

Efforts to Prevent Money Laundering in the Form of Binary Options Using Banking Prudential Principles

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Abstract

After facing the Covid 19 pandemic, the country of Indonesia has been pushed to improve the economy with various efforts, one of which is by providing convenience in investing. At present, with the support of rapid technological developments, investment activities have emerged with the Binary Option model, where investment activities are online (“call” and “put”). As a result of these developments, there is a problem where investment activities using the Binary Option model are used as a means of money laundering, as in the case of Doni Muhammad Taufik who committed fraud under the guise of binary option Of Quotex platform. Considering that there are no regulations regarding the use of Binary Options yet, so there have been no efforts to take precautions, therefore efforts are needed to prevent money laundering by means of Binary Options. The purpose of this study is to see how Binary Options are regulated in Indonesia and how to prevent money laundering through Binary Options. Normative juridical research methods with statutory and conceptual approaches. From this research it was found that Binary Option regulations did not yet exist because they did not receive permission from Bappepti to operate because they were considered gambling activities under the guidance of investment and trading. Then, as an effort to prevent money laundering through Binary Options, you can establish a special institution regarding the party who became the reporter, where the special institution was created to supervise and monitor activities binary options which do not have permission from Bappepti.

Keywords: *Prevention; Money laundering*

Introduction

The Republic of Indonesia is currently focusing on increasing economic growth after the Covid-19 Pandemic which caused a drastic decline in the Indonesian economy, making the government only focus on the security and health of the community and the country, by making various policies to tackle the Covid-19 Pandemic and allocating the entire budget in the health sector.

Currently, the government in terms of economic recovery is trying to increase investment by providing ease of doing business in terms of licensing to invite foreign investors, with the hope of achieving sustainable development.

The current developments are very rapid both in terms of economy and technology, where both are integrated to make it easier for everyone to carry out activities in terms of transactions, increasing financial literacy and investment. The term investment is currently familiar to the public, where the term investment is interpreted as an activity carried out by a person or legal entity by setting aside part of their income so that it can be used to carry out a business activity in order to obtain results or profits. (Sembiring, 2018) In addition, investment can also be interpreted as an activity of placing funds in a type of asset for a certain period with the hope of obtaining income and/or increasing the value of the investment in the future (Sayoga, 2022).

Currently, Indonesia is experiencing a boom in investment activities with various models among the community. One of these investment models is *Binary Option*, which means trading that is done online. *Binary Options* are often referred to as *Binary Option Trading*, which means carrying out activities to determine the movement of asset values with a certain time period that has been selected through a binary system by determining the predicted fluctuation of the reference price to obtain a predetermined profit (*fixed payout*) or conversely lose the previously determined value. (Puspitasari & Rachim, 2021) *Binary Option* can be said as a system of predicting whether an asset will rise or fall within a certain period of time or known as the "*call*" and "*put*" system. This *Binary Option* moves through various media or *platforms* such as Binomo, Olymptrade, Quotex, IQ Option, etc (Lestari & Arifin, 2022)

Binary Options can be said to be an online gambling activity disguised as *trading* in commodity futures trading, so it is known as *Binary Option Trading*. *Binary Options* on various *platforms* currently have illegal status, do not have legality in Indonesia, so they have great risks for their users who are called *traders*. Bappepti (Commodity Futures Trading Supervisory Agency) is an institution that carries out coaching, regulation, development, and supervision of futures trading as referred to in Article 1 number 3 of Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading, in this case Bappepti continues to strive to make efforts to block every *binary option platform*, but even though the *binary option platform* is always blocked, there will always be new *platforms* emerging. *Binary Option Trading* is feared to have negative effects, especially becoming a place to commit fraud, especially money laundering, so that it can harm users or *traders* who invest through the *binary option platform*.

Case of investment disguised as *trading* has occurred in several cases, one of the recent cases is the case of Doni Muhammad Taufik alias Doni who committed fraud disguised as *binary options* on the Quotex *platform*. Doni in decision No. 576 / Pid.Sus / 2022 / PN Blb, dated December 15, 2022 in his verdict was declared to have intentionally committed the crime of spreading false news and misleading consumers and was sentenced to 4 years in prison. However, in the appeal made by the prosecutor, the Bandung High Court decision No. 1 / Pid.sus / 2023 / PT BDG burdened Doni with 8 years in prison and was declared to have committed money laundering, because it was proven that Doni received personal benefits when using the Quotex application / *platform* which was then used to buy several assets such as luxury cars, luxury sports motorbikes, etc. This High Court decision was correct in declaring that the defendant Doni had committed the crime of money laundering. With this high court decision, the first-level decision has been annulled, namely decision No. 576/Pid.Sus/2022/PN Blb.

From the above case, it shows that there is a new mode of committing money laundering crimes, namely through *Binary Options*. This is certainly an important concern for the state to take preventive measures. Considering that the crime of money laundering in Law Number 8 of 2010 concerning the

Prevention and Eradication of Money Laundering, has not yet regulated explicitly regarding the prevention of money laundering through *binary options*. Considering that cases like the above will occur again in the future if prevention is not carried out early.

Seeing the development of the mode of crime of money laundering using *Binary Option facilities* under the guise of *Trading* as a place to carry out investment activities by *Traders* with the aim of covering up the results of the original crime such as fraud, gambling, etc. This is done so that the results of the money laundering appear as money obtained in a legitimate manner. In an effort to prevent money laundering carried out using *Binary Option facilities*, the precautionary principle applied in banking can actually be used.

Based on the problems that have been described, it will be studied further through this research entitled "Efforts to Prevent Money Laundering in the Form of *Binary Options* Using the Principle of Banking Prudence". This research focuses on two problem formulations that will be studied further, namely, *first*, how are the regulations regarding *Binary Options* in Indonesia? and *Second*, how can we prevent money laundering crimes through *Binary Options* using the principle of banking prudence?

Based on the literature search conducted by the author in this study, there are no similarities in the title and discussion in other studies, therefore this study does not contain elements of plagiarism and this study contains elements of renewal. As a comparison to this research, the author describes several other studies that discuss similar issues. First, a journal entitled Accountability of Perpetrators of Money Laundering Proceeds from *Binary Options* on the Binomo Platform, (Suryani et al., 2022) with the formulation of the problem, namely how the perpetrators of money laundering crimes from *binary options* on the Binomo platform are accountable. Second, a journal entitled Efforts to Prevent Money Laundering Crimes in the Form of Cryptocurrency (Bitcoin) Using the Principle of Banking Prudence, (Trisakti & Soponyono, 2021) with the formulation of the problem, namely regarding the existence of *cryptocurrency (bitcoin)* in Indonesia and making preventive efforts that can be done to prevent money laundering through *bitcoin*.

Research Method

The research method that will be used in this study is normative legal research. This study will use primary legal materials and secondary legal materials. Primary legal materials are taken from legislation Number 8 of 2011 concerning the Prevention of Money Laundering Crimes, Law No. 10 of 1998 concerning Banking, Bappepti Regulations, etc. Secondary legal materials are taken from books and journals related to this study. In this study also uses several approaches such as the statute approach, conceptual approach. *This study* will further use a descriptive analytical way of thinking.

Results and Discussion

1. Binary Option Settings in Indonesia

Indonesia is currently going through a critical period of the Covid-19 pandemic which has caused economic growth to decline rapidly, making the government focus on health and security by making policies as an effort to overcome and prevent. On the other hand, during the Covid-19 pandemic, people are competing to find ways to find funds to meet their daily needs by doing many things, supported by sophisticated technological developments, making people open their minds to carry out investment activities in various ways such as investing using the *binary option platform*. The investment offered using the *binary option platform* under the guise of *trading* makes people attracted without finding out in

detail how the background, the working system and the consequences that will arise in the future if they invest in *the binary option trading platform*, this happens because people are easily tempted by the profits offered by *the binary option platform*, considering that the way to invest in *the binary option platform* is so easy to do.

Binary options were first introduced in 2006 through a press conference at the *Chicago Board of Option Exchange* (CBOE) which then became a tradable asset in 2008. *Binary Options* are a new product in the financial world which is basically a derivative whose value refers to the value of assets such as gold or foreign exchange. Transactions in *Binary Options* are carried out by entering a deposit which then estimates the direction of fluctuations in the derivative value, then later will be given a choice whether the value will increase or decrease within a certain period of time. (Puspitasari & Rachim, 2021) If the value increases according to the estimate, you will get a profit, but if on the contrary the value does not match the specified estimate, you will experience a loss. *Binary Option* transaction activities are carried out through the *Over the Counter* (OTC) market which is a trading method that is carried out directly. These activities are carried out in *real time* on various *Binary Option Trading Platforms* such as Binomo, Olymptrade, IQ Option, etc.

Binary Option Trading platforms have started to emerge and become known to the public at least in 2018 which can be categorized as futures trading. Unfortunately, *Binary Options* in Indonesia do not have permission from Bappepti as the Commodity Futures Trading Supervisory Agency in Indonesia as stated in Article 4 of Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading, for the operation of the *binary option platform*, so the *binary option platform* cannot be said to be a futures trading commodity as stated in Article 1 number 1 of Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading. By not fulfilling the category as a commodity, *the binary option platform* is prohibited in Indonesia because the activities in *the binary option platform* only make predictions on *the candlestick* whether it will go up or down, without any traded commodity.

There is no regulation in the use of *the Binary Option Platform Trading* in Indonesia requires people to be more careful when making investments, considering the large number of *Binary Option Platforms*. Trading that does not have permission from Bappepti so that its legality does not exist, so the public needs to be more observant in choosing which *trading platform* has permission from Bappepti. In Indonesia, *trading platforms* that have permission to operate such as MIFX, GKInvest, and many others. *Trading platforms* that have legal status will have a much lower risk than those that do not have legal status.

Although *Binary Options* are prohibited in Indonesia because they are not legal, in several countries such as Austria, Cyprus and the United States they are legal, although with certain requirements.

2.Efforts to Prevent Money Laundering Crimes Through *Binary Option Facilities* with Banking Prudential Principles

In the use of criminal law in Indonesia as a means to combat crime, it does not seem to be a problem, this can be seen from the formulation of laws and regulations that have been formed so far, showing that the use of criminal law is part of the legal policy or politics adopted in Indonesia. The use of criminal law is considered normal and natural, as if its existence is no longer questioned (Muladi & Arief, 2010)

Policies as an effort to combat crime are essentially an integral part of efforts to protect society (*social defense*) and efforts to achieve social welfare (*social welfare*). (Arief, 2016) Therefore, by using a

criminal law policy, it is possible to prevent and overcome criminal acts, especially in the field of money laundering.

Money laundering is a process carried out by disguising or hiding assets resulting from a crime or predicate crime such as corruption, drugs, taxation, gambling, fraud, etc., carried out in the financial system or non-financial system, so that the assets obtained are as if they were obtained legally. Money laundering is an activity carried out by both individuals and organizations on money generated from a particular crime or predicate crime with the aim of hiding or disguising it from law enforcement by using the financial system, so that the money from the proceeds of the crime will become legal money or halal money (Halif, 2017)

Predicate offense is a crime that is a source of illicit money or criminal proceeds which are then hidden or disguised. Predicate offenses are contained in Article 2 number (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, namely corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling, in the banking sector, in the capital market sector, in the insurance sector, customs, excise, human trafficking, illegal arms trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting, gambling, prostitution, in the taxation sector, in the forestry sector, in the environmental sector, in the maritime and fisheries sector, or other crimes that are subject to imprisonment of 4 (four) years or more.

In the case of investment disguised as *trading* carried out by Doni Muhammad Taufik alias Doni who committed fraud disguised as *binary options* on the Quotex platform. In the decision of the Bandung High Court No. 1/Pid.sus/2023/PT BDG, Doni was sentenced to 8 years in prison and was found to have committed money laundering. This clearly shows that the fraudulent act committed is a predicate crime which can then be interpreted as a money laundering crime using the *Binary Option Platform*, because the results or profits from the fraudulent act carried out through the *Binary Option Platform* as a means of money laundering are enjoyed by purchasing various assets. Cases like this will certainly continue to occur if prevention is not carried out at the beginning, considering that the use of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering is only as an *ultimum remedium* or as a last resort in eradicating criminal acts. So that various efforts are needed to maximize prevention so that money laundering does not occur through *Binary Options*.

The existence of a new mode in money laundering crimes using *binary option platforms*, shows the rapid development of technology today but is not used properly for certain interests. Where the mechanism for using this *binary option platform* is very simple, where someone who will use the *binary option platform* registers online through the *platform provider's website*, then enters a predetermined deposit, after that the deposit that has been entered will be used as capital later wagered on a certain duration of time, after that the *binary option platform* will calculate the potential profit obtained from the transaction, the *return range* is estimated at 70% -90% when the underlying asset price goes up or down, where users can choose a time span from seconds, minutes, hours to days. Then as a final step, users will be asked to guess the direction of the asset movement on the *candlestick* whether it will go up or down, if the direction goes up then they will get a profit, but on the contrary if it goes down it will experience a loss. (Ferrario, n.d.) If you see a mechanism like this, it will certainly lead more to gambling activities because there is no product being traded. The use of this *binary option platform* is increasingly popular because its user mechanism is very easy and many also do promotions with the lure of getting big profits like what Doni did in the fraud case as described above. Because it should be remembered that this *binary option platform* does not have permission or legality from Bappepti so its use is prohibited.

As an eradication effort from Bappepti, it has blocked *binary option platforms* that operate without legality. Bappepti, which has collaborated with the Ministry of Communication and Information, has blocked 1,222 domains of illegal commodity futures trading websites and gambling games under the

guise of *trading*, in this case of course *the binary option platform*. That *binary options* are said to be online gambling activities under the guise of *trading* in the field of commodity futures trading, so the government appeals to the public not to be easily tempted by promotions and offers accompanied by the lure of using *the binary option platform*.

Bappepti as an institution that supervises futures trading, of course, in addition to supervising activities that have obtained legality, also has the task of supervising activities that do not have legality. Carrying out eradication efforts is not enough, but must be accompanied by prevention efforts, considering that the blocking efforts against *binary option platforms* that have been carried out have not stopped the emergence of other new *platforms*. Of course, this is very important to note, considering that the existence of *binary options* has become a gateway for criminal acts such as gambling, fraud, etc. which of course could lead to money laundering, such as the case of Doni in the P messenger of the Bandung High Court No.1 / Pid.sus / 2023 / PT BDG with a prison sentence of 8 years and was declared to have committed money laundering, because it was proven that Doni received personal benefits when using the Quotex *binary option platform* which was then used to buy several assets such as luxury cars, luxury sports motorbikes, etc. From this case, it shows that *binary options* can be a vehicle for money laundering.

In preventing money laundering crimes using *the binary option platform*, Bappepti can use the principle of banking prudence. This principle of banking prudence is also known as the *know your customer/ KYC principle*, namely the principle of knowing the customer regulated in Bank Indonesia Regulation (PBI) No. 3/10/PBI/2001 which was amended by PBI No. 5/21/PBI/2003, in Article 1 (2) explains that the principle of knowing the customer is an activity to find out the customer's identity, monitor and report suspicious transactions. In its development, the term *know your customer/ KYC principle* has been changed to *customer due diligence (CDD)*, in Article 1 (7) of PBI No. 14/27/PBI/2012 concerning the Implementation of the Anti-Money Laundering and Prevention of Terrorism Funding Programs, *customer due diligence* is an identification, verification, and monitoring activity carried out to ensure that the transactions carried out are in accordance with the profile of prospective customers, WIC or customers. (Kosasih & Haykal, 2020) There is a deeper principle after CDD, namely *Enhanced Due Diligence (EDD)* which is regulated in Article 1 (8) which means actions taken by the bank against potential customers, WIC or potential high-risk customers including *Politically Exposed Persons* regarding the possibility of money laundering and terrorism financing (Trisakti & Soponyono, 2021)

The principle of *Customer Due Diligence (CDD)* has been adopted in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, in Article 17 which states that the reporting parties are 16 financial service providers and 5 goods and/or service providers, and each institution is required to implement the Principle of Recognizing Service Users as in Article 18, which then each institution must report to PPATK as a form of effort to prevent money laundering. However, Article 17 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering does not include an institution specifically created to supervise and monitor *binary option activities* that do not have a permit from Bappepti, where the institution can be formed under the supervision of Bappepti which is then included in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering.

Bappepti only carries out coaching, regulation, development, and supervision of futures trading that has a permit from Bappepti itself, while those that do not have a permit are not supervised, this is true, but it should be noted that Bappepti in this case should not only exercise its authority limited to those that have a permit, but those that do not have a permit must also be reached by Bappepti. In current practice, there has been a widespread emergence of *binary option platforms* under the guise of *trading* which should be an important concern for Bappepti to make prevention and mitigation efforts so that no *binary option platform activities* can run. If only trying to block *the binary option platform* is very

ineffective, because to stop this practice, the roots must be addressed first, namely by expanding Bappepti's authority to reach futures trading activities, namely *binary options*, forming a special institution to prevent the emergence of *binary options* and can use the principle of banking prudence in the form of CDD and EDD. If there is an institution that specifically supervises activities that do not have permission from Bappepti, it will further reduce the existence of new *binary option platforms* in the future by conducting structural investigations of *binary option platforms* so that they do not only end up blocking but also tracing who created the *platform*, at least finding out the director, monitoring the intent and purpose of the activities carried out whether there is any suspicion of committing a crime or not, then tracing if there are other networks that cooperate with the *binary option platform*, as an effort to cut off the opportunity to create a new *binary option platform*.

The role of banking is also needed to carry out this prevention effort by increasing the principle of banking prudence, because to make a withdrawal of funds obtained in *the binary option platform*, a transfer will be made to a certain bank account. Therefore, banks in this case need to increase their supervision if there is a withdrawal transaction originating from *the binary option platform*, so that must immediately make a report to PPATK. As in the case of Doni Salmanan who committed a crime of fraud by advertising a *binary option platform*, then the results of the crime were disguised through *the binary option platform* so that the original crime could not be seen.

Based on the description above, in an effort to prevent using the principle of banking prudence in the form of CDD and EDD and forming a special institution that can be used as an initial step in supporting the program to prevent money laundering crimes carried out using *binary option platforms*.

Conclusion

Investment activities are currently in great demand among the public, with the presence of various investment methods that are very easy with the aim of facilitating and simplifying the public in investing. One of the methods that is currently in demand is *Binary Option* which presents various *platforms* such as Binomo, Olymptrade, Quotex, IQ Option, etc. However, it is very unfortunate that the presence of *Binary Option* is not welcomed by the government through Bappepti which does not give permission for *binary options* to operate in Indonesia. so that every *binary option platform* that is active will be blocked by the government because it is considered that the activities carried out by *Binary Option* are not in accordance with Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading, because it is not a commodity activity that can be traded but only makes predictions on *candlesticks* whether it will go up or down, like gambling activities but under the guise of investment with *trading*.

In its current development, *Binary Option activities* are used as a means to launder money, such as in the case of Doni Muhammad Taufik alias Doni in the decision of the Bandung High Court No. 1 / Pid.sus / 2023 / PT BDG was proven to have committed a crime of money laundering because he had enjoyed the results of *binary option activities* on the Quotex *platform* by buying several assets such as houses, cars, etc. Efforts to prevent money laundering through *binary options* can be carried out by establishing a special institution as in Article 17 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes regarding the reporting party, where the special institution is created to supervise and monitor *binary option activities* that do not have permission from Bappepti, as well as by implementing the principle of banking prudence in the form of CDD and EDD as anticipatory measures so that no *binary option platforms* will emerge in the future even though they have been blocked by the government.

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