

Juridical Analysis of Law Enforcement of Illegal Investment Affiliates in Indonesia

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Abstract. The goal of this study is to provide a legal analysis of Indonesia's law enforcement of illicit investment affiliates. By studying the appropriate legal provisions and what has occurred empirically in the field, this study employs a juridical-empirical method. Secondary legal sources are consulted. According to a review of legal sources, the affiliate or influencer who promotes the public to invest in illicit binary options violates sections of the Information and Electronic Transactions Law, the Criminal Code, and the Money Laundering Act (TPPU). According to several legal experts, affiliates or influencers who contribute material regarding gambling may be subject to Article 27 paragraph 2 of the Electronic Information and Transactions Law. Additionally, there is Article 28 paragraph 1 of the Electronic Information and Transactions Law, which criminalizes affiliates for disseminating false news that causes in financial losses for victims, who face a maximum term of 20 years.

Keywords: Analysis; Juridical; Law Enforcement; Illegal Investment

1 Introduction

In the era of rapid globalization, its progress has forced the transition of a previously traditional society to finally change towards modernity to neo-modernity. The economic sector is one aspect that is experiencing very fast development as a result of the globalization era. The changes that occur make it easier for economic movements in one country to become interrelated [1].

The rise of news of illegal investments both offline and online has had a bad impact on thousands of victims. Some illegal investments offer high profits and tend to be easy to get because usually potential victims are given a demo account to practice before playing on a real account with a certain number of deposits [2]. Victims and potential victims are generally from groups of people who have minimal information about literacy and are marketed by influencers through social media accounts, this is triggered by a lack of knowledge so that potential victims will be easily tempted by the enormous benefits offered by these influencers, one type of Such illegal investments are binary options [3].

Fluctuating foreign exchange or foreign currency transactions depend on economic conditions and political conditions in the respective countries. Three Parties interested in conducting transactions are investors, exporters, importers and speculators based on the need for currency conversion [4]. This transaction can be done in various ways, one of the foreign currency buying and selling transactions that is currently popular and becoming a trend is binary

options. Binary options are a trading effort carried out by buying foreign exchange transactions or foreign assets online based on exchange rate movements or fluctuating market patterns.

Binary options trading is increasingly recognized by the public with online promotions carried out on the YouTube site, which is one of the largest video sites in the world. In addition to flashy advertisements, binary options trading is also used as content material, as has been done by Youtuber Indra Kenz. Based on pre-research observations, the author found that Alan Suryajana's YouTube channel contains content on tips for trading binary options to the achievements that have been obtained from trading. The binary option system is a new form of online business for profit, and has been known to the general public in Indonesia, where the majority of the population is Muslim, so it is necessary to make an analysis of the halalness of the system which is not yet widely available [5].

The purpose of illegal investment is, of course, very contrary to investment practice, because it is detrimental, and damages investment law, finances, and hinders national economic activities. Several regulations governing this matter may have been violated, such as the provisions of Article 46 of Law Number 7 of 1992, Law Number 10 of 1998 concerning Banking. Although there have been many regulations governing illegal investment, this kind of investment activity continues to grow and attracts a lot of interest in membership from the community. This problem is of course closely related to the legal attitude and culture of the community itself considering that in general the people involved as well as victims of fraudulent investments are legal laymen, so the level of awareness and understanding of the law relating to investment in particular is questioned [6][7].

2 Method

This study uses the juridical-empirical method by examining the applicable legal provisions and has happened empirically in the field. The types of legal sources used are secondary legal sources. Article 45 paragraph (2), Article 27 paragraph (2), Article 45 paragraph (1), and Article 28 paragraph (1) of Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions shall be considered. The collecting of legal sources is accomplished through the use of a literature review technique. Additionally, the data analysis technique employed is qualitative analysis.

3 Result and Discussion

3.1 Analysis of Public Perceptions of Illegal Investments and the Authority of the Financial Services Authority

Today many people are invited to invest in instruments that are made as if legal investment is one of the government's focuses. The number of victims who enter into this illegal business is certainly very detrimental to the community and furthermore, law enforcement efforts are often hampered due to the inadequacy of the laws and regulations governing these activities plus the lack of public financial literacy in general which of course will have a bad impact on business. Investment that has been legal [8].

OJK created an Investment Alert Task Force in order to protect clients and increase public trust in the financial services industry. Indonesia's Prosecutor's Office, the Ministry of Trade (Kemenag), the Ministries of Small and Medium Enterprises and Cooperatives, as well as the

Ministry of Communication and Information make up The Investment Alert Task Force, which is responsible for conducting research. The Investment Coordinating Board (BKPM) also plays a role [9].

In previous research conducted by [9] stated that the general public has the perception that many families are still entangled in illegal investments such as binary options, some of them report to the authorities and provide information to neighbors or close friends or other customers with the aim of so that the number of victims does not increase, but some others do not do that. Eradication or handling of illegal investments is under the auspices of the Investment Alert Task Force, every product or business entity that is under the auspices is definitely legal and if the company commits a violation, its business license will be immediately revoked by the Investment Alert Task Force.

Law No. 21 on the Financial Services Authority and OJK Regulation No. 1 POJK/2013 on Consumer Protection in the Financial Services Sector mandate OJK to perform consumer protection in accordance with the mandate set by these laws. The OJK's attempts to strengthen consumer protection in the financial services sector and to increase public confidence in the business. As a result, the Investment Alert Task Force was established by the OJK in 2007.

3.2 Binary Options in Indonesian Legal View

It is understood that binary options trading is a bet on an asset in order to make a profit quickly. Betting is done on a graph that depicts the increase and decrease in the value of an asset. If the user correctly guesses the possible increase/decrease in the graph within the specified time, then this is the condition of the user as a winner and getting a multiple of the amount of money based on the value bet. The percentage you get depends on the type of account you have.

Based on this, it can be concluded that the absence of the seller is due to buying and selling transactions which are also less clear in the practice of trading binary options. The reason is that in practice, binary options trading platform users, especially Binomo, are only faced with a system that runs automatically. So even though there are transactions in it, this is done by applying the concept of self service and the rest is done automatically. The use of traditional services by Binomo is only limited to customer service to respond to customer complaints or questions by providing customer service features if needed.

Binary options, such as the Binomo application, are categorized as foreign money trading, but in practice the application also deceives potential victims by informing them that the victim's assets will be distributed to various investment instruments such as stocks, bonds, and so on. Law No. 3 of 1997 on commodity futures trading, as amended by Law No. 10 of 2011 on Amendments to Law No. 32 of 1997 on Commodity Futures Trading, governs forex trading in Indonesia. It states that three entities are involved in commodity futures and foreign currency trading: the Commodity Trading Supervisory Agency (BAPPEBTI), the Futures Exchange, and the Clearing House. The ability to award business licenses to futures exchanges, futures clearing institutions, futures brokers, futures advisors, and managers of futures fund centers is mentioned in article 6 of Law No. 10 of 2012 [10].

In its use, the application uses internet access to access the company's website provided by the broker, but the company that is run does not have the status of a legal company and is domiciled abroad, This, of course, violates Article 18 of Law No. 11 of 2008 on Information and Electronic Transactions; as is well known, the parties with authority over the selection of law enforcement for international electronic transactions are brokers and traders in this case.

3.3 Law Enforcement against Binary Option Investment Affiliates

An increasing number of people are engaging in illegal investment, which is also known as investment fraud. It's more directly linked to criminal law because of the practice of illegally collecting funds from the public, and therefore the standards of the Criminal Code can be used to analyze it. For now, ensuring the safety of the community is more important than ever because many investors lack basic financial literacy while also missing legal knowledge and a strong drive to get results through illegal means. Criminal Code Article 378, Law No. 10, 1998, and Law No. 7, both from 1992, all offer legal protections for financial institutions. In addition, the Financial Services Authority provides legal protection in an effort to promote financial literacy and awareness, which is a preventative strategy, among the general people.

The Electronic Information and Transactions Law, the Criminal Code, and the Money Laundering Act have all been cited against a number of affiliates (TPPU). Article 27 paragraph 2 of the Electronic Information and Transactions Law may be applicable to affiliates and influencers who post gambling-related content, according to a number of legal experts. Under Article 28 paragraph 1 of the Electronic Information and Transactions Law, affiliated parties are also responsible for disseminating false information that causes harm to victims.

Based on the cases that have been followed up, several affiliates or influencers who are proven to have received funds from the reported perpetrators of the Money Laundering Crime are subject to the provisions in Article 5 of Law 8 of 2010, Article 5 threatens anyone who receives funds that are suspected of originating from a crime. Furthermore, in article 10 concerning people who assist in the perpetrators of the crime of money laundering, they will be subject to the same punishment. Both face a maximum prison sentence of 20 years. Investment crimes are very detrimental to society and damage the joints of the law, but it is also undeniable that it is easy for people to find shortcuts in connection with the effort to get profits in a short time, without hard work, although not a few people are actually aware and know that the investment activities they are participating in are an illegal activity. These community empowerment efforts are intended to empower and increase understanding that efforts to get profits can only be reached by working hard and smartly [11].

Furthermore, investigators also examine parties who hinder the process of investigating cases by law enforcement. Provisions that ensnare obstructive acts are regulated in Article 221 of the Criminal Code and Article 21 of the Law on the Eradication of Criminal Acts of Corruption. The article prohibits anyone from intentionally hiding or assisting a person who is being charged with a crime so that the person being prosecuted is protected from legal proceedings, such activities as obstructing, complicating, and covering up or complicating the investigation and prosecution process.

Because community understanding and legal awareness of investment activities is very important, the community must have intelligence and not be easily swayed by grandiose promises of large profits or rewards in a short time period, because even though they are physically limited liability companies or cooperatives, legal entities may be just a cover to convince the public that the managers of investment activities are actually limited liability companies.

4 Conclusion

Based on the analysis of legal sources, it can be seen that the affiliate or influence who invites the public to participate in illegal binary options investment violates the articles in the

Law on Information and Electronic Transactions, Criminal Code, and Money Laundering (TPPU). Several legal experts say that Article 27 paragraph 2 of the Electronic Information and Transaction Law can ensnare affiliates or influencers who submit information about gambling. In addition, Article 28 paragraph 1 of the Electronic Information and Transaction Law also ensnares affiliates for spreading false news that results in losses for victims who are threatened with a maximum sentence of 20 years.

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