory Bodies of other countries. In addition to IOSCO, Indonesia is also a member of international organizations or forums whose work areas have close links with APU-PPT supervision, including:

²¹Article 1 point 10 of the Attorney General's Regulation No. PER-013/A/JA/06/2014 regarding Asset Recovery.

²²Rinaldy Amrullah, Rudi Natamiharja, Asset Recovery in the Criminal Act of Corruption in ASEAN, SIMBUR CAHAYA Journal, Faculty of Law Sriwijaya University DOI: 10.28946/sc.v27i1.805, 2020, p. 50.

²³Maggie Regina Imbar, The Role of the Prosecutor on Asset Recovery in the Crime of Money Laundering, Lex Crimen Vol. IV/No. 1/Jan-Mar/2015, p. 90.

²⁴Rasidi, M. (2022). ANALISIS PERAMPASAN ASET OLEH NEGARA DALAM KASUS TINDAK PIDANA PENCUCIAN UANG (MONEY LOUNDERING) DI TINJAU DALAM PERSPEKTIF HAK ASASI MANUSIA (HAM). *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 28 No. 10 (2022): 4533

²⁵Yunus Husein, Money Laundering in International Law Perspective, *Journal of International Law* Volume I Number 2 January 2004, 2004, p. 359-360.

²⁶Guidelines for Handling the Crime of Money Laundering and Asset Recovery in the Capital Market, Op.cit, p. 60.

- a) *Basel Committee on Banking Supervision (BCBS).*
 - b) *International Organization of Pension Supervisors (IOPS).*
 - c) *International Association of Insurance Supervisors (IAIS).*
 - d) *Islamic Financial Services Board (IFSB).*
 - e) *International Federation of Accountants (IFAC).*
 - f) *International Forum of Independent Audit Regulators (IFIAR).*
- iii) OJK actively exchanges information with Foreign Authorities Abroad about licensing, supervision, and law enforcement. The following is data on information exchange that OJK has carried with Foreign Authorities Abroad.

Table 1. Statistics of Information Exchange from OJK to Overseas Authorities

SECTOR	2016	2017	2018	2019	SEMESTER I 2020
Banking Sector	27	28	39	25	24
Capital Market Sector	11	22	23	20	14
INKB Sector	10	17	17	30	9

Source: Indonesia's Risk Assessment Against Money Laundering, 2021

Table 2. Statistics of Information Exchange from Overseas Authorities to OJK

SECTOR	2016	2017	2018	2019	SEMESTER I 2020
Banking Sector	3	6	4	15	9
Capital Market Sector	14	3	10	6	4
INKB Sector	-	-	3	-	1

Source: Indonesia's Risk Assessment Against Money Laundering, 2021

- iv) OJK also cooperates with supervision through a supervisory collage, joint audit and on-site examination.

Table 3. Collage Supervision Statistics

SECTOR	2016	2017	2018	2019	SEMESTER I 2020
Banking Sector	27	28	39	25	24
Capital Market Sector	11	22	23	20	14
INKB Sector	10	17	17	30	9

Source: Indonesia's Risk Assessment Against Money Laundering, 2021

Table 4. Statistics of on-site inspections conducted by OJK Abroad

SECTOR	2016	2017	2018	2019	SEMESTER I 2020
Banking Sector	3	6	4	15	9
Capital Market Sector	14	3	10	6	4
INKB Sector	-	-	3	-	1

Source: Indonesia's Risk Assessment Against Money Laundering, 2021

- b. In the form of Mutual Legal Assistance (Reciprocal Assistance) to find evidence of money laundering crimes

Indonesia has practiced international cooperation by using a legal basis for cooperation in the field of law, which is often referred to as Mutual Legal Assistance (MLA), this has been formulated in Undang-Undang Nomor 1 Tahun 2006 concerning Bantuan Timbal Balik Dalam Masalah Pidana. Some forms of cooperation in the implementation of this MLA include the following:

- i) Bilateral Cooperation: Indonesia has signed a number of these bilateral MLAs with several countries including Australia, China, Hong Kong, and Korea.
- ii) Regional Cooperation: Indonesia signed the ASEAN Legal Assistance Treaty on November 29, 2004 and was ratified as part of Indonesia's legal provisions through Law Number 15 of 2008 concerning the ratification Treaty on Mutual Legal Assistance in Criminal Matters (Perjanjian Bantuan Timbal Balik Dalam Masalah Pidana).
- iii) International Cooperation: first in 2006, Indonesia produced Undang-Undang Nomor 7 Tahun 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003) to demonstrate Indonesia's strong commitment to the UN Convention Against Corruption (UNCAC). Second, three years later, on January 12, 2009 Indonesia adopted the UN Convention Against Transnational Organized Crime. One of the essential stresses of this Convention is the necessity to conduct MLA in dealing with transnationally organized crime.

- c. In the form of an extradition agreement to hand over the perpetrators of criminal acts caught in other countries (the birth of law number 1 of 1979 concerning Extradition).

In addition to the cooperation through the formal channels mentioned above, Indonesia can also tackle this transnational crime through informal channels, namely by direct request.

The term "return of assets" implies that all asset control owned by the perpetrator of a crime is based on rights, because it is the result of a crime, it must be returned to the party who has legal rights to the asset, namely the victims of non-state trading fraud. This refers to Article 67 Paragraph (2) of the PPTPPU Law that the proceeds of crime are returned to the appropriate party. As we know that in 2019, the Depok District Court and the Bandung High Court decided that the assets in the First Travel case were returned to the state, not the victim. So that the handling is inappropriate and it is hoped that this will not happen to the victims of Trading Binomo, who have rights to these assets.

The term asset appears in the Anti-Corruption Convention 2003 (UNCAC), Article 2 letter d which states "Property" shall mean assets of every kind, whether corporeal or incorporeal,

movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets²⁷

Return of Cross-Border Assets includes processes/activities through criminal and civil courts to seek, freeze and return assets obtained from unlawful activities to the state. According to national law, asset recovery can be carried out criminally, civilly and administratively. It requires the integrated cooperation of various agencies, such as PPATK, Police, Kejaksaan, KPK, Ministry of Law and Human Rights. Furthermore, efforts to pursue existing assets abroad require cooperation between agencies (agent to agent) and Mutual Legal Assistance.

The return of assets on a criminal basis can be carried out with a conviction-based asset forfeiture (punishing the perpetrator first and then seizing the assets). It can also be done with non-conviction-based asset forfeiture, for example in Article 67 of the UU PP TPPU (without punishing the perpetrators first). Asset recovery is necessary for Financial Crime, which is generally a white collar crime. Financial crime is a crime committed to seek money or wealth, for example, acts of Corruption, Money Laundering, Drug Crime, gambling, and insider trading.

Optimization of asset return in the context of corporate criminal liability can be done in the following ways:

- a. Starting with investigation, investigation, prosecution and execution using good planning, implementation, evaluation, and supervision;
- b. Cooperating with various parties and institutions both domestically and abroad (including community involvement, CSOs, and associations);
- c. Applying criminal, civil and administrative law;
- d. sue individuals and corporations as much as possible together;
- e. Using cumulative indictments, such as Corruption and Money Laundering;
- f. Definition of replacement money (interpretation of Article 18 paragraph (1) letter b of Law 31/1999);
- g. "Substitute" Prison, namely the imposition of imprisonment as an optimal substitute for money (so that the convict pays replacement money);
- h. Imposing replacement money to corporations, namely the imposition of reimbursement payments to individuals and CORPORATIONS;
- i. Execution of Compensation Money, which the Prosecutor carries out immediately after the convict does not pay the replacement money within one month after the kracht decision by executing assets that have been and will be confiscated. The choice of paying replacement money with a substitute prison is not on the convict. Partial payment of replacement money is possible with proportional replacement imprisonment (according to PERMA);
- j. Utilization of reverse evidence;
- k. Utilization of Article 45 of the Criminal Procedure Code (Article 21 PERMA 13/2016), which implies:
 - 1) In order for the court to support investigators' efforts to immediately auction confiscated goods that are easily damaged, dangerous and difficult/require high costs to store them;
 - 2) Prohibit related/affiliated/associated persons from participating in the auction.
- l. Writing down the identity and property that must be confiscated in detail and accurately:
 - 1) Writing in detail each property considered as proceeds of crime if it is in the file to facilitate confiscation (especially overseas);

²⁷ Sosiawan, Ulang Mangun. "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi di Indonesia." *Penelitian Hukum De Jure* 20 (2020). <http://dx.doi.org/10.30641/dejure.2020.V20.596>

- 2) Ensure there are no typos in writing party identities, property identities, decision numbers, etc.
- m. Ensuring NEXUS on Assets with Crime (writing the relationship (nexus) between the confiscated property and the crime committed if it is in the file to facilitate the confiscation (especially for assets located overseas);
- n. Use of NCB in recovery.

In connection with this article, namely regarding asset recovery for victims of binary options trading there isn't any yet a particular institution and national and international laws and regulations to manage and administer assets originating from money laundering offenses so that tracing and returning victims' assets requires more effort to find them because of the fast movement of transactions so that it will be increasingly difficult to track them. Therefore, in addition to increasing international cooperation, efforts to process asset disposal through *NCB Asset Forfeiture* are necessary as a preventive measure in tackling money laundering and asset recovery.

Confiscation according to the Criminal Code is an (additional) crime against assets (*vermogensstraf*), which intends to "harm" the convict (by reducing his wealth). Even in this case, Indra Kenz is threatened with being "impoverished" for his actions, and all of his assets will be confiscated by the police. For the asset recovery process to be handled properly, in the investigation and prosecution process, investigators and public prosecutors must first confiscate assets from the start. So that when the judge's verdict has declared that the defendant is guilty, there is no need to search for the defendant's assets. This is an effort to save the assets of the victims entitled to this case.

The novelty of this research is about the crime of money laundering within the scope of the financial or investment business, handling money laundering crimes and recovering the assets of victims of trafficking, and the need for mutually sustainable cooperative relations between countries. Returning assets is a step to recover state assets because this step is essential in financial crimes

C. Conclusion

The extent of trading in the capital market with the concept of stock investment makes the rule of law must also be more widely enforced. Money laundering under the guise of investment is a means of money laundering, which incidentally is classified as a transnational crime. Therefore, a special institution and instruments of legislation are needed to manage and administer assets originating from money laundering offenses. Expanding and adding international legal regulations as an effort to return assets resulting from crime so that assets resulting from money laundering crimes can be confiscated and returned, an effective mechanism for returning assets resulting from crimes is through civil lawsuits against assets resulting from crimes without criminal prosecution using the *NCB Asset Forfeiture* concept.

In relation to how the asset recovery process is for victims of binary options trading, the effort to process assets through *NCB Asset Forfeiture* is needed as a preventive step in tackling money laundering offenses and asset recovery. Prior to the imposition of a criminal verdict, all assets owned by Indra Kenz for the funds that have been entered into the binomo trading account will be entirely confiscated by the police from the beginning of the investigation process and the prosecution of investigators and public prosecutors to confiscate the assets. So that when the judge's verdict has declared that the defendant is guilty, there is no need to search for the defendant's assets. This is an effort to save the assets of the victims entitled to this case.

This cross-border asset return is also inseparable from the integrated collaboration of various agencies, such as PPATK, Police, Kejaksaan, KPK, and Ministry of Law and Human Rights so that cooperation between agencies (agent to agent) and Mutual Legal Assistance is needed to pursue assets abroad.

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