

# Policy Formulation of Criminal Actions Related To Binary Option Through The Criminal Justice System In Indonesia

**Musa Darwin Pane**

Fakultas Hukum, Universitas Komputer Indonesia, Indonesia  
Jl. Dipatiukur No. 112-116 Bandung 40132, West Java, Indonesia

E-mail: [musa@email.unikom.ac.id](mailto:musa@email.unikom.ac.id)

**Abstract.** the quality of technology and increasing globalization. Currently, there is a lot of investment using the Binary Option Trading model, where this practice has not been accommodated by the laws and regulations in Indonesia and has resulted in victims who suffer losses. This study aims to identify and understand the formulation policies of Binary Option Trading in Indonesia and the enforcement of Binary Option Trading laws in Indonesia. This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach. Based on the results of the study showed that both organizers, Binary Options influencers and affiliates can be subject to multiple articles as regulated in the Criminal Code, the ITE Law, the Consumer Protection Law, and the Money Laundering Law. However, in the application of legal witnesses, it is important to note that criminal sanctions are the ultimum remedium, therefore it is important to apply other sanctions such as refunding losses, so that the goal of a fair sentence can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future. Therefore, it is important to apply other sanctions such as refunding losses, so that the goal of a just punishment can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future. Therefore, it is important to apply other sanctions such as refunding losses, so that the goal of a just punishment can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future.

**Keywords:** Formulation Policy, Binary Options, Indonesia.

## 1. Introduction

Along with the times, it is inevitable that technology continues to develop, namely improving the quality of technology and increasing globalization. The speed and accuracy of the community and the government are very encouraging and needed to be able to keep pace with the rapid development of technological advances in the present and in the future. Information and communication technology is considered to be able to bring an advantage and change for the country. That information and communication technology has succeeded in initiating changes in the order of people's lives in the

economic and social sectors, which incidentally used to be business transactions and socialization carried out in traditional or conventional ways, then became business transactions and socialization using electronic media[1]. However, the development of technology is not free from problems that cause casualties.

Currently, investment is booming using the Binary Option Trading model. Binary Option Trading or binary options trading is the activity of determining the movement of the value of an asset within a certain period of time that has been selected through the binary system. By determining the prediction of fluctuations in the price of the underlying asset in a certain period of time, one can gain a predetermined amount of profit or lose the value that has been placed. On the internet based Binary Options platform it asks investors to deposit a certain amount of money to make a deposit. From the deposit, investors can make a "call" or "put" to make a deposit in the form of a contract against one of the options of the commodity provided by the platform. If the result of the preposition placed by the investor is correct within the specified timeframe, the investor is entitled to receive the promised return. However, if the results of the preposition are not fulfilled within the specified time period, it is said to be Out of The Money and the customer loses the entire deposited amount [2].

Binary Options Trading in Indonesia it has not been specifically regulated, although there have been many people who have followed Binary Option Trading and have become "victims". Therefore, it is important for the Government to make clear and firm regulations and responsive countermeasures to this phenomenon, so that usefulness as a legal goal can be realized. Law enforcers should immediately take responsive actions that are realized in the form of prevention efforts so that the number of victims does not increase by coordinating with related parties such as CoFTRA, Diskominfo and so on. This is considering that Binary Options are considered to be similar to online gambling compared to trading assets such as stocks. Thus, law enforcement is not only limited to applying the law, but also need to take precautions against the occurrence of a crime. Based on the above background, the purpose of this research is to know and understand the policy of Binary Option Trading formulation in Indonesia and the enforcement of Binary Option Trading law in Indonesia.

## 2. Method

This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach. This research specification uses descriptive analytical method, namely research that describes, finds legal facts thoroughly and systematically examines secondary data. This research was conducted by taking an inventory of the laws and regulations that support the role, function and authority of CoFTRA, as well as optimizing the role of the government. The success variable for law enforcement is preventing the occurrence of criminal acts due to binary options.

## 3. Results and Discussion

### 3.1. Binary Option Trading Formulation Policy in Indonesia

Criminal law policy essentially contains state legal politics in regulating and limiting power, both the authority of the public in general to act and behave as well as the power or authority of the ruler or law enforcement apparatus in carrying out their duties, ensuring that the community obeys and complies with the established legal rules. . Criminal law policy is a series of processes consisting of three stages, namely: a. stages of legislative/formulative policy; b. stages of judicial/applicative policies, and c. executive/administrative policy stage [3].

Until now, there is no legal umbrella that covers Binary Options. Where the Financial Services Authority (OJK) as the supervisor of the financial services industry and the Supervisory Agency for the financial services industry and the Commodity Futures Trading Supervisory Agency (Bappepti) as the commodity trading supervisor do not recognize Binary Options.

The high public interest in investing in new financial instruments raises the urgency of public literacy so that the public is able to understand the risks that will arise, this is as referred to in OJK Regulation Number 1/POJK.7/2013 concerning Consumer Protection which applies several principles,

namely transparency, fair treatment, reliability, confidentiality and security of consumer data and handling complaints and resolving consumer disputes simply, quickly and at affordable costs.

Whereas a Binary Option is a futures contract, which is a standard form of contract to buy or sell a commodity with a later settlement as specified in the contract traded on the futures exchange. However, Binary Option does not have a futures brokerage business license from the Commodity Futures Trading Supervisory Agency (CoFTRA), so it is threatened with a criminal sanction of at least 5 years and a maximum of 10 years and a fine of Rp. 10 billion and a maximum of Rp. 20 billion.

In Article 9 paragraph (1) letter k of Law Number 8 of 1999 concerning Consumer Protection it is stated that business actors are prohibited from offering, promoting, advertising goods and/or services incorrectly, and/or as if offering something containing uncertain promise.

Furthermore, Article 57 paragraph (2) letter d of Law Number 10 of 2011 concerning Futures Trading states that each party is prohibited from directly, or indirectly influencing other parties to conduct futures contract transactions, Sharia derivative contracts, and/or derivative contracts. others by persuading or giving the hope of extraordinary benefits.

Article 303 paragraph (1) stipulates that a maximum imprisonment of ten years or a maximum fine of twenty five million rupiahs shall be imposed, whoever without obtaining a permit: 1. Deliberately offering or providing an opportunity for gambling games and making it a quest or intentionally participating in a company for it; 2. Deliberately offering or giving an opportunity to the general public to play gambling or intentionally participating in a company for that, regardless of whether to take advantage of the opportunity there are certain conditions or the fulfillment of certain procedures.

Article 27 paragraph (2) jo. Article 45 paragraph (2) stipulates that any person who knowingly and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing gambling content shall be punished with imprisonment for a maximum of 6 (six) years and/or or a maximum fine of Rp. 1,000,000,000, - (one billion rupiah).

In this regard, it is important to pay attention to the concept of punishment so that justice can be realized. Sentencing is an effort to awaken the convict to regret his actions, and return him to be a good citizen, obey the law, uphold moral, social and religious values, so as to achieve a safe, orderly and peaceful community life [4]. Therefore, in the application of criminal sanctions, the following provisions must be observed:

- a. Purpose of punishment
- b. Criminal guidelines
- c. Guidelines for the application of imprisonment with a single formulation and alternative formulations
- d. Criminal burden
- e. Other provisions regarding sentencing.

Furthermore, Muladi said that criminal law is the *primum remedium* if: [5]

- a. The casualties were huge;
- b. Defendant is a recidivist;
- c. Losses cannot be recovered.

In controlling crime so that it is within the "tolerance limits" of the community, but does not mean giving tolerance for a crime to occur, a social control is needed by applying social work criminal sanctions and compensation as an alternative to punishment. Social control is a system to prevent the occurrence of social deviations in society, where in the process, it is necessary to involve various elements or parties, both from government elements and from elements of society through supervisory efforts with the aim of being in accordance with the values that live in society. Public [6]. Criminal law as the *ultimum remedium* must be enforced, but before the enforcement of criminal law, the way of guidance and supervision needs to be done. In other words that The *ultimum remedium* principle places criminal law enforcement as the last legal option [7].

Law enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality. Law enforcement is a process that involves many things. In essence, law enforcement embodies values or principles that contain justice and truth, law enforcement is not only

the task of conventionally known law enforcers, but is the duty of everyone. However, in relation to public law, the government is responsible. In law enforcement there are three elements that must receive the same attention, namely justice, benefit or use (*doelmatigheid*), and legal certainty [8].

The rational enforcement of criminal law consists of three stages, namely as follows: (1) The formulation stage, is the stage of enforcing criminal law in abstracto by the legislature. In this stage the legislators carry out activities to choose values that are in accordance with current and future conditions and situations, then formulate them in the form of criminal legislation to achieve the best results of criminal legislation, in the sense of fulfilling terms of justice and usability. This stage can also be called the legislative policy stage. (2) Application stage, the stage of implementing criminal law (the stage of applying criminal law) by law enforcement officers starting from the police, prosecutors to courts. At this stage, law enforcement officers enforce and apply criminal laws and regulations that have been made by the legislature. In carrying out this task, law enforcement officers must uphold the values of justice and usability. This stage can also be called the judicial policy stage. (3) Execution stage, namely the stage of concrete enforcement (implementation) of criminal law by criminal implementing officers. In this stage, the criminal implementing apparatus is tasked with enforcing the criminal regulations that have been made by the legislators through the application of the criminal law that has been determined by the court. Implementing officers in carrying out their duties are guided by criminal laws and regulations that have been made by legislators and the values of justice and usability.

Therefore, in the prosecution of criminal acts resulting from the administration of *binary options*, it is important to do a regulation related to commodity futures. In addition, it is important to determine who can be held accountable, whether it is a person or a legal entity. Thus the realization of a just punishment.

## 2. *Binary Option Trading Law Enforcement in Indonesia*

Law enforcement is the process of making efforts to enforce or actually function legal norms as guidelines for behavior in traffic or legal relations in social and state life. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce law by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who enforces normative rules or does something or doesn't do something based on the norms of the applicable law, means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, Law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and ensure that a rule of law runs as it should. In ensuring the enforcement of the law, if necessary, law enforcement officials are allowed to use force [9].

In the relationship between social welfare and social defense, aspects outside the criminal law (penal) must be considered, namely the non-penal approach. Non-penal efforts can be carried out with a techno-prevention approach, namely by building and raising the sensitivity of citizens and law enforcement officers, an educational or moral approach, a global approach (international cooperation) and a bureaucratic approach [10].

CoFTRA has the authority to make technical guidelines regarding the PBK mechanism, grant permits in the PBK sector, conduct inspections of parties who have permits in the PBK sector, conduct investigations on any party suspected of violating the provisions of the PBK Law. Futures trading needs to be regulated because futures trading is a complex business activity, managing public funds (margin), protecting the community from harmful PBK practices, and to provide legal certainty that is able to provide business certainty for the parties involved. In addition to CoFTRA, the Police as part of the criminal justice system have the right to enforce the law against the occurrence of a crime. The existence of alleged gambling practices against Binary Options compared to investment is a signal for law enforcement to immediately take further preventive action, by coordinating with related parties such as Diskominfo, CoFTRA and also socialization, education through mass media. For example, when a victim's report is received regarding the loss he has suffered, from then on there should have been no more similar advertisements containing Binary Options, because if there were still things it would be strange. Prevention efforts apart from taking action are important, given that CoFTRA is not yet optimal

in implementing and supervising the parties in futures trading and the public's lack of understanding of the futures trading mechanism and its various modus operandi.

#### 4. Conclusion

There is currently a lot of reporting because the implementation of Binary Options is very detrimental to the community, this is exacerbated by the lack of public understanding regarding Binary Options. In an effort to protect the victim's newspaper from Binary Option, threats to the perpetrators have been spread in various laws and regulations such as the Criminal Code, the ITE Law, and so on. In this regard, the importance of building infrastructure and regulations related to commodity futures trading that is more massive through various socializations and education as an effort to prevent the occurrence of criminal acts is part of law enforcement. Restitution for losses and social sanctions are seen as appropriate punishments for perpetrators considering that the imposition of imprisonment is deemed not to provide justice for the victim. Synergy and integration of law enforcers in dealing with criminal acts due to the implementation of Binary Options which is seen as gambling activities must be carried out in an active way. This means that law enforcers prioritize prevention efforts as well as prosecution.

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