

Comparative Study of Electronic Transaction Criminal Liability and Money Laundering in Binary Option Electronic Trading Transactions

Diah Prasetyowati¹, Selamat Lumban Gaol², Sujono³

^{1,2,3}Universitas Dirgantara Marsekal Suryadarma, Indonesia

Email: diahprasetyowati@gmail.com

Abstract

Industry 4.0 or the fourth industrial revolution is a general term used for the level of development of the technology industry in the world. Industry 4.0 describes the growing trend towards automation and data exchange in technology and processes in the manufacturing industry. These trends include the Internet of Things, Industrial Internet of Things, cyber physical systems, artificial intelligence, smart factories, cloud computing systems, and so on. In research for writing this thesis the author uses normative legal research methods (normative juridical) or often also referred to as library research. The provisions of legislation in Indonesia that regulate prohibited acts that become criminal acts of electronic transactions are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, namely in Articles 27 to Article 37 of the ITE Law Regulations on electronic transaction crimes and money laundering in electronic trading transactions in Indonesian criminal law regulated in Article 27 to Article 37 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Meanwhile, the laws and regulations governing the crime of money laundering are regulated in Article 3 Jo. Article 4 Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (UU PP-TPPU).

Keywords: *Industry 4.0; Money Laundering; Binary Options.*



A. INTRODUCTION

Industry 4.0 or the fourth industrial revolution is a general term used for the level of development of the technology industry in the world. In general, Industry 4.0 describes a growing trend towards automation and data exchange in technology and processes in the manufacturing industry (Lacey & George, 2002; Ryder, 2012). These trends include the Internet of Things (IoT), Industrial Internet of Things (IIoT), Cyber physical systems (CPS), artificial intelligence (AI), Smart factories, Cloud Computing Systems, and so on. Information and communication technology has changed the behavior of society and human civilization globally. In addition, the development of information technology has created a borderless world and led to significant social change that has taken place so quickly (Ramli, 2010; Beebeejaun & Dullo, 2023).

The phenomenon of a borderless world makes it easy to interact between people and between countries around the world and causes rapid changes in world conditions (Zhemiyeve et al., 2022; Keith, 2018; Beebeejaun, 2023). Then, from this ease of interaction arises interdependence in almost all dimensions of life. At this time the cold war has ended, and now the debates have shifted to issues that are more charged with global dimensions, especially in the field of world trade and economy, environment,

poverty and world security (Haung, 2015; Alkaabi et al., 2010). The global realm in the dimension of life has moved into an era called globalization (Surtisno, 2007; Haritio, 2022).

Trading is the process of negotiating prices between buyers and sellers until an agreement is reached between the buyer and the seller. Trading can be summed up as the exchange of goods for money. Trading aims to make money by selling assets at a higher price than previously purchased, to make a profit, traders must observe prices over time and predict future prices (Al-Rawashdeh, 2020)(Simwayi & Haseed, 2011)(Salih, 2019). The types of trading include, forex trading; stock trading; binary options trading; trading gold; trading bitcoins. Of the five types of trading, the one most at risk of criminal fraud is binary options trading (Warganegara, 2022; Wibowo, 2018).

In this study, the author will compare the results of the trial decision of the Tangerang District Court in the Indra Kenz case which was decided by the judge with Decision Number: 1240/Pid.Sus/2022/PN.Tng with Doni Muhammad Taufik alias Doni Salmanan with Decision Number: 576/Pid.Sus/2022/PN Blb with the same type of case.

The Panel of Judges' Decision stated that the Defendant INDRA KESUMA Als INDRA KENZ had been legally and convincingly proven guilty of committing the crime of spreading false and misleading news which resulted in consumer losses in Electronic Transactions and Money Laundering. Thus imposing a sentence on Defendant INDRA KESUMA Als INDRA KENZ, therefore, with imprisonment for 10 (Ten) years, as well as a fine of IDR. 5,000,000,000.- (five billion rupiah), provided that if the fine is not paid it is replaced by imprisonment for 10 (ten) months following the confiscation of evidence assets.

Meanwhile, the decision of the Panel of Judges against the defendant DONI MUHAMMAD TAUFIK as know as DONI SALMANAN stated that the defendant was proven legally and convincingly guilty of committing a crime "intentionally and without right to spread false and misleading news resulting in consumer losses in electronic transactions" as stated in the first indictment of the Public Prosecutor. Therefore, the defendant Doni Muhammad Taufik alias Doni Salmanan was sentenced to imprisonment for 4 (four) years and a fine of IDR. 1,000,000,000.- (one billion rupiah), provided that if the fine is not paid then it will be replaced with a crime. Then, the evidence points 132 to 136 were confiscated for the State.

Based on the description of the background above, the author is interested in further research by choosing the title of the thesis entitled "Comparative Study of Electronic Transactions and Money Laundering Liability in Electronic Trading Transactions of Binary Options".

B. METHOD

In research for the writing of this thesis the authors used normative legal research methods (normative juridical) or often also referred to as library research. Peter Mahmud Marzuki defines legal research as a process to find legal rules, legal

principles and legal doctrines to answer the legal issues at hand” (Marzuki, 2011). While Zainuddin Ali said legal research is all the activities of a person to answer legal issues that are both academic and practical, both in terms of legal principles, legal norms that live and develop in society and those relating to the reality of life in society (Ali, 2009). Bambang Waluyo said that normative legal research is usually "only" a document study, namely using legal sources in the form of laws and regulations, court decisions, contracts/agreement, legal theory, and opinions of scholars (Waluyo, 2020). Another name for normative legal research is doctrinal legal research, also known as library research or document study. It is called doctrinal legal research, because this research is conducted or aimed only at written regulations or legal materials. It is referred to as library research or document study, because this research is mostly done on secondary data in libraries (Ali, 2009).

C. RESULT AND DISCUSSION

1. Regulation of Criminal Acts of Electronic Transactions and Money Laundering in Electronic Trading Transactions in Indonesian Criminal Law

The process of globalization of information and communication technology gave birth to a phenomenon that changed traditional and conventional communication models by creating virtual reality, known today as the internet (Wulandari & Dermawan, 2022)(Fauzia & Hamdani, 2021). The internet is developing so rapidly as a culture of modern society, it is said to be a culture because through the internet various cyber community activities such as thinking, creating, and acting can be expressed in it, anytime and anywhere (Soekanto, 1986)(Go & Benarkah, 2019). Its presence has formed a separate world known as cyberspace or pseudo-world, which is a world of computer-based communication that offers a new reality in the form of virtual (indirect and unreal) (Hendy, 2015)(Lukito, 2016). The development of information and communication technology, on the one hand, is very beneficial in social life, education, trade and the economy as well as offices (Mohamamd Farosi, 2022). However, on the other hand, it has a negative impact with the emergence of various crimes, known as cyber crime (Sumadi, 2015)(Meiryani et al., 2023).

In cases of criminal acts of electronic binary option trading transactions, there are actually no goods that can be exchanged for money. Of course it is different from trading on the capital market or futures stock exchange where goods are exchanged for money or in other words there is a form (Satrya, 2022)(Kusbianto et al., 2022). Since, trading generally aims to make money by selling an asset at a higher price than it was purchased previously, to make a profit, traders must observe prices from time to time and predict future prices. Because there are no goods to be exchanged, many observers say that binary option trading electronic transactions are gambling or gambling games. In the wikipedia dictionary it is stated that Gambling or totalizer is a game where players bet to choose one option among several choices where only one choice is correct and wins. The player who loses the bet will give his bet to the winner. Rules and bet amounts are determined before the game starts (Adami Chazawi, Crime of Information and Electronic Transactions Attacks Against Legal Interests Utilizing

Information Technology and Electronic Transactions, 2019). If it is said that binary options are gambling games, of course they are very different from the types of gambling that are generally known to the public, such as lottery (dark totoan), cockfighting, dice gambling, card gambling, soccer gambling and so on. The difference is that the binary option guessing game is a gambling game that uses an application, a computer or mobile device and an internet network. Each participant is asked to choose one of the predetermined options, in which the game itself is controlled by a trading robot that provides benefits to the application owner.

The provisions of the laws and regulations in Indonesia that regulate prohibited acts that become criminal acts of electronic transactions are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, namely in Articles 27 to Article 37 of the ITE Law which read in full as follows:

Article 27

- (1) Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that have content that violates decency.
- (2) Everyone intentionally and without right distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents that have gambling content accessible.
- (3) Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that contain insults and/or defamation.
- (4) Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that contain extortion and/or threats.

Explanation of Article 27:

Paragraph (1)

What is meant by "distributing" is sending and/or distributing Electronic Information and/or Electronic Documents to many Persons or various parties through Electronic Systems.

What is meant by "transmitting" is sending Electronic Information and/or Electronic Documents addressed to another party through the Electronic System.

What is meant by "making accessible" are all actions other than distributing and transmitting through Electronic Systems that cause Electronic Information and/or Electronic Documents to be known by other parties or the public.

Paragraph (2)

Quite clear.

Paragraph (3)

The provisions in this paragraph refer to the provisions for defamation and/or slander which are regulated in the Criminal Code (KUHP).

Paragraph (4)

The provisions in this paragraph refer to the extortion and/or threats stipulated in the Criminal Code (KUHP).

Article 28

- (1) Everyone intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions.
- (2) Everyone intentionally and without rights disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA).

Article 29

Everyone intentionally and without right sends Electronic Information and/or Electronic Documents that contain threats of violence or intimidation directed personally.

Article 30

- (1) Every person intentionally and without right or unlawfully accesses another person's computer and/or electronic system in any way.
- (2) Everyone intentionally and without right or unlawfully accesses Computers and/or Electronic Systems in any way with the aim of obtaining Electronic Information and/or Electronic Documents.
- (3) Everyone intentionally and without right or unlawfully accesses Computers and/or Electronic Systems in any way by violating, breaking through, exceeding, or breaking through the security system.

Article 31

- (1) Every person intentionally and without right or against the law intercepts or intercepts Electronic Information and/or Electronic Documents in a certain Computer and/or Electronic System belonging to another Person.
- (2) Every person intentionally and without rights or against the law intercepts the transmission of Electronic Information and/or Electronic Documents that are not public in nature from, to and in a certain Computer and/or System belonging to another Person, whether Electronic does not cause any changes or causes changes, omissions, and/or termination of Electronic Information and/or Electronic Documents that are being transmitted.
- (3) The provisions referred to in paragraph (1) and paragraph (21) do not apply to interception or wiretapping carried out in the framework of law enforcement at the request of the police, prosecutors or other institutions whose powers are determined by law.

- (4) Further provisions regarding the interception procedures as referred to in paragraph (3) shall be regulated by law.

Article 32

- (1) Everyone intentionally and without right or against the law in any way changes, adds, reduces, transmits, destroys, deletes, moves, hides Electronic Information and/or Electronic Documents belonging to other Persons or public property.
- (2) Every person intentionally and without right or against the law in any way moves or transfers Electronic Information and/or Electronic Documents to another Person's Electronic System who has no rights.
- (3) For the actions referred to in paragraph (1) which result in the disclosure of a confidential Electronic Information and/or Electronic Document to be accessible to the public with data integrity that is not as it should be.

Article 33

Everyone intentionally and without right or against the law takes any action which results in disruption of the Electronic System and/or causes the Electronic System to not work as it should.

Article 34

- (1) Everyone intentionally and without rights or unlawfully produces, sells, procures for use, imports, distributes, provides, or owns:
 - a. Computer hardware or software specifically designed or developed to facilitate the acts referred to in Article 27 to Article 33;
 - b. Password via Computer, Access Code, or something similar to that which is intended to make the Electronic System accessible with the aim of facilitating the actions referred to in Article 27 to Article 33.
- (2) The action as referred to in paragraph (1) is not a crime if it is intended to carry out research activities, test the Electronic System, for the protection of the Electronic System itself legally and not against the law.

Article 35

Everyone intentionally and without rights or unlawfully manipulates, creates, changes, deletes, destroys Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are deemed as authentic data.

Article 36

Everyone intentionally and without rights or against the law commits acts as referred to in Article 27 to Article 34 which result in losses for other people.

Article 37

Everyone intentionally commits acts that are prohibited as referred to in Article 27 to Article 36 outside the territory of Indonesia against Electronic Systems that are in the jurisdiction of Indonesia. Meanwhile, criminal sanctions for acts that are violated as mentioned above are regulated in Articles 45 to Article 52 of the ITE Law, which read in full as follows:

Article 45

- (1) Everyone who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible which has content that violates decency as referred to in Article 27 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR. 1,000,000,000.00 (one billion rupiah).
- (2) Everyone who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that have gambling content as referred to in Article 27 paragraph (2) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR. 1,000,000,000.00 (one billion rupiah).
- (3) Everyone who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible which contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of a maximum IDR. 750,000,000.00 (seven hundred and fifty million rupiahs).
- (4) Everyone who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible which has extortion and/or threats as referred to in Article 27 paragraph (4) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum IDR. 1,000,000,000.00 (one billion rupiah).
- (5) The provisions referred to in paragraph (3) constitute a complaint offense.

Article 45A

- (1) Any Person who intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR. 1,000. 000,000.00 (one billion rupiah).
- (2) Any person who deliberately and without rights disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA) as referred to in Article 28 paragraph (21) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum IDR. 1,000,000,000.00 (one billion rupiah).

Article 45 B

Any Person who intentionally and without right sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally as referred to in Article 29 shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of IDR. 750,000,000.00 (seven hundred and fifty million rupiahs).

Article 46

- (1) Everyone who fulfills the elements referred to in Article 30 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR. 600,000,000.00 (six hundred million rupiah).
- (2) Everyone who fulfills the elements referred to in Article 30 paragraph (2) shall be subject to imprisonment for a maximum of 7 (seven) years and/or a maximum fine of IDR. 700,000,000.00 (seven hundred million rupiah).
- (3) Everyone who fulfills the elements referred to in Article 30 paragraph (3) shall be punished with imprisonment for a maximum of 8 (eight) years and/or a fine of up to IDR. 800,000,000.00 (eight hundred million rupiahs).

Article 47

Everyone who fulfills the elements referred to in Article 31 paragraph (1) or paragraph (2) shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of up to IDR. 800,000,000.00 (eight hundred million rupiahs).

Article 48

- (1) Everyone who fulfills the elements referred to in Article 32 paragraph (1) shall be punished with imprisonment for a maximum of 8 (eight) years and/or a fine of up to IDR. 2,000,000,000.00 (two billion rupiahs).
- (2) Everyone who fulfills the elements referred to in Article 32 paragraph (2) shall be subject to imprisonment for a maximum of 9 (nine) years and/or a maximum fine of IDR. 3,000,000,000.00 (three billion rupiahs).
- (3) Everyone who fulfills the elements referred to in Article 32 paragraph (3) shall be subject to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR. 5,000,000,000.00 (five billion rupiahs).

Article 49

Everyone who fulfills the elements referred to in Article 33, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR. 10,000,000,000.00 (ten billion rupiahs).

Article 50

Everyone who fulfills the elements referred to in Article 34 paragraph (1) shall be subject to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR. 10,000,000,000.00 (ten billion rupiahs).

Article 51

- (1) Everyone who fulfills the elements referred to in Article 35 shall be subject to imprisonment for a maximum of 12 (twelve) years and/or a maximum fine of IDR. 12,000,000,000.00 (twelve billion rupiahs).
- (2) Everyone who fulfills the elements referred to in Article 36 shall be subject to imprisonment for a maximum of 12 (twelve) years and/or a maximum fine of IDR. 12,000,000,000.00 (twelve billion rupiahs).

Article 52

- (1) In the event that the crime referred to in Article 27 paragraph (1) relates to decency or sexual exploitation of children, a weight of one third of the principal sentence is imposed.
- (2) In the event that the acts referred to in Article 30 to Article 37 are directed against Computers and/or Electronic Systems as well as Electronic Information and/or Electronic Documents owned by the Government and/or used for public services, the principal punishment shall be plus one third.
- (3) In the event that the acts referred to in Article 30 to Article 37 are directed against Computers and/or Electronic Systems as well as Electronic Information and/or Electronic Documents belonging to the Government and/or strategic agencies including but not limited to defense institutions, central banks, banking, finance, international institutions, aviation authorities, they shall be subject to a maximum penalty of the principal sentence for each Article plus two-thirds.
- (4) In the event that the criminal acts referred to in Article 27 to Article 37 are committed by a corporation, the penalty is the principal sentence plus two-thirds.

According to Adami Chazawi and Ardi Ferdian, they say that if we look at the indicators/conditions for a *lex specialis* crime from a *lex generalis*, then the crime of ITE Article 27 Paragraph (2) jo 45 Paragraph (1) is a *lex specialis* crime of gambling Articles 303 and 303 bis of the Criminal Code (Adami Chazawi, 2019).

Article 303 of the Criminal Code formulates the prohibition of gambling as follows:

- (1) By a maximum imprisonment of ten years or a maximum fine of twenty five million rupiahs shall be punished, whoever without a permit:
 - a. intentionally offers or provides opportunities for gambling games and makes it a quest, or deliberately participates in an enterprise for that purpose;
 - b. deliberately offering or giving the general public the opportunity to play gambling or deliberately participating in companies for that purpose, regardless of whether to use the opportunity there is a requirement or some procedure is fulfilled;
 - c. make participating in gambling games a quest;

- (2) If the person guilty of committing the said crime is carrying out his search, then his right to carry out that search may be revoked.
- (3) What is called a gambling game is any game, in which in general the possibility of getting a profit depends on sheer luck, also because the game is more practiced or more proficient. It includes all bets on the decision of a race or other games that are not held between those competing or playing, as well as all other bets.

Then Article 303 bis of the Criminal Code formulates the following :

- (1) Shall be punished by a maximum imprisonment of four years or a maximum fine of ten million rupiahs:
 - a. Whoever uses the opportunity to play gambling, which is held in violation of the provisions of Article 303;
 - b. Whoever participates in gambling on a public road or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to hold said gambling.
- (2) If at the time of committing the offense two years have passed since the conviction has become fixed for one of these violations, a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs may be imposed.

Furthermore, it is said that there are two things that must be guided by in terms of applying Article 27 paragraph (2), especially regarding the meaning of gambling in that paragraph. First, regarding the meaning of the term gambling. Second, regarding the crime of gambling. These two things are very important and always apply in terms of implementing Article 27 paragraph (2) of the ITE Law (Adami Chazawi, 2019). Therefore, there are two possible ways to apply Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (1) of the ITE Law. First, adjusting to the limitations/definitions of gambling in Article 303 Paragraph (3) of the Criminal Code. The second applies to which types/forms of gambling crime are appropriate. Should be using both ways - simultaneously. The reason is that all forms of gambling must have the meaning of gambling as stated in Article 303 Paragraph (3) of the Criminal Code (Adami Chazawi, 2019).

2. Criminal Responsibility of Offenders for Crimes Committed Together with Fraud and Money Laundering as Continuing Actions of Electronic Transactions and Money Laundering in Binary Option Trading Transactions Based on Legal Considerations of Judges in Judicial Practices in Indonesia

To find out the application of criminal liability law for criminal offenders for crimes committed together with fraud and money laundering as continuing actions of electronic transactions and money laundering in binary option trading transactions (law in books) by judges/courts in judicial practice (law in action), researchers analyzed 2 (two) court decisions, namely the decision of the Tangerang District Court Number 1240/Pid.Sus/2022/PN.Tng on behalf of the Defendant INDRA KESUMA Als

INDRA KENZ and the decision of the District Court Number 576/ Pid.Sus /2022/PN Blb at the Bale Bandung District Court Class I A on behalf of the Defendant

1. The Case of the Position of the Tangerang District Court Decision Number 1240/Pid.Sus/2022/PN Tng

a. Sit Case

This case began around August 2018 Defendant INDRA KESUMA AKA INDRA KENZ registered on the website <https://www.binomo.com> using a computer at the PT EKSEKUTIF MEDIA UTAMA office which is located at Komplek Cemara Asri Jl. Melati number 21 Kec. Percut Sei Tuan, Deli Serdang Regency, North Sumatra. Apart from that, to further convince the public that this Binomo game is really a "trading platform", the Defendant also established PT Course Trading Indonesia which is engaged in education where the Defendant acts as a Director and majority shareholder. The activities of PT Trading Indonesia, namely the Defendant opened classes or training by selling paid video educational services at <https://www.kursustrading.com> where the defendant provided information in the form of videos related to crypto trading, stocks, financial education and also included a video about the Binomo game where course participants were asked to pay a trading course fee of IDR. 1.500.000,- up to IDR. 2.000.000,- per year per person and which until early 2022 the course managed to attract participants of approximately 3.000 people.

The decision of the High Court was based on legal considerations in essence as follows: First: based on all of these considerations, the Appellate Judge concluded that the Defendant had fulfilled the elements of the criminal act charged in both the first first charge and the second first charge;

Second: the decision of the Bale Bandung District Court Number 576/Pid.Sus/2022/PN Blb dated 15 December 2022 is no longer tenable and must be annulled and the High Court will try this case itself whose verdict is as stated below;

Third: The Panel of High Judges is of the opinion that in the Defendant's actions there is no justification that can eliminate the unlawful nature of the act and there is no forgiving reason that can eliminate the Defendant's mistakes, so the Defendant must be held accountable for the actions he has committed. Therefore the Defendant must be found guilty and sentenced to the type and duration of which will be stated in this decision.

3. Analysis of Criminal Responsibility of Offenders for Crimes Committed Together with Fraud and Money Laundering Crimes as a Continuation of Electronic Transactions and Money Laundering in Binary Option Trading Transactions Based on Legal Considerations of Judges in Judicial Practices in Indonesia

In the early part of this article, we will discuss the criminal responsibility of the perpetrators of criminal acts of binary options trading transactions on behalf of INDRA KESUMA, alias INDRA KENZ, based on the considerations of first-instance judges and appeals. First of all the author will describe the decision of the Tangerang

district court which has examined and decided on the criminal case of Indra Kesuma. In DECISION Number: 1240/Pid.Sus/2022/PN.Tng against the perpetrator of the crime INDRA KESUMA Alias INDRA KENZ, in this case as the Defendant.

In DECISION Number: 1240/Pid.Sus/2022/PN.Tng, the panel of judges proved the elements contained in Article 45A (1) Jo. Article 28 (1) UU ITE Jo. Article 3 of the TPPU Law. The first charge of the two public prosecutors violated Article 45A (1) Jo. Article 28 (1) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The owner of the Binomo and Quotex applications was never mentioned in the court decision. In fact, they are the ones who have violated CoFTRA regulations. However, legally it will be difficult to reach these two business actors, because in their country of origin trading on Binomo and Quotex is legal. What CoFTRA could do was submit a request to Kominfo to block the two binary options trading sites, but it still didn't work. Finally, we can see how difficult it is to close ourselves to the globalization of information in cyberspace. Before the losses to the people involved in trading deepen, CoFTRA should be pro-active in educating the public through appeals through social media regarding futures trading such as binary option trading Binomo and Quotex and the possibility of losses experienced when registering on the links of the two companies. If people are not educated, chances are this kind of incident will happen again. The police could not do much, at best they could only arrest the affiliate as the supporting actor of the two business actors, who were made suspects. Meanwhile, our laws find it difficult to reach the main actors, who also enjoy the benefits of this speculation game.

The two business actors should have been made the main suspects because they are the owners of the binary options trading business. The trading activities of the two business actors will definitely always win because they are assisted by a trading robot that can determine victory. It is for this reason that Article 38 paragraph (1) of the ITE Law states that "Everyone can file a lawsuit against the party operating the Electronic System and/or using Information Technology which causes harm". So, based on Article 38 paragraph (1) it is clear that the lawsuit must be filed against the owner of the binary option trading Binomo and Quotex as the party that organizes the Electronic System and/or uses Information Technology which causes harm to the parties who register.

It's just that the problem is determining the actions that were violated by the two defendants, who promoted binary option trading via YouTube in order to influence people to register themselves to transfer a certain amount of money so they could play the guessing game. When considering the actions of the defendant that are prohibited in the ITE Law specifically, there is no regulation. Somewhat close to Article 27 paragraph (2) which reads: "Every person intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents that have gambling content accessible." The formulation "Every person intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible" is correct. But in the last

sentence "having gambling content" will raise debate, whether the act of distributing or making accessible the website from Binomo and Quotex or via the link sent by the defendant includes gambling content? In the author's opinion, it is incorrect to say that it has gambling content, because entering on both websites or the links sent by the two defendants is only to register and simultaneously transfer a sum of money after that only to play trading speculation. However, the act of speculation is closer to the word gambling which is chancy, can win or lose.

Therefore, it is necessary that in the future amendments to the ITE Law be considered to contain rules against prohibited acts, namely those who become affiliates for futures trading, whose companies have not been registered in Indonesia. CoFTRA as the organizer of futures trading in Indonesia must be morally responsible for the losses of those who were harmed in the speculation game by Binomo and Quotex. In order to prevent the same incident in the future, it is not enough to just summon the culprit and prohibit him from continuing his activities. CoFTRA must provide information to the public about futures trading that is speculative and not registered but promotes in cyberspace, which will potentially harm the community.

D. CONCLUSION

Regulations on criminal acts of electronic transactions and money laundering in electronic trade transactions in criminal law in Indonesia are regulated in Articles 27 to 37 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Meanwhile, the laws and regulations governing the crime of money laundering are regulated in Article 3 Jo. Article 4 Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (UU PP-TPPU).

Criminal liability of perpetrators for crimes committed together with fraud and money laundering crimes as continuing actions of Electronic Transactions and Money Laundering in Binary Option Trading Transactions based on legal considerations of Judges in judicial practice in Indonesia refers to Article 28 paragraph (1) Jo Article 45A paragraph (1) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Article 3 Jo. Article 4 Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (UU PP-TPPU).

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