

Conference Paper

Discourse on Affiliate Marketing Platform Trading/Investment from Indonesian Legal Perspective

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Abstract.

The study aims to examine the existence of affiliate marketing trading/investment platforms from a legal perspective in Indonesia and discuss the legal noose that looms over it. The research approach methods used in this study are the statute approach, the case approach, and the conceptual approach. The results, if viewed from the perspective of Indonesian law, refer to regulations related to trade, consumer protection, electronic information, and transactions, as well as Indonesian Pariwara Ethics. Considering that business actors and their marketing affiliates are honest and responsible in carrying out and marketing their business and conducting good and healthy transactions and are accompanied by good faith without defraud. The affiliate marketing business strategy through this affiliate intermediary is something legal. But if in carrying out his role as an affiliate, having disguised malicious intentions, not accompanied by good faith, then there are legal consequences that will be accepted, whereas, in some related regulations, there is a threat of criminal penalties that do not mess with sanctions, to provide a deterrent effect.

Keywords: affiliates, trading, platforms, Indonesian law

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1. INTRODUCTION

The Covid-19 pandemic has given a new color to people's lives. It must be admitted that the extraordinary event of the spread of the Covid-19 virus with its various variants that occurred from mid-2020 to 2022 changed the patterns of people's lives, as stated by Alexander Bick, Adam Blandin, and Karel Mertens that "The global COVID-19 pandemic has led to widespread physical distancing to contain the spread of the viruses. Many businesses scaled back or ceased operations in the regular workplace because of government-mandated closures and stay-at-home orders, concerns for the health of their employees, or a lack of customers." [1]

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This government policy became known as Work From Home (WFH). Around the globe, WFH constituted a central measure to reduce physical proximity among workers while maintaining economic activity.[2] One of the direct impacts of this policy is that people are increasingly literate with technology and have more time to be exposed to electronic information because they have free time to work from home.

One of the many electronic information is information about platforms under the guise of trading/investment promoted by national celebrities who act as marketing for these platforms or affiliates. These affiliates show how easy it is to earn money from trading/investing on their promoted platforms. Plus, these affiliates show their results and achievements through their social media.

This is, of course, very tempting. For example, an affiliate that can be said to be phenomenal is "Doni Muhammad Taufik, a.k.a. Doni Salmanan with his YouTube channel, King Salmanan, who initially was a daily laborer then transformed into a crazy rich from Bandung,"[3] Then there is also Indra Kesuma or known as Indra Kenz, who promotes the Binomo Application as a trading application in Indonesia. Wherein his life journey, he started as a radio broadcaster, and then he consistently showed off the profits earned on his social media until he was known as Crazy Rich Medan.[4]

The condition of the community experiencing an extraordinary crisis as a result of the Covid-19 Pandemic as described by Dito Aditia Darma Nasution, Erlina, and Iskandar Muda, namely, "as cases of the COVID-19 pandemic have developed, the market has fluctuated more in a negative direction, significantly since the global economy is currently prolonged. impact on Indonesia's economic growth.[5] In line with this statement, Wibowo Hadiwardoyo explained that "activity restrictions due to the Covid-19 pandemic had caused economic losses nationally.[6]

Of course, psychologically, with the existing conditions, the public will be easily influenced by the promotions of the affiliate. Data.ai notes that "the number of downloads of financial applications in Indonesia will reach 382.1 million in 2021, with a growth of 185%. The Binomo application is ranked fourth as the most downloaded application in Indonesia.[7] Overall, Binomo only lost to DANA, which was supported by the Alibaba Group business entity, then Neo from Bank Neo Commerce and BRImo, an application owned by Bank Rakyat Indonesia.[8] As for the Quotex application promoted by Doni Muhammad Taufik alias Doni Salmanan, as of May 29, 2022, it has been downloaded more than 100 thousand times from the Google Playstore.

This certainly shows that the performance of these affiliates is excellent from the marketing aspect in promoting the platforms they work with because it provides tangible results for their partners. It was interesting when later, the Selegrams or YouTubers or

public figures who played the role of affiliates of these applications and platforms under the guise of trading/investment were arrested by the Criminal Investigation Agency of the Indonesian National Police Headquarters. Starting with the determination of the suspect and the detention of Indra Kesuma on February 25, 2022, followed by the determination of the suspect in the name of "Fakar Suhartami Pratama, Brian Edgar Nababan, Wiky Mandara Nurhalim, Nathania Kesuma, Vanessa Khong, and Rudiyanto Pei in a legal case related to the Binomo Application.[9]

Not long ago, on March 8, 2022, based on a "report with the number LP: B/0059/II/2022/SPKT/POLRI, the Directorate of Cyber Crimes at the National Police-Criminal Investigation Agency named Doni Muhammad Taufik alias Doni Salmanan as a suspect.[10] Even in the development of the case, "investigators have confiscated Doni Salmanan's assets worth 64 billion rupiahs. The assets include houses and land, cars, big motorbikes, various luxury fashion products.[11]

This phenomenon is undoubtedly something phenomenal and attracts the attention of the public. The public must be wondering whether affiliating as part of a business marketing strategy is a prohibited profession or remains a legal profession as long as it is in the corridor of its job. Therefore, the author is interested in discussing the legal position of the affiliate who is part of the affiliate marketing trading/investment platform from a legal perspective in Indonesia and the legal snares that overshadow him if he commits an unlawful act.

2. METHODOLOGY/ MATERIALS

The research method is "a series of consistent, systematic and measurable processes in exploring and deepening a certain phenomenon to produce a series of research processions that can be accounted for based on a parameter of scientific truth.[12] The approach method used in reviewing this problem is "the method of statutory approach, namely research conducted by examining all laws and regulations related to the legal issues being handled.[13] Also uses a case approach, namely "research conducted by examining cases related to the legal issues under study where in this case the researcher tries to build legal arguments in the perspective of concrete cases that occur in the field.[14] Legal science is a prescriptive science that studies the values of justice, legal objectives, legal concepts, legal norms, and the validity of rules.[15] And use conceptual approach which in its analytical study focuses on legal concepts.[16].

3. RESULTS AND DISCUSSIONS

Vladimíra Jurišová explains “affiliate marketing, in which the seller or service provider is a financially rewarding agent so-called affiliate for each visitor, which through its website to attract a dealer there, who made some activity, either directly purchase products, register to subscribe to a newsletter, or just browsing the site.[17] Affiliate marketing is one of the most successful proven concepts used in today’s competitive marketplace to promote websites, products, and services, and affiliates will be given commissions after consumers make a transaction to use or buy the products they market.[18] Nicolas Gregori, Roberto Daniele, and Levent Altinay stated, “Affiliate marketing is a prominent, contemporary type of performance- based Internet marketing whereby a company compensates affiliates for each customer referred through the affiliate’s marketing efforts. It is regarded as one of the most promising customer acquisition tools.[19]

Affiliates can be agents or part of affiliate marketing, “which, in principle, these affiliates or affiliates are paid or given commissions based on their performance.[20] Moreover, these affiliates use social media to support their performance, where the role of social media in this era of digital disruption “has been recognized as having a significant influence on the success of a business and is a crucial element of development and profit achieved from the course of a business.[21] In addition, “social media has a broader reach and zero cost.[22]

So from these various explanations, the author has the idea that the affiliate’s position as an agent or part of a business strategy called affiliate marketing is essentially not a taboo job but is an ordinary job like other jobs in general that have even been recognized for their existence. Agreeing with this, Aulia Nuarini also explained that she :

“The practice of affiliate marketing, even in the Islamic law itself, is in principle identic with jialah, where affiliate marketers work for merchants to obtain commissions, and the practice of affiliate marketing is allowed in Islam. Affiliate marketers get a commission according to the promised percentage as long as Shari’a justifies the object of the goods sold.[23]

Referring to the general description explained by experts regarding affiliate marketing and also seen from the perspective of Islamic law, the role of affiliates is justified and recognized. So then, it is pretty compelling to discuss Indonesia’s legal point of view in looking at these affiliates, where they are part of a business strategy. However, the current reality is that the law entangles some affiliates.

An affiliate is generally a public figure with a reasonably wide influence and a large mass or following so that his existence “simultaneously and partially has a positive and significant influence.[24] Especially in the digital era like today. In addition, these affiliates broadly have diverse backgrounds, so it would be nice when trusted to be an affiliate. They must understand the rules of the game, especially the regulations that apply in Indonesia, so as not to have problems with the law, especially legal regulations that have links with electronic systems.

When referring to Law Number 7 of 2014 concerning Trade, Article 65 paragraph (1) of Chapter VIII concerning Trade Through Electronic Systems emphasizes, “Every Business Actor who trades Goods and/or Services using an electronic system is obliged to provide data and/or information completely and correctly.” So *argumentum a contrario* can be interpreted that business actors and parties involved in the affiliate marketing strategy should not trade goods and / or services that are not following the information submitted.

He understands that it is not permissible to make unhealthy trades. This is synergistic with the purpose of Law Number 8 of 1999 concerning Consumer Protection, as stated in Article 3 Letter b and e, which substantively emphasizes that consumers are protected from the harmful excesses of the use of goods and/or services and also for business actors and their marketing affiliates must be honest and responsible in running their business. This regulation is under the understanding that, theoretically, Roscoe Pound states, “one of the human interests protected by law is social interest, especially regarding guarantees for transactions and income.[25] It is worth remembering that “the law serves as a protection of human interests so that the law has the purpose of creating an orderly society, with the hope that if the society is orderly, human interests are protected.[26]

This harmonization of legal protection is also seen in Article 17 Paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which confirms, “parties to electronic transactions must assume good faith in interacting and/or exchanging Electronic Information and/or Electronic Documents during the transaction.” This rule can be said to implement Article 1338 paragraph (3) of the Civil Code, stipulates that “the contract must be executed in good faith.”

The understanding of the principle of good faith is that “each party to an agreement to be concluded, should provide information or information that is as complete as possible that may influence the decision of the other party in agreeing or not.[27] From the business perspective, “good faith is rooted in the Latin *bona fide*, seen as an attempt not to seek profit unreasonably or not to deceive or cheat, be honest, and meet appropriate standards in reasonable transactions.[28] Simple, “Good faith is a value that becomes

a benchmark in determining whether a contract is feasible or not to be implemented [29].

In addition to referring to legal regulations, it is suitable for affiliates also to understand the manners and procedures of advertising in Indonesia as explained in the 2007 objectives section of the Indonesian Pariwara Ethics, which is stated in number 12, namely, "marketing communication must create a healthy, responsible and advanced and up-to-date climate." The affiliate is still a citizen subject to applicable national laws. You should not only prioritize profit so that then it will promote the product or take advantage of the psychology of the masses through word and visual games to make a profit without paying attention to the applicable legal rules, which in the end, instead of profit, but it also goes bankrupt and leads to legal cases.

The viral legal problems experienced by Indra Kesuma, Fakar Suhartami Pratama, Brian Edgar Nababan, Wiky Mandara Nurhalim, Nathania Kesuma, Vanessa Khong, and Rudiyanto Pei in a legal case related to the Binomo Application and Doni Salmanan on the Quotex application, because they in carrying out their role as affiliates have disguised malicious intentions, namely providing false information to the public wherein promoting their products, This affiliation gave a testimonial that this application is a trading or investment application and of course legally legal when in fact the product promoted as a futures broker has not been registered and has not received permission from the authorized agency, in this case, the Commodity Futures Trading Regulatory Agency (BAPPEBTI). The next mistake is that these affiliates benefit from the losses experienced by users or consumers of the products they promote. The profits obtained are obtained from the results of unhealthy and unreasonable transactions, which are undoubtedly contrary to the legal regulations in force in Indonesia. More sadly, the product offered in the form of a trading or investment application is just a cover because its original form is a gambling platform or application.

The affirmation of unlawful acts committed by these affiliates is reflected in the results of the investigation conducted by the Directorate of Cyber Crimes at the National Police-Criminal Investigation Agency, which in determining the status of suspects on these parties, uses the presumption of committing unlawful acts against:

1. Article 45 paragraph (2) jo Article 27 paragraph (2) of the Electronic Information and Transactions Law which substantially regulates the prohibition of promoting Electronic Information and/or Electronic Documents that have gambling content with the threat of imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiahs);

2. Article 45 paragraph (2) jo Article 28 paragraph (1) of the ITE Law, namely spreading false and misleading news that results in consumer losses in Electronic Transactions with the threat of imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiahs).
3. Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU), which in essence is related to anyone who hides or disguises the origin of the wealth that he knows or reasonably suspects the result of a criminal act can be convicted of a criminal act of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp10,000,000,000, 00 (ten billion rupiahs);
4. Article 5 of Law Number 8 of 2010 concerning TPPU, for those who receive or control the origin of the wealth that they know or reasonably suspect, is the result of an act of criminal can be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiahs)
5. Article 10 of Law Number 8 of 2010 concerning TPPU, for anyone both within the territory and outside the region of Indonesia, who participates in conducting experiments, assistance, or Malicious Agreements to commit money laundering crimes is punished with the same crime as referred to in Article 3 and Article 5.
6. Article 378 of the Criminal Code jo Article 55 of the Criminal Code, which explains

"Whoever with the intent to benefit himself or others unlawfully, by using a false name or false dignity, by deceit, or a series of lies, moves another person to hand over goods to him, or to give a debt or write off a receivable, is threatened with fraud with imprisonment for not more than four years."

In addition, they who do, who tell to do, and participate in doing deeds can also be punished. The behavior of these individuals then damages the excellent image of affiliate marketing, especially the affiliates. Their actions were contrary to the values and legal norms that lived and prevailed in the territory of the Unitary State of the Republic of Indonesia. The unlawful acts committed by these affiliates then sent them into the prodeo hotel. Felt the cold of the prison floor while reflecting on the limitations of the freedom of life they had and enjoyed before with all its conveniences and luxuries.

So at this point, the author gets an even firmer understanding of the legal perspective in Indonesia, There is nothing wrong with affiliate marketing as long as it remains within the boundaries of the applicable legal corridors. Through legal deviations or unlawful acts, resistance to regulation will only lead to misery. Therefore, the legal awareness of

the affiliates in particular and society is essential to minimize cases like this repeating themselves.

4. CONCLUSION AND RECOMMENDATION

Referring to the general description explained by experts regarding affiliate marketing, the role of affiliates is justified and recognized. If reviewed more specifically in Indonesian law, as discussed mainly in this article, it refers to regulations related to trade, consumer protection, information, and electronic transactions. Even Indonesian Pariwara Ethics, as long as business actors and their marketing affiliates are honest and responsible in running their business and conducting good and healthy transactions accompanied by good faith without deception, then the affiliate marketing business strategy through this affiliate intermediary is something legal. If in carrying out their role as an affiliate, have disguised malicious intentions, especially providing false information, only to get a profit so that then at will promote the product or take advantage of the psychology of the masses through puns and visuals to achieve profit without paying attention to the applicable legal rules. In some related regulations, these affiliates will get legal consequences with a criminal law threat that is not fooling around to provide a deterrent effect. Based on the conclusion made above, affiliates must understand the legal regulations that apply in Indonesia so that they avoid legal snares in carrying out their profession. The affiliates must also be more selective in accepting the products to be promoted so as not to become a boomerang for themselves, which can harm them in the future because the affiliate is not only responsible for the company that cooperates with him but also has a moral responsibility to the community.

References

- [1] Bick A, Blandin A, Mertens K. Work from Home After the COVID-19 Outbreak. Fed. Reserv. Bank Dallas; 2020.
- [2] Alipour JV, Falck O, Schüller S. "Germany's capacities to work from home." Munich Soc. Promot. Econ. Res. - CESifo GmbH, vol. 8227, 2020.
- [3] Hukmana SY. Sebelum Jadi Afiliator Quotex, Doni Salmanan Buruh Harian Lepas. Media Indonesia; 2022.
- [4] Junior FX. Polri Ungkap Fakta Indra Kenz sebagai Afiliator Binomo Lakukan Promosi yang Menggiurkan di Media Sosial. News Media; 2022.

- [5] Nasution DA, Erlina E, Muda I. Dampak pandemi Covid-19 terhadap perekonomian Indonesia. *J. Benefita*. 2020;5(2).
- [6] Hadiwardoyo W. Kerugian ekonomi nasional akibat pandemi Covid-19. Volume 2. Baskara; 2020. p. 2.
- [7] Setyowati D. "Riset: DANA dan Binomo, Aplikasi Finansial Paling Banyak Diunduh di RI." *Katadata.co.id*, 2022. .
- [8] Dewi IR. Binomo Ternyata Paling Laris Didownload Padahal Ilegal. *CNBC Indonesia*; 2022.
- [9] Batubara P. "Berkas Indra Kenz Dikembalikan, Jaksa Berikan Petunjuk untuk Penyidik Bareskrim." *Sindonews.com*, 2022.
- [10] Pratomo GY. "Kilas Balik Kasus Doni Salmanan, Berawal Aplikasi Quotex hingga Jadi Tersangka." *Liputan 6*, 2022. .
- [11] Zaki MF. "Rentetan Kasus Doni Salmanan Tak Seheboh Indra Kenz, Ini Kata Polisi." *tempo.co*, 2022. .
- [12] Fajar M, Achmad Y. *Dualisme penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar; 2013.
- [13] Marzuki PM. *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenadamedia Group; 2014.
- [14] Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media; 2020.
- [15] Haruni CW. "Constitutionality of Monitoring and Evaluation of Regional Regulation Drafts and Regional Regulations by Regional Representative Council," *Leg. J. Ilm. Huk.*, vol. 30(1), 2022.
- [16] Salim, Nurbani ES. *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. Jakarta: PT. Raja Grafindo Persada, 2014.
- [17] Jurišová V. "Affiliate marketing in the context of online marketing," *Rev. Appl. Socio-Econ Res J*. 2013;5(1).
- [18] Ivkovic M, Milanov D. "Affiliate internet marketing: Concept and application analysis," in *2010 International Conference on Education and Management Technology*, 2010, pp. 319–323.
- [19] Prathama MF, Putra RI, Dahroni A. Putra E. "Penerapan Metode Pemasaran Affiliate Pada Digital Marketing Sistem Informasi Penerimaan Mahasiswa Baru." *INTEK J. Informatika dan Teknol. Inf*. 2021;4(1).
- [20] Salmiah S. Fajrillah Fajrillah, and Acai Sudirman, *Online Marketing*. Medan: Yayasan Kita Menulis; 2020.

- [21] Ariyanto A, et al. Strategi Pemasaran UMKM di Masa Pandemi. Solok Sumatera Barat: Insan Cendekia Mandiri, 2021.
- [22] Nuraini A. “Jual Beli dalam Praktek Affiliate Marketing pada Internet Marketing E-Commerce dalam Perspektif Hukum Islam.,” Universitas Islam Negeri “SMH” Banten., 2018.
- [23] Irpansyah MA, Ramdan AM, Danial RD. “Dampak Dari Kekuatan Dan Popularitas Selebgram Terhadap Minat Beli Pada Produk Mode Lokal Di Instagram.” E-Jurnal Ekon. dan Bisnis Univ. Udayana. 2019;(Mar):221.
- [24] McManaman LJ. Social engineering: The Legal Philosophy of Roscoe Pound. St Johns Law Rev. 1958;33(1).
- [25] Mertokusumo S. Mengenal hukum suatu pengantar. Yogyakarta: Liberty; 1996.
- [26] Harun RS, Dungga WA, Tome AH. Implementasi Asas Itikad Baik Dalam Perjanjian Transaksi Jual Beli Online. J Legis. 2018;12(2).
- [27] A. D.A.Kolopaking, Asas Itikad Baik Dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase. Bandung: P.T.Alumni Bandung, 2013.
- [28] Priyono EA, “PERANAN ASAS ITIKAD BAIK DALAM KONTRAK BAKU (Upaya Menjaga Keseimbangan bagi Para Pihak).”