

Legal Liability of Influencers or Affiliates for Stock Pumping Activities and Promoting Trading in the Form of Binary Options

Tri Nadya S Paranna* & Christian Andersen

Faculty of Law, Maranatha Christian University, Bandung, Indonesia

Abstract

Trading Platform with Binary Obsi or choosing one of the two is a platform that is considered by OJK to be more similar to numbers, where this refers to Law number 10 of 2011 concerning amendments to Law 32 of 1997 in this law there is an article that can ensure that the practice of Binary Options is not in accordance with what is regulated by the law, but binary options trading can circulate rapidly because the owners of the binary options platform use the services of influencers to spread the platform. which results in trading in the form of Binary Options, the legality of which cannot be ascertained in Indonesia. This raises new legal problems in the form of activities recommending platforms that do not have legality in Indonesia and are prohibited by the OJK, this is binding on those who carry out recommendation activities or are often referred to as stock pompoms. Stock pompom activities are rampantly carried out by public figures who are known to the public who do not pay attention to the legality of Binary Options trading, as for several parties who collaborate with application owners and take advantage of the failures of Binary Option players. The approach method used is a normative legal research method, namely legal research conducted by examining library materials or secondary data. The approach used is the invitation approach, the approach and the conceptual approach. This journal finds several issues that need the government's attention, such as the need for special laws governing binary options applications in the gambling or fraud category, special rules regarding influencers who get commissions called affiliates, as well as strict rules for influencers to make recommendations, also educating the public so that they are not easily influenced by what activities are found on social media.

Keywords: Affiliate; Binary Options; Fraud; Gambling; Platform; Trading.

1. Introduction

Investment is often considered as an investment / investment for the future. Investment/investment is the implementation of an evaluation of certain resources as well as resources capable of providing results from the investment/investment (Return). Investment can be interpreted as investment in financial or physical form. In the theory put forward by Keynes, there are three factors in ensuring investment/investment including the existence of funds, returns and certainty as well as opportunities/opportunities. Investment/investment can appreciate or depreciate over time, have competence in the process of building or lose value (SORAYA, 2021). Investment/investment has the aim of being able to maintain capital, obtain and generate revenue and returns from the investment process, grow capital and create new equity capital. (Eatwell, Milgate, & Newman, 1992).

In the era of Generation Z, new forms of investment began to emerge in the form of E-commerce, which is better known to young investment groups in the form of Mutual Funds, Peer to Peer lending, property, and what has recently become popular with novice investors is investment in the form of Trading. (Raharjo, 2021). Trading is an activity of buying and selling commodities or capital market instruments in a short period of time to earn profits (Frida, 2022). In a broader sense, trading is the activity of exchanging goods or services from one party to another based on a mutual agreement. With the acceptance of trending entry in Indonesia, resulting in the emergence of trading applications that can be categorized as not in accordance with commodity futures trading regulations (Utami, 2010), where in the current era there has also been the emergence of trading in a new form, namely trading with the binary options system or choosing one example is the BINOMO application, where it is known that applications with binary options do not

*Corresponding author.
E-mail address: trinadyasparanna@gmail.com

comply with trading rules, why this cannot be categorized according to trading rules because have a different system in trading in general which is known (Kalesaran, 2022)(Raharjo, 2021).

Trading in the form of long-term stock investment but different from binary options where investors are asked to choose and guess whether the stock will go up or down, binary options trading is also difficult to legalize in Indonesia due to the many trading applications that run online from abroad and do not have a permanent office. in Indonesia, this is one of the strong reasons why trading with binary options is an application that does not have a business license. As a Futures Broker, CoFTRA is regulated under Article 31(1) of Law no. 32 of 1997. However, even though this site has been blocked many times, they are known to create new domains and keep trying to find loopholes.

Disseminate a platform requires good marketing communication, where Advertising is a very popular and often used marketing communication tool today. Advertising is used flexibly because it can be found on television, radio, newspapers, magazines and internet sites (Febriani & Dewi, 2019). However, advertisements must be designed to attract the attention of consumers. It is the marketer's job to design these ads as creatively as possible. One way is to use a brand endorser or a party used by a company to promote its products. Endorser for this brand can be from ordinary people or celebrities (celebrities). Brand advocates here often act as opinion leaders, where their job is to let others know and try to influence them. this triggers the emergence of a criminal act. Not only through applications, but in today's era there are more and more influencers who make efforts to recommend certain stocks by inviting the public through social media to buy or sell shares. The influencers referred to in this case are celebrity endorsers (Mubarikah, 2021)

Common stock pompoms. If seen in Article 34 of Law no. 8 of 1995 the Capital Market says that those who can carry out activities as investment advisors are those who get a business license from the OJK. This phenomenon involves many influencers who recommend failed investments. (Abidin, 2021). not only recommend but also many influencers who do not have investment advisory permits to take Affiliate action, affiliate action itself is one way of developing a profitable business for both parties where the commissions they get are not only from one party or payments from the company owner, but earn commissions from all investors. Where later the influencer will explain the advantages if investors register using the code owned by the influencer which is directly related to the shares owned by the influencer, according to the Investment Alert Task Force, it is suspected that profits will not only be obtained from registration by investors but also from losses incurred. obtained by investors, this is the problem that can become a criminal act that can ensnare influencers, the actions taken by these influencers are often called Affiliates, Affiliates are a term for people who carry out affiliate programs, which is the concept of business partnerships in exchange for commissions.

Based on a new phenomenon that has emerged in the community regarding trading and stock pumps involving influencers, this paper therefore wants to discuss: What is Trading with activities carried out on the Financial market, the difference between Trading in the form of Binary Options, and how is the responsibility of an Influencer who promotes Trading application with binary options can be said to be an Affiliate who gets a profit in the form of a commission?

2. Research Method

The method used in this research is using normative juridical (Benuf & Azhar, 2020) namely research that is focused on examining the application of rules or norms in positive law in finding data, and discussing problems using descriptive to determine data comparisons, as well as correlational in assessing the degree of relationship between variations of one factor and variations of other factors as a function of the correlation coefficient. Where also in the search for data using case analysis, the type of data used in legal research is secondary data obtained from primary legal documents, secondary legal documents and tertiary legal documents. secondary data materials, consisting of: UU 1945, journals, news, thesis, and others.

3. Results and Discussions

3.1 Trading activities on financial markets

Trading is the exchange of goods or services. Trading has the aim of earning money by selling or buying assets, which later assets will be purchased taking into account the future development period of the investment, and selling at the time the asset has been purchased the price will be higher than at the time it was purchased from here the traders get

profits. Trading in the financial market is an activity of trading transactions in the form of currencies. Minimum profit obtained if someone has the ability to read market movements (Lestari & Arifin, 2022).

A noteworthy characteristic of trading itself is that trading can not always be detrimental, but it is also possible that trading can be profitable for traders where, it can be seen in the buying and selling system if the investment price owned by the trader rises, it can be profitable for traders so On the other hand, if the price that is sold falls, the price of the trader's investment will decrease. Beginners who want to trade must understand and pay attention to, fundamentals, Objects to be the choice to be invested later (HIDAYAH, 2022). And it would be nice not to buy any stock without paying attention to the potential profit, form or type of stock at the first IPO Initial Public Offering, as well as some of the most basic things that can affect several factors. (Abidin, 2021).

It is attached that trading itself is divided into several developing forms such as:

- (1) Forex, is trading in the form of foreign currencies that take advantage of currency rates that will later rise or fall within a certain period of time,
- (2) Stock Trading is where investors buy and sell shares with relatively short timeframes, both offline and online through the Trading application
- (3) Gold trading is specialized trading through Forex Brokers. Where to trade with short timeframes
- (4) Bitcoin is an object that exists in trading Trading in the short term where Bitcoin itself will be purchased by investors with the currency used in their respective countries
- (5) Binary Options are trading that is different from the others in that it is known that basically trading has a system that uses a certain time to buy and sell

Binary Options are listed as a form of trading but have a different mechanism from trading where binary options are very easy and simple, prospective options owners only need to register online on the platform or website provided by the binary options provider, enter a deposit. With each different provider using US Dollars. Option holders are invited to choose an underlying asset index, be it forex, stock indices, commodities. The most commonly used is foreign exchange. Next, the trader or option holder will be asked to enter capital to bet with the specified time period. The minimum amount of capital used depends on the asset. In addition, the binary options application calculates the potential profit that the trader will earn from the trade, with a range of returns in the range of 70% to 90% of the asset price, on which to base the increase or decrease (Hartito, 2022). Binary options traders are free to choose the time duration to predict the direction of movement of various durations per seconds, minutes, hours or days, based on the underlying asset of the choice (Fang et al., 2022). Finally, the trader must guess the direction of movement of the asset until the end of the period, whether the nominal asset will increase or decrease when the trade starts, if True assume that the user will take profit, but if this is wrong, then the capital used will be lost and the trader will lose.

The mechanism used by binary options is considered by the OJK to have the potential to be included in the act of gambling or so that it is studied more deeply about gambling. According to the Criminal Code Article 303 paragraph (3) concerning the Crime of Gambling (Polizzi & King, 2022), Gambling is any game which generally the possibility of making a profit depends on pure chance, also because the player is better trained or more skilled, it includes all bets on the decisions of contests or other games that are not played between participants by playing. or play, like all other bets. Gambling involves betting a certain amount of money or property in a guessing game of chance, with the aim of getting an amount that is greater than the original amount or wealth. Gambling is also called:

- (a) Game: gambling is actually a game that is done only to entertain and relieve fatigue and fill spare time.
- (b) Luck: is in a game you don't always have to win or succeed in bringing your own advantage, there is a risk that the player has to bear.
- (c) Betting: if you play a game if you place a bet that is used to complete the game and get the prize money that was placed and get the prize money that was placed acting up can be said to be a gamble.

The investment alert task force placed an asset trading platform with the Binary Option Scheme as an investment that is similar to gambling because the system used is similar to the three elements of gambling, where traders will be asked to choose one of two stocks and will guess which stock will go up or down. by pledging a number of shares of funds owned by traders and if traders guess wrongly the shares owned will be completely lost. This scheme in binary options is a trap for investors who are more like a form of gambling, with the risk of losing their assets. From the explanation of investment and trading, as well as the differences with binary options, it can be concluded that binary options are not actually a form of investment trading.

3.2 Influencers as Binary Options Affiliates

In Indonesia itself, it is common for operators to use intermediaries through affiliate marketers and use influencers as marketing participants. Affiliate marketing is one of the main forms of e-commerce-based marketing strategy in the future. The success of affiliate marketing can be seen from the mutually beneficial relationship between the merchant and the affiliate (Patrick & Hee, 2019). Affiliate marketing is a marketing method in which the affiliate invites and brings the public to the affiliate's platform page by giving them a commission on each percentage of the sale transaction. On the other hand, there are ways to use compensation based on community actions per click on platform pages. Most companies offer bonuses to affiliates by offering a commission as a percentage of each sale. Or compensation based on each time someone clicks on the platform page. Binary Option is involved in marketing in Indonesia by looking for members in the social media influencer (SMI) circle. An SMI is someone with a certain social influence, usually measured by their social media popularity (e.g., in terms of number of followers and/or engagement) over most people on YouTube, Instagram, etc. and Telegrams. usually run promotions through advertisements in electronic media, and binary options operators use influencers in affiliate campaigns because they have good market potential and are ideal for reaching consumers in a relatively short time.

The compensation that affiliates receive from binary options traders ranges from 70-80% of cost per conversion (CPA). CPA is a marketing metric that measures the total cost of getting a customer to become an affiliate member. With a fairly large remuneration, it becomes an attraction for affiliates and influencers to find and engage consumers who mostly "vlog" using Framing and Flexing methods. The income that affiliates earn from CPAs can also cover 70-80% of the trader's total losses, while 20-30% is profit for binary options traders. Examples of binary options applications are Binomo, Quotes, OlympTrade, Binary Cent, Pocket Option and many more.

Is a form of media and/or communication strategy in the form of journalism. Framing Organizing or grouping information about an event with the aim of forming an opinion or supporting public perception of an event (Schmierbach et al., 2022). Along with the framing effect, it provides an interesting phenomenon for people to make decisions. With the vlog content, SMI often shows the public its personal life and its success in profiting from the products offered.

Binary Options affiliate marketing claims that the binary options platform is a legitimate broker or dealer of financial assets. claims that investing and trading in various financial instruments easily and quickly generate profits with small capital. Influencers typically offer returns between 80-85 in player-defined open funds via the Binary Options app during their promotions. In addition to syndicated activities, affiliates also provide content-based training activities created by affiliate managers. With the start of the training phase, participants will then be asked to make their first deposit to practice trading, with the desire to experience real profits. To further ensure that affiliates will be flexible by showing viewers the wealth gained from affiliate content, flexibility is applied as a marketing strategy with the aim of building consumer trust. With flexible linking actions, you will easily attract and seduce people with a get-rich-quick mentality without hard work.

In Indonesia, if there are indications of cases of fraud by affiliates in binary options trading, they can be classified as economic crimes which are usually classified as alleged violations of Article 45 paragraph (2) along with Article 27 (2) and Article 45A (1) along with Article 28 (1) Law Number 19 of 2016. Concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. After that, Article 3, Article 5 and Article 10 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, Article 378 of the Criminal Code combined with Article 55 of the Criminal Code explicitly regulates the crime of fraud. states that:

“Anyone with unlawful intent to take advantage for himself or another person, by using a false name or false dignity, by deception, or by a series of lies, to induce another to give him something. , both to pay off debts and to eliminate debts, are threatened with fraud with a maximum imprisonment of 4 (four) years.” (Zaenudin & Faridah, 2022). Based on article 378 of the Criminal Code, the subjective elements can be formulated:

- (a) With the intention of benefiting themselves or others, where the fraudulent element intends to benefit themselves or others, where the affiliates get profits for themselves from the results of the failure of the investors' commissions so that it can be concluded that this element is included in the affiliate's actions.
- (b) By going against the law. An action can be said to be a fraud if this action is against the law. In this case it is known that the binary options application is an application that is prohibited by CoFTRA but the affiliate takes the action of recommending it in a conscious way.

In contrast to Affiliates, the parties from Influencers who participate take actions to promote and recommend Binary Options applications whose legality is doubtful in Indonesia, where the influencers also take actions to promote, recommend, to the public through their personal accounts but the profits or commissions obtained are not as large as the affiliates as well. not from commissions given by Binary Option operators or even from the losses of people who play binary options applications, but from getting a fee from a work contract limited to recommending the application. there are no specific rules that can be imposed on influencers who only carry out recommendations with the employment contract agreement, but if it is seen in the Capital Market Law regarding which parties involved in capital market activities are, the Capital Market Supervisory Agency, the Indonesia Stock Exchange, Clearing and Guarantee Institutions, Depository and settlement institutions, capital market supporting institutions, securities rating companies, capital market supporting professions, issuers and public companies, and investors. Based on what is stated in the law, no one mentions that influencers are included in the capital market. This is in accordance with Article 34 concerning investment advisor licensing. In the case of Article 34 paragraphs (1) and (2) it is stated that “those who can carry out activities as investment advisors are those who have obtained a business license from Bapepam with the following requirements: Investment advisor licensing requirements. and procedures are regulated by the government. (Pahlevi, 2021).

According to OJK, article 34 states that those who can carry out activities as advisors are parties who have obtained a business license from the OJK, also in article 93 which states that any party is prohibited in any way from making statements or providing materially incorrect information. or misleading information, so that it affects the stock exchange price if at the time a statement or information is provided.

- (a) Related parties or should know that the statement or information is materially incorrect/misleading.
- (b) The parties are not careful in assessing the statement or the material truth of the statement

In articles 8 to 17 of the consumer protection law, which explains that broadcast advertisements are advertisements that do not lie to consumers, do not deceive and are based on the truth, create risks of use and are ethical.

In Indonesian criminal law, what is known as criminal liability is criminal liability, which is the obligation of an individual or corporation to bear the consequences for their actions because they have committed a harmful crime. Based on this definition, it can be concluded that an act or action of a person can be held accountable, if it is in a condition that has fulfilled what has been regulated in the legislation, and has fulfilled the elements of the offense listed in the articles governing legal subjects in terms of being involved in the action. this punishment. involved in legal subjects who commit criminal acts contained in article 55 paragraph (1) of the criminal law code elaboration on a criminal liability is divided into 4, namely, those who commit acts (pleger), those who order to do (doen pleger), those who those who participate in doing (Medepleger) and those who advocate (Uitlokker) (Lamintang & Lamintang, 2022). it is in article 9 paragraph (1) letter K of the Consumer Protection Law Number 8 of 1999 which states that trade actors are prohibited from providing, promoting, or advertising goods and/or services that are not true and/or as if conveying something that contains a promise. which is uncertain. More specifically, the prohibition against recommending such activities is also contained in Article 57 paragraph (2) letter d which explains that everyone is prohibited from directly or indirectly influencing other parties to transact in futures contracts, sharia derivative contracts. and/or other derivative contracts. by persuading or giving unreasonable expectations of benefits based on actions.

3.3 Binary Option in Indonesia

Binary Options are known by the public as an asset traded on the Chicago Board of Exchange (CBOE) or the Chicago Option Trading Exchange, where the CBOE is one of the largest options trading exchanges in Indonesia, In 2008 the year the impact of the economic crisis on the United States triggered the collapse of the Bear Stearns and Lehman Brothers, as well as to the Global financial system, with these circumstances triggering many investors around the world to experience considerable spending, as well as a lot of pressure on investments against the backdrop of lower risk available to traders, at this time led to the entry of trading with binary options Binary Options gaining popularity on the investment line in 2008, Binary Option really entered and became known in Indonesia around 2018 with digital mass media marketing. In Indonesia binary options are included in the category of futures contracts, futures contracts are regulated in Law No. 11 of 2011 which discusses Commodity Futures Trading, Law No. 49 of 2014.

Several reasons why binary options cannot be legalized at Bappebti are known to be inconsistent with the provisions of Article 1 Number 8 of Law Number 10 of 2011 concerning Commodity Futures Trading, which reads as follows “Options are contracts that give the buyer the right to buy or sell contracts certain futures or commodities at a predetermined price, amount and time period by paying a premium. Regarding Bappebti review, the reason it is

difficult to legalize binary options in Indonesia is because binary options are not recognized as a commodity or at least a legal commodity to trade, so users of this article cannot be considered as consumers. 8 of 1999 (Simanjuntak, 2018), Bappebti said that the binary options platform circulating on the internet does not have branches in Indonesia, making it difficult to register an account. (FARID, 2022), and lastly, due to the lack of regulations both domestically and internationally, it is difficult to standardize business actors who act fairly.

In terms of binary options law, binary options are considered a gambling activity in the form of online trading under the guise of trading, in the field of Commodity Futures Trading. The Investment Alert Task Force locates a platform for trading assets with the binary options system as an illegal form of investment. For various reasons, one example is binary options programs that trap investors with gambling, at the risk of losing their assets.

Based on specific incidents in Indonesia regarding affiliates and influencers who carry out affiliate actions and/or recommend binary options applications, cases and articles that deceive affiliates, for example: Indra was charged under Article 45A paragraph 1 along with Article 28 1 paragraph of the Act (UU). UU no. 19/2016 concerning Information and Electronic Transactions (ITE), Articles 3, 5, 10 of Law no. 8/2010 concerning the Prevention and Eradication of the Crime of Money Laundering (TPPU), article 378 of the Criminal Code is combined with Article 55 of the Criminal Code and combined with Article 56 of the Criminal Code. Threatened with 20 years in prison, Brian Edgar, Fakarich and Wiky were charged under Article 45(2) together with Article 27(2) and/or Article 45A(1)., along with Article 28, paragraph 1, Law Number 11 of 2008 concerning Information and Electronic Transactions; Articles 3, 5 and 10 of Law no. August 2010 concerning Prevention and Eradication of the Crime of Money Laundering (TPPU) and/or Article 378 of the Criminal Code combined with Article 55 of the Criminal Code. With the threat of 20 years in prison, Vanessa, Rudiyanto and Nathania were charged with Article 5 and/or Article 10 of Law no. August 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (TPPU) together with Article 55 Paragraph 1 of the Criminal Code concerning those who commit criminal acts. With a sentence of 5 years in prison and a fine of IDR 1 billion.

4. Conclusion

Binary Options are a form of trading whose legality is doubtful in Indonesia because according to OJK, the way binary options work is not in accordance with E-Commerce investment standards in general, namely trading, OJK sees the Binary Option Scheme as a form of Illegal investment. For various reasons, one example is because the scheme in binary options is a trap for investors, and is more similar to a form of gambling, because it contains the risk that traders lose their assets. With the prohibition of Binary Options in Indonesia, it causes parties who participate in the form of promoting recommending such as affiliates to be included in acts of fraud and embezzlement, where the elements of fraud committed by affiliates fall into categories 1. A series of false words, 2. Deception, elements This can be fulfilled because the Affiliate provides information that is not in accordance with reality to the public, most of the affiliate recommendation videos say 1. such as Binary Option is an illegal application in Indonesia, 2. Binary Option is profitable for the players, etc. The actions of the affiliator can also be said to be included in the element of embezzlement, which is based on Article 372 of the Criminal Code which reads: Whoever intentionally owns against the rights of an object which completely or partially belongs to another person and the object is in his hands not because of a crime, is punished for embezzlement. where it has been explained that the profits obtained by the affiliate are from the player's commission as well as the failure of the player where the affiliate does not explain this to the traders but takes advantage of the trader's defeat in this case the fulfillment of the element of Possession by fighting the rights of an object which completely or partly belongs to another person. other . On the one hand, the things that should be considered by influencers who want to take an offer recommend a Trading application in the form of Binary Options where even though the influencers do not get a commission from the application, because in article 55 paragraph (1) of the criminal code of law the elaboration of a criminal liability is contained elements of those who participate in doing (Medepleger) and those who recommend (Uitlokker) where the actions taken by influencers can fulfill the element of taking part in doing because influencers participate in recommending applications that are prohibited by OJK and also elements of those who recommend where the public knows about applications This is due to videos created by influencers advising the public and showing off the advantages of the Binary Options application.

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