

The Criminal Law & *Muamalah* Studies on the Affiliator Role of Binary Option Transaction

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Abstract. *The development of the digital world today has not been fully followed by the development of human capabilities in the digital field. This is what gives rise to various problems, especially in facing the trend of digital transactions, such as Binary Option. The most obvious impact in digital transactions is the emergence of Affiliators who take huge profits on the losses of their transaction partners. Regarding to above statement, this study aims to explore the role of trading affiliator in digital transactions, the performative function of criminal law, and the perspective of sharia contracts in Muamalah about Binary Option. The method of this research is normative research using a statutory approach in criminal law and sharia contracts in Muamalah. The results showed that the role of Affiliators in Binary Option is to influence business people to enter the circle of online type transactions, by promoting that Binary Option are fast, easy and very profitable transactions. In the perspective of criminal law shows that those committed by Affiliators in Binary Option are included in the criminal act of fraud. Likewise in Muamalah, digital transactions such as Binary Option are classified as prohibited transaction because it contains elements of Gharar and it is not called selling in Islam.*

Keywords: Affiliator; Binary Option; Criminal; Muamalah.

1. INTRODUCTION

Binary Option is a form of modernity that shows the power of the digital transaction system. It provides at least three fundamental dilemmatics. First, Binary Option is a trading instruments with an online system based on price guesses with a profit from 60% to 90% or losses will lose all capital in the transaction. Second, Binary Option provides two options for transactions, namely up or down. Thirdly, Binary Option also shows the result of transactions automatically both losses and profits. Binary Option trading is increasingly known to the public since the Binary Option Trading Platform Binomo has appeared in various online media advertisements. Online promotion carried out in YouTube as an advertisement is successful to grab the attention of the netizen in Indonesia, where the majority of the population is Muslim. Beside that, Binary Option has become one of the YouTube content regarding to the tips in trading Binary Option such as on the IndraKens YouTube channel, Scientific Traders, King Traders, Bhi Irawan and so on.

Binary Option or Binary Option transactions allow traders to buy and sell assets of money that have been deposited. This kind of trading is considered an easy business to get a

profit worth 10\$ or IDR 150.000. However, if there is a loss, the asset will fall to the broker or bookie with a 70% commission that will be given to the affiliator. As shown in the following chart:



This system makes the interpretation of digital transactions are never quiet and as a symbol of the development times by times. Binary Option developed into a trend with the highest predicate that ever achieved. However, it is also not far from the occurrence of various problems. This can be seen from several reported cases of 118 victims with losses IDR 72.138.093.000.¹ In addition, the Indonesian Trade Ministry has blocked 1,222 illegal commercial futures trading websites under the guise of trading throughout 2021.² Indonesian Ministry of Communication and Informatics has closed the 92 Binary Option content and the government has dealt with 5,429 illegal fintechs.³ 1,300 evidences of loss reports to suicides of victims who suffered losses of hundreds to billions of rupiah. Victims are tempted by the fantastic results in such a short period of time as promoted by the Affiliator.

In general, this research originated from the author's tendency to review the literature regarding the performative function of criminal law and *Muamalah* contracts on the trend of digital transactions. First, digital transactions, both conventional and sharia, are used as a form of optimization to support Indonesia's economic recovery during covid-19, such as research conducted by Muhammad Alfarizi.⁴ Beside that, research conducted by Nur Syamsi Anwar regarding Cryptocurrency transactions as a form of Global investment seen through the lens of Islamic Law. This discussion will be explained about criminal law and *Muamalah* contracts on Binary Option which is demand public by measuring the role of Affiliator trading in these transactions.

This article is intended to complement the lack of literature studies that author has mentioned. At least three questions are asked here, first, what is the role of trading Affiliators in Binary Option transactions. Second, how does criminal law highlight digital transactions that are being loved by the public. Third, how does the *Muamalah* contract

¹ "Kasus Binomo Telan 118 Korban, <https://nasional.sindonews.com/read/749393/13/kasus-binomo-telan-118-korban-kerugian-rp7213-miliar-1650495876>, 24 March 2022."
² Ekbis, "Situs Investasi Bodong, <https://ekbis.sindonews.com/read/674897/178/1222-situs-investasi-bodong-diblokir-ada-binomo-cs-1643806955>, 2 May 2022."
³ Republika, "Buntut Kasus Investasi Bodong, <https://www.republika.co.id/berita/r7oumh9417000/buntut-kasus-investasi-bodong-indra-kenz-akses-binary-option-ditutup>, 12 March 2022."
⁴ "Optimizing The Use Of Sharia Digital Transactions To Support Indonesia's Economic Recovery, *JIET (Jurnal Ilmu Ekonomi Terapan)*, vol 6 no 1 2021 122-132"

see a blind agreement that occurs between two things that rely on market digitalization. Indirectly, the main purpose of this study reveals all information related to the paradigm of the Binary Option trend phenomenon as one of the online markets through the point of view of criminal law and the *Muamalah* contract as a portrait of a legal state with a Muslim population.

This article assumes that Affiliator trading has a strong role by looking at some of the social impacts in society background as follows, first, Indonesian people with all their lives cannot be separated from the development of digitization. Second, the digital market that continues to skyrocket also offers many conveniences in transactions. Third, Indonesian people are not fully ready to accept the digital market so they need a third party as a mediator between the buying and selling instrument with the transaction object.

This research focuses on the role of Affiliators in digital transactions, criminal law studies and *Muamalah* in assessing the increasingly diverse trends of digital transactions. The author interested in researching this problem because the information in the form of facts and events that occur in digital transactions through the role of an affiliator on Binary Option platforms is a hot issue in the media because it involves many conglomerates and several capital city artists, the importance of reinvigorating the function of criminal law regulation in responding to various similar cases related to digital transactions in the wider community and showing unequivocally for Indonesia as the country that adheres to the most Islam regarding the goodness of the values of *Muamalah* science regulates the terms and conditions in transacting on Islam.

2. RESEARCH METHODS

The type of research used is normative research using a statutory approach and conceptual approach. Furthermore, in this research, the type of data used is secondary data in the form of laws and regulations which are studied in more depth namely Act No. 11 of 2008 concerning Electronic Information and Transactions Jo Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and the Criminal Code related to the fraud article and the *Gharar* concept as well as the provisions of contracts in the *Muamalah*.

The data analysis method uses legal interpretation techniques, namely in the form of social interpretation by paying attention to the phenomena associated with these laws and regulations, systematic interpretation by linking a statutory regulation with the entire legal system, and hermeneutics or interpretation of meaning in a text in interpreting the principles contained in laws and regulations in order to obtain valid research results.

3. RESULT AND DISCUSSION

3.1. The Role of Affiliator Trading in the Digital Market of Binary Option Trading

Affiliator is the origin of the word *Affiliate* which means member or branch. Affiliator itself is a market term in the form of promotion about something against others.⁵ If it is

⁵ Natarina, R.A Emilia dan Cendera Rizky Anugrah Bangun, "The Use of Affiliate Marketing in Improving Pegipegi Sales, Jurnal The Messenger, Volume 11, No. 2, (July 2019)."

interpreted more deeply, it can be said that affiliation is an activity to influence others to obey or follow what is offered by an affliator.⁶ In the case of a digital platform or a means of meeting users with instrument providers, an Affliator is a person who makes an offer to the target consumer by showing the ways and benefits of the profit.⁷

Affliators have a big role to play in offering and influencing potential new members to join by showing the results of online sales of transactions such as luxury houses, sports cars until savings of billions of rupiah on their bank account. The offer is generally published on social media with convincing statements. The Affliator itself is divided into several forms including the following:

- Mega affliators are people who come from among artists, sportsmen and musicians. This type of Affliator has many followers on their social media so it is very effective in promoting the platform massively. This is due to the public's trust in these figures who are considered trustworthy.
- Macro affliators are people who comes from Instagram famous called as *Selebgram*. *Selebgram* are considered new figures who have strong figures and have interesting media content.
- Micro affliator are people who specifically has a follower count of 5,000 to 30,000 on their social media. The marketing carried out is fairly effective in offering platforms results on social media.
- Nano affliators are people who effectively acts out a digital platform to family, friends and co-workers. This type of Affliator is quite effective in influencing the surrounding environment based on close relationships with other people.

Affliators deliberately disseminate information about Binary Option for the purpose of personal gain. The profit is a commission or rebate from each new member who joins. Affliators easily influence people who have not been educated by financial literacy. The offer of Affliators in funding the community was fairly successful both in raising funds in the form of member get members and ponzi pyramid schemes.⁸

Ponzi is one of the schemes with an online investment fraud mode. Ponzi schemes are fraudulent activities with the request of planners' money to investment groups with the promise of getting more refunds. Ponzi was created by Charlez Ponsi in 1920 with the aim of convincing people to invest in the hope of receiving higher returns. Ponzi involves repeated interactions with the increase in the number of individuals over a period of time. This type builds and selects the trust of its members. A simple manifestation is transaction without requiring the purchase of goods and services but rather only contributions and not recruitment of additional members. Similarly, the addition of profits through the increase in the number of members or members is generally referred to as a pyramid scheme. If recruitment is stopped, the additional benefits for other members

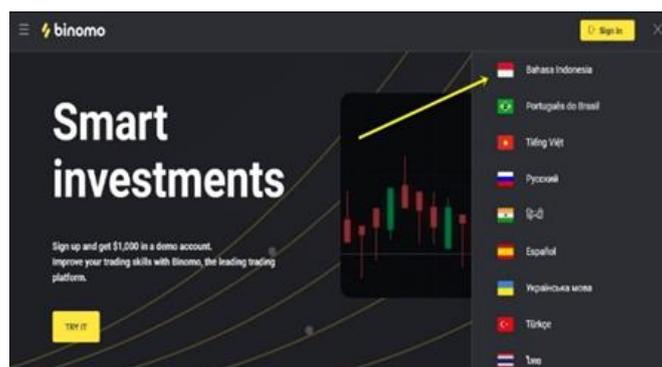
⁶ Emi, "Risk vs Return with Binary Option Trading, Thesis, Lahti University of Applied Science, Lahti, 2016"

⁷ Puspitasari, "Binary Option Sebagai Komoditi Perdagangan Berjangka Di Indonesia, " Journal Hukum Lex Generalis, Volume 2, No. 8, (August 2021).

⁸ Ramadhan, Peran Besar Affliater dalam kasus investasi bodog berkedok robot trading, redaksi, 6 April 2022.

will also stop.⁹ So the Affiliators continue to strive to add members periodically. New traders will get a preliminary guide to trading simulation. The account is given a balance of USD 1,000, if converted to the rupiah exchange rate in 2022 worth approximately IDR 15,000,00.00 the value is a virtual currency instead of physical money which is used as a simulation with an analysis that more or less involves an Affiliator with an initial view as the Binomo platform as follows:

3.2. The Concept of Punishment for Binary Option Affiliators



The behavior of the Affiliator in the circle of transactions in Binary Option is to invite the victim by showing his success through the application or platform. In addition, there are Affiliators who say that Binary Option are a type of online trading transaction that is legally recognized by the state.¹⁰ In fact, this system is a sale and purchase by relying on instincts such as gambling carried out online and is a form of fraud against the public. Fraud is by definition the act of a person with a gimmick of a series of lies, false names and false circumstances with the intention of benefiting oneself with no rights. Meanwhile, the series of lies is a sequence of false sentences that are arranged as if they were true. The Affiliator shall be held accountable for acts containing fraud on the basis of article 378 of the Criminal Code and Article 55 of the Criminal Code which states that:

"Whoever with the intent to unlawfully use himself or others, by using a false name or false dignity by deceit or by a series of lies moves another person to hand over something to him or to give a debt or write off receivables is threatened with fraud with a maximum of 4 years"

The above article can be applied to the Affiliator if the subjective elements and objective elements have been met. The subjective element is the element inherent in the offender including in his heart.¹¹ Based on that statement, subjective elements can be classified in several forms as article 278 of the Criminal Code including: First, it has an impact on the purpose of benefiting oneself or others. Affiliators in this case benefit from being able to invite others to join. *Second, the act is against the law. Fraud is a form of unlawful*

⁹ Diana Tambunan, "Waspada Investasi Ilegal Di Indonesia", Perspektif, Vol 20. No1 (2022)."

¹⁰ Editorial, "Cara Afiliator Binomo Gaet Pelanggan: Yakinkan Legal, Janjikan Untung Besar, 6 March 2022."

¹¹ Lamintang, (2013), *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, p. 193.

act because the platform of the Binary Option instrument has been declared illegal by BAPPEBTI (Komiditi Futures Trading Supervisory Agency). In this case, at least the affliator consciously performs deeds that benefit oneself by means of offering and publishing something that is considered illegal.

While the objective element is the element related to the condition of the perpetrator. Objective elements related to this matter are also contained in article 378 of the Criminal Code as follows; First, The use of fake names, false social classes and deceit or a series of lies. The point is the way perpetrator performs this act in the case of handing over money belonging to another person who is handed over to invest. On this, the affliator has tricked the partner with various sweet promises to reassure the victim. Second is the encouragement to others to give debts or write off receivables. The culmination is to provide benefits to the Affliator so that fraud happen.

Fraud can be a criminal act if the elements of mistakes made by someone who is able to take responsibility are met. Meanwhile, fraud related to electronic transactions can be subject to Article 28 paragraph (1) of Act No. 19 of 2016 concerning amendments to Act No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law).¹²

Fraud committed by the affliator can occur deprivation by the state of the proceeds of the fraud committed. As article 39 paragraph (1) of the Criminal Code explains that stuff owned by a convicted person obtained through a crime or that are deliberately distorted to commit a crime can be seized. The paragraph may indicate the possibility of foreclosure in the future. Self-confiscation as mentioned in Article 1 of section 16 of the Criminal Procedure Code is:

"Confiscation is a series of investigative actions to expropriate and or store under his control a movable or immovable object, tangible or intangible for the purpose of proof in the investigation, appointment and trial."

In addition, indirectly the affliators has collaborated with the platform in the Binary Option system to help the occurrence of criminal acts because they also organize gambling. The conditions for the act can be said to be a form of being considered to help the occurrence of criminal acts are:

- there is cooperation that is carried out consciously without prior agreement
- have the same will to make it happen
- there is a deliberate and conscious joint implementation

if the above conditions are met by the affliator, it will simply realize the purpose of the existence of Binary Option. On the other hand, Indonesian law has prohibited publishing illegal work or events. As on the article 9 paragraph (1) of Act No. 8 of 1999 concerning consumer protection which states that: *Business Actors are prohibited from offering, promoting, advertising stuff and / or services incorrectly and or as if they were true*

¹² Yuliantini, "Penggunaan Bukti Elektronik Dalam Peradilan Pidana, Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha, Vol 6, No 1 (2020), 290."

The letter (k) contains something uncertain

3.3. *Muamalah's Contract for Digital Binary Option Transactions*

The type of online trading carried out through foreign exchange or assets based on exchange rates or market patterns tends to be volatile. This trait then becomes a problem in Islam related to the feasibility of sharia rules that contain differences of opinion among clerical figures.¹³ The reason is that buying and selling in Binary Option is classified as defective in material terms as the rules in the *Muamalah*. The rule of buying and selling in Islam is that the object of buying and selling must be *maal mutaqawwin*. This trait is the direct mastery of ownership to be taken advantage of. The object being traded must also be clear about its ownership status.

Intangible and uncertain objects of sale and purchase (*matsir*) are allowed on condition that they are based on the agreement of the two parties. This can be interpreted to mean that in general the distribution of proceeds on Binary Option is based on an agreement too.¹⁴ On the other hand, foreign currency trading in *Muamalah* is called *sharf*. *Sharf* is defined as the name on the transaction or sale of the price value of *al-muthlaqah* to another one. Transactions of this type are basically allowed on the condition that there are no elements of usury, *maisir*, *gharar* and others. The reason is the fear that there is a loss on one of the parties.¹⁵ As Allah Almighty said in QS *al-Fathir*: 29 as follows: *Surely those who recite the Book of Allah, establish prayer, and donate from what We have provided for them—secretly and openly—can hope for an exchange that will never fail,*

In this case Islamic *Ulama* give definitions of buying and selling including:

- *Hanafiah* explains that buying and selling is exchanging objects between two currencies and gold/silver or the like, or exchanging stuff for money or something like that in a special way.
- *Malikiah* defines buying and selling as an exchange of stuff, not an exchange of benefits and enjoyment.
- Imam Shafi'i elaborated that buying and selling is allowed on the basis of the willingness of two persons who hold a trade.

The legal basis for buying and selling is generally found in the Qur'an *surah al Baqarah* verse 275: *Those who consume interest will stand 'on Judgment Day' like those driven to madness by Satan's touch. That is because they say, "Trade is no different than interest." But Allah has permitted trading and forbidden interest. Whoever refrains—after having received warning from their Lord—may keep their previous gains, and their case*

¹³ Kasim, "Islamic Economic Legal Review Towards Gold Trading By The Brokers In "Pasar 45 Manado," Tasharruf: Journal Economics and Business of Islam, Volume 5 No 1 (2020)."

¹⁴ Hasanuddin, "Pendapat Majelis Ulama Indonesia (MUI) Kabupaten Malang Terhadap Trading Binary Option, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2019."

¹⁵ Suryani, "Transaksi Valuta Asing (Sarf) Dalam Konsepsi Fikih Mu'amalah, Jurnal Wacana Hukum Islam dan Kemanusiaan (2013)."

is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever.

These verse generally describes that buying and selling is a business transaction that is allowed and mandated. The purpose of allowing this transaction is to prevent people from having difficulty in understanding with *maal* or property. Furthermore, these verse prohibits the practice of usury because it harms one of the parties to the transaction activity. The next source describing the sale and purchase is narrated by Bukhari number 2207 which reads: *from Anas bin Malik r.a. said that Rasulullah SAW forbade buying and selling the unpaid buying and selling, buying and selling the fruit that was not yet ripe (green), buying and selling with a touch, buying and selling with guesses, and buying and selling scales is unknown.*

The existence of the Qur'an and Hadith in above verse is not entirely a guide for entrepreneurs or business actors in their transaction activities. So that transactions that tend to be illegitimate become a common thing to do. Whereas on the other hand Islam becomes a religion that provides protection of human rights to property ownership and provides a way how humans can have people's things in the right way through the agreement of both parties. Agreement is one of the four principles in the *Muamalah*. The other three principles of *Muamalah* are the principle of manhood, the principle of helping and the principle of not being forbidden. In addition, buying and selling must at least be met with the pillars and conditions as contained in the following table;

No.	Pillars	Terms/Requirements
1	There is <i>al Muta'qidain</i>	Thoughtful, those who perform the contract are two different people
2	<i>Shigat</i>	<i>Ijab qabul</i> performed in one majlis The <i>Qabul</i> are same as <i>Ijab</i> People who speak are reasonable people
3	Stuff that is offer to the buyer	Clean The stuff is their own The stuff that offers to the buyer has benefits The stuff can be handed over

The stuff is known	
Exchange rate substitute stuff	of Does not contain any vagueness

Meanwhile, the terms and conditions in Binary Option or the Binomo platform itself do not have any clarity regarding the subject and object of buying and selling. Whether the provider of the trading instrument as a seller with a benchmark increase of one chart or the user of the application as its buyer. Or the user of the platform as a seller while the buyer is a provider of trading instruments. In addition, if there are sellers and buyers, then there should be goods that are traded for profit or expediency. In the event that the assets traded are still considered abstract to be used as objects of buying and selling, whether foreign exchange or virtual money. Is it really a physically realizable asset or a system that is played and created by the platform. The expediency of the stuff being sold is not visible in Binary Option practice because the transaction of buying and selling itself is still unclear in its form. Although in the early practice of using physical currency, the money was converted into a digital currency in the form of a deposit that would become the object of betting.

Islam in the *Muamalah* expressly calcifies prohibited buying and selling into several things including; first, *mu'abadzah* buying and selling is buying and selling where the condition of each party throws what is [to the other party without knowing the quality and quantity of the object of sale. Second, buying and selling with certain conditions, for example, buying and selling clothes with holes. This type of buying and selling is allowed by *Malikiyah, Hanafiyah and Shafi'iah* because the condition still contains benefits, while for *Hanabilah* it prohibits buying and selling this type because it contains benefits only for one of the parties. Third, buying and selling *gharar* is a vague trade that allows fraud to occur. Fourth, buying and selling by excluding part of the object being sold, such as the seller of the object by excluding one side or the top of the object.¹⁶ The types of buying and selling that are prohibited in Islam become a symbol of hospitality towards the people to provide protection for the benefit of the good.

On the other hand, the practice of digital Binary Option transactions becomes buying and selling a new trend by risking assets to be able to make profits quickly. A bet made using a chart depicts the increase and decrease in the value of an asset. If the user can correctly guess the rise or fall at a predetermined time, the user becomes the party who benefits by getting profits in accordance with the nominal rupiah staked. Indirectly, the type of transaction is a type of *munabadzah* and *gharar* transaction.

4. CONCLUSION

The results showed that the role of Affiliators in Binary Option cases is to influence others to obey or follow what is offered. Its big role is to offer and influence potential new members to join by showing the results of convincing online transaction sales that do not correspond to reality, then published on social media. In the perspective of criminal

¹⁶ Hidayati, "Investasi: Analisis Dan Relevansinya Dengan Ekonomi Islam, " Jurnal Ekonomi Islam, Volume 8, No. 2, (Juni 2017).

law shows that those committed by Affiliators in Binary Option are included in the criminal act of fraud. Similarly, in *Muamalah*, digital transactions such as Binary Option are classified as prohibited because they contain elements of *Gharar* and are not awarded with harmony and conditions for buying and selling in Islam.

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