

Comparative Analysis of Binary Option Law in Indonesia and United States of America

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Comparative Analysis of Binary Option Law in Indonesia and United States of America

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ABSTRACT. Binary option, which was originally applied from the United States (US), has become a public discussion in Indonesia due to various cases. This happened due to there was an Indonesian YouTuber who introduced Binary Option investment, and many people joined the trade. However Binary Option trading is illegal in Indonesia. In order to respond to these cases, it is crucial to understand a comprehensive picture particularly on legality, case and regulatory framework. It is necessary to obtain a clear description of the country of origin of Binary Options, namely the United States. This research is descriptive in nature with the type of normative juridical research through a comparative legal approach with qualitative analysis methods. The result of this research shows that a comparison of Binary Option law in Indonesia and the US can be identified from the differences in terms of legality, the supervising institution, the regulations, and the criminal acts that occurred along with the sanctions. Unlike the US, which legalizes Binary Option trading, in Indonesia Binary Option is not a part of legal investments, instead it is classified as gambling. US have an anti-fraud regulations about Binary Option trading, while Indonesia does not have one, but explicitly can use another laws.

KEYWORDS. Binary Option, Ban Binary Option, Law Comparison

Comparative Analysis of Binary Option Law in Indonesia and United States of America

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Introduction

Binary Options are a relatively new financial market instrument and are considered a risky investment. Therefore, trading Binary Options requires accurate market analysis. Through technical analysis, the development of underlying assets can be predicted to a certain extent,¹ making Binary Options a highly attractive investment in terms of income. Options trading began in 1973, officially launched by the Chicago Board of Option Exchange (CBOE). At that time, the options traded were only options for stocks (stock options).²

As the market evolved, various options trading methods emerged, one of which was Binary Options, first presented by CBOE at a press conference on July 10, 2006, as one of its major financial innovations. Due to its simplicity, Binary Options have become very popular among traders and are

¹ Andrea Kolková and Lucie Lenertová, "Binary Options as a Modern Fenomenon of Financial Business," *International Journal of Entrepreneurial Knowledge* 4, no. 1 (September 11, 2017): 52–59, <https://doi.org/10.1515/ijek-2016-0004>.

² Syanti Dewi and Ishak Ramli, "OPSI SAHAM PADA PASAR MODAL DI INDONESIA (STUDI PASAR OPSI SAAT PASAR OPSI MASIH BERLANGSUNG DI BURSA EFEK INDONESIA)," *Jurnal Muara Ilmu Ekonomi Dan Bisnis* 2, no. 2 (March 28, 2019): 300, <https://doi.org/10.24912/jmie.v2i2.1001>.

now widely traded worldwide. The significant interest in trading Binary Options has also given rise to many new brokers who specialize in this business instrument. However, in recent years, the electronic web-based retail market has gained popularity, especially among investors with little prior investment experience or limited capital.³

The subprime mortgage crisis that occurred in the United States in 2008 was one of the worst financial crises in American history. This marked the beginning of a scenario where investors recognized the need for low-risk investment options, leading to the emergence of Binary Options trading as an alternative means of trade. Consequently, in the same year, the Securities Exchange Commission (SEC) approved Binary Options, making them available to the public as tradable assets on the American Stock Exchange (AMEX).⁴

In the United States, there was an economic crisis in the 1920s and 1930s, which led to intensive efforts by the federal government to regulate the securities trading business.⁵ The stock market crash of 1929 prompted the Securities Act of 1933, which was further regulated by the Securities Exchange Act of 1934. Under these laws, Options, including Binary Options trading, are considered securities trading activities, and as such, they must comply with these regulations. The purpose of these laws is to ensure that securities providers or sellers provide accurate information to investors in their securities offerings. This objective is achieved by promoting transparency in the information available to the public regarding the issuance of new securities and providing legal certainty for those who violate these regulations.⁶

Binary Options, in general, are online trading activities. The ever-increasing development of the cyber world has allowed Binary Options to spread to various countries, including Indonesia. In 2019, Binary Options activities began in Indonesia. This can be confirmed by the gradual blocking of Binary Option websites and domains by the "Badan Pengawas

³ Kolková and Lenertová, "Binary Options as a Modern Fenomenon of Financial Business."

⁴ Rohmini Indah Lestari and Zaenal Arifin, "Godaan Praktik Binary Option Berkedok Investasi Dan Trading," *Jurnal Ius Constituendum* 7, no. 1 (April 15, 2022): 19, <https://doi.org/10.26623/jic.v7i1.4875>.

⁵ Elisabeth Keller, "Introductory Comment: A Historical Introduction to the Securities Act of 1933 and the Securities Exchange Act of 1934 Recommended Citation," 1988, <http://lawdigitalcommons.bc.edu/lisfp>.

⁶ James Burk, "The Origins of Federal Securities Regulation: A Case Study in the Social Control of Finance," *Social Forces* 63, no. 4 (June 1985): 1010, <https://doi.org/10.2307/2578604>.

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

Perdagangan Berjangka Komoditi" (Bappebti).⁷ These blockings were implemented due to Binary Options trading not complying with or meeting the requirements of Law Number 10 of 2011, which amended Law Number 32 of 1997 regarding Commodity Futures Trading.

The rapid development of digital financial technology is often exploited by criminals to reap substantial profits. This is also the case with Binary Options, which have become widely known in Indonesia due to a prominent Binary Option case that occurred in 2022. This case involved the Binomo platform and was carried out by a famous Indonesian YouTuber. The criminal acts in this case included fraud and money laundering. However, Indonesian commodity futures trading law does not specifically regulate criminal activities that occur within commodity trading. This is different from the United States, which has specific regulations against fraud under the Securities Act of 1933 and Securities Exchange Act of 1934 to provide legal protection for Binary Options trading. In Indonesia, the emergence of Binary Options activities has not been accompanied by similar specific regulatory formulations in Law Number 10 of 2011, which amended Law Number 32 of 1997 regarding Commodity Futures Trading.

Although the criminal activities that occur in Binary Options trading in Indonesia can be explicitly linked to various legal regulations, such as the Criminal Code, the Electronic Information and Transactions Law, and the Law on the Prevention and Eradication of Money Laundering, Indonesia does not have specific regulations prohibiting Binary Options. Consequently, the enforcement of the law is not effectively carried out. It would be much better to establish stricter regulations regarding the prohibition of Binary Options. In light of this, this study will explore the comparison of legal regulations concerning Binary Options between Indonesia and the United States, which was the first country to legalize Binary Options trading. It will also examine the criminalization of Binary Options offenders in Indonesia and the United States. This research aims to investigate and further analyze the legal comparison of Binary Options between Indonesia and the United States. It is known that the United States and Indonesia have different legal systems. Indonesia follows a Civil Law system.⁸ while the United States

⁷ Ferrario H.M, "Perlindungan Hukum Korban Investasi Binary Option Berkedok Trading," *Jurnal Abdikarya: Jurnal Karya Pengabdian Dosen Dan Mahasiswa* 5, no. 1 (June 25, 2022): 1–8, <https://doi.org/10.30996/abdikarya.v5i1.6723>.

⁸ Fajar Nurhardianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal TAPIS (Teropong Aspirasi Politik Islam)* 11, no. 1 (2015): 42.

predominantly adheres to a Common Law system.⁹ These differences in legal systems are expected to provide insights into the strengths and weaknesses of Binary Options in a given country, highlighting what kind of regulations would be effective in addressing Binary Options issues in Indonesia.

Method

This research takes the form of a normative juridical study using a comparative legal approach, aimed at enhancing knowledge of positive law by comparing the legal systems of one country with those of another.¹⁰ The study employs primary legal materials, secondary legal sources, and tertiary legal materials. Legal materials were obtained through a literature review, involving an examination and analysis of research issues by referencing legislation, conducting literature searches, and reviewing references. Subsequently, the data and materials collected were further processed and analyzed to address the legal issues under investigation,¹¹ namely, legal regulations and the criminalization of Binary Options offenses in Indonesia and the United States.

Binary Options Regulation in the United States

Binary Options in the United States are associated with securities, and their regulations are governed by federal securities laws, specifically the Securities Act of 1933, further regulated under the Securities Exchange Act of 1934. The Securities Act of 1933 mandates disclosures when companies distribute securities, while the Securities Exchange Act of 1934 requires disclosures when companies publicly trade their securities.¹² The United States follows a federal system, which consists of two separate governments, which are the federal government and the states. The federal government has authority over the states. Meanwhile, state governments have limited authority to regulate the territory of each country. Based on this, the United

⁹ Djoni Sumardi Gozali, *Pengantar Perbandingan Sistem Hukum (Civil Law, Common Law, Dan Hukum Adat)* (Bandung: Nusa Media, 2018).

¹⁰ Soejono Soekanto and Sri Mamuju, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 1st ed. (Depok: Rajawali Pers, 2018).

¹¹ Mukti Fajar Nur Dewata and Yulianto Achamad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2017).

¹² Burk, "The Origins of Federal Securities Regulation: A Case Study in the Social Control of Finance."

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

States operates with two types of laws that coexist: federal law, which applies to the entire country, and state law, which is applicable within each respective state. However, the state's authority to make laws has limitations, that it cannot conflict with federal government laws.¹³

However, federal law holds a higher legal authority than state law. Therefore, in cases where there is a conflict between federal law and state law, federal law takes precedence.¹⁴ The United States Congress passes laws within its jurisdiction to regulate interstate commerce, as outlined in Article I, Section 8 of the United States Constitution.¹⁵ Hence, the Securities Act of 1933 and the Securities Exchange Act of 1934 apply to every state.

1. Binary Option Registration Regulations

In the United States, some Binary Options are considered securities, as outlined in Sec. 2(a)(1) of the Securities Act of 1933 and Sec. 3(a)(10) of the Securities Exchange Act of 1934. According to the Securities Act of 1933 Sec. 5(a) and Sec. 5(c), companies are not allowed to directly or indirectly use any means or instrument of transportation or communication in interstate commerce, including telephone or the internet, to offer or sell Binary Options to the U.S. public when the underlying asset is a security or a securities-based index, including common stock prices and stock index levels, unless such offers and sales have been registered with the SEC or an exemption from registration applies.¹⁶ For instance, if the terms of a Binary Option contract provide for a predetermined return based on the price of a company's securities, then the Binary Option contract is a security and cannot be offered or sold without registration, unless there is an exemption from registration. Without registration or an exemption, the offer or sale of such Binary Options is considered illegal.¹⁷

¹³ J B Hames and Y Ekern, *Pengantar Hukum Perspektif Amerika Serikat* (Nuansa Cendekia, 2023), <https://books.google.co.id/books?id=MGimEAAQBAJ>.

¹⁴ Mulyana, "Mengenal Hukum Dan Pengadilan Amerika Serikat," *Jurnal Era Hukum* 1, no. 2 (1994): 83.

¹⁵ Steven. Ramirez, "Securities Exchange Act of 1934," *Encyclopedia.com*, accessed October 7, 2023, <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/securities-exchange-act-1934>.

¹⁶ "Securities Act of 1933, As Amended Through P.L. 115–174" (2022).

¹⁷ U.S. Securities And Exchange Commission (SEC), "Investor Alter Binary Option and Fraud," U.S. Securities And Exchange Commission (SEC), n.d. Pub. No. 148 (6/13), hlm.1-3.

Anyone engaged in a business affecting securities transactions on behalf of others in the United States must register with the SEC as a broker or dealer. Additionally, some Binary Options trading platforms may operate as unregistered brokers or dealers. Generally, anyone engaged in a business affecting securities transactions on behalf of others in the United States must register with the SEC as a broker-dealer.¹⁸ The authority of the SEC is governed by Sec. 4 of the Securities Act of 1934. The SEC has the power to oversee securities, including stocks, bonds, freely tradable securities, financial marketplaces, and the conduct of financial professionals, including brokers, dealers, and investment advisors. Furthermore, it monitors the financial reports that must be disclosed by public companies.¹⁹ The SEC collaborates with several other institutions in regulating securities trading in the United States, including the Commodity Futures Trading Commission (CFTC). The CFTC is an independent federal agency that regulates derivative markets, including futures contracts, options, and swaps, in the United States. Its objectives include promoting competitive and efficient markets and protecting investors from manipulation, abusive trading practices, and fraud.²⁰

The CFTC declares Binary Options to be illegal for entities to solicit, accept offers, offer, or enter into transactions in option commodities (e.g., foreign currencies, metals such as gold and silver, and agricultural products like wheat or corn) with U.S. citizens, unless the Option transactions occur on a designated contract market, an exempt board of trade, or a bonafide foreign board of trade, or they are conducted with U.S. customers with a net worth exceeding US\$5 million. Binary Options traded on U.S. exchanges must be regulated and available on Designated Contract Markets (DCMs). Currently, there are only three designated contract markets in the United States offering Binary Options: Cantor Exchange, Chicago Mercantile Exchange, Inc. (CME), and North American Derivatives Exchange, Inc. (NADEX). All other entities offering Binary Options as commodity option transactions do so illegally.²¹

¹⁸ *Ibid.*

¹⁹ Will Kenton, "Securities Exchange Act of 1934," investopedia, n.d.

²⁰ Lydie N.C. Pierre-Louis, "Hedge Fund Fraud and the Public Good," *Fordham Journal of Corporate & Financial Law* 15, no. 1 (2009): 36–37.

²¹ U.S. Securities And Exchange Commission (SEC), "Investor Alter Binary Option and Fraud." SEC Pub. No. 148 (6/13), hlm.3.

2. Anti- Fraud Regulations

The operation of Binary Options must be registered, and it is also prohibited from engaging in fraud. This is stipulated in Sec. 17(a) of the Securities Act of 1933 and Sec. 10(b) of the Securities Exchange Act of 1934. Companies are prohibited, either directly or indirectly, using the means or instrumentalities of interstate commerce or of the mails or of any facility of a national securities exchange in connection with the purchase or sale of securities, from:²² a) employing any device, scheme, or artifice to defraud; b) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to obtain money or property; and c) engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon the purchaser.

If an individual or company violates the provisions in the Securities Act of 1933 and Securities Exchange Act of 1934, they may face civil and/or criminal penalties. Based on Sec. 20(d) of the Securities Act of 1933 and Sec. 21 of the Securities Exchange Act of 1934, civil penalties that can be imposed are divided into three tiers:²³ a) Imposition of sanctions for defendants who violate the provisions of the Securities Act of 1933 and Securities Exchange Act of 1934, with penalties based on the amount of gains obtained or a maximum of \$5,000 for individuals or \$50,000 for others involved. b) Imposition of sanctions for violations involving fraud, deceit, manipulation, or willful disregard of regulatory requirements, with penalties based on the gross amount gained or a maximum of \$50,000 for individuals or \$250,000 for others. c) Imposition of sanctions for each violation involving fraud, deceit, manipulation, or willful disregard of regulatory requirements, with penalties equal to the amount of gains obtained or a maximum of \$100,000 for individuals or \$500,000 for others if the violation results in or poses a significant risk of substantial loss or significant risk to others.

Penalties are added for violations, but there is a total limitation. The penalties depend on the seriousness of the violations committed by the offender in securities trading, including Binary Options. Therefore, offenders in Binary Option trading activities may be subject to civil penalties.

²² Securities Act of 1933, As Amended Through P.L. 115–174, Sec. 10 (b).

²³ Securities Act of 1933, As Amended Through P.L. 115–174, Sec. 21.

These three tiers of civil penalties represent a limited cumulative scheme. The first tier is the least severe violation, and for subsequent tiers, In addition to civil penalties, offenders can also face criminal penalties, as stipulated in Sec. 24 of the Securities Act of 1933. It states that anyone who willfully violates any of the provisions in the Securities Act of 1933 concerning registration statements, makes untrue statements of material fact or omits material statements or removes necessary facts, or makes statements therein that are misleading, shall be subject to a maximum fine of \$10,000 or imprisonment for not more than five years, or both.

U.S. regulations unequivocally state that Binary Options are considered one of the securities trading instruments. However, Binary Options trading activities must comply with the conditions outlined in the Securities Act of 1933 and the Securities Exchange Act of 1934. Therefore, not all Binary Options are legal in the United States. Individuals or companies that violate these provisions may face civil penalties in the form of fines and may also be subject to criminal penalties, including imprisonment, or both, as outlined in the key points of both regulations discussed above.

Binary Option Crime in the United States

Binary Options in the United States are regulated by the SEC and the Commodity Futures Trading Commission (CFTC). Furthermore, in its developments, the SEC issued warnings to the U.S. public to exercise caution in their investments, especially in Binary Option exchanges, as there are unregistered Binary Option exchanges engaging in fraudulent activities.²⁴

1. Types of Binary Option Crime Complaints in the United States

The SEC and CFTC have received numerous complaints about fraud associated with websites offering opportunities to purchase or trade Binary Options through Internet-based trading platforms. These complaints can generally be categorized into three main groups:²⁵

The first category of alleged fraud involves the refusal of certain Internet-based Binary Option trading platforms to credit customer accounts

²⁴ U.S. Securities And Exchange Commission (SEC)), "Investor Alter Binary Option and Fraud." SEC Pub. No. 148 (6/13), hlm.1-3.

²⁵ *Ibid.*, pp. 1-3.

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

or reimburse funds after receiving customer money. These complaints typically involve customers who have deposited money into their Binary Options trading accounts and were then encouraged by a 'broker' over the phone to deposit additional funds into their accounts. When customers subsequently attempt to withdraw their original deposits or the promised returns, the trading platforms are suspected of canceling customer withdrawal requests, refusing to credit their accounts, or ignoring their phone calls and emails.

The second category of alleged fraud involves identity theft. For example, some complaints accuse certain Internet-based Binary Option trading platforms of collecting customer information, such as credit card and SIM card data, for undisclosed purposes.

The third category of alleged fraud involves the manipulation of Binary Option trading software to generate trading losses. These complaints accuse certain Internet-based Binary Option trading platforms of manipulating trading software to distort Binary Option prices and payouts. For instance, when customers' trades are "winning," the countdown to expiration is arbitrarily extended until the trade turns into a loss.

The three categorizations of complaints related to Binary Option offerings can be linked by their types, the media used, and the *modus operandi*. Based on these three categories, it can be seen that all categories involve actions related to the criminal offense of fraud. This is evident in the actions taken by the trading platforms, such as canceling promised commitments to customers and deceiving customers into engaging and registering on the platform with the intention of stealing customers' personal data without their consent, as well as fraud related to pricing and payouts.

The second commonality among the three categories above is that the media used to commit a crime are all related to electronic or computer systems. The actions that harm customers, such as rejecting customer requests for online profit withdrawals and manipulating computer software with automatic settings that can harm customers, as well as the theft of customers' personal data that is entered and registered on the trading platform, all involve electronic or computer-based methods.

The three categorizations of complaints mentioned above differ in terms of their *modus operandi*. It can be observed that the first category commits fraud by shirking responsibility and refusing to provide customers their rights, the second category involves identity theft, and the third is

carried out through the manipulation of the software system to the detriment of customers automatically.

2. Binary Options Cases in the United States

A case of Binary Options in the United States occurred in June 2013, involving Banc De Binary, Ltd. The CFTC filed a lawsuit in the U.S. federal court in the District of Nevada against Banc de Binary Ltd, its founder Oren Shabat Laurent, and three affiliates, ET Binary Options Ltd., Bo Systems Ltd. (now named Banc de Binary Limited), and BDB Services Ltd., which operated an Internet-based trading platform for Binary Option.²⁶ They were accused of failing to register their offerings before soliciting U.S. customers through YouTube videos, spam emails, and other internet advertisements. They also failed to register as broker-dealers before directly communicating with U.S. clients through phone calls, emails, and instant messenger chats. Banc De Binary, which illegally defrauded U.S. customers, incurred losses of nearly \$11 million.²⁷

Banc de Binary, Laurent, and the Affiliates agreed to jointly pay \$7.1 million in disgorgement and \$1.95 million in penalties to the SEC and \$2 million in penalties to the CFTC, which filed parallel actions. The court established a settlement fund, referred to as the 'Fair Fund,' to be managed by the National Futures Association (NFA) to provide compensation to harmed investors. Banc de Binary, Laurent, and the Affiliates also agreed to be suspended from the securities industry for one year and permanently barred from issuing penny stock offerings. This settlement was approved by the U.S. District Court for the District of Nevada.²⁸

Furthermore, in 2021, another Binary Option fraud case occurred in Nevada, carried out by a company named Spot Tech House Ltd. (Spot Option Ltd.), based in Israel. This company engaged in a multi-year fraud that duped

²⁶ Commodity Futures Trading Commission, "Case Status Report: Banc De Binary Litigation," Commodity Futures Trading Commission, 2016, <https://www.cftc.gov/LearnAndProtect/CaseStatusReports/enfbancdebinary022016>.

²⁷ U.S. Securities And Exchange Commission (SEC), "Litigation Release No. 23481 / March 9, 2016, Securities and Exchange Commission v. Banc de Binary Ltd., et Al," U.S. Securities And Exchange Commission (SEC), 2016, <https://www.sec.gov/litigation/litreleases/2016/lr23481.htm>.

²⁸ *Ibid.*

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

victims worldwide into losing billions.²⁹ The case revolved around a multi-million dollar fraud scheme involving the unregistered offer and sale of Binary Options to investors in the United States. This scheme was overseen by Pini Peter and Ran Amiran through a jointly-owned and controlled company, Spot Tech House Ltd.³⁰

They employed fraudulent and manipulative practices to amplify investors losses and increase the company's revenue. Their actions included manipulating the trading platform to enhance the likelihood of trades being unprofitable and offering investors so-called 'bonuses' to lock in their funds and prevent withdrawals, which, when combined with payment requirements, virtually guaranteed investor losses.³¹ Through this fraudulent scheme, they defrauded U.S. investors out of over \$100 million.³²

The criminal Binary Option fraud case carried out by Spot Tech House Ltd. resulted in violations of the registration provisions under Section 5(a) and Section 5(c) of the Securities Act of 1933, anti-fraud provisions under Section 17(a) of the Securities Act, and anti-fraud provisions under Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The Spot Tech House Ltd. case was filed by the SEC in a federal district court in Nevada.³³

The two Binary Option cases in the United States, namely Banc De Binary, Ltd. and Spot Tech House Ltd., were criminal fraud cases in the Binary Option trading industry. Both of them were not registered with the SEC or CFTC, which are the regulatory authorities for Binary Option trading in the United States. Both cases involved electronic media fraud. However, these cases had different fraud *modi operandi*. Banc De Binary, Ltd. convinced the American public to engage in their Binary Option trading by promoting Binary Options to the general public through media such as YouTube, email spam, and other online advertisements, which turned out to

²⁹ Simona Weinglass, "SEC Charges Israel's Main Binary Options Firm, and Its 2 Chiefs, with Vast Fraud," *the times of israel*, 2021, <https://www.timesofisrael.com/sec-charges-israels-main-binary-options-firm-and-its-2-chiefs-with-vast-fraud/>.

³⁰ Securities and Exchange Commission Vs. Spot Tech House, Ltd., Formerly Known as Spot Option, Ltd., Malhaz Pinhas Patarkazishvili and Ran Amiran (April 16, 2021).

³¹ *Ibid.*

³² U.S. Securities And Exchange Commission (SEC), "SEC Charges Binary Options Trading Platform and Two Top Executives with Fraud," U.S. Securities And Exchange Commission (SEC), 2021, <https://www.sec.gov/news/press-release/2021-66>.

³³ Securities and Exchange Commission Vs. Spot Tech House, Ltd., Formerly Known as Spot Option, Ltd., Malhaz Pinhas Patarkazishvili and Ran Amiran.

be illegal Binary Option trading. Their actions resulted in losses amounting to \$11 million.

Meanwhile, the fraud case conducted by Spot Tech House Ltd. falls into the first and third categories of fraud, as they manipulated the trading platform to increase the likelihood that trades would be unprofitable. They also offered investors so-called bonuses to lock up investors' funds and prevent withdrawals, ultimately benefiting the company significantly. This caused losses totaling \$100 million.

Binary Option in Indonesia: Gambling or Investment?

The Binary Option scheme in Indonesia is associated with futures trading. In Indonesia, futures trading is regulated under Law Number 32 of 1997, which has been amended by Law Number 11 of 2011 on Commodity Futures Trading. Binary Options are often correlated with the definition of options in futures trading in Article 1, paragraph 8 of the Commodity Futures Trading Law.³⁴

Furthermore, in Article 14, paragraph (3) of the Commodity Futures Trading Law, it explains that Options must obtain permission from Bappebti.³⁵ Bappebti is a government institution with the main task of overseeing, regulating, developing, and supervising Commodity Futures Trading, including those involving Binary Options.³⁶

Unlike in the United States, Binary Option applications currently circulating in Indonesia do not have legality.³⁷ Up to this point, Bappebti has never issued licenses for the operation of investment activities based on Binary Options.³⁸ Therefore, it can be said that Binary Options are illegal both in terms of licensing and their activities. This is because the scheme is seen as similar to online gambling.

³⁴ Danastri Puspitasari and Faiq Rizqi Aulia Rachim, "Binary Option Sebagai Komoditi Perdagangan Berjangka Di Indonesia," *Jurnal Hukum Lex Generalis* 2, no. 8 (August 10, 2021): 627–48, <https://doi.org/10.56370/jhlg.v2i8.98>.

³⁵ Indonesia, "Undang-Undang Nomor 10 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 32 Tahun 1997 Tentang Perdagangan Berjangka Komoditi," Pub. L. No. 32 (2011), Pasal 1 angka 3

³⁶ *Ibid.*, Article 14 verse (3).

³⁷ Badan Pengawas Perdagangan Berjangka Komoditi, "Siaran Pers: Kemendag Blokir 1.222 Situs Web Perdagangan Berjangka Komoditi Ilegal," Biro Hubungan Masyarakat Kementerian Perdagangan, 2022, https://bappebti.go.id/siaran_pers/detail/9579.

³⁸ *Ibid.*

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

The Binary Option scheme involves only predicting the price of a financial instrument, such as forex, cryptocurrencies, or stock indices, whether it will rise or fall within a specified period. If the prediction is correct, the person will profit, usually less than 100% of their capital. If the prediction is wrong, they will incur a 100% loss.³⁹ Some people in society considers Binary Option as a kind of Investment or Trading. Investing is an act of saving some money or another resources in the present in order to gain a profit in the foreseeable future. Practically, investment can generally be associated with activities related to investing money in various assets, like some kind of financial assets such as shares, bonds, mutual funds or riskier financial assets such as options, futures and international equities.⁴⁰ Meanwhile, trading refers to the buying and selling of securities with the aim of making money by selling the asset at a lower price than paid.⁴¹

On the other hand, Binary Options are often categorized as internet-based gambling due to their similarity to online gambling. Gambling involves deliberate betting, which means staking a value or something considered valuable while acknowledging certain risks and expectations in events such as games, matches, races, and events that have uncertain or undetermined outcomes.⁴² A person who wins a gamble will profit, while those who lose will incur losses. Therefore, Binary Options represent online gambling activities disguised as trading in the field of commodity futures. This is similar to Binary Options, which is a type of options contract in which the payout depends entirely on the outcome of a yes/no proposition. The yes/no proposition typically relates to whether the price of a particular underlying asset in the Binary Option will rise above or fall below a specified amount (U.S. Securities and Exchange Commission (SEC)), n.d.). Therefore, Binary Options represent online gambling activities disguised as trading in the field of commodity futures.

Article 68 of the Commodity Futures Trading Law grants specific authority to Bappebti as an investigator in the event of a criminal offense in

³⁹ *Ibid.*

⁴⁰ Rico Nur Ilham, *Manajemen Investasi (Fake Investment versus Legal Investment)* (CV Jejak (Jejak Publisher), 2020, https://books.google.co.id/books?id=cj_-DwAAQBAJ).

⁴¹ Rohmini Indah Lestari and Zaenal Arifin, "Godaan Praktik Binary Option Berkedok Investasi Dan Trading," *Jurnal Ius Constituendum* 7, no. 1 (April 15, 2022): 19, <https://doi.org/10.26623/jic.v7i1.4875>.

⁴² Kartini Kartono, *Patologi Sosial*, vol. 1 (Jakarta: Raja Grafindo Persada, 2005), hlm. 56.

the field of commodity futures trading.⁴³ However, Bappebti states that in the event of a dispute between customers and providers, as the regulatory body in the field of commodity futures trading, they cannot facilitate customers for mediation.⁴⁴ From this statement, in the case of illegal unregistered Binary Options trading activities, Bappebti does not participate in case resolution but only supervises and blocks them. This is in contrast to the United States, where the SEC, as the regulator of Binary Options trading, serves as a law enforcement authority from the beginning, receiving reports from victims, conducting investigations, and prosecuting the perpetrators.

First, Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law, which regulates the prohibition of spreading false and misleading information causing losses to others through electronic media, carries a maximum criminal penalty of 6 years in prison or a fine of up to IDR 1,000,000,000.⁴⁵ The perpetrator is subject to this article because they committed the criminal offense of investment fraud disguised as trading by marketing Binary Options trading through their YouTube channel, which was, in fact, online gambling and caused financial harm to consumers.

Second, Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (Money Laundering Law) prohibits placing, transferring, diverting, spending, paying, gifting, entrusting, taking abroad, converting, exchanging into currency or securities, or engaging in other actions with wealth suspected to originate from criminal acts. This offense carries a maximum prison sentence of 20 (twenty) years and a fine of up to IDR 10,000,000,000. The perpetrator is subject to this article because they diverted funds resulting from the fraudulent acts in various ways, such as depositing it into multiple accounts, purchasing luxury items or properties, starting a business, and giving gifts to others.⁴⁶

Based on the above discussion and the mentioned cases, even though there is no specific regulation regarding Binary Options, the existing positive laws in Indonesia can criminalize illegal activities related to Binary Options trading. The criminal acts that occur within the Binary Options trading in Indonesia satisfy the elements of several legal provisions mentioned above. However, in Indonesia the decision is a criminal act of fraud, in the press

⁴³ Badan Pengawas Perdagangan Berjangka Komoditi, "Siaran Pers: Kemendag Blokir 1.222 Situs Web Perdagangan Berjangka Komoditi Ilegal."

⁴⁴ Badan Pengawas Perdagangan Berjangka Komoditi.

⁴⁵ Indonesia, "Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," Pub. L. No. 58 (2008); Pasal 45A.

⁴⁶ Putusan No. 1240/Pid.Sus/2022/PN.Tgn (2022), pp. 50-51

COMPARATIVE ANALYSIS OF BINARY OPTION LAW

release it is stated as gambling. This can cause confusion for law enforcement in classifying Binary Option crimes, because the status of Binary Options is not yet clear. It would be better for Indonesia to further regulate the prohibition of Binary Options, not only through press releases but through official legal measures, to provide clarity and legal enforcement when criminalizing individuals engaged in Binary Options-related criminal activities.

Conclusion

Binary Options are relatively new financial instruments and are considered high-risk investments. Therefore, trading Binary Options requires accurate market analysis. In the United States, Binary Options fall under the category of securities regulated by the Securities Act of 1933 and the Securities Exchange Act of 1934. In Indonesia, Binary Options cannot be categorized as options trading within commodity futures trading, as governed by Law No. 11 of 2011 concerning Commodity Futures Trading. Regarding their legality, in the United States, Binary Options can be either legal or illegal. In Indonesia, Binary Options are not considered an investment but rather online gambling due to their similarity in scheme, making Binary Options illegal in the country. Most criminal activities related to Binary Options involve fraud. In the United States, regulations implicitly address anti-fraud measures in securities trading, including Binary Options. In Indonesia, regulations implicitly lack such anti-fraud provisions but can be linked to various existing positive legal provisions. Nevertheless, Indonesia has yet to introduce specific regulations regarding the prohibition of Binary Options, resulting in a lack of clear legal authority for such bans and the status is still unclear whether it is fraud or gambling.

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