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## **Gambling Characteristics Pursuant to Criminal Law Related to Binomo Application**

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### **ABSTRACT**

*Binomo is an online trading platform that provides a wide selection of assets to trade (foreign currencies, gold, and stocks). The Binomo application shows a graphic display (chart) where the chart displays the price movement of an asset. The purpose of this study is to determine the characteristics of gambling in Indonesian criminal law and analyze the Binomo application in the perspective of gambling crime. This research is a type of normative research that describes in detail the social phenomena that are the subject matter in everyday life associated with using a statutory approach. The results of this study indicate that the characteristics of the Binomo application have fulfilled the elements of gambling in Article 27 Paragraph 2 of the Electronic Information and Transactions Law because of the element of intentionally making accessible Electronic Information and/or Electronic Documents that have gambling content. This is proven by the existence of the Binomo website which is categorized as an electronic document and contains gambling characteristics, namely guessing with a deposit as a bet and can be accessed by the public easily.*

**Keywords:** *Binary Options Trading, Binomo, Gambling*

## INTRODUCTION

It is undeniable that Indonesia is currently in the era of globalization. Additionally, social control toward others is still not responsive enough due to Indonesian society's and the country's culture as a developing nation. This is inversely proportional to developed nations where the populace is more obedient, rational, and orderly in upholding the law. Therefore, in many circumstances, police often experience hardships in tracking down perpetrators of complex online crimes, resulting in less effective, efficient and responsive law enforcement efforts.

The rapid development of technology has led to a variety of new business opportunities that can be utilized by the community. Technology not only introduces innovative business models, but also brings efficiency in various aspects of life, including financial transactions. Digital platforms have made it easier for people to conduct financial transactions, both in the form of payments and fund management. In addition, technology has also provided convenience for individuals to invest online, allowing them to access various investment instruments that were previously out of reach. However, despite the many benefits, these developments also present new challenges, such as increased security risks in digital transactions and the potential for fraud in online investment activities.

Since 2018, binary options trading has expanded in Indonesia through digital media marketing. Binary options are often associated with futures trading. Law No. 32/1997 on Commodity Futures Trading, which was later amended to Law No. 10/2011, sets out the initial regulations for futures trading. All transactions involving the buying and selling of commodities, the drawing of margin, as well as the settlement of transactions, are considered part of commodity futures trading. In addition, these transactions may also involve derivative contracts, such as futures contracts, sharia derivative contracts, or other types of derivatives.<sup>1</sup>

Since the COVID-19 pandemic struck Indonesia, people have begun to show high curiosity towards investing. Driven by curiosity and the desire to earn extra income, many people have started investing through the Binomo application. Binomo is an online trading platform that offers a wide selection of assets, such as foreign currencies, gold, and stocks. The Binomo online site was developed by Tiburon Corporation Limited, based in Seychelles, and began operations in 2014. The platform went viral among Indonesian netizens through an advertisement featuring a man named Budi Setiawan, who claimed to be able to make \$1,000 from home in 2019.

In any trading activity, there is always interplay between sellers and buyers.<sup>2</sup> This dynamic also applies to Binomo. However, unlike traditional trading that

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<sup>1</sup> Pemerintah Pusat Indonesia, *Undang-Undang (UU) Nomor 10 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 32 Tahun 1997 Tentang Perdagangan Berjangka Komoditi*, 2011, <https://peraturan.bpk.go.id/Details/39186/uu-no-10-tahun-2011>.

<sup>2</sup> Asher Wolinsky, "A Note on the Interaction between Buyers and Sellers," *Economics Letters* 13, no. 2-3 (January 1983): 117-121, <https://linkinghub.elsevier.com/retrieve/pii/0165176583900721>.

involves a direct meeting between the two parties, transactions on Binomo do not involve physical interaction. On this platform, sellers and buyers transact on an online market called the exchange, which is part of the capital market. The transaction process on Binomo is mediated by a third party who acts as a broker. This broker serves as an intermediary that connects sellers and buyers, ensures the flow of transactions, and provides access to various traded assets, such as currencies, stocks, and other commodities. Despite no physical transaction taking place, the interaction and agreement between the two parties still takes place in the form of digital transactions that are overseen and managed by the platform.

Binomo displays a graph or chart that depicts the price movement of an asset. Trading on the Binomo focuses on predicting whether the price of the chart will go up or down. This trading relies heavily on economic and technical analysis, which helps traders look at historical price movement trends to forecast future price movements. There is a fundamental difference between exchanges on Binomo and conventional markets, as exchanges do not involve individual retail trading, but rather aggregate transactions for execution. An exchange is a place where a large number of sellers and buyers, such as banks, brokers, and other financial institutions, meet to make transactions. Asset analysis, both technical and fundamental, is the method used to trade on the Binomo. Nonetheless, the operational system implemented in Binomo bears a resemblance to the gambling system, where the final outcome of the trade is highly dependent on the correct prediction of the price movement within a certain period of time. Therefore, the purpose of this research is to prove whether Binomo is a gambling application as well as to provide a clear view of the gambling characteristics of the Binomo application.

## LITERATURE REVIEW

### **Criminal Law Policy**

Criminal law policy consists of a set of regulations that govern actions that fall under the category of prohibited criminal offenses, as well as sanctions imposed on criminals as a way to prevent them from committing crimes. The terms 'criminal law policy' and 'criminal law politics' share the same meaning, making their use interchangeable. Criminalization policy establishes acts that were previously not punishable as criminal acts. Therefore, criminalization policy is part of criminal policy that uses criminal law, which in turn is included in criminal law policy. Barda Nawawi argues that, because the word 'policy' comes from the words 'politiek' (in Dutch), the terms 'criminal law policy', 'criminal law politics', or 'strafrechtspolitik' have similar meanings.<sup>3</sup>

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<sup>3</sup> Yudha, Subekti, and Noenik Soekorini, "Criminal Law Enforcement against Perpetrators of Illegal Mining in Sukodadi Village, Kabuh, Jombang," *IUS POSITUM: Journal of Law Theory and Enforcement* 2, no. 1 (2023): 57–67.

Sudarto defines criminal policy as an effort to apply regulations that are appropriate to the existing situation and conditions.<sup>4</sup> This policy includes state actions through authorized bodies to establish regulations that must be obeyed, with the aim of ensuring society can function properly while conveying the content and intent of these regulations. The term "social policy" encompasses "social security policy" and "social defense policy," as well as reasonable efforts to promote social welfare and public security.<sup>5</sup> In general, policies related to criminal law can include the scope of policies associated with the field of criminal law in the implementation of penalties.

From the aforementioned opinions, it can be concluded that criminal law policy refers to legal regulations made and implemented by authorized bodies as a positive legal direction for the community and law enforcement, with the aim of preventing and overcoming crimes or criminal offenses. As the eradication of criminal law violations is the goal of law enforcement, criminal law policy is incorporated in law enforcement policy. While it is part of law enforcement efforts, it is also an important part of social virtue and social politics.

### **Gambling**

Gambling has a negative impact that is detrimental to the morals of society, especially the younger generation. As a social problem that has existed since human civilization, gambling has a negative influence that is difficult to overcome. Dr. Kartini Kartono defines gambling as the act of deliberately placing bets on events such as games, matches, or contests whose outcomes are yet to be determined.<sup>6</sup> In this context, gambling involves betting on something of value. The Great Dictionary of Indonesian Language also describes gambling as a game in which money or valuables are bet, such as dice or cards.<sup>7</sup>

In legal terms, Article 1 of Law No. 7/1974 refers to gambling as a criminal offense that is synonymous with crime, although an in-depth definition is not provided in either the law or the Criminal Code (KUHP). Gambling includes all games that rely on luck to win bets, including bets on competitions or games that

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<sup>4</sup> Sahat Maruli Tua Situmeang, "KEBIJAKAN KRIMINAL DALAM PENEGAKAN HUKUM UNTUK MEWUJUDKAN KEADILAN DALAM PERSPEKTIF HAK ASASI MANUSIA," *Res Nullius Law Journal* 1, no. 1 (November 25, 2019), <https://ojs.unikom.ac.id/index.php/law/article/view/2492>.

<sup>5</sup> Gerhard Igl, "Social Insurance: Legal Aspects," in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), 362–364, <https://linkinghub.elsevier.com/retrieve/pii/B9780080970868861115>.

<sup>6</sup> William Dwi K. P. Marbun and I Ketut Sudjana, "TINJAUAN YURIDIS TERHADAP AKTIFITAS PERJUDIAN ONLINE DI INDONESIA SERTA PENGAWASAN DAN PENERAPAN SANKSI," *Kertha Wicara : Journal Ilmu Hukum; Vol. 06, No. 04, Oktober 2017* (September 11, 2017), <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/33928>.

<sup>7</sup> Kamus Besar Bahasa Indonesia (KBBI), "Arti Kata Judi - Kamus Besar Bahasa Indonesia (KBBI) Online," *Kamus Besar Bahasa Indonesia (KBBI)*, last modified 2025, <https://www.kbbi.web.id/judi>.

are not participated in by the participants of the competition.<sup>8</sup> Along with technological advances, the form of gambling has developed into online gambling, which is played through electronic media such as computers or cellphones with internet access. In online gambling, players must pay a bet and guess correctly to win the game; if they lose, the player loses the money that has been staked.

Despite the fact that the Criminal Code does not explicitly discuss online gambling, the concept of gambling described in the Criminal Code remains relevant, which is a game that relies on luck with possible outcomes influenced by the skill of the player. Online gambling, also known as internet gambling, is often conducted through betting activities on sports or casino activities.<sup>9</sup> This type of gambling not only expands the range of gambling activities but also increases the risks for the people involved, both in moral, social and economic terms.

## RESEARCH METHODOLOGY

This research uses a normative juridical type problem approach. In writing this research, a statute approach is used. In addition, there are primary legal materials which include the Preamble of the 1945 Constitution of the Unitary State of the Republic of Indonesia, the Criminal Code, Law No. 19/2016 on Amendments to Law No. 11/2008 on Electronic Information and Transactions, and Law No. 7/1974 on Gambling Control. In addition, there are secondary legal materials related to the subject under study, including literature works, journals, previous research, and scientific works.

## RESULT AND DISCUSSION

### Characteristics of Gambling in Indonesian Criminal Law

Gambling is prohibited under Article 303 of the Criminal Code, together with Article 303 bis Paragraph (1) of the Criminal Code. In this regard, Article 303 of the Criminal Code reads as follows:

1. Any person who is not entitled shall be punished by imprisonment for ten years or a fine of twenty-five million rupiahs;
2. Any person who with deliberate intent organizes or provides an opportunity for gambling, or with deliberate intent participates in a gambling business;

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<sup>8</sup> Dini Ramdania, "Efektifitas Pasal 303 BIS KUHP Dalam Menanggulangi Tindak Pidana Perjudian Sebagai Penyakit Masyarakat," *Wacana Paramarta: Jurnal Ilmu Hukum* 17, no. 2 (February 25, 2018): 105–114, <http://paramarta.web.id/index.php/paramarta/article/view/60>.

<sup>9</sup> Hady Yusuf and Tajudin, "Perilaku Judi Online Dalam Kehidupan Masyarakat Kampung Babakan Binong Permai Kabupaten Tangerang," *Jurnal Mahasiswa Karakter Bangsa* 4, no. 1 SE-Articles (March 30, 2024): 77–87, <https://openjournal.unpam.ac.id/index.php/JMKB/article/view/34630>.

3. Deliberately organizing or providing an opportunity to gamble to the public, or deliberately participating in a gambling business, either with or without an agreement to take advantage of the opportunity; and
4. Engaging in gambling as a source of income. The suspect may be dismissed from their position if they commit the offenses in their capacity.

The term 'gambling' refers to any game that relies on luck to win, and the likelihood of this winning can be made greater due to the habits and intelligence of the players. In addition to other bets, what is considered part of 'playing gambling' is betting on the decision of a race or game that is not made by those participating in the race or game. However, Article 303 bis Paragraph (1), which regulates the crime of gambling, states that:

1. By imprisonment for four years or a fine of ten million rupiah: a) Individuals who take advantage of an opportunity to play gambling created by violating the requirements of Article 303; b) Individuals who engage in gambling on public property, beside a road, or in a location open to the public, unless the relevant authority has authorized the practice.
2. A person may be sentenced to imprisonment for not more than six years or a fine of not more than fifteen million rupiah if the offense is committed within less than two years from the first judgment of conviction for the offense.

Law No. 11/2008 on Electronic Information and Transactions regulates provisions related to gambling through its several articles, including:

1. Paragraph 2 of Article 27 states that any individual who intentionally and without authorization distributes, transmits, or creates electronic documents and information containing gambling content may be subject to punishment.
2. The first paragraph of Article 45 states that the criminal offense mentioned in Article 27 Paragraph (1), (2), or (3) shall be punished with imprisonment for 6 (six) years and/or a fine of not more than Rp. 1,000,000,000.00 (one billion rupiah).
3. Paragraph 4 of Article 52 states that corporations punished with basic punishment plus two-thirds may be subject to criminal offenses as referred to in Article 27 through Article 37.

The crime of gambling consists of several components that drive the activity. Gambling can be defined as a human action or a form of game of chance, where money or goods are used as bets. Based on Article 303 of the Criminal Code, the components included in gambling include taking the opportunity to play gambling and violating the provisions stipulated in the article.

According to Article 303 of the Criminal Code, gambling is a game in which a player expects to win, which usually depends on luck, and if that expectation is coupled with the player's intelligence or habit, then the chances of winning may increase. In addition, participating in a gambling game also means placing a bet on the outcome of a contest or other activity that is not conducted by the person competing or playing. This applies to other types of gambling as well.

The concept of online gambling refers to games conducted in cyberspace or online, using electronic media with internet access and digital money as bets. The game has a number of rules, and the amount of the bet is determined by the online gambling player. Online gambling can cause addiction for its users. Initially, they may just dabble and make some winnings and profits, which then triggers the desire to repeat it with bigger and bigger bets, hoping for even bigger winnings and results. As long as a player has access to a computer or smartphone with an internet connection, money, and free time to gamble, they can play online gambling anytime and anywhere.

Online gambling games that are famous and have many enthusiasts in Indonesia include Poker, Capsa, E-Lottery, Sabung Ayam, and Bola. The presence of online gambling in Indonesia is due to the increasingly limited conventional gambling activities, as the government and religion are against gambling in this country. As a result, gambling organizers turned to opening online gambling sites on the internet to make it easier for people who want to participate in gambling.

As a result of the actions of these gamblers, credit card issuing companies became overwhelmed because gamblers used credit cards as a payment method in playing gambling. Eventually, credit card issuing companies restricted the use of credit cards issued to their owners in order to avoid misusing the cards as a payment method in gambling activities. One of the steps taken was to prohibit cardholders from using their credit cards as a payment method on gambling sites on the internet, as well as developing transaction codes. With these codes, banks can block credit card payments if necessary.<sup>10</sup>

### **Binomo in the Perspective of Gambling**

In essence, gambling has been around for a while, and practically every nation acknowledges that it is a game that depends on luck. Due to the detrimental effects it may cause, particularly on the younger generation, gambling is also a concern in society. Younger people may become unmotivated to work as a result, depending instead on gambling games for their financial resources. Gambling also transgresses

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<sup>10</sup> Lina Nur Anisa, "JUDI ONLINE DALAM PERSPEKTIF MAQASHID SYARIAH," *Journal of Islamic Business Management Studies (JIBMS)* 5, no. 1 SE-Articles (June 15, 2024): 1–21, <https://jurnal.idaqu.ac.id/index.php/jibms/article/view/284>.

morality, religion, and ethics. Players and their families may suffer both tangible and intangible losses as a result of gambling.<sup>11</sup>

Gambling crime patterns include the use of electronic media, such as computers or the internet, as a means to commit criminal offenses. This is regulated in Law No. 19/2016 on Electronic Information and Transactions, as well as in several other regulations, such as Law No. 7/1974 on Gambling Control and Government Regulation No. 9/1981 on the Implementation of Gambling Control. In addition, Article 303 and Article 303 bis of the Criminal Code (KUHP) specifically regulate provisions regarding gambling. Article 303 of the Criminal Code regulates crimes related to gambling, including providing opportunities to play gambling without a license. Offenders can face fines of up to IDR 25 million or imprisonment of up to 10 years. This crime includes acts such as offering or providing the opportunity to play gambling as a source of income, giving the general public the option to gamble, and making gambling a source of livelihood. If the offense is committed while working, the offender's right to work may be revoked. Gambling games themselves include any form of play where the aim is to earn money by relying on luck or skill, including betting on the outcome of races, other games not directly participated in, and other forms of supplementary betting.

According to Article 303 of the Criminal Code, there are five types of crimes related to gambling, which are listed in Paragraph 1. All of these crimes involve unauthorized and unlawful elements:

1. First Act:

Includes the act of offering or providing the opportunity to play gambling intentionally as a source of income. This crime has objective elements, such as the act of providing opportunities and the object of illegal gambling. The subjective element is the intention of the perpetrator to facilitate gambling without participating in gambling. This crime includes inviting people to play gambling by providing a certain place or time.

2. Second Act:

Refers to participation in an unlicensed gambling business. The objective element includes the act of participating in an unlicensed gambling business, while the subjective element is the offender's intent to engage in the activity. The offender has a conscious intention to participate in this gambling business, which means that they actively support the activity.

3. Third Act:

Involves the act of providing the general public with the opportunity to play unlicensed gambling. This crime is similar to the first but is aimed at a wide audience and does not involve the element of income as a source of livelihood. The objective element is offering or providing an

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<sup>11</sup> Safira Mustaqilla et al., "Analisis Maraknya Warga Miskin Yang Kecanduan Judi Online Di Indonesia," *Glossary : Jurnal Ekonomi Syariah* 1, no. 2 (December 27, 2023): 121–136, <https://jurnal.stisummulayman.ac.id/gosejes/article/view/175>.



opportunity, and the subjective element is willfulness to enable gambling to take place in the community.

4. Fourth Act:

Prohibition to engage in unlicensed gambling business activities. The objective element includes the act of participating in illegal gambling business activities, while the subjective element is the deliberate intention to support the gambling business. The difference with the second act lies in the purpose, where the fourth is not aimed at obtaining direct income.

5. Fifth Act:

Refers to direct participation in the gambling game itself, without involving the provision of opportunities or the organization of gambling. The perpetrator uses the opportunity to play gambling in violation of Article 303. Article 303bis of the Criminal Code prescribes the penalty for this type of crime, which is imprisonment of up to four years or a fine of up to ten million rupiah. If committed within two years of a previous conviction, the sentence may increase to six years' imprisonment or a fine of five million rupiah.

Each of the above crimes shows that unlicensed gambling, whether in the form of organizing or participating, is strictly prohibited by Article 303 of the Criminal Code and is subject to severe sanctions.

Binomo is often referred to as gambling and is considered similar to an online casino. Several pieces of evidence pointing to Binomo being illegal include: first, the fraudulent model, where the person featured in the Binomo advertisement is not actually a trader, but just a paid model.<sup>12</sup> Second, Binomo was blocked by the government in May 2019, where the Ministry of Communication and Information blocked the official Binomo website after receiving a submission from the Commodity Futures Trading Supervisory Agency.<sup>13</sup> Binomo has two official websites, Binomo.com and Binomo.net. Despite being blocked by the government, these two sites can still be accessed via VPN. Third, Binomo does not have an operational license, which has led the government to investigate sites that offer investments without a license from the Commodity Futures Trading Supervisory Agency.<sup>14</sup> Fourth, Binomo offers unreasonable profits to its users by offering investments under the guise of foreign currency exchange with huge fixed income.

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<sup>12</sup> Nadila Sandra, Komariah Komariah, and Yohana Puspitasari Wardoyo, "Analisis Yuridis Normatif Praktik Investasi Ilegal Pada Aplikasi Binomo," *Indonesia Law Reform Journal* 2, no. 2 (November 23, 2022): 237–253, <https://ejournal.umm.ac.id/index.php/ilrej/article/view/22188>.

<sup>13</sup> Diah Nila Kandhi, "PERTIMBANGAN HAKIM TERHADAP PENJATUHAN PUTUSAN AFFILIATOR BINARY OPTION (STUDI KASUS PUTUSAN NO:117/PID.SUS/2022/PT.BTN.)," *Lex Administratum* 12, no. 3 (2024), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/55704>.

<sup>14</sup> Muhammad Ardiansyah and Brian Amy Prastyo, "Legal Analysis Of Binary Options Through Online-Based Platforms," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, no. 4 (2022), <https://ejournal.mandalanursa.org/index.php/JISIP/article/view/3596>.

However, in reality, traders can lose a significant amount of money in a short period of time.<sup>15</sup> Fifth, Binomo affiliates create manipulative content and advertisements that promote Binomo as a safer business than doing business on their own. Affiliates such as Indra Kenz frequently mention this, but they fail to highlight the high dangers involved, which makes those new to the industry feel lured.<sup>16</sup>

Gambling can be carried out both offline and online. Binomo is included in online gambling which has recently been discussed by the general public. The Binomo system is considered to have elements of gambling, by guessing the rise or fall of a chart by depositing a certain amount of money first. By predicting the fluctuation of the selected asset within a certain period of time, one can either earn a predetermined amount (fixed payout) or lose the amount wagered.

Therefore, this method of binary options trading fulfills the elements associated with online gambling. The terms “gambling” and “online” are used to define this online gambling. Article 303 of the Criminal Code Paragraph (3) defines “gambling game” as any game in which the chances of making a profit depend entirely on chance, even though the player has certain skills and experience. This includes all rules governing decisions taken in contests or other games that are not made by the individuals taking part in such contests or games, as well as all other relevant regulations.

According to Article 303 Paragraph 3 of the Criminal Code, allegations of gambling on binary options must meet the following conditions:

1. A game that relies on chance. Given that there are only two possible outcomes, players must predict which asset in their portfolio will go up or down, the outcome of which depends on luck or fate. That is how binary options work in practice.
2. A game that requires additional skills and abilities. Investors who run binary options require strong skills to guess and determine the price of the portfolio that will come out in the future, considering the volatile market price changes.

Investors stake their initial capital or money on game decisions in binary options applications. When players or investors manage to guess correctly, they can earn a profit of between 60 to 90 percent of the staked capital. However, if the guess is wrong, the investor will lose the entire staked capital.<sup>17</sup>

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<sup>15</sup> Sandra, Komariah, and Wardoyo, “Analisis Yuridis Normatif Praktik Investasi Ilegal Pada Aplikasi Binomo.”

<sup>16</sup> Syavira Raniya and Marliyah Marliyah, “Analisis Perilaku Investor Pada Penggunaan Aplikasi Trading Online Binary Option Binomo Di Kalangan Muslim Gen-Z,” *Jurnal Ekonomi Syariah Teori dan Terapan* 9, no. 2 (March 31, 2022): 168–181, <https://e-journal.unair.ac.id/JESTT/article/view/33602>.

<sup>17</sup> Deni Setiyawan and Noor Rahmad, “Menelaah Keabsahan Kontrak Binary Option Pada Unsur Pidana Perjudian,” *Jurnal Penegakan Hukum dan Keadilan* 5, no. 1 (March 30, 2024): 69–78, <https://journal.umy.ac.id/index.php/jphk/article/view/19312>.

## CONCLUSION

Based on the research that has been conducted, the characteristics of Binomo fulfill the elements stipulated in Article 303 of the Criminal Code related to the crime of gambling, which includes the crime of offering or providing opportunities to engage in gambling. In the Binomo application, users are asked to guess whether a chart will go up or down, which contains elements of “guessing” and “profit and chance.” However, the “guessing” can only be categorized as gambling if there is a bet of money or property. In this case, Binomo requires its users to make a deposit as a condition for guessing the rise or fall of the chart in the app.

The characteristics of the Binomo application have also fulfilled the elements of gambling regulated in Article 27 Paragraph (2) of the ITE Law, as there is an element of intentionally making electronic information and/or electronic documents accessible and containing gambling content. This is evidenced by the existence of the Binomo website which is categorized as an electronic document and contains gambling characteristics, such as guessing with a deposit as a bet. In addition, the site can be easily accessed by the public. Therefore, it can be concluded that Binomo is an application that contains gambling elements in accordance with Article 303 of the Criminal Code in conjunction with Article 27 Paragraph (2) of Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions.

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