

**Semarang  
State University  
Undergraduate  
LAW &  
SOCIETY  
REVIEW**

VOLUME 3 ISSUE 1, JANUARY 2023

ISSN (Print): 2807-8225 ISSN (Online): 2807-8683

**History of Article**

Submitted: March 2022

Revised: August 2022

Accepted: November 2022

**How to cite:**

Pujiani, R. S., Putri, N. M., & Aksan, M. A. (2023). Binary Option: Legality in the Perspective of National and Islamic Law as a Manifestation of Continuous Legal Reform. *Semarang State University Undergraduate Law and Society Review*, 3(1), 71-90. <https://doi.org/10.15294/lsr.v3i1.57092>

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# Binary Option: Legality in the Perspective of National and Islamic Law as a Manifestation of Continuous Legal Reform

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**ABSTRACT.** Law is used as a guide and protector for every human being who lives in society, there are several kinds of applicable law in Indonesia, namely Indonesian national law and Islamic law. Amid the development of increasingly sophisticated digital technology, digital investment methods in the form of Binary Options have emerged which cause problems in people's lives. Then this research was conducted to determine the position of Binary Options in the perspective of national law and Islamic law so that the public knows and understands the legal basis for investing in the form of Binary Options. The writing of this journal uses normative juridical research methods. The results of the analytical study were obtained that in national law Binary Options as an illegal act which is part of an unlawful act, one of which is the result of not getting permission from the OJK (Financial Services Authority) so that it can be sentenced to criminal sanctions, while in the perspective of the Islamic law that Binary Options Judging from the way the game is played, it can be said that gambling is more precisely modern gambling, where gambling itself in Islam is strictly prohibited based on the verses of the Qur'an.

**KEYWORDS.** *Binary Option, Indonesian National Law, Islamic Law*

## I. INTRODUCTION

*The Sustainable Development Goals* (hereinafter SDGs) or what we usually call the Sustainable Development Goals are programs initiated in the 2012 UN Conference on Sustainable Development with a post-2015 development agenda that was agreed at the UN General Assembly in September 2015 (Bappenas, 2022). The SDGs have 17 goals that cover various fields such as economic, social, environmental, educational, natural resources, and

human resources. The seventeen goals have the same purpose, namely, to maintain the economic, social welfare of the community in a sustainable manner, and maintain an inclusive environment and development from the implementation of governance that is able to maintain the improvement of the quality of life for the next generation. One of its objectives in the economic sphere is to support inclusive and sustainable economic growth, a full and productive workforce and decent work for all (SDGs, 2022).

Trade is one of the main factors in the economy. In modern times, there is a type of trading, namely commodity futures trading. Commodity futures trading is a trade that sells derivative products. The type of derivative product is in the form of finance that has been supervised by the Indonesia Stock Exchange (IDX) and is intended to be an investment instrument such as stocks, bonds, currencies, and so on. If the derivative product is a commodity, it will be supervised by the Commodity Futures Trading Supervisory Agency (Bappebti) (Adhiperwira & Muhammad, 2019). This commodity futures trading is regulated in Law Number 32 of 1997 and has undergone changes to Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading.

In the world of trading, it is known as 'trading', where a person or what can be called a trader or investor, exchanges goods or services from one party to another. Trading is used in conventional trading activities that serve to make a profit by working alone by way of managing, and understanding strategies that affect profitability (Oxley Jimmie, Smith James, Busby Taylor, 2022). Some of the platforms that can be used for this online investment are Mutual Funds, Stocks, Forex, Gold Savings, Peer to Peer Trading, Binary Options, and others. Each platform has a different way

to use it, for example investing in forex trading is by guessing the price of a currency that has the potential to make a profit. *Binary Options* are trades that involve investing in the form of assets such as gold, stocks, crypto, and others (Puspitasari & Aulia, 2021).

Currently, there is a lot of discussion about *binary options*, and it has become a trend among the public because it is considered capable of providing large profits from the invested capital. The system of *binary options* is to guess between two options, namely by guessing the price of gold, stocks, forex, crypto, and others. *Binary Options* are not meant to be a type of real market, because investors do not own or buy anything, so we do not have anything (Nursanti, 2019). *Binary Options* are referred to as *Market Over the Counter* (OTC), where marketers or makers of *Binary Options* facilities take data from the real market prices of gold, stocks, forex, crypto, and others. It is not certain whether the marketers of these *binary options* collect fair data or not from the market, so the risk for investors is quite high.

The mechanism in *binary options* is that marketers give traders five minutes to guess the price will rise or fall with the trader having to bet or spend capital. If you guess correctly, then the trader will get 80% of the profit from the capital, and if the trader guesses wrong, he will lose 100% or not get any profit. In *binary options*, the risk reward ratio is not proportional, because if the trader correctly guesses, he will make a profit of 80%, and if he guesses wrong, he will lose 100%. The more profitable the trader is, the more likely the *binary options* platform will also pay for the reinvested capital after losing. There is a compensation technique in *binary options*, where every trader loses in guessing, the trader will be asked to give 2.5 times the capital than before. It is expected to return all the lost

capital, even though it cannot be sure that it will return the invested capital. (Oxley Jimmie, Smith James, Busby Taylor, 2022).

In Indonesia, *binary options* are illegal because they are considered the same as online gambling. The Commodity Futures Trading Regulatory Agency (Bappeti) also classifies *Binary Options* as prohibited activities because they violate the Law. Reporting from Kompas.com, Tongam Lumban Tobing, as Head of the Financial Services Sector Investigation Department (OJK) said, *Binary Options* are gambling activities under the guise of commodity trading. Because it does not carry out buying and selling activities but guesses the movement from a data that is not clear on the basis (Dewi, 2022; Lestari & Arifin, 2022). Even in Islamic law, all things in trade must be clear. Seeing that the purpose of playing *binary options* is to make a profit, then this is forbidden. This is because *binary options* are intended in transactions that contain elements of speculation or we can also call gambling in them (Thionita, 2021; Puspitasari & Rachim, 2021).

The case regarding *Binary Options* that is being discussed in Indonesia today is the Binomo case, which happened to Indra Kesuma or Indra Kenz as the affiliate of the application. Indra himself is in charge of promoting and socializing about this Binomo application. The Criminal Investigation Agency (CID) arrested Indra on charges of online gambling and money laundering. Another influencer who is also entangled in the same case as Indra but from a different platform is Doni Muhammad Taufik or Doni Salmanan. Both were reported for fraudulent investment scams under the guise of binary options. Indra Kenz was charged with Article 45 paragraphs 2 and 1 jo Article 27 paragraph 2 jo Article 28 paragraph 1 of the Electronic Transaction Information Law (ITE), then subsided Article 3, Article 5, and Article 10 of Law Number 8 of 2020 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU), and

Article 378 of the Criminal Code jo Article 55 of the Criminal Code. The threat of punishment that awaits Indra is twenty years in prison. Meanwhile, Doni Salmanan, was entangled in Article 45 paragraph 1 juncto 28 paragraph 1 of the ITE Law, Article 378 of the Criminal Code, Article 3 paragraph 3 of Law No. 8 of 2010 concerning TPPU (Chaterine, 2022; Simangunsong, 2022; Fathurrachman & Setiawan, 2022).

*Binary Options* are also often associated with futures trading. Seeing the application of *Binary Options* in Indonesia that is prohibited and has caused many casualties, can raise questions; what is the perspective of binary options in National Law and in Islamic Law? and is there any chance for *binary options* to become legal in the future? The method in this writing is the normative juridical method, where the author examines a collection of library sources on issues related to Regulations and Laws. The data analysis method is carried out by collecting data through a review of library discussions which include primary legal materials and secondary legal materials.

## II. BINARY OPTIONS IN A LEGAL PERSPECTIVE IN INDONESIA

The development and advancement of technology gave birth to many conveniences for humans in general. Humans find it easy to access all kinds of information in just one internet network. Humans are given the convenience of meeting their needs *online* and much more. Recently, various digital investment models were born through the *Peer-To-Peer Lending* method and even planted shares online through digital applications such as mutual funds.

The existence of this convenience is not impossible to also give birth to various legal impacts or consequences behind it if it is not accompanied by the development of the law that regulates it. Recently, investment has mushroomed in various circles of society, investment has become one of the ways or methods of generating income with a risk oriented. Recently, there has been a lot of discussion about the concept of *Binary*, which is said to be digital trading with the intention of making a profit. Trading itself can be interpreted as the concept of buying and selling where there are sellers and buyers involved in it. Buying and selling carried out within the scope of buying and selling assets, stocks and even *crypto* (Mufidah & Setiawan, n.d.) .

In trading, these assets will be held, and profits will be made on the difference between the selling and buying prices transacted. *Binary Options* is a method in the money market by utilizing price ups and downs with a certain time and traders can only guess one with two possible options, so binary is often confused with modern online gambling concepts by utilizing the digital world. Binary Options are also known as Digital Binary Options where if in the guess you make is correct then the money earned is the entire money previously promised and vice versa if it is wrong then you will lose all the value promised (Daniel, 2020).

Based on the statement of the Commodity Futures Trading Supervisory Agency (Bappebti), the Ministry of Trade, the Head of the Investment Task Force and the Ministry of Communication and Informatics that transaction activities in *Binary Options* are prohibited and illegal in Indonesia (Kemendag, 2020). This is based on several considerations (Puspitasari & Aulia, 2021):

1. There is no recognition that *binary options* are commodities or legal goods to trade, so it will cause legal consequences in the form of using



these goods not recognized as consumers in consumer law Number 8 of 1999 so that the rule of law cannot provide protection in the event of a problem.

2. Bappebti revealed that the *Binary Options* platform does not have a representative office in Indonesia so in terms of accountability it will be much more difficult.
3. The absence of concrete regulation in Indonesia regarding *binary options* and the lack of regulation in the international scope have caused no standardization of business actors who must do and act fairly.

Based on the laws and considerations above, doing *binary options* or modern gambling digitally is an illegal act and is part of all unlawful acts so that it can be sentenced to criminal sanctions. The issue of legality in the application of Binary Options is a crucial issue for countries, where in the European Union (EU) the application of Binary Options is also prohibited by *The European Securities and Markets Authority* (ESMA) under the pretext of protecting investors from various problems of complexity and lack of transparency in *Binary Options* (Puspitasari & Aulia, 2021). In addition, in other countries such as Australia the *Binary* mechanism is often offered by parties who do not have the authority to provide a financial investment service in their country, making it very prone to abuse and the birth of criminal acts such as fraud that cause losses to many parties.

Here are some of the characteristics of illegal investment products that must be known by all levels of society to avoid falling into the circle of illegal investment fraud problems:

- a. Promising unnatural profits.
- b. Do not have a business license.
- c. Promises a claim without risk.



- d. Promising bonuses from *members get members*.
- e. It does not have clear legality and is not registered with the Financial Services Authority (OJS).

In line with the issue that is currently being discussed in the Indonesian virtual and television universe, regarding the illegal investment of *Binary Option* Trading by a YouTuber where he managed to attract many customers through an affiliate system. The profit it earns is derived from losses earned by customers or users of *Binary Options*. The profit earned by hundreds or even billions of rupiah, he promotes the product through *Youtube* content and also his personal Instagram platform.

His actions violated the provisions of Article 303 of the Criminal Code where, for those influencers, the perpetrators of the game of *Binary Options*, who advocate, give opportunity and influence the general public to learn and follow and even participate in gambling games as their livelihood can be subject to criminal sanctions for their actions (Moeljatno, n.d.) . What is categorized as gambling in Article 303 is any game whose profit is derived from mere luck, this is in line with the concept of *Binary* which considers its ups and downs according to a certain time.

Related to the legal noose received by Indra Kenz as, a YouTuber and *Binary Option* celebgram who some time ago was entangled in legal issues for alleged online gambling crimes and the spread of fake news or Hoaxes through electronic media and fraud, fraudulent acts, and alleged money laundering with the results of an examination stating that he met the previously alleged criminal elements so that he was threatened with a layered article and a 20-year sentence prison.

1. Online Gambling (Article 45 paragraph 1 *juncto* Article 27 paragraph 2 of the ITE Law)

In Article 27 paragraph 2 it is explained that in fact, any person who deliberately without the right to distribute or transmit or make accessible electronic information and documents that have gambling content. Meanwhile, in the provisions of Article 45 paragraph 1, it is explained that any person who meets the elements referred to in Article 27 paragraphs 1, 2, 3 or 4 can be sentenced to a maximum of 6 years in prison and/or a maximum fine of Rp.1,000,000,000,000 (one billion) of the Republic of Indonesia.

2. Fake News (Article 45 paragraph 2 of the ITE Law *juncto* Article 28 paragraph 1 of the ITE Law)

In the provisions of Article 28 paragraph 1, it is explained that any person who intentionally and without the right to spread false and misleading news that results in consumer losses in electronic transactions, criminal charges against the article are regulated in Article 46 paragraph 2 which reads, any person who meets the elements stipulated in Article 28 paragraph 1 or 2 can be sentenced to a maximum of 6 years in prison and a fine of Rp. 1,000,000,000,000 (one billion).

3. Money laundering (Article 3, 5, 10 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law).

#### Article 3

*The article contains matters that should be suspected that the property owned is obtained unlawfully, in Article 2 paragraph 1 it is intended that the purpose of concealing or disguising the origin of the property can be sentenced to a criminal offense regarding Money Laundering with a maximum penalty of 20 years and a fine of Rp. 10,000,000,000 (ten billion).*

#### Article 5

*In paragraph 1, it is said that any person who receives or controls the placement, transfer and everything stipulated in Article 3 shall be punished with a maximum imprisonment of 5 years and a maximum fine of Rp.1,000,000,000 (one billion), the provision does not apply to the complainant.*

#### Article 10

*Regulates anyone who participates in probation, assistance or malicious conspiracy for money laundering acts either inside or outside Indonesia can be criminalized as stipulated in Articles 3, 4 and 5.*

#### 4. Fraud (Article 378 of the Criminal Code *juncto* Article 55 of the Criminal Code)

Article 378 explains that, whoever with the intent to benefit himself or others by unlawfully using the name, or false dignity, deceit or any form of lie to move another party to hand over goods or something is threatened with fraud and the maximum penalty is 4 years (Moeljatno, n.d.; Ardiansyah & Prastyo, 2022; Hartito, 2022) .

Based on this issue, it is appropriate for the law in Indonesia to make adjustments to the development and mobility of the community. This is intended to create legal certainty and legal protection for all forms of violations that exist, so that related to *binary options* the existence of legal rules that provide a strict prohibition on the legality of *Binary* in Indonesia will provide legal protection for consumers in the event of violations or abuses that cause losses. This must also be balanced by public curiosity over the issues that are now developing in the digital world. This is intended as a means or mechanism in building public awareness related to legal investment so that the public can properly sort out illegal investments

with modern gambling and know the legal consequences that will arise behind it.

### III. BINARY OPTIONS IN THE ISLAMIC LAW PERSPECTIVE

*Binary Options* in recent years are in the spotlight of the Indonesian people, the increasing popularity of *Binary Options* among the public is seen from the emergence of many similar brands in line with the number of people who want to try to follow them. Many people fall into *Binary Options* because influencers influence them to enter the investment game in *Binary Options* in the hope of getting an instant profit, without first studying and paying attention to what they are currently following and what bad potential they will pass later. Even though the OJK (Financial Services Authority) itself has never officially issued licenses to *Binary Options* and the like, this investment is still running today, and, in the end, it causes many victims who feel aggrieved when following it.

Judging from the working system of *investing binary options trading* indirectly can be said to be a modern online-based gambling (Mufidah & Setiawan, n.d.) . Where in the way of playing by guessing the price of an asset whether it will increase or even fall, here the size is said to win and make a profit if their guess is correct, if from the correct guess the person will get a profit of 80% of the capital, but when the person guesses wrong, the entire capital owned will be forfeited. The form of *binary options* system can be found on applications present on smartphones such as binomo. In the binomo application itself, the way to play is the same as a form of gambling in the form of property bets from several parties, where one of the parties, namely the trader who will open options for the other party

where the trader already has assets first to be traded as desired based on the amount of profit he wants to get. There is a choice to win and lose from this game, where the trader needs to first choose the choice of rising or falling as a determination of the *expiry time* that can be adjusted. With the option / *expiry time*, from how to play *Binary Option Trading* there is a determination to determine who is the winning and losing party. This is what the *trader* does when making a choice of the movement of the value of a value or the price of the forex.

Therefore, the game of Investment in the form of *Binary Options* can be called *Binary Option Trading* which is very detrimental and can be called modern gambling. Of course, in the view of Islamic law, gambling is strictly prohibited, because based on the Quran Surah Al-Baqarah verse 219 explains that *khamar* and gambling deeds, both contain major sins but there are benefits for humans, but the sins are heavier than the benefits provided. When a person who has made his living through the path of investment in *Binary Option Trading*, of course, the food and all the needs he buys from the results of the *trading* money are declared not good even though they cannot be declared illegitimate, but the way to obtain it is done illegitimately, namely gambling.

As for Islam, gambling deeds are prohibited based on the Quran Surah Al-Maidah verses 90-91 that by gambling, drinking liquor, it is included in *shaitan* deeds, so they must be shunned because these actions will actually cause hostility between gambling people (Ramadhani & Muhammad, 2021; Mukarromah, 2021; Yusuf, 2022). No matter how hard it is to find treasures to make ends meet or just to improve social degrees, then with shortcuts for it goes into gambling. When there is a loss of all the property owned when all of them are used for *binary options* capital, the loss will fall on it, thus adding to the burden of life and the difficulty of

fulfilling life is getting heavier. If on the contrary when winning then there are parties who are hurt and miserable to make it and even often cause heartache and lead to hostility which of course in this case is not taught in Islam, this in Islam is explained in the Qur'an Surah Al-Maidah verse 92 in conclusion explaining that hatred and hostility are shaitan acts.

The scholars give their opinion that gambling is a game with a betting/*maysir* system or various games using this system, so that the game can be categorized as a gambling act. Just as this investment will cause more mudharat than worldly benefits that are only temporary, where the property or capital owned should be sacrificed in the way of Allah so as to obtain benefits not only for himself but also for others, which is based on the Qur'an Surah Al-Baqarah verse 220 contains that do not think too much about worldly life, by thinking about how it has been spent and how much the rest but what needs to be thought about is how many rewards can bring us to the end later (Firmansyah & Ismail, 2021). In *Binary Options Trading* there is no practice of buying and selling as it is in stock trading but based on the fatwa of the national sharia council number 28 / DSNMUI / III / 2002 regarding Al-Sharf can be related to *binary options trading* investment, which in this fatwah explains the money transactions allowed in Islam as follows (Labib, 2021):

- a. Not looking for profit
- b. It is necessary for the benefit of needs or can be used as a deposit.
- c. In making transactions, it must be in a similar currency with the same value and in the form of cash.
- d. However, if you use a different type, it is with the existing exchange rate when making transactions in the form of cash.

That clearly the types of *binary* options trading game types in the form of transactions through foreign exchange in the forex market are only a

few that are allowed, but if types of transaction types such as options are clearly not allowed based on the fatwah above, these transactions should not be allowed in Islam because the transaction process is not carried out in cash but through digital money and plus there is an element of gambling in it.

The era of digital development is increasingly craze with the transformation of facilities to meet human needs, as well as the emergence of digital investment and digital money. With the current developments, a Muslim should not forget the provisions and provisions in Islamic law to respond to existing technological developments (Umrah, 2019). It does not mean that a Muslim completely avoids technological developments, but rather how a Muslim is able to put certain limits that are allowed in Islam and not allowed. As Islamic law sanctions are not only in the world but also in the world were facing Allah Almighty as a result of violating the commandments and working out the prohibitions.

#### **IV. THE ROLE OF GOVERNMENT**

Commodity Futures Trading in Indonesia has undergone significant changes after the issuance of Law Number 10 of 2011 concerning Commodity Futures Trading and Law Number 9 of 2011 concerning Warehouse Receipt System. There are two futures exchanges in Indonesia, namely the Jakarta Futures Exchange (BBJ) and the Indonesian Commodity and Derivatives Exchange (BKDI). In 2011, BBJ created sharia commodity trading. Since the launch of sharia commodity futures trading, commodity futures trading in Indonesia has become increasingly attractive. This is because Islamic commodities can be used and are very profitable in national Islamic banks that want to manage liquidity.



The commodity market does not only concern commodity futures trading, but also includes the activities of the Commodity Auction Market (PLK) and the Warehouse Receipt System (SRG). Many businesspeople use the Commodity Auction Market to make transactions to buy and sell primary commodities by *forward*, cash, or *spot*. The development of global economic conditions urges the government to continue to increase the role of the Commodity Futures Market, Commodity Auction Market, and Warehouse Receipt System to help improve the national economy. To integrate these three things, Bappebti must create a liquid futures market supported by commodities in the physical market and the delivery of goods in the form of Warehouse Receipts. The implementation of the financial market and commodity market must always be supervised by the relevant authorities because it involves a lot of publicly owned funds. Such as the capital market supervised by the Financial Services Authority (OJK), and the Money Market supervised by Bank Indonesia ([Serfianto Dibyo Purnomo, Iswi Hariyani, 2013](#)).

In 2020, the Ministry of Trade (Kemendag) through Bappebti collaborated with the Ministry of Communication and Information to regulate the distribution of illegal investment information on social media. This is intended as a preventive measure to minimize the occurrence of crucial problems of violations of legislation in the field of commodity futures trading which will then cause losses to many people. Bappebti successfully blocked 112 facebook pages, 73 instagram, 81 videos on youtube content and 45 domains that do not have permission ([Ministry of Trade, 2020](#)).

The video content in question is video content with the content of promoting commodity futures in the field of investment whose legality does not yet exist in Indonesia, as well as binary options. This is because,

in order to trade futures, it is appropriate for this activity to pocket a business license from Bappebti even though it previously had legality from abroad. The role of the government here is not only limited to socialization and education actions to the public, but the government has an important role to prepare mechanisms and design legal policies regarding binary options in Indonesia.

The current government's readiness to face the development of increasingly sophisticated and all-digital technology can be by pursuing the formation of legal policies to later protect the Indonesian people. These policies are formed on the basis of the impact caused by technological developments as well as the impact of investment in the form of *binary options*. The government can expressly regulate that commodity futures trading that causes losses and unrest to the public can be blocked. The government can hold special supervision on the renewal of technological developments, which will make it easier for the government to indicate earlier if there are unnaturalness and illegal actions of community activities in the digital realm. Also, people also need to increase caution from current technological developments, because all human activities can be carried out digitally as well as gambling on how to play *Binary Options* packaged in the form of investments. That way, the public also needs to increase knowledge and understanding of technological developments so that later they do not fall into illegal commodity futures trading.

## V. CONCLUSION

*Binary Options* are essentially an illegal trading or investment concept where in Indonesia itself the concept of *Binary Options* does not fully have strong legal rules and legalities. Reviewed from the point of view of

Indonesian law, *binary options* are an illegal investment concept both in terms of licensing and activities. Islamic law also views the concept of *Binary* as the concept of mobility of illegal financial transactions that do not meet Islamic law and cause *madhratan*. So, it is necessary to create a concept of legislation that openly and specifically regulates and provides a concrete definition of the prohibition, form, and concept of *Binary Options* as a form of legal development in the midst of technological and information advances in order to create a legal partnership behind it. In this case, the government has a big hand in formulating a rule of law that specifically regulates and provides protection so as not to cause harm to many parties.

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### ***Conflicting Interest Statement***

All authors declared that there is no potential conflict of interest on publishing this article.

### ***Funding***

None

### ***Publishing Ethical and Originality Statement***

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.