



Legal Responsibility of affiliators who spread misleading product promotions that harm consumers

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Abstrak - Binomo as one of the trading platforms has taken a lot of casualties, due to the presence of affiliates who facilitate huge profits in a short period of time. Influencer and affiliate Indra Kents were named as a suspect. It should be noted that misleading advertising formats that cause consumer losses, the mechanism by which affiliated companies can compensate consumers, and the legal liability of affiliated companies that advertise items that result in losses for customers. The Binomo case refers to a notable incident of fake news that gained traction in Indonesia in 2018. Using a philosophical and legislative approach, this research is normative in nature. Utilizing primary, secondary, and tertiary legal documents gathered through literature study methodologies, the data comes from secondary data sources. A qualitative data analysis method is employed. The investigation came to the conclusion that deceptive advertising that presents success stories and offers affiliates the promise of enormous earnings are among the deceptive tactics that harm consumers. A demand for compensation can be made both civilly and UUPK in order to reimburse victims of Binary Option criminality for their damages. In combination with ITE Law's Article 28 paragraph (1) and Article 45A paragraph (1), Article 1365 of the Civil Code both contain legal liability provisions for affiliates that push products that result in losses for consumers. Article 62 paragraph (1) of the Law may impose sanctions on the affliator, in reference to letter k of Article 9 paragraph (1) of the UUPK.

Kata Kunci: Responsibility, Affliator, Loss, Consumer.

I. INTRODUCTION

The rapid growth of online trading platforms has revolutionized the financial landscape, offering new opportunities for investors. However, this growth has also led to the proliferation of misleading promotions and unethical practices. The Binomo case exemplifies the risks associated with these developments, particularly in Indonesia, where a fabricated story about a fictional country caused widespread confusion and political tension. Compounding this issue is the role of influencers like Indra Kents, who aggressively market online trading platforms, promising high returns with minimal risk. These endorsements often mislead inexperienced investors, highlighting the urgent need for regulatory oversight and public awareness to combat the adverse effects of misinformation and unethical financial promotions.

The practice of trading involves buyers and sellers haggling over pricing until a mutually agreeable price is reached. Profiting from trading involves predicting future prices and keeping track of pricing over time in order to sell assets at a greater price than when they were first bought. Here are some types of trading known in Indonesia: (Fathurrachman & Dian Alan Setiawan, 2022).

1. Forex trading is the trading of foreign currency rates.
2. Stock Buying and selling is the action of trading shares within a certain period of time, usually quite short.
3. Binary options trading is the same as other trading, namely the activity cannot be separated from buying and selling, but this trading is considered very risky even though it can also generate large profits. Many times, this binary trading is a scam.
4. Gold trading is not much different from Forex trading and stocks, it's just that the object traded is gold.
5. Bitcoin trading is one of the newest trading alternatives. The object in this type of trading is of course bitcoin.

In trading there is what is called an affliator, which is a word for those who advertise products to others. In this case, binary option affiliates can be said to be part of a marketing strategy because they promote it to the wider community. Generally, an affliator promotes by showing the benefits of trading results to attract his target consumers. People are currently tempted by promotions carried out by affiliates, so many ordinary people who do not understand and know about binary options trading follow the trade just to make a profit, however, in fact they are not well educated by affiliates how to play binary options trading This is so that many of them become victims of fraud from such trading. The public does not understand what risks will be obtained from trading binary options, therefore there is a need for a law to regulate the problem.

An affliator is someone who promotes a product or service to the general public through various social media, such as Instagram, Facebook, Twitter and other social media platforms. To be able to become an affliator there are no characteristics or standards that govern this. The affliator is usually an influencer. Influencers are people who can influence others to do something or buy something promoted by the influencer. The influence of influencers is an effort to socialize to the public that investment has an easy mechanism and gets large profits. The existence of influencers who offer investment is considered quite effective and efficient for issuers or affiliates to get more potential investors from the public. Social media is the most widely used strategy by influencers as a means of promoting trading investments and so on, the influence of influencers because they have a large number of followers to be noticed by the wider community, (Kholiq, 2022)

Related to Naturally, it is vital to take precautions against the promotion of goods or services that could endanger customers. The affiliate in this instance is a continuation of trade managers or business actors. Here, the affiliate's job is to help traders make a deal; so, a trader or traders who benefit from an affiliate's promotional services can also be considered consumers. Anyone Law Number 8 of 1999 concerning Consumer Protection defines a "consumer" as someone that "uses goods and/or services available in society, both for the benefit of themselves, family, others, and other living beings and not to be traded." (from now on, UUPK) defines "consumer " as defined in Article 1 Point 2. Binomo is now having a negative impact on the system. This is evidenced by a report on February 24, 2022, the National Police Bareskrim (Criminal Investigation Agency) has revealed the loss of victims of the Binomo application with the reported Indra Kusuma (aka Indra Kenz) as an influencer and affliator on the Binomo trading platform. It is known that the number of victims obtained by investigators has a total of 14 people who have been asked to provide information. The total loss of the 14 victims who have been asked to provide information is Rp. 25,620,605,124, (Chaterine & Meiliana, 2022).

PID.Sus/2022/PN.Tng 1240 in Decision Number ironically the victims concerning the Indra Kenz case did not get compensation from Indra Kenz, all of Indra Kenz's property was confiscated by the State. Quoted from Kompas.com that In its ruling, the panel of judges stated that the confiscated assets of Indra Kenz were handed over to the State, (Pranita & Sari, 2022). In addition to In this case, many other cases are considered detrimental to the aggrieved victim. In addition, in another case there is the same case as Indra Kenz, namely the case of Doni Salmanan Doni was accused of breaking the Criminal Code's Article 378 jo Article 55 paragraph (1) 1st, Article 45A paragraph (1), Article 28 paragraph (1) concerning Amendments to Law Number 11 of 2008 about Information and Electronic Transactions,

Article 3, Article 5, and Article 10 of Law Number 8 of 2010 about the Prevention and Eradication of Money Laundering (TPPU Law), and/or Article 378 jo Article 55 paragraph (1) 1st. according to the PN / Pid.Sus / 2022 / decision number: 576 Blb. When the judge struck the gavel at the sentencing session, the outcome of the two was nevertheless different. According to (Permana, 2022), Indra Kenz's TPPU lawsuit was validated, however Doni Salmanan's was not. This is very confusing because both of them commit the same crime under the same Article but with different convictions and convictions.

Based on the background descriptions above, a study entitled "Legal Responsibility of Affiliators Who Spread Misleading Product Promotions That Harm Consumers" needs to be conducted. For this reason, the problem of this research is how is the form of misleading promotion that causes consumer losses? how is the Affiliates' accountability for products they endorse that result in losses for customers and how is the compensation mechanism by the affliator to consumers? This study aims to analyze the form of misleading promotion that causes consumer losses, to analyze the liability of affiliates endorsing goods that lead to consumer losses and to analyze the mechanism of compensation by affiliators to consumers.

II. METHOD

Using a legal systematics research methodology, normative law research is used. This research employs a descriptive analytical methodology. Descriptive analytical methodology involves systematically organizing, summarizing, and interpreting data to provide a clear understanding of the phenomenon under investigation. The two (two) strategies employed in this study's approach method are the statutory approach, also known as the legislation approach, and the conceptual method. The kind of data required for this inquiry are secondary data, mostly book data. Three main legal resources are utilized in order to gather secondary data: laws and regulations as primary legal documents; books as secondary legal resources additionally the results of earlier studies; and tertiary legal materials, which are journals. This study uses a document study, also known as a library material study, as its method of data collection. Secondary data are gathered for an inventory of all information and/or documents pertinent to the discussion topic, and they are then categorized according to the problem formulation that has been determined. The data is then analyzed with the selected analysis method, (Fuady, 2007). The analysis in this study was carried out qualitatively.

III. RESULT AND DISCUSSION

Misleading Forms of Promotion That Cause Consumer Harm

In carrying out product promotion activities, there are times when business actors collaborate with celebrities / influencers to promote products on the celebgram/influencer's Instagram social media account. Advertisements in Indonesia's positive law are regulated sporadically in the UUPK, Broadcasting Law (Law No. 32/2002) and PP pertaining to food labels and advertisements, No. 69 of 1999. On the other hand, matters related to advertising are also regulated by Indonesian advertising manners and procedures, especially related to giving advertising business actors responsibility for providing true and complete information, in general regulations are made in Article 20 of the UUPK which states This states " The people in the advertising sector are accountable for the commercials they create and any harm they may cause.

In the general principles of Indonesian advertising manners and procedures, it is stated that advertisements must be honest, able to account, and not not in line with existing laws, Widiarty, W. S., & Tampubolon (2020). In the UUPK, matters related to advertising are regulated in general Article 8 to Article 16 and by specifically Article 17 which provides regulation of acts that business actors are prohibited from taking.

In general, the juridical responsibility of Based on the concepts of product liability, contractual obligation, criminal responsibility, and professional liability, business actors operate inside the United Kingdom. In terms of product liability, Article 19 of the UUPK specifies that corporate actors may be held accountable for damages, contamination, and/or losses incurred by consumers as a result of to consuming goods created or sold. Damage, pollution, and/or loss of consumers due to using products that are realized or traded can occur

because business actors (producers of goods) violate all prohibitions as stated in Article 8 to Article 17 of the Law.

Producers of goods, or "business actors," may face civil or criminal penalties if their products pollute the environment, harm human health, or cause property damage or loss. Legal repercussions may include: reimbursement of funds; substitution of like or equivalent goods; medical treatment; or the payment of damages in accordance with current legal and regulatory guidelines. The fundamental component of product liability is tortious liability, which is accountability founded on unlawful actions, so that four elements of tortious liability, namely: elements of loss, elements of unlawful acts (PMH); and elements of causal relationships between PMH and losses that arise, remain mandatory. Only proving the element of guilt is not a burden on the consumer, but instead is the burden on the producer in proving if he has not made a mistake (shifting the burden of proof or reverse proof). This is done in the regulation in Article 28 of the Law which provides a statement if the proof on whether or not there is an aspect of error in the Article 19 of the Law's claim for compensation, including the obligation and accountability of the party conducting business.

Related to it is obviously vital to take precautions against the advertising of goods or services that are harmful to customers. An extension of trading managers or business actors is the affiliate in this instance. Here, the affiliator's job is to help traders by offering services that will increase trades; traders or individuals impacted by these services can naturally be classified as consumers as well. In terms of the marketing of goods and services as stated in Article 1 point (6) of the Law, this is consistent with the concept of "consumer" as stated in UUPK Article 1 point 2.

Many people come to believe in it by using reputable affiliates' presentation abilities together with their success stories and those of other traders. Victims are invited by affiliates who entice them with the promise of financial gain in exchange for trading and joining their Telegram group. Eventually, a large number of victims were able to join the Telegram channel, where they will be watched over and given instruction on how to trade in the Binary Option system using the resources at their disposal. Next, in order for the victim to participate in the application, the affiliators will provide a referral number. The victim shall receive capital in free mode. Subsequently, the victim shall predict whether the chosen asset's price will increase or decrease during a predetermined time frame during a trading session. A successful guess will result in profit for the user. according to the initial calculation. But if it is wrong, then the user will lose money and the capital used will be forfeited.

The method will initially make it simpler for the victim to prevail. The victim may feel pressured to make more deposits if he has been provoked since he feels like he is winning all the time. The two individuals were faced Upon a tip to the police in March regarding fraudulent investment schemes carried out under the guise of binary options, in Article 45 paragraph (2) potential punishment of twenty years in jail. Joe, 27, Law Number 19 of 2016 about Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions; Articles 3, 5, and 10 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering; Clause 378 of the Criminal Code; and/or (1) A paragraph jo. Shortly after the police seized Indra Kenz and Doni Salmanan, a number of influencers who participated in creating trading material and encouraged the public to trade were also reported to the authorities.

Considering the theory of unlawful acts, the form of promotion carried out by affiliators who become influencers in the field of trading, can be said to having satisfied the criteria for illegal activities as defined by Article 1365 of the Civil Code by providing lure and showing off the image of the wealth of the affiliators and causing losses to others who follow trading so that parties who experience losses (consumers) can claim compensation as based on Article 19 of the Law.

Thus, it can be concluded the misleading form of promotion in this study is a promotion carried out by affiliators who become influencers who are known to many people and form an image as a wealthy young man thanks to his success in the field of trading. The goal is that they can easily attract many people to follow directions. Affiliates create trading educational content, promote applications with binary options systems and showcase their wealth, and

confess to the public that it is the result of trading. Affiliators invite victims by providing the lure of profits if they participate in trading and join their telegram group.

AFFILIATES' LEGAL LIABILITY FOR PROMOTING PRODUCTS THAT CAUSE CONSUMER LOSSES

1. Civil Liability of Affiliators Who Promote Products Causing Harm

According to the Civil Code (KUHPercivil), losses can originate from defaults or unlawful acts (PMH). Default can occur due to non-fulfillment of achievements as agreed by the parties (Kamagi, 2018). In contrast to default, liability caused by unlawful acts departs from Article 1365 of the Civil Code. Requests for liability for losses can only be imposed on legal subjects that include persons and legal entities as something that can obtain, have or bear rights and obligations, (Mertokusumo, 2010).

Unlawful acts are also known as "onrechtmatige daad." An act is called an unlawful act if four conditions are met, among them, the act must be contrary to the law (onrechtmatige), done in the presence of a mistake, causing harm, there is a causality relationship between the loss incurred and the deed. The elements are cumulative, so if there are those if it is not fulfilled, then the act cannot be called an act that is against the law, (Fuady, 2013)

- a. The existence of unlawful acts
- b. Done by mistake
- c. There are losses for victims
- d. Losses and deeds have a causal link.

Legal subjects who commit unlawful acts must be held accountable. Articles 1365 to 1380 of the Civil Code contain forms of liability for unlawful acts. In general, accountability requires the fault of the violator. Article 1365 is a general formulation that regulates provisions regarding unlawful acts. This article states that in essence every act that deviates from the law and then causes expenses incurred through additional parties, then the person who caused the loss must make compensation for the loss.

Furthermore, according to Hans Kelsen, the subject of the sanction law is "responsible" or legally liable for the violations he has committed. Thus, legal responsibility must have a basis or foundation, namely things that cause the emergence of legal rights for a person to sue others as well as things that give birth to other people's legal obligations to give them accountability, (Tutik & Febriana, 2010).

The principles of legal responsibility can be divided into the following categories:

- a. In both criminal and civil law, the (Shidarta, 2004) theory of responsibility based on fault liability, or liability based on fault, is widely recognized (Article 1365 of the Civil Code). A person cannot be held legally liable unless there is evidence of misconduct, according to this idea.
- b. Until it can establish its innocence, the presumption of culpability principle is always "held" to be liable. In accordance with this principle, the defendant bears the burden of proof in light of the reverse burden of proof (omkering van bewijslast). This goes against the legal presumption of innocence doctrine, yet when it comes to consumer disputes, it appears that this doctrine is sufficiently pertinent to hold the corporate actor being sued accountable for its actions.
- c. Although specialists sometimes distinguish between the two concepts above, the concept of strict liability is sometimes confused with the notion of absolute liability. According to the concept of strict liability, fault is established rather than used as a deciding element. There are, however, several exclusions that permit immunity from culpability, such as in cases of force majeure. Conversely, the concept of absolute culpability entails accountability without any room for exceptions or guilt.
- d. The principle of responsibility due to the actions of other parties (vicarious liability) is the responsibility imposed due to the actions of other parties under its supervision (Article 1367 of the Civil Code).

2. Affiliator Liability under Consumer Protection Act

In the event that business actors are negligent and disobedient to consumers, it gives consequences to business actors to be responsible for indemnifying losses and bear all risks due to their negligence. Business actors are known to be obligated To make up for customers for losses incurred as a result of consuming the items they sell, as per the rules of Article 19 of the UUPK. Refunds or the replacement of comparable products are two possible forms of compensation, (Agustina, 2012).

In order to fulfill their obligation to compensate customers, business actors have multiple responsibilities, which include:

- a. Contractual Liability, or called contractual liability, is civil liability on the basis of agreements or contracts from business actors, both goods and services, losses suffered by consumers due to consuming the goods produced or utilizing the services provided. This means that in this contract there is an agreement or contract directly between business actors and consumers.
- b. Product Liability, which is civil liability for products directly from business actors for losses suffered by consumers due to using the products produced.
- c. Criminal Liability, namely criminal liability of business actors as a relationship between business actors and the state. In terms of evidence, what is used is reverse proof as stipulated in Article 22 of the Law, which states that proof of the presence or absence of elements of guilt in criminal cases, as referred to in Article 19 of the Law, namely damage, pollution and / or loss suffered by consumers is the burden and responsibility of business actors, without closing the possibility of proving it. So, the position of responsibility needs to be considered, because questioning the interests of consumers must also be accompanied by an analysis of who should be burdened with responsibility and to what extent responsibility is imposed on him. Responsibility for goods and/or services produced by companies or industries, in the juridical sense is commonly referred to as product liability, (Kuntag, 2021).

As required by Article 7 letter an of the UUPK, business actors have an obligation to always conduct their operations with high ethics. In this situation, the goal is to preserve a positive business environment and protect customers. Concerning the accountability of corporate entities, in this instance, inadequate details about a product's composition are referred to in Article 19 paragraph (1) of the UUPK, which states that if customers are damaged in the event that they incur losses due to damage, pollution, or losses in money and health resulting from using items sold by manufacturers; reimbursements; substitutes for similar goods and/or services; medical attention; and imposition of penalties in compliance with relevant legal and regulatory requirements.

Regulations on the imposition of punishment on business actors that break relevant laws are contained in Chapter XIII of the Law, starting from Article 60 to Article 63, among others:

1) Sanksi Administrative

Regarding administrative sanctions, it is covered by the UUPK's Article 60, which deals with administrative sanctions. The Law has given the Consumer Dispute Settlement Agency (BPSK) a specific right to apply this sanction based on Article 60 of the Law for the responsibilities and/or authorities granted by the Law-law on Consumer Protection (UUPK) to resolve disputes outside the court.

The UUPK's Paragraph 1 of Article 60 and Article 60 paragraph (2) stipulate that BPSK may apply administrative sanctions, such as deciding payment of up to Rp. 200,000,000.00 (two hundred million rupiah) as compensation to business actors who:

- a. The following situations can be attributed to business actors: a. Failure to provide consumers with compensation by way of refunds, exchanges for similar goods and/or services, health care, or compensation for losses incurred;
- b. Losses resulting from food production activities completed by food business actors;
- c. Business actors that are unable to provide after-sales guarantee facilities, including maintenance and spare part provision, as well as the provision of guarantees or

guarantees that have been predetermined, both applicable to business actors who trade their goods and/or services.

However, so far the understanding of administrative sanctions is focused on sanctions for revocation of business licenses or other similar matters, because in practice in the public environment in the event of finding a violation, the decision orders the permit issuing agency to revoke the business license of the business actor concerned.

If you look at Article 60 of the UUPK, it is said that BPSK is entitled to apply administrative sanctions; however, as BPSK does not issue permits, it would be more proper to refer to these measures as civil sanctions. This is expressed in Rp. 200.000.000,00- (two hundred million rupiah), as well as in paragraphs (2) and (3) of Article 19, Article 20, Article 25 and Article 26. These articles assert liability for damages incurred from the consumption of goods and/or services created or supplied by commercial entities.

2) Principal Criminal Sanctions

The principal criminal sanction is a sanction that be enforced and enforced by the court at the public prosecutor's request for infractions committed by corporate players. Business actors may be charged with crimes under the law. Article 62 of the Law states that corporate actors must comply with this commit violations of:

- a. Article 8 concerning products and/or services that fall short of approved benchmarks for quality;
- b. The provisions of Articles 9 and 10 concerning false information;
- c. Article 17 paragraph (1) letters a, b, c, and e relating ads that contain material that is misleading or not in conformity with reality;
- d. Article 13 paragraph (2) involving the offering of medications and health-related topics.

These things may be subject to criminal penalties, which include a maximum term of five (five) years in prison or a fine of two billion rupiah (Rp 2.000.000.000,00). General provisions apply to infractions that result in serious damage, serious sickness, permanent disability, or death. These offenses are also punishable.

3) Additional Criminal Sanctions

Based on the provisions contained in Article 63 of the Law, it is possible to impose additional criminal sanctions in addition to the main criminal sanctions that can be imposed under the provisions of Article 63 of the Law.

Basically, consumers have Article 4 of the Law guarantees the right to obtain clear, concise, and true information about the conditions and guarantees of the goods and/or services provided. As mandated by Article 7 letter f and g of the Law, business actors must also protect this consumer right by providing replacement, refund, or both in the event that the goods and/or services acquired or utilized do not live up to the agreement's terms. Researchers claim that company actors that engage in deceptive promotion are extended by affiliates to the public, so that they experience losses, so for that affiator should be held civilly responsible for their actions to harm others, namely by compensating losses suffered by victims. In this case, according to the researcher, Binary Option affiliates may be subject to sanctions as stipulated in Article 62 paragraph (1) of the Law.

Thus, it can be concluded that Affiliates who legally market items and cause losses to consumers may face criminal penalties under Article 378 of the Criminal Code. According to the Civil Code, someone who engages in default and illegal behavior may be entitled to compensation. In connection with this case, the affiator engaged in unlawful behavior, which is punishable under the Civil Code's Articles 1365 through 1380. The UUPK states that "offering something that contains a promise is uncertain" in the terms of Article 9 Paragraph (1) letter k. This means that the affiator can be held civilly responsible for losses suffered by victims as consumers, then the affiator can be sanctioned in Article 62 paragraph (1) of the Law. In general, liability requires the fault of the violator which if it causes losses to other parties, then the person who caused the loss is obliged to compensate for the loss. The

compensation is also part of the form of legal liability by the affiator that caused harm to the victims.

3. Affiator Liability under the ITE Law

As is known that binary options trading activities in Indonesia still do not have a legal umbrella or are still not regulated in legislation specifically and clearly. However, because binary options trading is all done online and can be accessed anywhere and all electronic needs such as information, documents, agreements, and others, this trade is bound by the ITE Law.

As stated in Article 1 of the Law, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy, or similar communications, letters, signs, numbers, access codes, symbols, or perforations that are processed and have meaning or are comprehensible to capable individuals are all listed as forms of electronic information. An electronic data collecting system is an assembly of electronic devices and protocols used for data collection, processing, analysis, recording, display, communication, distribution, and/or broadcasting. system, (Hanif, 2022)

As previously explained that binary option trading is a trading activity using certain assets such as foreign currency pairs (forex) and several types of commodities. In Indonesia, foreign currency trading or forex or forex is In reaction Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading was passed in response to that law. Legally speaking, the clearing house, the Futures Exchange, and the Commodity Futures Trading Supervisory Agency (BAPPEBTI) are the three entities that are permitted to trade foreign exchange and commodities futures, respectively.

Article 6 of Law Number 10 of 2011 states that futures exchanges, clearing houses, futures adviser brokers, and managers of futures fund centers are among the businesses to which BAPPEBTI is permitted to issue business licenses. However, this binary option activity is carried out through the internet network by accessing directly on the company's website that has been provided by overseas brokers such as OlympTrade and Binomo. From this it can be seen that binary option trading is generally run by companies that are not domiciled in Indonesia so that based on Article 18 of the ITE Law above it is known that the parties have the authority to choose the law that applies to international electronic transactions made in this case between brokers and traders.

Based on Article 5 paragraph (1) of the ITE Law, in essence, electronic evidence can be divided into two, namely: electronic information and / or documents and printouts of electronic information and / or printouts of Electronic Documents, (Hartono & Yuliantini, 2020). In committing a scam, an affiliate uses social media that is shared on the affiliate's YouTube channel containing invitations and even showing off his wealth as a result of the affiliate's efforts in running binary options trading which is a legal application, even though this application has not been registered with a legitimate institution, namely BAPPEBTI. The invitation and promotion video distributed on the Youtube channel can be one of the electronic evidences. The ITE Law in Article 16 paragraph (1) states that for the use of electronic media as evidence in the trial, it must meet elements which in essence are able to display Electronic Information and / or Electronic Documents as a whole, can be guaranteed authenticity, can be operated properly in accordance with their functions, and their availability when they will be used for trial purposes. Apart from the explanation through the ITE Law, to test an electronic evidence that can be considered valid before the law must meet the following requirements: (Asimah, 2021)

- a. Acceptable i.e. data must be able to be accepted and used for legal purposes ranging from the interests of the investigation to the interests of the court;
- b. Original, that is, the evidence must relate to the event / case that occurred and not fabricated;
- c. Complete, that is, evidence can be said to be good and complete if there are many clues that can help the investigation;
- d. Trustworthy, that is, evidence can say what happened behind it, if the evidence is credible, then the investigation process will be easier and this condition is a must.

The behavior of this affliator in inviting victims by making a video containing his success in participating in binary option activities by using his wealth and status as a public figure known by the public, so that the public can believe that what he did was not a lie. In this case, it can be said that the affiliate itself is a party who helps binary options to carry out their activities of flatform binary option promotion by conveying fake news.

In the case of binary options affliator Indra Kenz is accused of engaging in online gambling, spreading false information through electronic means, fraud, deception, and/or TPPU. The Electronic Transaction Information Law (ITE) suspects it under Article 45 paragraph 2 jo Article 27 paragraph 2 and/or Article 45 paragraph 1 jo Article 28 paragraph 1. in compliance with Law Number 8 of 2010's Articles 3 and/or 5 and/or 10 regarding the Prevention and Eradication of Money Laundering (TPPU). Additionally, Indra Kenz was accused with violating Criminal Code Articles 378 and 55. The maximum sentence for an offender is 20 years in prison.

When it came to the restrictions that Indra Kenz broke, gambling was the initial point of suspicion. The police accused him of violating Law Number 11 of 2008, which dealt with ITE and was later amended to become Law No. 19 of 2016. The law's provisions are found in Articles 45 paragraph 2 jo Article 27 paragraph 2 and/or Article 45 paragraph 1 jo Article 28 paragraph 1. He was also accused of violating Articles 3 and/or 5 and/or 10 of Law Number 8 of 2010 on the prevention and eradication of money laundering (TPPU).

Regarding the affliator itself, hereby it can be concluded that the affliator has no rules that clearly regulate the affliator, so the responsibility carried out by the affliator in binary options trading is to refer to the ITE Law which emphasizes promotional actions and spreading false news to the public.

Indemnification Mechanism by The Affliator To Consumers

Referring to the provisions of Article 1239 jo. Article 1243 claims that compensation is made up of three parts: costs, losses, and interest. This is stated in Section of the Civil Code. The term "costs" refers to expenses, costs, or costs that the aggrieved party has clearly or expressly borne. Additionally, a loss that results from the other party's negligence causing harm to one party's products and/or property is considered a loss. A benefit that should be earned or anticipated by one party in the meantime, provided that the other party is not careless in carrying it out, (Hayati & Ginting, 2021)

Juridically, Criminal activity is prohibited by the Civil Code's Articles 1365 and 1366 provisions. A violation states that "every unlawful act, which brings harm to another person, obliges the person who by mistake publishes the loss, to compensate for the loss" (Article 1365). Within the Civil Code, Article 1366 declares that "everyone is responsible, not only for losses caused by his actions, but also for losses caused by his negligence or lack of prudence."

In addition to being regulated in the Civil Code, the regulation of the concept of compensation guarantees for consumers is also specifically regulated in Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). In this case, the compensation arrangement in the Consumer Protection Law is actually a form of lex specialist from the Civil Code as its generalist. As for what needs to be noted is that in the regime of the Consumer Protection Law, the protection of compensation guarantees as intended is only intended for natural persons (natuurlijk person) and must be the end consumer, Az Nasution (2002).

In this case, the affirmation It The client in question is the end consumer himself, as specified in the explanatory section of Article 1 number (2) of the Law. Furthermore, in line with UUPK "The right to get compensation, compensation and/or replacement, if the goods and/or services received are not in keeping with the agreement or are not as they should be," is one of the consumer's rights stated in Article 4 letter (h). Business actors are required to "provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services" and "provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement," in accordance with this regulation and the provisions of In accordance with

UUPK Article 7 Letters (f) and (g). The remuneration legislation of the Law is further limited by the criteria governing corporate actors' accountability found in Articles 19 through 28.

Referring to the provisions of Article 19 paragraph (2), it can be seen that compensation in consumer protection law in Indonesia can take four forms, namely:

1. Refunds

- a. replacement of goods and/or services similar or equivalent in value,
- b. health care, and/or
- c. provision of compensation;
- d. in accordance with the provisions of applicable laws and regulations, (Fadhly,2013)

In the case of losses caused by the affliator, the losses suffered by One of the rights of the victim of a criminal conduct is to request compensation if they are the outcome of the criminal act. Restitution is one way that victims of criminal activity might get compensation. Although it is predicated on the idea that the victim will never be able to return to their pre-crime state, restitution in line with the Principle of Recovery in Original State (*restitutio in integrum*) aims to put the victim back in the same situation as before the crime. This notion highlights the need for the victim's recovery to be as comprehensive as possible, addressing all areas that result from the repercussions of their crime. Through restitution, victims can regain their assets, independence, legal rights, social standing, family life, and citizenship. They can even go back to their houses and resume their employment. This idea of restitution was created and given to crime victims as compensation for their suffering as victims of criminal activities in practically many countries. According to this theory, the guilty party or other accountable third party must provide victims and their families with just recompense. This compensation will encompass things like service provision, recovery rights, repayment of expenses incurred due to casualties, and restoration of property or payment for damage or loss incurred.

Based on The Civil Code's Article 1365, People have the right to compensation if they lose anything as a result of other people's illegal activities. In order to assist the person, the government creates a means of obtaining compensation without going through the customary civil lawsuit process by incorporating compensation claims into criminal cases governed by the Criminal Procedure Code, which is located in Articles 98 through 101 of the Criminal Procedure Code. The Code of Criminal Procedure, Article 98, Paragraph 1. Article 101 of the Code of Criminal Procedure specifies how the Civil Procedure Code's procedural rules applies to compensation claims. The description can be concluded as follows:

- a. There must be a request from the aggrieved party;
- b. There is a real loss as a result of the defendant's actions; and
- c. This request for compensation can be filed no later than before the judge makes a verdict.

Execution can be carried out if the verdict has permanent legal force. A request for execution can be made to the chief justice of the district court who decides the case so that the judgment is executed, either orally or in writing. The chief justice or judge who decides the case orders the defendant within a maximum of 8 days to fulfill the verdict. If the specified time passes, the judge will issue a warrant to confiscate movable property belonging to the convict estimated to be worth the obligation decided to fulfill. If the movable goods are insufficient, the immovable goods are also confiscated. This seizure is called executory seizure carried out by the clerk assisted by two witnesses. The incorporation of compensation cases is a distinctive event and characteristic contained in the provisions of the Code of Criminal Procedure. After the above mechanism has been carried out, the next step to take the compensation property is by public confiscation.

Related to Indra Kenz's case, it is very interesting that his assets were returned to the victim as a result of the appeal granted by the Banten High Court. A total of 38 assets belonging to Indra Kenz were returned to Binomo victims. These assets range from money, land and buildings, watches, to luxury cars. The decision to return assets to the victim was stated based on the decision of the Banten High Court which annulled the verdict of the Tangerang District Court on appeal. Judge PN Tangerang stated that Indra Kenz's assets were confiscated for the state. Because, Binomo's trading actions related to Indra Kenz are considered gambling. However, the Banten High Court disagrees with this. The appeal judge

judged that part of the assets deserved to be returned to the victim. The Appellate Judge said as revealed in the trial, that Indra Kenz's assets were obtained from the victims. The number was 144 people with losses of approximately Rp 83 billion. This case is a breath of fresh air for the victim. From the beginning, the victim demanded that the assets be returned. Once disappointed with the Tangerang PN verdict, now PT Banten's verdict raises hope. The appeal judge said that the return of assets was carried out through the United Indonesian Traders Association formed by victim Indra Kenz.

The cases of affiliators such as Indra Kenz and Doni Salmanan who were sentenced to return losses to the victims who were harmed are a criminal responsibility borne by each. Without a TPPU decision declaring bankruptcy, the one who has the authority to be the executor to return assets / assets distributed to victims is the Prosecutor. The judge ordered the prosecution to confiscate the assets as stipulated in the TPPU Law. In TPPU, if there is sufficient evidence that there are still rich assets that have not been confiscated, the Judge must order the prosecution to confiscate these assets", (Welda, 2015).

Thus, it can be concluded that the mechanism of indemnity by the affiator, which means that the assets will be confiscated and returned to the victims after they are tried and found guilty. Because the Criminal Procedure Code combines a criminal case with a claim for damages, after the criminal verdict goes straight with the claim for damages, the affiator will also be asked to pay compensation to the victim if found guilty. In the realm of civil law, the compensation mechanism depends on whether the affiator's PMH is proven. If proven, the judge will order the affiator to pay damages to the victim.

IV. CONCLUSION

Based on the results of the study, it can be concluded that:

1. Forms of misleading promotions that cause consumer losses include through affiliates who run promotions with inducements to victims through evidence of success and traders to make victims believe to follow trading in the Binary Option system. The actions of the affiator in this case have violated Article 7-point b and Article 9 Paragraph (1) letter k of the UUPK.
2. Victims of Binary Option crimes can make claims for compensation suffered as a result of Binary Option crimes both civil and criminal. However, if the Binary Option crime falls into the realm of criminal law, then the procedure for its implementation refers to the Criminal Procedure Code. The mechanism taken is the merger of compensation lawsuit cases in criminal cases. Related to the cases of affiliators such as Indra Kenz and Doni Salmanan who punished to return losses to the victim, where the mechanism is carried out through public confiscation.
3. Legal liability by affiliators who promote products causing consumer losses can be subject to sanctions as contained in Article 378 of the Criminal Code and Article 1365 of the Civil Code. If referring to Article 9 paragraph (1) letter k of the UUPK, the affiator may be subject to sanctions in Article 62 paragraph (1) of the Law. Indemnity is also part of the form of legal liability by the affiator that causes harm to the victims.

Related to misleading promotions at this time have become more sophisticated due to the consequences of globalization, for that special rules and sanctions should be made that regulate misleading promotions, especially on social media. In addition, there must be many seminars on misleading promotions so that the public has enough knowledge so as not to be affected by misleading promotions or advertisements and so that the public is wiser in assessing the investment promotions offered.

Related to the compensation mechanism by affiliators who carry out illegal promotions, basically it is regulated in the ITE Law and the Criminal Procedure Code, so that in its implementation, it is expected to be firm and thorough in imposing sanctions on affiliators, especially in efforts to restore victims' rights.

Regarding legal liability by the affiator in the form of criminal penalties and compensation, LPSK and OJK as institutions that can play a role in holding the affiator accountable should focus more on the inherent authority, namely LPSK as the authorized institution to protect consumers and OJK as the authorized institution to supervise the binary option.

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