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Legal Aspect of Binary Options Broker Platform Related to Operating Permissions From Bappebti and Liability of Company's Information From Blocked Social Media

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Abstract. It seems that we are bombarded every day with advertisements touting the benefits of investing online through binary options brokers (Binary Options). Pop ups on various social media showing celebrities and their yachts, and driving luxury cars and luxury vacations on their own Tropical Islands. However, due to a lack of information, many have stuck with this risky fantasy, and this has been proven again, investing is not a game, and many people who think they can make a fortune trading online quickly eat up years of savings. This research applied a normative legal study using statutes, conceptual, and case approaches. The legal materials were through document study, i.e., reviewing regulations and concepts relevant to investment law. Data in this research were analyzed qualitatively. The result research shows that many people make promises to the public that online trading can generate large profits as additional income. In practice, it is said through it money will work for us. Even though the risk of loss that can occur is also very large or commonly known as a highrisk high return. Public enthusiasm for transactions in the field of Commodity Futures Trading during the pandemic has increased. For this reason, supervision and observation needs to be tightened to prevent potential losses to the public due to unlicensed offers of advertisements and promotions in the field of Commodity Futures Trading and one of the ways is by imposing restrictions so that the websites of these unlicensed entities cannot be accessed. Entity applications that do not have permission from Bappebti, which are still on the Google Playstore and IOS Appstore, and socialized by various influencers-celebs on social media contain elements of fraud and their legality is questionable.

Keywords. Binary Options; Commodity Futures Trading; Influencers

1. Introduction

Since the pandemic, especially since 2019, the flow of information through technology has led to an acceleration of globalization in various fields in Indonesia which has had a major impact on the legal system, because globalization, especially in the economic field, has led to legal globalization. The globalization of law is not only based on international agreements between nations, but also on the understanding of legal and cultural traditions between the West and the East. Advances in technology have also brought the Indonesian people together with various forms of investment from other countries. One of the investment models that is currently in the public spotlight is Binary Option Trading (binary options). In practice, the online investment market has evolved towards short-term trading, with time periods as short as 30

seconds. With a time frame like this, binary options trading has actually become something of a gamble, and that's how many binary options users started using the instrument, with all the associated problems including addiction to binary options trading.

Many social media users will be used to seeing advertisements promoting binary options platforms. Instagram and Youtube are full of videos with titles like 'how do I make 600\$ per day', or "how to make 10% profit in one hour" (this is actually a conservative claim, many sites promise much higher returns), where people - visible people. Rich millennials explain how they became financially independent using a few simple trading rules that can also be learned in minutes. They often offer USD 50 or 100 "free trading credits" to those who open new accounts. Perhaps as many as a hundred internet sites offer binary options trading in Indonesia, many of which market their products in the local language. Social media crimes that are now rife on the Instagram platform are referred to as the phenomenon of Love scammers or fraud under the guise of love. The fraud of this phenomenon is taken from the word scammers in English which means fraud. Scams are things or acts of manipulation or deception, which are carried out by a business entity or individual by manipulating something to gain the trust of others which is carried out only for profit.¹

This platform is accessible anywhere, by anyone with a computer, internet connection, and a credit card, PayPal account, or similar. The barrier to access is very low. Binary options platforms present themselves as offering the kind of democratic access to the market that is in line with the desire of millennials to be in complete control of their lives, without having to rely on banks, brokers, financial advisors or other intermediaries.

The field of advertising is currently undergoing changes, especially regarding the medium used for advertising. If in the past conventional media were used to promote goods and/or services such as television, magazines or billboards, now in order to promote goods and/or services better, 'new' or digital media such as various social networking services are also used as mediums. advertisement.

When advertising using social networking services, especially Instagram, the involvement of influencers (such as celebrities, athletes, or other figures with great influence in society) cannot be ignored in conveying the message or purpose of the advertisement. By its nature it has a large number of followers in the media social media, as well as their ability to encourage or influence their followers to try or pay attention to the goods and/or services of business actors, it can be seen that influencers make a major contribution to the success of advertising. Apart from indicating that there are many elements of fraud, problems arise because many trading platforms that run binary options are abroad and do not have branches in Indonesia, let alone have permits from various related institutions. In contrast to transnational corporations are corporations whose business can be located across countries, because doing business in Indonesia will require corporations. Transnational corporations to comply with applicable laws and regulations. Transnational corporations, in carrying out their business, of course, will make it in the form of branches (branches).

Apart from the most famous Binomo, there are actually 28 investments as of January 30, 2020 that were recently closed. This entity takes advantage of people's incomprehension to deceive by luring potential victims of very high and unreasonable returns. Throughout 2019, Bappebti has blocked a total of 199 illegal entity website domains. According to him, these entities usually offer investments under the guise of forex by promising fixed profits or fixed

¹ Yuni Retnowati, " *LOVE SCAMMER: KOMODIFIKASI CINTA DAN KESEPIAN DI DUNIA MAYA*", Journal Komunikologi Volume 12 Number 2, September 2015, pp 69

income beyond reasonableness in the form of investment packages such as Silver, Gold, Platinum Packages and so on to attract potential victims. 1 But until now it still appears various content that resembles advertisements in investing on sites that some have blocked. The latest case where the defendant in the Bimono Trading fraud case, Indra Kesuma, also known as Indra Kenz, received a sentence of 15 years in prison and a Rp 10 billion fine in a trial at the Tangerang District Court. Indra Kenz was proven legally and convincingly guilty of spreading false news and misdirection that resulted in losses to the victims as well as money laundering. In addition, the prosecutor also demanded that Indra Kenz also pays a fine of Rp 10 billion, and If not paid, it will be replaced with 12 months imprisonment. There is another similar case by Doni Salmanan, both cases, they have a similar role. They persuade people to participate on the platform where they take shelter. For example, Indra Kenz. He creates video content and uploads it to social media. The content says Binomo is a legal trading platform in Indonesia. In Doni's case, the affiliation is assumed to be not much different. They were charged with the ITE Law, the Criminal Code, and the ML which carries a maximum penalty of 20 years in prison, however the court's verdict on both cases are different. This article curiously to know approximately how the judges made their decision and we come up with the distinguishing proof issues such as:

1. What is the legal certainty of investment activities through binary options that differentiates legal actions from gambling?
2. What is the position and legal responsibility of an influencer acting as affiliates whose content contains a call to invest through binary options?
3. What is the legal protection for investors and their position as consumers who invest through illegal binary options?

2. Methodology

This research applied a normative legal study using statutes, conceptual, and case approaches. The legal materials were through document study, i.e., reviewing regulations and concepts relevant to investment law. Data in this research were analyzed qualitatively. The research method is normative juridical which will derive from some secondary literature consisting of Law no. 32 of 1997 concerning Commodity Futures Trading, Law Number 8 of 1999 concerning Consumer Protection, Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, books, journals and other sources related to commodity futures trading, binary options, and consumer protection.

3. Theoretical Review

Introduction, Legal protection is the protection of dignity, as well as the recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. The principle of legal protection in Indonesia is the principle of recognition and protection of human dignity which is based on Pancasila. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because

historically in the West, the birth of concepts regarding the recognition and protection of human rights was directed at limitations and placing community obligations. and government.²

A. Commodity Futures Trading Investment

Investment is regulated in 2 (two) existing dictionaries, namely the big Indonesian dictionary and the dictionary of economic law. Investment is regulated in 2 (two) existing dictionaries, namely the big Indonesian dictionary and the dictionary of economic law. The definition of investment or investment is as follows

a) According to the Big Indonesian Dictionary, investment has 2 (two) characteristics, namely putting money into a company or project with the aim of obtaining profitable returns, and the amount of money put is included in investment activities.³

b) According to the Dictionary of Economic Law, investment is an activity carried out in the long term related to the company's financial condition, implementing projects that are part of the company's operations, purchasing shares, as well as activities related to the company's capital.⁴

Law Number 32 of 1997 concerning Commodity Futures Trading Article 1 point 1 states what is meant by commodity futures trading, hereinafter referred to as Futures Trading, is everything related to the sale and purchase of commodities with later delivery based on Futures Contracts and Options on Futures Contracts. Whereas in Article 1 number 1 of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 (abbreviated as the PBK Law) states that Futures Trading is everything related to the sale and purchase of Commodities with the withdrawal of Margin and with later settlement based on the Contract Futures, Sharia Derivative Contracts, and/or other Derivative Contracts.

Abdulkadir Muhammad stated that the economic function of futures trading is as a means of hedging and a means of creating prices (price discovery) as a transparent reference price which is used as a reference for world prices.⁵

The market where contracts are traded is called "Over the Counter" abbreviated as OTC. ⁸ Futures buying and selling contracts can also be executed in markets that use "standard" terms only by exchange members. Such markets are called "futures exchanges". The trading mechanism on OTC is Forward and Swap. The trading mechanism on futures exchanges is Futures and Options.⁶

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² Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: Bina Ilmu, 1987, Page 38.

³ Kamus Besar Bahasa Indonesia (KBBI) Pusat Bahasa Kementerian Pendidikan Nasional, edisi V, Jakarta: 2016.

⁴ Syahrul, Muhammad Afdi Nizar, Ardiyos, *Kamus Lengkap Ekonomi, Istilah-Istilah Akuntansi, Keuangan, dan Investasi*, Jakarta: Citra Harta Prima, 2000.

⁵ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, Bandung: Citra Aditya Bakti, 2006, Page 142.

⁶ Mohamad Samsul, *Pasar Berjangka Komoditas dan Derivatif*, Jakarta: Salemba Empat, 2010, Page 7-8.

⁷ Ibid, Page 142

mechanism on OTC is Forward and Swap. The trading mechanism on futures exchanges is Futures and Options.⁸

In accordance with its definition, futures brokers are also referred to as trade intermediaries that connect customers and the futures market. According to Sentosa Sembiring, intermediary traders can generally be divided into two groups, namely intermediary traders based on working relationships and intermediary traders who stand alone. Intermediary traders who are based on an employment relationship means that intermediary traders in carrying out their duties are bound by a work agreement between the employer and the worker. While intermediary traders who stand alone means that intermediary traders are not bound by employers.

Article 50 paragraph (2) of the PBK Law states that futures Brokers are required to submit Company Information Documents and Risk Disclosure Documents and enter into agreements with customers before the Futures Broker concerned can receive funds belonging to customers for futures contract trading. The agreement between the futures broker and the customer as referred to must be stated in a contract called a Futures Contract. Article 1 point 5 states that a futures contract is a standard form of contract to buy or sell a commodity with a later settlement as stipulated in the contract traded on a futures exchange. Commodity futures contracts are standard contracts that have been formulated by CoFTRA.

B. Investment Platform with Binary Options

Binary Options have been known since 2006 at the Chicago Board of Option Exchange (CBOE) press conference as an asset that can be traded in 2008.⁹ Binary options trading is an activity that determines the movement of the value of an asset in a certain period of time that has been selected through the binary system. On the internet-based binary option platform, investors are asked to deposit a certain amount of money to make a deposit.¹⁰ Transactions in Binary Options are theoretically carried out through investors who estimate the direction of fluctuations in the value of derivatives,¹¹ where they will later choose whether the value will increase or decrease in a certain period of time. There are several binary trading services that can be used by the public, for example, Binary.com, Olymp Trade, qoption.com, and Binomo. Some of these sites cannot be even accessed without using a VPN.¹²

As far as the authors explore, there are studies that have some similarities from the same research object regarding derivative investments including binary options however, even after the court decision on Indra and Doni's case, specifically regarding investors' rights to invest and the accountability of influencers whose content is identical to advertisements, which

⁸ Pantas Lumban Batu, *Perdagangan Berjangka: Futures Trading*, Jakarta: PT Elex Media Komputindo, 2010, Page 52.

⁹ A. Kolkova dan L Lenertova, *Binary Options as a Modern Phenomenon of Financial Business*, *International Journal of Entrepreneurial Knowledge*, Issue 1, Vol.4, 2016, Page 53.

¹⁰ Danastri Puspotasari dan Faiq Rizki Aulia Rachim, *Binary Option Sebagai Komoditi Perdagangan Berjangka di Indonesia*, *Jurnal Hukum Lex Generalis*, Vol. 2, no. 8, 2021, Page 629.

¹¹ A derivative instrument is so named because its value changes as a result of changes in a predetermined variable (often referred to as the underlying), does not require an initial net investment or requires a small initial net investment, and is settled at a certain date in the future. Quoted from A.A. Gede Indra Pramana and Gerianta Wirawan Yasa, *Hedging Activities with Derivative Instruments and Firm Value*, *E-Journal of Accounting*, Vol. 30, no. 9, 2020, Page 2171.

¹² Herlina Kartika Dewi, *Getting to Know the Concepts and Practices of Binary Option Trading, What Is It?*, <https://investasi.kontan.co.id/news/mengenal-KNOWLEDGMENTS-DANCE-DRAACTIC-trading-binary-option-APA-itu>, accessed at January 13, 2022 at 20.00 West Indonesian Time.

until now, although they can be categorized as business actors, do not yet fulfill the elements of advertising in consumer protection laws.

4. Findings

After reviewing several regulations The Binomo application is not be part of in indirect investment because when investing is not limited by a place where investors can carry out activities virtually on capital markets around the world, and indirect investment is not required to establish a business entity 18 . It can be said that the Binomo application is a gamble where the Binomo application guesses a graph which can also be called a gamble. According to Tirtodiningrat that gambling or betting is included in an agreement or agreement that is not mandatory or can also be called a free agreement, in this case gambling enters into an agreement or a gambling agreement 19. What has been confirmed in the provisions of article 1774 of the Civil Code, which reads "A chancy agreement is an act whose outcome, in terms of profit and loss, both for all parties, as well as for some parties, depends on an uncertain event. Those are: insurance agreements, life insurance interest, gambling and the first agreements regulated in the Commercial Code."

The public must know about trading methods that use options which are prohibited activities. Because this system is not in accordance with the provisions of article 1 number 8 of Law Number 10 of 2011 concerning amendments to Law Number 32 of 1997 concerning commodity futures trading. It is not only the people who are experiencing economic difficulties, but also many people who are well-educated and have an adequate economy, who are also exposed to illegal investments. Even though they are educated, the community does not yet have the awareness not to get involved in illegal investments. From this, the investment alert task force (SWI) is required to increase public awareness by educating the importance of ensuring investment organizers have obtained permits from the OJK or CoFTRA. That due to the lack of legal awareness for the community. and so many people who are easily influenced by the lure of big profits without first seeing the performance system of these illegal investments. which makes society suffer a lot of losses

Gambling has the nature that there is a chance agreement in which the parties will depend on an event or event that cannot be ascertained beforehand. It's the same as in the Binomo application where users guess a graph where the event cannot be ascertained. In gambling the winning party will feel the advantage while the loser will feel the loss without any achievement at all. It's the same as with the Binomo application, where when users guess a graph incorrectly, the money made for gambling has the nature of a chancy bet in which the parties will depend on an event or event that was not previously certain. It's the same as in the Binomo application where users guess a graph where the event cannot be ascertained. In gambling the winning party will feel the advantage while the loser will feel the loss without any achievement at all. It's the same as with the Binomo application, where when users guess a chart incorrectly, the money for guessing a graph will belong to the affiliate and the owner of the application. Illegal gambling in terms of civil law, in addition to not allowing claims regarding gambling debts, goods or money that have been handed over to the winning party and if known by the authorities can be confiscated as evidence of a criminal case.

Chart fluctuations describe the value of a currency where traders or users only guess the movement of the charts based on the knowledge that will be used when carrying out fundamental and technical analysis. The objects in the Binomo application are foreign currencies or foreign exchange 20. There is no perfect agreement on the Binomo platform, which can result in not being sued for performance because the Binomo platform is an imperfect

agreement. which is already regulated in the Civil Code Act on gambling and betting in article 1788 which reads "The law does not provide law in the case of a debt that occurs due to gambling or betting

The judge's consideration did not return to the victim because Binomo was considered a gamble and the victim also enjoyed the benefits of the gamble. As a preventive and repressive effort as well as to provide proper education to the public, so as not to perpetuate gambling games, and not to be quickly tempted by the lure of quick money in an easy way without working hard, evidence numbers 220-258 are qualified as proceeds of crime, and therefore must be usurped for the state.

Indra Kenz's decision is interesting to study further. Because, the judge used the victims as an aggravating and mitigating reason with the perspective of participating victims. We can compare this binary option case to the First Travel case in Indonesia. In the First Travel case, the judge stated that the state seized the victim's assets. However, the decision was based on the consideration of preventing legal uncertainty over confiscated assets. Meanwhile, in the case of Indra Kenz, the judge stated that the assets were confiscated because Binomo's trading was gambling. Binomo traders are considered to have contributed to the gambling act which later became Indra Kenz's profit. In another perspective, for the victim, we can consider them as user or consumer as member of a digital platform, and after for the Witness and Victim Protection Agency (LPSK) within its authority can carry out the assessment of compensation in granting restitution and compensation. This is contained in Article 12A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. These victims can first report to the Police so that they can then submit it to the Witness and Victim Protection Agency (LPSK) for refund of restitution.

Binomo business actors and traders as consumers do not have a legal relationship because binary options do not meet the requirements as a Derivative contract or an agreement based on Article 1320 of the Civil Code where objective legal requirements (certain objects and halal causes) are not met. Law Number 8 of 1999 concerning Protection Consumers and Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading cannot become a legal umbrella for traders of the Binomo application because binary options do not meet the qualifications as commodities but affiliated victims can apply for restitution to the Witness Protection Agency and Victim (LPSK)

5. Conclusion

The judge's considerations were somewhat contradictory. Indra Kenz was charged with a few elective articles. Counting the primary essential arraignment of Article 27 section 2, specifically the betting substance of the ITE Law. Be that as it may, the judge chose to demonstrate Article 28 passage 2 of the ITE Law. Where it could be a lie within the setting of buyer assurance. This implies that it isn't a betting substance that the judge considers. We consider the judge's verdict to be conflicting. Since, on the one hand, the judge evaluates that there's a consumer misfortune that emerges. Be that as it may, the judge expressed that the resources were reallocated by the state. Typically, indistinguishable from the thought of the judge who considered that there was a commitment from the casualty within the event of this wrongdoing. The concept utilized by the judge is undoubtedly taking part in casualties where the casualty contributes to the event of wrongdoing, judges appear to put the casualties as taking

interest casualties or self-victimizing casualties, where the venture mentality of these casualties contributes to wrongdoing.

As well naïve for us to consider parallel alternative is betting as it were, where numerous cases appear that the Internet-based twofold alternatives exchanging stages able to control the exchanging program to misshape double choices costs and payouts. For illustration, when a customer's exchange is "winning," the commencement to close is expanded self-assertively until the exchange gets to be a misfortune. These circumstances are distant more awful than betting, when we bet on a soccer match, we see the same match with the same groups that are playing, but parallel alternatives ostensibly have the same circumstance as such. Right now, the case is still not marked or definitive. An appeal is being recorded, able to as it were trust there are a few certainties and security for binary option's victim.

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