

LEGAL PROTECTION FOR VICTIMS OF ILLEGAL ONLINE INVESTMENT FRAUD WHOSE ASSETS ARE CONFISCATED BY THE STATE

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Abstrak

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The rapid growth of illegal online investment practices in Indonesia has caused significant losses to the public, both materially and immaterially. Within the framework of criminal law, the protection of victims of illegal online investment has not yet been implemented optimally, as law enforcement tends to prioritize the punishment of offenders rather than the restoration of victims' rights. This study aims to examine the legal position of victims of illegal online investment within the Indonesian criminal law system and to analyze the forms of legal protection afforded to them. This research employs a normative legal research method using a statutory approach and a conceptual approach. The findings indicate that, normatively, victims of illegal online investment have not been fully recognized as legal subjects entitled to effective protection and recovery. In judicial practice, victims are generally positioned merely as reporters and witnesses, resulting in limited participation in the criminal justice process. Although legal provisions concerning victim protection exist, their implementation still faces various obstacles, including normative, procedural, and institutional constraints, particularly in relation to the recovery of victims' losses. Therefore, strengthening victim-oriented legal protection is necessary to ensure that the criminal law system can deliver more comprehensive justice for victims of illegal online investment.

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INTRODUCTION

The transformation of information technology advancement has brought fundamental changes in the pattern of the public's economic activities, including in the field of investment. The digitalization of investment systems provides easy access and efficiency in financial transactions. However, such development has also given rise to



various forms of misuse, one of which is the increasing practice of online fraud under the guise of illegal investment. This practice is generally carried out through electronic means by offering unreasonable profits without being supported by legitimate business activities. Illegal financial transactions conducted online have caused broad consequences for our culture. In addition to financial losses, public trust in digital-based investment is also affected. To make it more difficult to trace the origin of funds, perpetrators often use complex digital transactions, fake accounts, and third-party identities. Perpetrators may be able to maintain control over crime and gain profit from its proceeds if they are not prosecuted adequately.

Confiscation is an important part of the formal procedure of the Indonesian criminal justice system in handling criminal behavior. The objectives of confiscation are twofold: first, to prevent perpetrators from reusing the proceeds of their crimes; and second, to obtain valid evidence in court by confiscating items that may be related to the crime. The Criminal Procedure Code (KUHAP) generally contains rules governing the confiscation of evidence. Article 38 paragraph (1) of KUHAP reads as follows: *“Confiscation may only be carried out by an investigator with the permission of the Chief of the local District Court.”*

This provision affirms that confiscation is a coercive measure that impacts a person’s property rights; therefore, its implementation must be subject to legal procedures and judicial supervision. Furthermore, the scope of objects that may be subjected to confiscation is explained in Article 39 paragraph (1) of KUHAP, which states that: *“Objects that may be subjected to confiscation are:*

- a. objects or claims belonging to a suspect or defendant which are wholly or partly suspected to have been obtained from a criminal offense;
- b. objects used directly to commit a criminal offense;
- c. objects used to obstruct the investigation of a criminal offense
- d. objects specifically made or intended to commit a criminal offense
- e. other objects that have a direct connection with the criminal offense committed.”

The formulation of the article provides a legal basis for law enforcement officials to confiscate various forms of assets, including funds in bank accounts and other financial instruments originating from or directly related to illegal online investment fraud practices. Since fundraising activities begin illegally in investment cases that violate the law, asset confiscation is usually broader. Thus, wealth acquired by perpetrators may be considered profit from their illegal activity. On the other hand, the law cannot be applied arbitrarily to assets of those responsible for draining legitimate investment fraudulently. It remains difficult for law enforcement to determine a causal relationship between the crime and the assets seized. For legal certainty and the protection of those not directly involved, this distinction is very important.

After an object is confiscated, the next step is to determine its legal status in accordance with a final and binding court decision. This is explained in KUHAP, particularly Article 46 paragraph (2): *“If a case has been decided, then the objects subjected to confiscation shall be returned to the person or those from whom the objects were seized, or to the person or those most entitled, unless according to the judge’s decision the object is forfeited to the state, destroyed, or damaged so that it can no longer be used.”*

Asset auctioning is carried out for confiscated objects that the judge decides to be forfeited to the state. In the context of illegal online investment schemes, asset

auctioning is very important because it gives control over illicit profits to the state, which can then use them for beneficial purposes, such as returning court-ordered compensation to victims. The implementation of law relating to confiscation and sale of objects remains a problem in the context of illegal online financial transactions. The complexity of digital-technology-based crimes, asset disguise practices, and the lack of optimal technical regulation regarding auctioning of assets from digital crime indicate a gap between legal norms and law enforcement reality.

Based on that explanation, confiscation and asset auctioning can be understood as essential instruments in the Indonesian criminal law system for handling illegal online investment fraud. Therefore, this article focuses on discussing the legal regulation of confiscation and auctioning of assets of perpetrators of illegal online investment fraud within the Indonesian criminal law system, emphasizing Articles 38 to 46 of KUHAP as the main legal basis.

Problem formulation How is the legal regulation of confiscation and auctioning of assets of perpetrators of illegal online investment fraud within the criminal law system in Indonesia?

LITERATURE REVIEW

1. The Growth of Illegal Online Investment Fraud in Indonesia and Its Social Impact

Illegal online investment fraud has expanded rapidly in Indonesia alongside the growth of digital financial services and widespread internet access. The emergence of online investment platforms has introduced efficiency and accessibility in financial transactions; however, the same technological environment has also enabled new forms of deception that exploit public vulnerability and low financial literacy. Fraudulent investment schemes typically promise unrealistic profits, operate without lawful business activities, and use sophisticated digital transaction patterns to conceal fund flows. As described in the article, offenders frequently rely on complex online payment systems, third-party identities, false bank accounts, and layered transfers to obscure the origin and destination of funds.

In legal and criminological literature, illegal online investments are often categorized as financially motivated cyber-enabled crimes, which differ from conventional fraud due to the borderless nature of digital communication. The harm inflicted by these schemes is not only material but also immaterial, including psychological distress, social insecurity, and the erosion of public trust in legitimate digital investment ecosystems. These consequences have broader implications: when victims lose confidence in the digital financial sector, national economic development and financial inclusion goals can be undermined.

Furthermore, scholars frequently note that online-based fraud grows more aggressively when legal enforcement mechanisms appear to focus on punishing offenders while overlooking victim compensation. The journal emphasizes that, in Indonesian criminal justice practice, victims are often placed as reporters and witnesses with limited participation and minimal recovery rights.

This means that even when a criminal case is successfully prosecuted, victims may still face significant difficulties in obtaining restitution. From a victimology perspective, this outcome produces a “double harm” effect victims suffer from both the initial fraud and the absence of adequate legal remedy.

Thus, the literature highlights the urgent need for victim-centered approaches in handling illegal investment fraud. These approaches should include not only prosecution strategies but also mechanisms to restore victims' losses and protect them from systemic neglect in criminal processes.

2. Asset Confiscation in Indonesian Criminal Procedure: Function, Scope, and Legal Basis

Asset confiscation (*penyitaan*) is a central instrument in Indonesian criminal procedure, designed to secure evidence and prevent offenders from benefiting from illicit gains. In the context of illegal online investment fraud, confiscation becomes particularly significant because the crime is profit-oriented and often involves large-scale financial assets. Indonesian law provides procedural foundations for confiscation through the Criminal Procedure Code (KUHAP), especially within Articles 38 and 39. The journal explicitly highlights that confiscation may only be conducted by investigators with authorization from the local District Court Chief, emphasizing judicial supervision due to its impact on property rights.

From a doctrinal perspective, confiscation serves two major purposes: (1) preventing the reuse of assets derived from crime, and (2) securing admissible evidence for trial. This dual purpose is reflected in the definition of confiscation as “a series of actions by investigators to take over and/or place under control movable or immovable property for evidentiary purposes during investigation, prosecution, and trial.” The scope of property subject to confiscation is broad. Article 39 of KUHAP allows confiscation of items or claims presumed to be acquired from crime, used directly in the offense, intended to obstruct investigation, specifically made for criminal acts, or otherwise directly connected to the offense.

In illegal investment fraud, this may include bank accounts, digital assets, financial instruments, or physical property purchased using illegal proceeds. However, legal scholarship often critiques confiscation practices when asset tracing is difficult or when investigators struggle to establish a causal link between the offense and the seized property. The journal mentions that distinguishing between legitimate assets and criminal proceeds remains a major challenge, particularly when digital crimes involve complex asset disguising strategies. This gap highlights the importance of stronger forensic financial investigation techniques and clearer procedural guidelines for digital asset tracing.

Overall, literature suggests that while confiscation has a solid normative basis, practical implementation needs modernization to address technology-based fraud and ensure lawful, proportionate, and transparent enforcement.

3. Auctioning Confiscated Assets and Its Implications for Victim Recovery

After confiscated property is secured, the next legal stage concerns the determination of its final status following a binding court judgment. Indonesian criminal law regulates this through provisions comparable to Article 46(2) KUHAP, which states that once a case is decided, confiscated objects must be returned to the rightful party unless the judge orders them to be confiscated for the state, destroyed, or rendered unusable.

When a judge orders forfeiture for the state, the confiscated assets may be auctioned. Auctioning becomes relevant in illegal online investment schemes because it allows the state to take control of unlawfully acquired gains and potentially use them for public interest purposes. In theory, auctioning criminal assets can contribute to justice in

at least two ways. First, it prevents offenders from reaping benefits from crime, reinforcing deterrence and accountability. Second, it opens a possible pathway for victim recovery by enabling the conversion of seized assets into liquid resources. The journal emphasizes that auctioning can serve as a form of reparation and an element of punishment, aligning with modern criminal policy that targets economic incentives in profit-driven crimes.

Nevertheless, literature on victim protection points out a critical weakness: Indonesian positive law does not explicitly guarantee that auction proceeds are directly returned to victims. Instead, the criminal procedure system prioritizes state forfeiture consequences, meaning victims may not automatically receive proportional restitution even after offenders' assets are auctioned.

This creates a normative and practical gap between the purpose of punishment and the need for restoration. Scholars connected to restorative justice argue that asset forfeiture should not be oriented solely toward state interests but must also consider the rights of harmed parties. In mass victimization crimes such as illegal investments, where losses are often widespread and severe, auctioning without a clear restitution mechanism risks becoming symbolic justice rather than substantive justice. Therefore, literature strongly supports the argument that auctioning policy should be integrated into victim recovery systems through clearer legal frameworks, better restitution procedures, and institutional mechanisms that ensure victims can access meaningful compensation after state confiscation.

4. Victim Position in the Indonesian Criminal Justice System: Normative Gaps and the Need for Victim-Oriented Protection

Victims occupy a crucial but often marginalized role within the Indonesian criminal justice process. The journal explains that, normatively, victims of illegal online investment fraud are not yet fully treated as legal subjects entitled to effective protection and recovery; instead, they are primarily positioned as reporters and witnesses, limiting their procedural participation. This reflects a broader pattern noted in victimology and criminal law literature: many criminal justice systems remain offender-focused, prioritizing punishment over victim restoration.

In practice, an offender-centered approach can produce justice outcomes that feel incomplete. Victims may obtain a conviction against the offender, yet still face financial devastation due to the absence of compensation mechanisms. In illegal investment fraud, this problem becomes more visible because the crime's primary harm is economic loss. The journal also highlights that although a framework for victim protection exists, its implementation encounters normative, procedural, and institutional barriers particularly regarding restitution and recovery of losses.

Legal scholars often argue that the state should not only criminalize and prosecute financial fraud but also ensure that victims receive fair remedies. When confiscated assets are forfeited to the state without a reliable system to allocate them for victim recovery, the state's role may appear contradictory: it punishes the offender while simultaneously failing to repair the damage inflicted on citizens. Such conditions weaken trust in law enforcement and may discourage victims from reporting fraud.

A victim-oriented protection model requires reforms on multiple levels. Normatively, laws should explicitly recognize victims' rights to restitution, participation, and protection. Procedurally, victims should be given clearer avenues to claim compensation during criminal proceedings. Institutionally, coordination between

investigators, prosecutors, courts, and asset management bodies must be strengthened to ensure that seized and auctioned property can translate into tangible restoration. Thus, literature supports the urgency of shifting Indonesian criminal justice toward more comprehensive justice where accountability for offenders is combined with genuine recovery for victims. This shift is essential in responding to digital-era fraud and ensuring that criminal justice delivers both legal certainty and social fairness.

RESEARCH METHOD

This research is normative legal research based on the legal issues discussed in a thesis entitled the legal regulation of confiscation and auctioning of assets of perpetrators of illegal online investment fraud within the Indonesian criminal law system. The research focus is directed to answer the problem formulation regarding how the legal regulation of confiscation and auctioning of assets for perpetrators of illegal online investment fraud and its implications in criminal law enforcement. Therefore, the purpose of this study is to explore criminal procedural and criminal law regulations governing the liquidation of assets related to illegal activities.

The research approaches used include the statute approach and the conceptual approach. A very important aspect is KUHAP, specifically Articles 38–46, which discuss confiscation, safeguarding, and returning seized property. In addition, this technique is used to investigate various laws related to computer-based fraud and technology crimes.

The conceptual approach is used to analyze the concept of confiscation and asset forfeiture in criminal law as an instrument of law enforcement. In this study, confiscation is understood not only as a means of evidence in the criminal judicial process, but also as a mechanism to prevent offenders from enjoying the proceeds of crime and opening opportunities for recovery of victims' losses. This approach refers to the views of criminal law experts regarding the function of confiscation and asset forfeiture in the modern criminal justice system.

This study uses primary, secondary, and tertiary legal sources. KUHAP and other regulations related to fraudulent and illegal investment are the main legal documents specifically connected to asset confiscation and auction procedures. Books on criminal procedural law and criminal law, as well as scientific articles, research results, and expert opinions discussing topics such as asset confiscation and illegal investment crime, are examples of secondary legal materials. Tertiary materials are used to further understand the legal concepts and terminology discussed in this research.

The legal materials are collected through legal research involving review and search of various legal documents relevant to the subject. Using descriptive and prescriptive analysis, as well as other qualitative methods, all collected legal materials are thoroughly examined. The legal mechanism for judicial administration and the process of auctioning criminal assets is explained using descriptive analysis, while the process is defended using prescriptive analysis. This research is conducted to support the effectiveness of the criminal justice system.

RESULT AND DISCUSSION

Legal Regulation of Confiscation and Auctioning of Assets of Perpetrators of Illegal Online Investment Fraud in the Indonesian Criminal Law System

1. Legal Regulation of Asset Confiscation in Illegal Online Investment Fraud Cases

Online financial crime is a general term for law enforcement practice and stricter criminal regulation through asset confiscation. Normative research on relevant laws and regulations reveals that the provisions of KUHAP have been sufficiently covered by most criminal law related to illegal investment. Assuming valid reasons, KUHAP enforces the legality of taking evidence. An example can be seen in KUHAP Case 1, number 16, which states: “*Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable objects, tangible or intangible, for the purposes of evidence in investigation, prosecution, and trial.*”

This formulation shows that confiscation has a strategic position in the criminal justice process, including in handling illegal online investment fraud, which generally has an orientation toward obtaining economic profit. Seized assets have a dual purpose in the context of illegal financial crime: they can be used as evidence, but they can also be used to stop criminals from making money from their crimes. Furthermore, investigators require approval from the head of the local District Court to conduct this procedure (except in emergency circumstances) in accordance with Article 38 paragraph (1) of KUHAP. To show the existence of a judicial supervision system to prevent asset confiscation without due process, this rule is applied. Since bank accounts, digital assets, and other large assets are often targeted by law enforcement efforts to eradicate illegal online financial crime, court authorization is crucial in this process.

The legal basis regarding objects that may be seized is explicitly regulated in Article 39 paragraph (1) of KUHAP which states that objects that may be subjected to confiscation include:

- a. Objects or claims of suspects or defendants which are wholly or partly suspected to have been obtained from a criminal offense;
- b. Objects used directly to commit a criminal offense;
- c. Objects used to obstruct the investigation
- d. Objects that have a direct connection with the criminal offense.

This provision provides legal legitimacy for law enforcement officials to confiscate investment funds, holding accounts, movable and immovable assets that originate from illegal investment practices. The state has authority to confiscate profits obtained by offenders through criminalization because these investment activities initially have no formal legal basis. The view held by M. Yahya Harahap aligns with this; the purpose of confiscating criminals' wealth is to prevent it from accumulating in their hands and to make it acceptable as evidence in court. Therefore, a crucial part of the criminal law enforcement response to illegal online financial crime cases is the blocking of assets.

2. Regulation of Asset Auctioning and Its Implications for Victim Loss Recovery

The next stage is to determine the legal position of seized objects after the confiscation procedure is completed and the court has issued a final decision. The following provision in KUHAP, Article 46 paragraph (2), establishes the legal basis for further processes involving seized objects: “*If the case has been decided, then the objects subjected to confiscation are returned to the person or to those mentioned in the decision, unless according to the judge's decision the object is forfeited to the state or destroyed.*”

This provision shows that asset auctioning is a consequence of a judge's decision ordering forfeiture of seized objects for the state. Assets are usually seized and then sold in cases involving illegal online investment schemes. Furthermore, the prosecutor acts as a representative of the court decision and carries out the auction process. Asset auctioning serves as a form of compensation for victims as well as a form of punishment for those responsible in this context. Because it allows the state to cut off the chain of crime based on financial gain, Andi Hamzah argues that auctioning criminal assets and enforcing asset prohibition is very important for modern criminal law. Asset auctioning is a way for criminals to hide their money from the government and even use it to compensate victims when they experience losses.

The results of the study show that positive legal regulation has not explicitly regulated a mechanism for returning the proceeds of asset auctioning directly to victims. KUHAP emphasizes auctioning more as a consequence of forfeiture for the state. As a result, even though the perpetrators' assets have been auctioned, victims of illegal investment may not necessarily obtain proportional compensation for their losses. This condition creates a gap between the purpose of punishment and the need for victim protection.

P.A.F. Lamintang argues that confiscation and asset forfeiture should not only be oriented toward the interests of the state, but should also be directed to guarantee recovery of losses suffered by harmed parties. In the context of illegal online investment fraud, this view becomes relevant considering that victims' losses are often massive and have broad impacts. Therefore, asset auctioning should be positioned as part of a criminal law policy oriented toward restorative justice.

Based on this discussion, it can be concluded that normatively the regulation of confiscation and auctioning of assets of perpetrators of illegal online investment fraud already has a sufficient legal basis in KUHAP. However, its effectiveness in providing substantive justice, especially for victims, still requires strengthening through progressive legal interpretation and further policy that is more oriented toward recovery of victims' losses.

CONCLUSION

The legal regulation concerning confiscation and auctioning of assets of perpetrators of illegal online investment fraud within the Indonesian criminal law system provides a basis for victim protection through efforts to recover losses. Article 39 paragraph (1) of KUHAP allows confiscation of assets originating from or used for a criminal offense, which can then be auctioned based on a court decision. Through this mechanism, victims normatively have the opportunity to obtain the return of their losses from the proceeds of the perpetrators' crimes.

Protection for victims is still not optimal. Confiscation and auctioning of assets are more often functioned as means of proof and punishment for perpetrators, while the interests of victims in obtaining compensation for their losses have not become a main priority. As a result, although perpetrators are punished, victims often do not receive real recovery for the losses they have suffered. Strengthening regulation and law enforcement practice that positions victims as subjects entitled to recovery is required, so that confiscation and auctioning of assets truly provide direct benefits for victims of illegal online investment.

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