

## ***Law Enforcement In The Case of Binary Option Under The Guise Of Investment and Trading***

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### **Abstract**

*Binary option is one type of online trading that works by predicting the movement of an asset, and until now binary option in Indonesia is illegal. The purpose of this study is to explain how the form of criminal liability for parties who commit fraud under the guise of binary option investment and preventive efforts that can be made by both the government and the community. This study uses normative legal research methods. The results of this study show that regarding commodities as regulated in the law and BAPPEBTI regulations, binary options are not included in the subject of futures contracts, which makes binary options illegal. The legal basis used to ensnare the perpetrators behind the binary option case includes articles of fraud to money laundering. This paper is expected to benefit the community in general as additional knowledge and information in investing, as well as input for the government in encouraging and strengthening financial literacy in the community.*

### **Abstrak**

*Binary option merupakan salah satu jenis trading online yang cara kerjanya dengan memprediksi pergerakan suatu aset, dan hingga saat ini binary option di Indonesia masih bersifat ilegal. Tujuan dari penelitian ini adalah untuk menjelaskan bagaimana bentuk pertanggungjawaban pidana bagi pihak yang melakukan penipuan berkedok investasi binary option dan upaya preventif yang dapat dilakukan baik oleh pemerintah maupun masyarakat. Penelitian ini menggunakan metode penelitian hukum normatif. Hasil penelitian ini menunjukkan bahwa mengenai komoditas sebagaimana diatur dalam undang-undang dan peraturan BAPPEBTI, binary option tidak termasuk dalam subjek kontrak berjangka sehingga menjadikan binary option ilegal. Dasar hukum yang digunakan untuk menjerat pelaku kasus binary option antara lain pasal penipuan hingga pencucian uang. Tulisan ini diharapkan dapat bermanfaat bagi masyarakat secara umum sebagai tambahan pengetahuan dan informasi dalam berinvestasi, serta menjadi masukan bagi pemerintah dalam mendorong dan memperkuat literasi keuangan masyarakat.*



## INTRODUCTION

Entering the digital era 5.0, people are familiar with the use of Artificial Intelligence including financial technology or fintech.<sup>1</sup> While technology can produce positive impacts for mankind, it can also produce unexpected and unintended consequences and create new forms of risk that need to be managed effectively by the government.<sup>2</sup> The use of AI systems can be found in today's online trading applications that are easily accessible and result in the public becoming unselective about the online trading applications used.<sup>3</sup> Of the many online trading applications available, there are many online trading applications that turn out to be illegal because they are not included in commodities, one of which is binary options under the guise of investment which causes several problems such as fraud and money laundering.<sup>4</sup>

In developing countries with low public financial literacy such as Indonesia, it is very vulnerable to becoming victims of fraudulent investment scams, one of which is binary options. It can be seen that in Indonesia, public awareness of the importance of investment is not balanced with carefulness in finding information and accuracy in choosing the type and company of investment. Most people are tempted by investments that promise high rates of return or profit sharing in a short time, without first investigating the credibility and legality of the related investment company, so that in most cases investors do not get big profits, but instead suffer financial losses due to being victims of fraud.<sup>5</sup>

In the case of binary options, many people are tempted to try to get into it without understanding what and how the binary option system itself. In addition, there are still many people who do not know the legality status of binary options in

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<sup>1</sup> Ashley Deeks, "The Judicial Demand for Explainable Artificial Intelligence," *Columbia Law Review*, Vol. 119, No. 7, 2019, p. 1829.

<sup>2</sup> Paul W. Grimm, Maura R. Grossman, and Gordon V. Cormack, "Artificial Intelligence As Evidence," *Northwestern Journal of Technology and Intellectual Property*, Vol. 19, No. 1, 2021, pp. 9–106.

<sup>3</sup> Miriam C. Buiten, "Towards Intelligent Regulation of Artificial Intelligence," *European Journal of Risk Regulation*, Vol. 10, No. 1, 2019, p. 41.

<sup>4</sup> Elizabeth Chen, Jessica Audrey Halim, and Yuwono Prianto, "Perlindungan Hukum Bagi Investor Sebagai Pelaku Binary Option Trading," *Serina IV UNTAR 2022*, Vol. 04, No. 13, 2019, p. 331.

<sup>5</sup> CIMB Niaga, "5 Perbedaan Binary Option Dan Trading Forex", <https://www.cimbniaga.co.id/id/inspirasi/perencanaan/5-perbedaan-binary-option-dan-trading-forex> accessed 13 June 2024.

Indonesia. When viewed regarding the types of commodities included in the subject of futures contracts as regulated in Bappebti Regulation Number 3 of 2019 concerning Commodities, binary options are not included in the subjects written in it. Indirectly, it can be interpreted that binary options in Indonesia are illegal.<sup>6</sup> So the question arises, how are the preventive efforts of the government to minimize victims and repressive law enforcement efforts against binary option cases under the guise of investment?

## **RESEARCH METHOD**

The type of research used is normative legal research, focusing on positive legal norms and the data source used is secondary data. Literature study is carried out by reading, analyzing, and understanding journals, laws and regulations, legal opinions related to the material under study, namely binary option cases in terms of criminal law.

## **RESULT AND DISCUSSION**

### **A. Binary Options and How They Work**

Binary Options is one of the trading instruments that predicts the movement of an asset by the trader. Binary options often operate in regulatory gray areas that leave consumers vulnerable to fraud and steep losses. Binary options are deceptively simple to understand, making them a popular choice for low-skilled traders. The most commonly traded instrument is a high-low or fixed-return option that provides wagers on prices related to indexes, commodities, and currencies.<sup>7</sup> These options have a clearly stated expiration date, time, and strike price. Suppose a trader wagers correctly on the market's direction and price at expiration. In that case, they are paid a fixed return regardless of how much the instrument has moved since the transaction, while an incorrect wager loses the original investment.<sup>8</sup>

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<sup>6</sup> Chen, Halim, and Prianto, op. cit. p. 332.

<sup>7</sup> Philip Sales, "Algorithms, Artificial Intelligence, and The Law," *Judicature*, Vol. 105, No. 1, 2021, p. 24.

<sup>8</sup> Lucas Downey, "Binary Option: Definition, How They Trade, and Example", <https://www.investopedia.com/terms/b/binary-option.asp> accessed 13 June 2024.

The binary options trader buys a call when bullish on a stock, index, commodity, or currency pair, or a put on those instruments when bearish. The market must trade above the strike price at the expiration time for a call to make money. For a put to make money, the market must trade below the strike price at the expiration time.

When the trade is established, the broker announces the strike price, expiration date, payout, and risk. Binary options typically have a fixed payout and risk and are offered by individual brokers rather than directly on an exchange. These brokers profit from the difference between what they pay out on winning trades and what they collect on losing trades. While there are exceptions, these instruments are supposed to be held until expiration in an all-or-nothing payout structure.<sup>9</sup> These options can be traded at any time, with the rate fluctuating between one and 100, based on the present probability of the position finishing in or out of the money. The percentages offered for these options fluctuate, offering advantages for those using various risk-to-reward scenarios. Moreover, while binary options that attract many traders by offering numerous strike prices and expiration times may seem attractive, unscrupulous brokers can also use these features to stack the odds against them. The lack of regulatory oversight in many international markets heightens these risks. Many operations look like robust online operations one day and are dead links the next.<sup>10</sup>

In Indonesia itself, binary option activities are still confirmed illegal because all platforms or organizers of activities under the guise of commodity trading do not have a business license from the Commodity Futures Trading Supervisory Agency (Bappebti). In the binary option itself, in fact, there are no buying and selling activities or futures commodity trading, so it is not in accordance with Law Number 10 of 2011 concerning amendments to Law Number 32 of 1997 concerning Commodity Futures Trading. In this regulation Bappebti has explicitly determined that binary options cannot operate in Indonesia because it does not have a legal basis that protects it. In addition, according to Bappebti, no binary broker has a

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<sup>9</sup> Ibid.

<sup>10</sup> David Freeman Engstrom & Daniel E., "Algorithmic Accountability in the Administrative State," *Yale Journal on Regulation*, Vol. 37, No. 800, 2020, p. 800.

license so it is illegal. Binary Option itself is not supervised by Bappebti or OJK (Financial Services Authority) which is an institution engaged in the economy.<sup>11</sup> Therefore, binary options is a practice that can actually be criminalized because there are elements of fraud and embezzlement in practice. The government through OJK and Bappebti has a role in educating the public and taking preventive action against illegal practices related to finance, especially in this case related to investment and providing legal protection to resolve conflicts or disputes that may arise.

## **B. The Government's Role in Law Enforcement Efforts**

One of the government's efforts to prevent and handle fraudulent investment cases is by establishing the Illegal Financial Activity Eradication Task Force or PASTI Task Force, which consists of 16 ministries and state institutions. The PASTI Task Force is a coordination forum that has two main tasks, namely prevention and handling of illegal investments. The prevention task is carried out by educating the public to be aware of illegal investment offers by recognizing 2 L, namely Legal and Logical, when receiving offers with the lure of high rewards.

Legal means that when receiving an offer related to investment, the public is asked to ask about the license of the investment activity or company. If it does not have a license, then do not follow it. To check or find out the legality of a company, the public can access the information through several government agencies. For example, companies in the trading sector can look at the Ministry of Trade, investment in cooperatives can check at the Ministry of Cooperatives, businesses in foreign exchange or foreign currency exchange can see their licenses at Bappebti, while financial services can see the list or license at OJK. Logical which means the rationality of the return. If someone offers an investment with high returns without risk, the public should be wary.<sup>12</sup>

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<sup>11</sup> Leonard and Ariawan, "Analisis Perlindungan Hukum Terhadap Ganti Kerugian Akibat Investasi Ilegal," *Jurnal Hukum Adigama*, Vol. 4, No. 2, 2021, p. 4430.

<sup>12</sup> Otoritas Jasa Keuangan, "Hati-Hati Investasi Bodong, Pahami Tentang Skema Ponzi", <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20633> accessed 13 June 2024.

The task of handling illegal investments from the PASTI Task Force is carried out by stopping the activities of illegal investment entities, announcing a list of illegal investments to the public, submitting blocking sites and applications routinely to the Ministry of Communication and Information of the Republic of Indonesia, and submitting information reports to the Criminal Investigation Police for law enforcement processes. Regarding handling efforts by the government in the form of stopping the activities of illegal investment entities both from within and outside the country, for example, from 2018 to 2022, the Ministry of Communication and Information in collaboration with the National Police Headquarters has cut off access to 566,332 gambling content in the digital space. This includes platform accounts and websites that share content related to online gambling activities.<sup>13</sup> Then the PASTI Task Force in the April-May 2024 period has blocked 129 illegal investment offers related to fraud committed by individuals with the mode of imitating or duplicating product names, sites, and social media belonging to licensed entities with the aim of committing fraud (impersonation). Since 2017 - May 31, 2024, the Task Force has also stopped 9,888 illegal financial entities consisting of 1,366 illegal investment entities,<sup>14</sup> and throughout 2023, the Government has blocked 1,855 websites offering activities in the field of Commodity Futures Trading (PBK) that are not in accordance with the provisions of laws and regulations in the field of PBK.<sup>15</sup> But until now, even though the SURE Task Force has carried out a lot of blocking and removal of illegal sites, new sites that are also illegal have sprung up again, and people also regardless of the risks involved are still trying to enter illegal sites by using various methods, one of which is VPN.

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<sup>13</sup> KOMINFO, "Blokir Situs, Sehatkan Ruang Digital", <https://www.kominfo.go.id/content/detail/47128/blokir-situs-sehatkan-ruang-digital/0/artikel> accessed 13 June 2024.

<sup>14</sup> Bayuningtyas Wulandari, "Satgas PASTI Blokir 824 Entitas Ilegal Di April – Mei 2024", <https://mmc.kalteng.go.id/berita/read/43863/satgas-pasti-blokir-824-entitas-ilegal-di-april-ndash-mei-2024> accessed 13 June 2024.

<sup>15</sup> KOMINFO, "Pemerintah Blokir 1.855 Situs Entitas Perdagangan Berjangka Komoditi Ilegal", <https://www.kominfo.go.id/content/detail/54503/pemerintah-blokir-1855-situs-entitas-perdagangan-berjangka-komoditi-ilegal/0/berita>. accessed 13 June 2024

### **C. Criminal Liability in Repressive Law Enforcement**

Law enforcement efforts are an important part of eradicating illegal investment. Law enforcement is carried out to realize the objectives of law, namely justice, benefit, and legal certainty.<sup>16</sup> The type of law enforcement itself is divided into two, namely preventive and repressive. In repressive law enforcement, the effort or path that can be taken to punish the responsible parties is through criminal channels. As explained earlier that the use of binary options in Indonesia is illegal, so that the parties involved in it such as brokers, affiliates, influencers who commit fraud using binary options, marketing or promoting binary options can be prosecuted criminally.<sup>17</sup>

The rules of law that can be used by the reporter as the basis for criminal charges and law enforcement in criminal proceedings with articles that have been regulated in Indonesian legislation include:

- a. Article 9 and Article 62 of Law Number 8 Year 1999 on Consumer Protection with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).
- b. Article 27 Paragraphs (1) and (2), Article 28 Paragraph (1), Article 45 Paragraphs (1) and (2) of Law Number 19 of 2016 concerning ITE with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah).
- c. Article 105 and Article 106 of Law Number 7 of 2014 concerning Trade with a maximum imprisonment of 10 (ten) and 4 (four) years respectively or a maximum fine of Rp10,000,000,000.00 (ten billion rupiah).
- d. Article on fraud as referred to in Article 378 of the Criminal Code with a maximum imprisonment of 4 (four) years.
- e. Articles 3, 4, 5, 6 Jo Article 10 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, in this case both committing and receiving the proceeds of money laundering can be subject to criminal sanctions of imprisonment ranging from 5 (five) to 20

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<sup>16</sup> Satjipto Rahardjo, 2014, Ilmu Hukum, 3rd ed., Bandung: PT. Citra Aditya Bakti, p. 13.

<sup>17</sup> K. A. Malysenko et al., "Criminal-Legal Mechanism of Counteraction of Insider Activity in the Stock Market," *Journal of Advanced Research in Law and Economics*, Vol. 10, No. 3, 2019, p. 848.



(twenty) years and fines ranging from Rp1,000,000,000.00 (one billion rupiah) to Rp10,000,000,000.00 (ten billion rupiah).

The problem of illegal investment law enforcement can be seen from four factors, namely the perpetrator factor, victim factor, legal device factor, and law enforcement factor.<sup>18</sup> First, the perpetrator factor. We often see that the legal process is carried out only on the main perpetrators, while other perpetrators who participate are not processed. As a result, the perpetrators who are still at large will re-conduct illegal investment offers. Second, the victim factor. Law enforcement is often constrained because victims do not report to law enforcement. The reason is because they are embarrassed to have been deceived, small losses, afraid of being terrorized by the perpetrators, still expecting returns, or afraid that the money will not return. Third, the factor of legal instruments in this case legislation. Law enforcement is often constrained in determining the type of alleged criminal offense that occurred. Articles that are often used are fraud in the Criminal Code and money laundering. The use of articles in other statutory provisions is not widely practiced, for example the Trade Law, Banking Law, Commodity Futures Trading Law, Consumer Protection Law. Fourth, the law enforcement factor. Handling illegal investment cases is not yet a priority for law enforcement officials. General criminal offenses are prioritized, due to the large number of cases handled. Another consideration is that the cost of law enforcement is not proportional to the losses suffered by victims.

The success of combating illegal investment is strongly influenced by optimal law enforcement. These four factors determine the success of law enforcement in order to provide protection to the public from illegal investment. Illegal investment offers will remain rampant if law enforcement is weak.<sup>19</sup>

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<sup>18</sup> Tongam Lumban Tobing, "Investasi Ilegal Dan Permasalahan Penegakan Hukum", <https://www.hukumonline.com/berita/a/investasi-ilegal-dan-permasalahan-penegakan-hukum-oleh--tongam-lumban-tobing-lt5f06cbaa7abd8/>. Accessed 13 June 2024.

<sup>19</sup> Orlando Cosme Jr, "Comments Regulating High-Frequency Criminal Liability," *The Journal of Criminal Law & Criminology*, Vol. 109, No. 2, 2019, p. 381.

## **CONCLUSION**

Law enforcement against illegal investment cases in Indonesia has not been optimal to date. In fact, of the many illegal investment entities stopped by the Government, only about ten percent continue to the green table. In addition, the main problem of rampant illegal investment is also caused by the low level of financial literacy of the community. The majority of Indonesians do not really have good financial knowledge. People are easily tempted by investment offers with high rewards without risk, but first do not find out whether the company is legal or not. Law enforcement still needs to be improved in terms of preventive and repressive, especially in terms of fraudulent/illegal investments, so as to provide protection for the public and provide a deterrent effect to the perpetrators. To avoid this, everyone must equip themselves with sufficient financial literacy, so that they are able to think logically not to be easily tempted by investment offers in order to restrain themselves and avoid losses. One easy way to anticipate avoiding fraudulent investments is to remember and do the 3Ks, namely know the company; know the owner of the company; and know the financial condition of the company.

## **ADVICE**

The government through existing institutions in conducting law enforcement should not only focus on repressive law enforcement as has been done by blocking illegal investment sites, but also no less important is preventive law enforcement. Indonesian people with a very low level of financial literacy are certainly very vulnerable to investment fraud like this binary option. Therefore, by increasing knowledge of finance, especially investment through socialization, training, teaching, and so on can help make Indonesian people a critical and wise society in making investments.

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