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**CYBER CRIME PROTECTION LAW IN INDONESIA****ON THE RISK OF LOSS OF BINARY OPTION**

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**ABSTRACT**

Advances in science and technology have resulted in the advancement of trading methods which are currently not only done conventionally, but also through virtual global. Through commerce in cyberspace, anyone, anywhere, can reach any object. This includes investing activities that are very profitable financially, and are also activities that have a high risk. Investing or investing exclusively or not, with the hope of getting the maximum profit in a certain period of time from the investment results. Technological developments, supported by the abundance of supply and demand, have created a binary options platform. Binary options are online trading instruments that offer investment by choosing the assets to trade, generally in the form of currencies, stock indices, cryptocurrencies, to commodities.

We compiled this study using a normative legal approach in the form of a statutory approach and a conceptual approach. Technological developments do not always have a positive impact on financial investment products. This study emphasizes that binary options is not a commodity futures trading activity or investment. Binary options trading is illegal in Indonesia because it has not been licensed and its legality is not recognized by laws and regulations. Without a license, there is no clarity on consumer protection in binary options, both legally and practically.

This research leads to the emphasis on legal science by examining the legal rules used and applicable to the community to be studied and researched. Cybersecurity laws and regulations in Indonesia divide responsibilities into several ministries and are considered ineffective in preventing cyber threats and crimes. Therefore, a comprehensive cyber security regulation is needed in Indonesia.

Keywords: Investment; technology; cyber; binary options.

## PRELIMINARY

### 1) Background

Investment is a means to prepare financial reserves in order to gain profits, prepare financial reserves to face the future or in unexpected situations. Therefore, due to the times, especially the development of information technology and the easier access to capital market information, it has an impact on the emergence of various forms of investment that are managed through digital technology so as to allow investments to be made flexibly and to embrace more investors. The view and interest in investing will not run well without adequate facilities and facilities to support each investment activity so that it runs effectively. Technology is expected to be able to make investors becomes more interested in investing. For this reason, a tool or system is needed that is able to assist processes in the capital market to run more effectively and efficiently. One form of investment that has emerged along with technological developments is binary options. This is evidence that a technological development has a considerable influence on the progress of a country's economic development and encourages the development of a more efficient and effective business sector.

Binary options trading or binary options trading is an activity that determines the movement of asset values over a certain period of time through the binary system. By determining the approximate price movement of the underlying asset over a certain period of time, one can gain a fixed payout or lose a predetermined value. On the internet based binary options platform, investors are required to deposit a certain amount of money for deposit. From the deposit, the investor can make a "call" or "put" to make a deposit in the form of a contract against any of the commodity options offered by the platform. If the reservation results determined by the investor is correct, within a certain period of time the investor is entitled to receive the promised profit. However, if the notification result is not reached within the specified time, it will be considered out of money and the customer will lose the entire deposit amount.<sup>17</sup>

This becomes a problem, when there is no legal umbrella that really covers binary options as a form of investment. So it's just based on the existing law. In addition, there is a lot of uncertainty about the concept of binary options as a form of investment that can be included in the concept of futures trading investment. In addition, the high risk in this form of investment causes the possibility of a large risk of loss for its users. Another thing that needs to be questioned is the calculation of the risk and the financial form of the investment which only has two options which makes it seem as if the profit is only based on luck.

### 2) Formulation of the problem

Based on the explanation above, the formulation of the problem to be studied in this study are as follows:

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<sup>17</sup> Puspitasari, D., & Rachim, F. R. A. (2021). Binary Option sebagai Komoditi Perdagangan Berjangka di Indonesia. *Jurnal Hukum Lex Generalis*, 2(8), 627–648.

1. How is the concept of binary options viewed from the futures trading law in Indonesia?
2. What is the legal protection for cybercrime in Indonesia against the risk of losing binary options?
3. How is the concept of binary options related to the concept of gambling in Indonesian law?

## **RESEARCH METHODS**

In this study, the author uses a normative juridical approach, namely a research that leads to the emphasis on legal science by examining the legal rules used and applicable to the community to be studied and researched. This approach is also known as the library approach, which is a study of a legal problem that is only aimed at documentation, the language is simply a sociological approach that is not carried out directly in the field.

Reading the literature/documentation, only reading library books and research journals and in writing the author has reading written material, not face to face with informants and respondents in order to complete a scientific task or research carried out.

This method is one option that can be used to create a research method, because the content of the reading context adds insight to the reading in order to add to the research rules that are usually carried out by academics to choose the purpose of research methods that take various forms, ease of finding The material makes this method an application that can be taken into account in choosing a research method.

The data that has been collected from various kinds of research is then processed and analyzed using qualitative data processing techniques, the purpose of this technique is qualitative data processing, namely by selecting accurate and appropriate data to answer various problems that are being designed, in presenting the data it is done by descriptive analysis method is a method of analyzing data that is systematically arranged and obtains scientific conclusions which are the answers to the problems and concerns raised.

## **RESULTS AND DISCUSSION**

- 1) KBinary Option concept Seen from Futures Trading Law in Indonesia.

At this time, there are various types of investment that exist in the community, especially in Indonesia, the impact of the pandemic which is very influential on the community's economy is one of the reasons for making these investments. There are several types of investment, one of which is Binary Options, compared to other investments, this investment tends to be of interest to the public because it does not require large capital to carry out investment activities. The process to create an account is also easy, you just need to choose the application platform you want to use, then fill out several forms with email and so on. The transaction process on binary options begins with filling in the balance to be able to

trade or what is called a deposit, then investors/traders can start trading in binary options by making estimates or predictions about the direction of fluctuations shown in graph form or called candles. Traders place the position of a market at a certain time whether the candle is up or down.

If the trader's estimate is correct, then they will get paid/profit according to the trading platform determined, but if the guess is wrong, the trader will lose the amount of money that was placed when trying to guess the position of a market. According to news circulating, the ratio of profit and loss in the Binomo application is 80% profit if the trader's estimate is correct and 100% loss if the trader's estimate is wrong. It also led to some criticism from binary options traders. When linking Binary options to the existing commodity trading laws in Indonesia, basically commodity trading is in the form of primary products related to energy such as mining and agriculture. In Indonesia the commodities traded must be transacted physically or in direct contact, but in trading, the commodity being traded is the contract. So far, the variety of commodity trading in Indonesia is increasingly varied and continues to grow rapidly until the creation of financial products such as stocks and foreign currency. In Indonesia, commodity futures trading is regulated in Law Number 32 of 1997 concerning Futures Commodity Trading which has been amended into Law Number 10 of 2011 which reads Futures Trading is everything related to the sale and purchase of Commodities with withdrawal of Margin and with later settlement based on Contracts. Futures, Sharia Derivative Contracts, and/or other Derivative Contracts. So far, the variety of commodity trading in Indonesia is increasingly varied and continues to grow rapidly until the creation of financial products such as stocks and foreign currency. In Indonesia, commodity futures trading is regulated in Law Number 32 of 1997 concerning Futures Commodity Trading which has been amended into Law Number 10 of 2011 which reads Futures Trading is everything related to the sale and purchase of Commodities with withdrawal of Margin and with later settlement based on Contracts. Futures, Sharia Derivative Contracts, and/or other Derivative Contracts. So far, the variety of commodity trading in Indonesia is increasingly varied and continues to grow rapidly until the creation of financial products such as stocks and foreign currency. In Indonesia, commodity futures trading is regulated in Law Number 32 of 1997 concerning Futures Commodity Trading which has been amended into Law Number 10 of 2011 which reads Futures Trading is everything related to the sale and purchase of Commodities with withdrawal of Margin and with later settlement based on Contracts. Futures, Sharia Derivative Contracts, and/or other Derivative Contracts.

In Indonesia, there are several categories that can be subject to futures contracts, namely in the fields of mining, industry, fisheries, marine and others. There are also digital assets that are included in the category of commodity futures trading because they cover the financial sector, which consists of foreign currency and the Republic of Indonesia Government Securities (SUN). Commodity futures trading has a special characteristic, namely with the subject of the related parties who do not know each other because in this trade they are transacted through intermediaries made to be traded on the futures exchange. The word buying and selling in world Futures trading is equated with the case in bonds, data ptradebthis

framework only like a figuratively because contracts are not bought and sold in the true sense like case stocks are also bonds, but both of them is a convention entered into between parties for a mandated price. This is then similar to Binary Options because the parties involved also do not know each other and the contract that occurs is a metaphor.

2) Cyber Crime Protection Law in Indonesia against Binary Option Loss Risk.

The binary options trading system itself still sounds foreign to the Indonesian people because it is new to Indonesia, only in the last few years. The popularity of this trading system is also due to the presence of several influencers or public figures who use the trading platform with the system, it is undeniable that many of their followers want to trade without learning the system. And uniquely, what these influencers show is only when the profit conditions are large enough without telling the risks that might occur if conditions do not go according to plan.

These affiliates open trading classes to the public with a fee for registration requirements but there are also those who open classes for free. Many Indonesians are interested in the training so they decide to join the class, the majority of whom attend the class are people with middle to lower economic class. They are tempted to get big profits in a fast time. And what is happening now is that binary options trading traders experience losses of different values, some have lost tens of millions and some have even suffered losses of billions.

Of course this makes traders disappointed with affiliates because the condition that occurs is that traders experience losses, very different from what they show on their social media content. There are some victims of binary options trading who speak up to the public about what happened, but there are also victims who experience mental disorders and some even commit suicide. The existence of these losses led to the existence of laws regarding binary options trading. There are several articles in cyber law that are imposed on the affiliate because the platform is still legal or does not have a license in Indonesia. Some of these articles include:

- a) **Article 45 paragraph 2 in conjunction with Article 27 paragraph 2 and or Article 45 Averse 1 ITE Law** which reads "Everyone who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. .000,000,000.00 (one billion rupiah)".
- b) **Article 28 I paragraph 1 of the ITE Law** which reads "*Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions". Article 28 paragraph 1 of the ITE Law is in line with Law Number 8 of 1999 concerning Consumer Protection. The law aims to increase consumer awareness and independence in order to protect themselves and create a protection system for consumers by providing legal certainty and information disclosure as well as access to information.*

Furthermore, regarding the losses suffered by binary options platform traders, the Witness and Victim Protection Agency (SPSK) stated that the losses of the victims of binary options trading platforms can be returned through a restitution mechanism or compensation for the perpetrators. Based on the terms what's inside Article 7A of Law Number 31 of 2014 contains various provisions that state that the victim of a crime related entitled to something restitution. LPSK also has the authority, one of which is to assess compensation in providing restitution in accordance with Article 12A paragraph 1 letter j. Investigator as well as the prosecutor can apply for restitution of the victim in the prosecution dossier. But the success or failure of the restitution ultimately depends on the judge's decision.

3) Binary Option Concept When Associated With The Concept of Gambling In Law In Indonesia.

In investing, there are several things that must be considered so that in making investments you are not trapped in illegal investments which will result in gambling. Compiled from various sources, it can be concluded that the characteristics of illegal investment platforms are:

1. Promising unreasonable (large) profits in a relatively short time
2. Promising bonuses from recruiting new members or often called "member get member"
3. Utilizing community leaders / religious leaders / public figures to work together as affiliates to encourage public interest in investing in the platform
4. Claim without risk (free risk)
5. Legality is not clear
  - a. Do not have a business license
  - b. Has an institutional license (PT, Cooperative, CV, Foundation, etc.) but does not have a business license
  - c. Have a business license and an institutional permit but carry out activities that are not in accordance with the permit.

In this case, there are several factors that cause the main actors to carry out illegal investments, namely the perpetrators making web and applications which are then offered through online media, in this case the perpetrators also have many servers abroad, this makes it easy for the perpetrators to trick the public into investing because of the lack of public knowledge about investment. then people are easily tempted by high interest or high profits offered by the perpetrators.

In Indonesia alone binary options have not been regulated in laws and regulations specifically and clearly in Indonesia in several cases that have occurred in Indonesia that under the guise of binary options trading in the gambling category this is proven by the binary option game system, namely by installing foreign currency which is then traded in trading then it will be guessed whether the currency being traded will experience profit or loss

In this case it is clear that the system used by binary options is indicated by gambling because basically Binary Options has a working system by asking the user to guess the price of an asset that seems to be traded which will appear in a time period that has been determined by the user himself. The users of this platform are obliged to guess the price (in the form of the price of an asset that is said to be going up or down) correct before time that already determined

out. If the specified asset has been selected, the next step the user needs to take is to risk capital what they have in order to make a profit, and if the staked loses (defeat) it will lose 100% but if the thing that is bet experiences a profit (win) will get a profit of 80%. In the case of gambling, it is regulated in Article 303 of the Criminal Code which contains:

- (1) By a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs, any person who is not entitled to:
  - a. demanding a livelihood by intentionally procuring or giving opportunity to gamble, or intentionally interfere in a gaming company gambling.
  - b. intentionally holding or giving the opportunity to play gambling to the public, or deliberately interfering in the company for that, even though there is or is not an agreement or in any way to take advantage of that opportunity.
  - c. participate in gambling for a living.
- (2) If the guilty commits the crime in his position, he may be dismissed from his position.
- (3) What is said to play gambling is every game, which is based on the hope to win generally depends on luck alone, and also if that expectation becomes greater because of the intelligence and habits of the player. Also included in playing gambling are betting on the decisions of competitions or other games, which are not held by those who participate in the competition or play, as well as all other bets. (KUHP 35, 37, 542). Article 303 of the Criminal Code is also strengthened by Law Number 7 of 1974 concerning the Control of Gambling.

From the various existing regulations, it can be concluded that the system used by binary options trading is included in the online gambling category. a gambling contained in the Criminal Code article 303 paragraph (3). So for victims who experience losses when trading binary options, a refund will be quite difficult.

## **CLOSING**

### **1) Conclusion**

Based on the explanation above, we can conclude that there are several articles in cyber law that are imposed on the affiliate because the platform is still illegal or does not have a license in Indonesia. This is regulated in Article 45 paragraph 2 in conjunction with Article 27 paragraph 2 and/or Article 45A paragraph 1 of the ITE Law and Article 28 I paragraph 1 of the ITE Law. The state of the victim should be a concern of the State, not only in the form of giving punishment to the perpetrators of the crime but also with the restoration of the victim's condition so as to create a balance, bring a sense of peace in society and realize justice. Philosophically, the state is obliged to provide protection for victims. Several factors that can affect the protection of victims of investment fraud are contained in the law, then awareness of the public who do not want to report on the case and do not want to give their testimony, a means of disseminating information or socializing about good and correct ways to invest in similar financial businesses. as well as law enforcement officers who are still relatively lacking

in supervision of cases like this. There are several legal protection efforts against victims of investment fraud, namely the Government Must Conduct Socialization or education to the public about investment and business towards finance. in this case it can be done by the financial services authority or similar parties and can be assisted by the police.

## 2) Suggestion

In today's digital era, there are many modes of marketing binary options trading platform be very diverse. People who are not familiar with the use of digital technology are easy food for shareholders binary options trading platform that manipulate the online business sector today, sometimes people become interested in advertisements that promise big profits and mediocre capital. Public deception like this is a violation of the trade law regulated in Article 9 paragraph (1) of the Consumer Protection Law affirms "Business actors are prohibited from offering, promoting, advertising goods and/or services incorrectly, and/or pretending to be." This means that there is a prohibition against making advertisements that mislead the public. We should be able to understand, find out, and sort out wrong and right information, especially in the era of massive technological disruption that is happening today, we are required to be able to keep up with technology in our daily lives.

This should be able to encourage the Indonesian government to immediately regulate more detailed regulations in the online business sector such as binary options trading platform. Because even though the Financial Services Authority prohibits its use, there are still many applications and sites for illegal commodity futures trading sites and gambling games under the guise of trading in the future. We also have to pay attention to the victims in this case, some are deliberately playing binary options trading platform even though he clearly understands the risks, when he gets the profit he stays silent and enjoys it, but when he feels aggrieved he just reports, where is the money from the trading profits? Unlike people who are completely new to online trading, they use it out of necessity, something like this that the government must handle further.

The government needs to monitor binary options trading platform through a special agency dealing with this matter, the agency is formed independently or under the ministry. The goal is that all people who start businesses binary options trading platform according to the rules and not against the law. If one day binary options trading platform to be legal, there should be more comprehensive regulations regarding this online trading. The government in this case must be observant in knowing the system built by online trading, such as taking preventive measures, because what must be considered again is legal protection to consumers or customers.

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