



## The Legal Problems of Weakness Supervision of Binary Option in Indonesia

Ahmad Yunan Salsabilla Mafaza<sup>1</sup>, Dona Budi Kharisma<sup>2</sup>

<sup>1</sup>Faculty of Law, Sebelas Maret University, Indonesia

<sup>2</sup>Lecturer Faculty of Law, Sebelas Maret University, Indonesia

Email: <sup>1</sup>ysmafaza@gmail.com, <sup>2</sup>donabudikharisma@staff.uns.ac.id,

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### ABSTRACT

This article aims to find out and assess the forms of binary option supervision in Indonesia contained in statutory regulations. This article discusses the legal problems of the weakness of binary option supervision in Indonesia. This research uses normative research methods using primary and secondary legal materials collected using literature studies with a statutory approach.

This study found that although supervision of commodity futures trading in Indonesia has been carried out by Bappebti, there are still problematic weaknesses in supervising binary option trading which is currently a new trend in Indonesian society. Futures trading in Indonesia is regulated in Law No. 10 of 2011 concerning Commodity Futures Trading. Bappebti's supervision has legal problems, namely in the form of the absence of a special regulation on binary option trading, lack of education for the public, imposition of sanctions that are less strict, and the existence of legal vagueness. Bappebti is expected to have a legal strategy in optimizing binary option supervision in Indonesia in the form of: making strict regulations, socializing to the public about the dangers of illegal investment, increasing financial and investment literacy, and can cooperate with foreign regulators to improve binary option supervision in Indonesia.

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### INTRODUCTION

Due to the development and advancement of technology today, investment is one of the fields affected by technological developments and advances where it can attract investors and make investment activities more effective and efficient. Online trading includes facilities provided by a broker or securities that make it easier for investors to use their devices to access their investment activities so that they can make a decision (Pradnyadani, 2019: 179).

One of the online investment activities that has become a public conversation lately is binary option trading. Binary option is an instrument in online trading. Traders can carry out trading activities in the form of foreign exchange, crypto asset trading, stocks, or certain commodities by guessing the price of the asset whether it goes up or down. It can be said that binary option trading is a new activity and product in the world of investment, transactions made by investors in binary options are carried out with the investor's ability to estimate fluctuations in the value of the derivative whether it will rise or fall in a certain period, in determining the estimated rise or fall the investor can put some money, so

that if the estimate is correct then the investor gets a predetermined profit, but if it is wrong then the investor will lose the money placed in determining the estimate. Currently, binary option activities can be carried out through the Over the Counter (OTC) market as a trading method where market participants do it directly, such as through binary option trading platforms such as Binomo, Olymptrade, IQ Option, and others. The rolling issue of binary options does not only occur in Indonesia but also occurs in various countries, including Europe has banned binary options by The European Securities and Markets Authority (ESMA) on the grounds of protecting investors due to the lack of transparency of binary option activities. In addition, in Austria, through The Austrian Financial Market Authority (FMA) warned that this binary option is a high-risk, speculative, and complex trade and risks considerable harm. The FMA also explains that binary options are often offered by unauthorized investment companies, this is related to the existence of fraud which has an impact on law enforcement on these cases being difficult to uncover (Danastri Puspitasari, 2021: 641).

The issue of binary options in Indonesia itself is currently a trending topic because the ease of features offered in carrying out investment activities in binary options increases public interest in trying one of these investment activities. However, until now, both the Financial Services Authority (OJK) as a financial services supervisor and the Commodity Futures Trading Supervisory Agency (Bappebti) as a commodity trading supervisor have not licensed binary option trading. It is known that during 2021 Bappebti and the Ministry of Communication and Information have blocked unlicensed commodity futures trading pages and gambling wrapped in trading activities as many as 1,222 pages on the internet. The platform has no legality in Indonesia, so if a dispute occurs, Bappebti cannot facilitate the issue (<https://bappebti.go.id>). This can be attributed to the large number of people who are not yet aware of binary option activities that are considered investment activities, as well as being an urgency related to the supervision of binary option trading against the presence of this type of investment whose problems are increasingly complex and troubling for the community.

Therefore, based on the description above, it is necessary to study further what are the legal problems of supervising binary option trading as a futures commodity in Indonesia, as well as how legal strategies can be carried out to optimize the supervision of binary option trading in Indonesia.

## METHOD

This article is a normative legal research. Normative legal research is conducted by examining existing legal materials or focusing on library materials and secondary data which includes primary legal materials and secondary legal materials. (Marzuki 2014) defines normative legal research as research based on legal materials (library research) which focuses on reading and studying primary and secondary legal materials. The purpose of this research is to produce an argument, theory or new concept as a problem solving for the legal issues being studied by the author. This research is an evaluative research that aims to find out and assess the sustainability of a policy, not only getting the conclusion that the policy has been implemented properly or not, but also knowing the efficiency of the implementation carried out, what is the cause of this, and the location of the weak points (Arikunto, 2010: 37). This research uses a statutory approach. The Legislative Approach is an approach that is carried out by examining several laws and regulations related to the legal issues discussed. The author uses this approach because he wants to know and analyze the legal certainty and/or conformity and harmony between laws and regulations with one another or with regulations related to this discussion (Marzuki, 2014: 136). The case discussed in this study is about binary option supervision. The legal material collection technique used in this legal research is a library research technique. This legal material collection technique is carried out by analyzing, reviewing, and reading legal materials (primary and secondary) based on the approach used while staying within the limits of the topic of discussion being studied.

## RESULT AND DISCUSSION

The losses incurred by various investors in Indonesia with the implementation of binary option practices is a problem that is starting to occur frequently. The occurrence of these losses is in line with the growth in the use of social media and the use of devices in society. At this time the supervision of binary options in Indonesia still has very clear obstacles. The main obstacle to binary option supervision occurs because there is no clear legal affirmation regarding which institution is responsible for the supervisory duties. However, in its implementation, supervision of binary option practices in Indonesia is currently carried out by Bappebti, this is regulated in Law No.10 of 2011 concerning Amendments to Law No.32 of 1997 concerning Commodity Futures Trading.

Bappebti which has the authority to supervise commodity futures trading in Indonesia which is regulated in Law No. 10 of 2011 concerning Amendments to Law No.32 of 1997 concerning Commodity Futures Trading. Basically, it can conduct guidance, regulation and supervision of futures trading. The purpose of the authority possessed by Bappebti based on Article 5 of Law Number 32 of 1997 concerning Commodity Futures Trading is to cover 3 (three) main issues, namely "(1) Realizing regular, fair, efficient and effective futures trading activities and in an atmosphere of fair competition; (2) Protecting the interests of all parties in Futures Trading; and (3) Realizing Futures Trading activities as a means of price risk management and transparent price formation".

The implementation of binary option supervision which is ultimately carried out by Bappebti is carried out based on the authority it has which is emphasized in Article 6 letter r that it can "take necessary actions to prevent public losses as a result of violations of the provisions of this Act and / or its implementing regulations". In addition, Bappebti can also do other things aimed at providing legal certainty for the implementation of commodity futures in Indonesia. On the basis of this authority, Bappebti has been intensively supervising binary options since the last few periods. However, the less than optimal supervision of binary options in Indonesia leaves unresolved legal problems, among others:

1. There are no regulations governing binary options specifically in Indonesia.

There is still a lack of rules or regulations that specifically regulate binary options in Indonesia. As a result, there are no definite provisions in terms of supervision and problem solving related to binary options.

The lack of clarity in the regulation of binary options in Indonesia can allow practices that harm investors to continue without proper supervision and enforcement from the relevant authorities. This can create difficulties for investors who wish to protect their investments or resolve issues related to binary options.

The lack of clarity in the regulation of binary options in Indonesia also makes it difficult to enforce the law against binary options companies that commit fraudulent practices or market manipulation. Without clear regulations, relevant authorities may find it difficult to determine the limits of supervision and legal action that can be taken against practices that harm investors. On the issue of binary options, legal development strategies can be carried out by efforts to create legal certainty itself. In connection with the current supervision, it is also not certain which institution is responsible for the implementation of binary options because there are no statutory provisions governing it. If there are provisions for the implementation of binary options then automatically the implementation of supervision will also be implemented. The implementation of this supervision can then have major implications in people's lives because investors as consumers will receive legal protection in the event of losses that befall them.

2. Lack of public understanding and awareness of financial literacy and the risks of following binary options trading.

Over the years, governments have tried to provide counseling and strong warnings for those involved in illegal investment transactions. Indonesia's Financial Services Authority (OJK), for example, continues to warn domestic and foreign investors about the existence of opaque, sometimes even illegal, online platforms or companies that offer lucrative investment

opportunities (Lestari, 2022). People's access to non-investment products under the guise of trading, such as Binary Options, is currently hampered by the fact that they are not equipped with knowledge about investment products. The public must also pay attention to the licensing and legality of a company engaged in investment, especially Binary Options which has claimed many victims.

The public's lack of understanding about binary options can worsen the situation and make it difficult to monitor and take appropriate legal action against binary options companies that engage in practices that harm investors. People who are not well educated about binary options can find it difficult to distinguish between companies that carry out safe practices and companies that carry out harmful practices.

To overcome the legal problems associated with the weakness of binary options supervision in Indonesia, there needs to be an effort to increase information and education about binary options and their risks. This can be done by providing clear and easy-to-understand information about binary options, as well as educating the public about healthy and safe investments.

3. The many complaints from investors and certain frauds have caused many countries to ban or tighten the rules on binary options.

In various countries have banned or tightened the rules regarding binary options due to complaints from investors and fraudulent practices committed by some binary option companies.

Some countries such as the United States, Canada, Israel, Belgium, and Australia have banned binary options due to fraudulent practices committed by some companies. In the United States, financial regulators such as the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have warned the public about the fraudulent practices of binary options and have taken legal action against some binary options companies that commit unsound practices.

In other countries such as the UK and the European Union, rules regarding binary options have been tightened to protect investors from unfair practices. In the UK, the Financial Conduct Authority (FCA) has tightened the rules on binary options and requires binary options companies to obtain a business license and provide clear and transparent information to investors.

Strict regulation of binary options and strict enforcement against unfair practices are essential to protect investors and maintain public confidence in financial markets. Therefore, Indonesia also needs to increase supervision and legal action against binary options companies that commit unfair practices, as well as tighten regulations on binary options to protect investors from unwanted financial losses.

4. The absence of strict legal action against binary option companies so as not to cause a deterrent effect

In Indonesia, the absence of strict legal action against binary options companies can be problematic in the supervision of binary options. When binary options companies commit fraudulent practices, market manipulation, or other violations, if there is no strict legal action taken against them, it will not have a sufficient deterrent effect on the companies. This can take the form of severe sanctions, such as significant fines or criminal prosecution of individuals responsible for harmful practices. With strict and effective legal action, as well as good international cooperation, it is hoped that unlawful binary options companies can be stopped and investors protected from harmful practices. This will help create a safer and more trustworthy environment for those involved in binary options.

5. Legality of binary options: The legality of binary options in Indonesia is still a matter of debate, especially in the context of gambling or investment. This makes it difficult to determine the limits of supervision and legal action that can be taken against practices that harm investors.

The legality status of binary options in Indonesia is still a matter of debate and lacks clarity. The debate is mainly related to whether binary options can be categorized as a form of gambling or investment.

In the context of gambling, binary options are considered similar to betting or wagering because they involve predicting the movement of asset prices within a certain period of time. In Indonesia, gambling is legally prohibited except for some specifically regulated and permitted forms of gambling, such as lotteries and casino games operated by the government. However, binary options can also be considered a form of investment where investors seek to profit from fluctuations in asset prices. In this context, binary options can be seen as financial instruments similar to stocks, bonds, or other derivatives.

Due to the unclear legal status of binary options in Indonesia, it is difficult to determine the appropriate limits of supervision and legal action against practices that harm investors. Financial regulators in Indonesia, such as the Financial Services Authority (OJK) and the Commodity Futures Trading Supervisory Agency (Bappebti), have not provided clear guidance regarding the regulation of binary options. However, it should be noted that although the legality status of binary options is still being debated, the public is urged to be cautious and aware of the risks associated with binary options. Binary options are a very risky investment, and there are many cases of fraud or harmful practices associated with binary options.

In this regard, it is important to conduct in-depth research before engaging in binary options and only transact with companies that are trusted and regulated in reputable jurisdictions. In addition, following the guidelines and advice of existing financial authorities, such as the OJK, is also a wise move.

## CONCLUSION

Supervision of binary options in Indonesia still has very clear obstacles. The main obstacle to binary option supervision occurs because there is no clear legal affirmation regarding which institution is responsible for the supervisory duties. However, in its implementation, supervision of binary option practices in Indonesia is currently carried out by Bappebti, this is regulated in Law No.10 of 2011 concerning Amendments to Law No.32 of 1997 concerning Commodity Futures Trading. The implementation of binary option supervision, which was eventually handed over to Bappebti, then Bappebti since the last few periods of time has been very intensively conducting supervision of binary options. However, the lack of optimal supervision of binary options in Indonesia still leaves unresolved legal problems.

Problems that have not been optimized in the supervision of binary options in Indonesia, which includes: There are no regulations governing binary options specifically in Indonesia, Lack of understanding and awareness of the public about financial literacy and the risks of following binary option trading, The number of investor complaints and certain frauds that have caused many countries to ban or tighten the rules regarding binary options, The absence of strict legal action against binary option companies so as not to cause a deterrent effect, problems regarding the legality of binary options: The legal status of binary options in Indonesia is still a matter of debate, especially in the context of gambling or investment. This makes it difficult to determine the limits of supervision and legal action that can be taken against practices that harm investors.

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