

Legal Liability of Futures Brokerage Companies for Risks in Standard Agreements that Result in Losses to Customers in Online Trading Investments



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ABSTRACT: The implementation of trading activities is brokered by Futures Brokers, where Futures Brokers, in binding customers use standard agreements that have been prepared by Bappebti. Where the agreement contains an exoneration clause and this violates Law Number 8 Year 1999 concerning Consumer Protection, so that with these violations, it results in losses suffered by customers. The formulation of the problems raised in this study is 1). How do the clauses in the agreement provided by the Futures Brokerage Company which accommodate the risks in the standard online trading investment agreement provide a balance for the parties? 2) How is the Futures Brokerage Company's liability to customers for risks in the standard investment trading agreement agreed upon? This study uses normative legal research methods, namely research by collecting and analyzing secondary data using secondary data sources only, namely books related to the problem, related laws and regulations, related court decisions, legal theories and relevant scholars' doctrine experts, and case studies related to legal issues, the theory used to analyze the theory of Legal Liability Theory, Balance Theory, Legal Certainty Theory and Theory of the Hierarchy of Legislation. The conclusion of this research is that people should be careful in understanding agreements related to online trading investments.

KEYWORDS: Legal Liability, Futures Broker, Risk, Agreement, Customer, Investment, Online Trading

INTRODUCTION

The Indonesian state under the leadership of President Joko Widodo's administration has actually made the economic growth sector one of the strategic carriages in accelerating the pace of development in Indonesia.¹ One of the focuses of study and discussion in the economic growth sector is investment in trade. To support the development of investment in Indonesia, technological advances are also needed. Indonesia is a country that is entering the 4.0 era. Era 4.0 is an era where technology is developing so rapidly that it affects various aspects of life. Various aspects of life that are influenced by technological developments are social, cultural, economic and business aspects.^{2,3} Information and communication technology is considered to bring benefits and changes to the country.⁴

People initially invested in conventional ways such as by buying land or property assets, saving their money by buying gold (hoardings), buying land or houses (real estate), lending money to other parties, or saving in banks.⁵ However, nowadays this transaction tends to switch to other forms of investment that use electronic media (online).⁶ In trading transactions, there are always sellers and buyers. Likewise in the Trading market, but here the difference is, buyers and sellers do not meet physically directly and there is never a physical handover. Trading transactions are classified as futures exchanges, which are derivative investments (derivatives) of stock investment products and their friends. In its development, trading in Indonesia requires supervision, a regulator that oversees the trading activities themselves.⁷

¹ https://www.setneg.go.id/baca/index/presiden_jokowi_investasi_jangkar_pemulihan_eko_nomi_indonesia, accessed on June 01, 2022, at 16.00 WITA

² Dewa Ayu Fera Nitha and I Ketut Westra, 2020, Cryptocurrency Investment Based on Bappebti Regulation No. 5 of 2019, Udayana Master of Law Journal, E-ISSN: 2502-3101, P-ISSN:

³ -528X, Vol.9, No. 4, pp. 713

⁴ Dwi Jauhartono, Efridani Lubis, 2015, Piracy of Journalistic Works in Internet Media, Scientific Journal of Juanda University Bogor Vol 7 Number 1, pp. 1

⁵ Sumantoro, 1990, Introduction to Capital Markets in Indonesia, Ghalia Indonesia, Jakarta, pp. 16

⁶ Ibid

⁷ <http://fxkeybiz.blogspot.com/2009/08/mekanisme-dan-legalitas-forex.html>, accessed on June 01, 2022, at. 16.20 WITA

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Commodity Futures Trading hereinafter referred to as Futures Trading is everything related to the sale and purchase of Commodities with the withdrawal of Margin and with later settlement based on Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts. Commodities are all goods, services, rights and other interests, and any derivatives of Commodities, which can be traded and become the subject of Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts.

The implementation of trading activities is brokered by a brokerage company, in Indonesia alone there are 64 Futures Brokerage Companies that are recognized and licensed by the Bappebti institution.⁸ It can be explained that according to Article 1 paragraph 17 of Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading Futures Trading Brokers, hereinafter referred to as Futures Brokers, are business entities that carry out buying and selling commodities based on futures contracts, sharia derivative contracts, and / or other Derivative Contracts on the customer's mandate by withdrawing a certain amount of money and / or securities as a margin to guarantee certain transactions.

The Consumer Protection Law expressly does not justify and provide space for business actors to pour clauses that contain transfer of responsibility in order to obtain profits and throw responsibility or what is often called an exoneration clause. However, the problem is found in the sheets of the Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior, especially Form Number III.PPP.2 which is used as a benchmark for Futures Brokerage Companies in Indonesia in making agreements or contracts for customers.

Based on the description above, it can be seen that there are legal problems, namely the inconsistency of norms between Article 18 paragraph 1 letter a of Law Number 8 of 1999 concerning Consumer Protection and Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions on Futures Broker Behavior. It can be explained that Article 18 paragraph 1 letter a of the GCPL prohibits business actors from including standard clauses in every document and / or agreement if it states the transfer of responsibility, while the Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions on Futures Broker Behavior contains a standard agreement format Form Number III.PPP.1 which contains an exoneration clause. Furthermore, what is meant by Form Number III.PPP.1 is a Mandate Provision Agreement which contains clauses that are very burdensome and there is no legal protection to customers, one of which is the transfer of responsibility from the Futures Brokerage Company.

Here we can see the inconsistency of the norms between Article 18 paragraph 1 letter a of the GCPL and the Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior. On the one hand, the GCPL prohibits the use of exoneration clauses, namely the transfer of responsibility on the other hand, the Bappebti Regulation seems to prepare, provide and make an example of an agreement format on form Number III.PPP.1

which is an inseparable part of the Bappebti Regulation to be used for Futures Brokerage Companies in Indonesia in binding customers. Where in the agreement, there are clauses that are very burdensome to customers. Based on the foregoing, on this occasion the researcher is very interested in conducting legal research by examining and discussing the above problems which will then be poured into the form of a thesis with the title "**Legal Liability of Futures Brokerage Companies Against Risks in Standard Agreements That Result in Losses to Customers in Online Trading Investments**". Based on the description of the background above, the problems that will be drawn in this research or research can be formulated as follows:

1. How do the clauses in the agreement provided by the Futures Brokerage Company which accommodate the risks in the standard online trading investment agreement provide a balance for the parties?
2. How is the Futures Brokerage Company liable to customers for risks in the mutually agreed standard investment trading agreement?

METHODS

The type of research used is normative legal research, normative legal research is research by collecting and analyzing secondary data,⁹ normative research usually uses secondary data sources only, namely books related to the problem, relevant laws and regulations, relevant court decisions, legal theories and relevant scholars' doctrines, and case studies related to legal issues. The approach used in this research is a statutory approach, namely by examining all laws and regulations related to the legal issues under study. Furthermore, using a conceptual approach is a type of approach in legal research that provides an analytical point of view of solving problems in legal research from the aspect of the legal concepts behind it, or it can even be seen from the values

⁸ <http://bappebti.go.id/pialangberjangka>, accessed on May 16, 2022, at 12.45 Wita

⁹ Soerjono Soekanto and Sri Mamudji, 2007, Normative Legal Research: A Brief Overview, PT. Raja Grafindo Persada, Jakarta, p. 13.

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contained in the norming of a regulation in relation to the concepts used, and finally using a case approach to provide an overview of examples of cases of customers who have suffered losses due to standard agreements with Futures Brokerage Companies.

Normative legal research legal research sources are obtained from library materials. In normative research, literature is the basic material. Normative research is divided into 3, namely primary, secondary and tertiary legal materials.¹⁰ The primary legal materials used are the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law No. 8 of 1995 concerning Capital Markets, Law No. 8 of 1999 concerning Consumer Protection, Law No. 25 of 2007 concerning Investment, Law No. 40 of 2007 concerning Limited Liability Companies, Law of the Republic of Indonesia No. 40 of 2007 concerning Limited Liability Companies. 40 of 2007 concerning Limited Liability Companies, Law of the Republic of Indonesia Number 10 of 2011 concerning Amendments to Law of the Republic of Indonesia Number 32 of 1997 concerning Commodity Futures Trading, Law No. 7 of 2014 concerning Trade, Government Regulation of the Republic of Indonesia Number 49 of 2014 concerning the Implementation of Commodity Futures Trading, Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior and OJK Circular Letter No.13./SE/OKJ.07/2014 Regarding Standard Agreements. Secondary legal materials used are secondary materials are doctrines in books, law journals, and internet websites. Tertiary legal materials used are such as legal dictionaries, encyclopedias, and so on.

The legal material collection technique used in this research is by means of researchers collecting three legal materials, namely primary legal materials, in this case regulations or regulations related to the research topic, coupled with an agreement obtained by researchers. Furthermore, all related regulations will be reviewed by researchers to explore the clauses contained in the standard agreement obtained by researchers. In analyzing the conflict of norms in this study, the researcher uses the principle of *lex superior derogat legi inferiori*, where the principle of *lex superior derogat legi inferiori* states that if there is a conflict between higher and lower laws and regulations, the higher norms must take precedence. This principle is one of the principles in the hierarchy of laws and regulations.

RESEARCH RESULTS AND DISCUSSION

Clauses in Agreements Provided by Futures Brokerage Companies that Accommodate Risks in Online Trading Investment Standard Agreements Provide Balance for Parties

An agreement or contract is understood as the terms and conditions agreed upon by the parties as a provision of negotiations, talks or negotiations between the parties that make it.¹¹ Agreements or contracts are inseparable from clauses. The agreement contains a series of clauses or covenants, where most of these clauses are an effort to protect the parties. The clause is a series of requirements formulated in an effort to provide credit in terms of financial and legal aspects.¹²

Therefore, in a contract made by the parties, it should be able to accommodate the interests of the parties as outlined in a clause. Johannes Ibrahim Kosasih also added that the parties in a contract have the right to fulfill their personal interests so as to give birth to an obligation, the consideration is that individuals must have freedom in every offer and consider their benefits for themselves.¹³ The existence of the interests of the parties is something that cannot be separated, because basically in the contract agreement the parties in it both have interests. Referring to the idea that an agreement occurs when the parties in it agree to bind themselves to each other, in this case the implementation of the agreement cannot be separated from the principle of consensualism which is a condition for forming an agreement. The principle of consensualism is an absolute requirement in every contract that serves to ensure legal certainty.

The agreement contained in the Regulation of the Commodity Futures Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions on Futures Brokerage Behavior which is used as a benchmark for all Futures Brokers in Indonesia, in terms of binding customers with Futures Brokers there are several clauses that show an imbalance in the position between the parties, namely customers and Futures Brokers, among others Article 7, Article 8, Article 10 and article 15 which can be described as follows about No Guarantee of Information or Recommendations, Limitation of Liability of Futures Brokers, Futures Brokers are not Responsible for Communication Failures, Transfer of Funds.

Bayu Seto Hardjowahono and Denny Lesmana explained that in contract practice must contain standard articles (boilerplates). Where boilerplates are standard articles that almost always have to be in business contracts. Boilerplates clauses generally begin to function when a difference of opinion or dispute arises between the parties regarding a right or obligation arising from the contract or from the implementation of the transaction, which includes guaranty clauses, indemnity clauses, releases,

¹⁰ Peter Mahmud Marzuki, 2008, Normative Legal Research Overview, Rajawali Pers, Jakarta, p. 24. 24.

¹¹ Johannes Gunawan, 2003, Reorientation of Contract Law in Indonesia, Journal of Business Law, volume 22, No.6, pp. 45

¹² Johannes Ibrahim Kosasih, Hassanain Haykal, 2021, Legal Cases of Notary in the Field of Banking Credit, Sinar Grafika, Jakarta, pp. 108

¹³ Johannes Ibrahim Kosasih, 2019, Access to Credit and Variety of Credit Facilities in Bank Credit Agreements, Sinar Grafika, Jakarta, p. 65. 65

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events of breach of contract and legal remedies (even of default and remedies), assignment clause, notice, force majeure clause, hardship clause, survivability clause, severability clause, waiver clause, choice of forum clause, choice of law clause in international contracts, dispute settlement clause (arbitration), interpretation of contractual terms, interpretation on legislation clause, no agency nor partnership clause, merger clause, express and implied warranties clause, amendments clause¹⁴. Some Boilerplates Articles that have been mentioned above, can be reviewed from the Articles contained in the Agreement between the customer and the Futures Broker No. Reg: CA-04341, among others:

- a) The waiver article in the boilerplates is contained in Article 7 regarding no guarantee of information or recommendations, Article 8 regarding limitation of Futures Broker liability and Article 10 regarding Futures Brokers are not responsible for communication failures. However, in the application of the three Articles, there are indications that lead to fraudulent practices by shifting responsibility from the more dominant position to the less dominant position, namely the Futures Broker to the customer.
- b) The notice article in the boilerplates is contained in Article 17 regarding the risk notification document, it can be explained that Article 17 of the trading agreement has a hidden meaning or meaning where the risk notification document is a separate document from this agreement, so that customers will feel confused and do not understand the purpose of the document.
- c) Article Force Majeure can be categorized or included in the type of force majeure clause in the Boilerplates Article, but the application of the Article has weaknesses for customers with implications for losses. Where with the existence of this Article on force majeure, it will make the Futures Broker take refuge when the customer suffers a loss with the reason or argument of the existence of force majeure so that it will release its responsibility, such as an example of the argument of a natural disaster in a country that results in a change in the value of commodities in the world so that the customer is wrong in setting the position so that the customer will experience defeat.
- d) The Dispute Settlement Clause can be categorized or included in the type of Choice of Forum Clause and Dispute Settlement Clause in the Boilerplates Article, because the Dispute Settlement Article of the trading agreement contains provisions on the jurisdiction or place of the Court which is considered authorized to file cases arising from the formation, implementation, or interpretation of the contract. And for the Dispute Settlement Clause, it explains that one form of forum selection clause is used to emphasize that the parties do not want to resolve disputes through the litigation process and instead agree to resolve them by alternative dispute resolution methods.
- e) The article on amendments to the contents of the contract (amendments clause) in the boilerplate, contained in Article 21 concerning Amendments to the Contents in the Trust Agreement, in the provisions of this Article contains an agreement of the parties regarding the method that must be taken if the parties or one of the parties want to change the contents or substance in the agreement.

Based on this explanation, it can be seen that the trading agreement does contain several boilerplate clauses, but the use of the boilerplate clause seems to be a loophole to be able to benefit from the situation and conditions. Based on the substance of the agreement, it can be seen that the contractual relationship between the customer and the Futures Broker has an unbalanced position, where in the agreement there is no clause that provides protection for the interests of the customer. This can have implications for losses that will arise in the future as a result of the customer's own lack of understanding of the contents of the agreement.

Looking at some of the clauses that have been described by researchers related to investment trading agreements, it can be found that there are clauses that are burdensome to customers, so that they can have implications for customers experiencing losses in online trading. Thus, it can be understood that the principle of balance here relates to the rights and obligations that exist in the standard agreement clause. Imbalance arises if the clauses in the standard agreement are so burdensome that they create inequality for the rights and obligations in the agreement. Balance is considered to exist if both parties enjoy the same level of rights by taking into account the characteristics of the contract object. In this context, there are at least several legal principles, one of which is the principle of balance as a reference for making standard clauses that will be poured into an agreement / contract, especially for online trading investment practices, especially the principle of balance which can be found in several laws and regulations in Indonesia such as Law Number 8 of 1999 concerning.

Consumer Protection, (UUPK) Circular Letter of the Financial Services Authority (SE OJK) Number 13 / SEOJK.07 / 2014 concerning Standard Agreements, Financial Services Authority Regulation Number 01 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector.

¹⁴ Bayu Seto Hardjowahono and Denny Lesmana, 2019, *Business Contract Design*, PT Citra Aditya Bhakti, Bandung, pp. 93-111

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Liability of Futures Brokerage Companies Against Customers for Risks in Mutually Agreed Standard Investment Trading Agreements

Legal liability is the result that arises due to the non-fulfillment of the rights and obligations of the parties. Responsibility according to Sugeng Istanto means the obligation to provide an answer which is an account of all things that happen and the obligation to provide recovery of losses that may be caused.¹⁵ Meanwhile, according to Algra, responsibility is the obligation to bear responsibility and bear the losses suffered both in law and in the administrative field.¹⁶ The form of legal responsibility based on the existence of a contractual relationship or agreement is regulated in Article 1317 of the Civil Code and 1338 of the Civil Code. However, to determine the responsibility of the Futures Brokerage company for losses incurred by customers in the online trading agreement in question, it is good for researchers to re-present the principles of responsibility put forward by Sidharta,¹⁷ which includes (1) Error (liability based on fault), (2) presumption of liability, (3) presumption of irresponsibility, (4) strict liability, and (5) limitation of liability.

Based on the description of the principles above, according to the Researcher to the losses suffered by customers in the practice of online trading caused by Futures Brokers leads to liability based on the principle of fault (liability based on fault), which leads to the existence of unlawful acts. As previously explained, where the tort must fulfill the elements of tort, among others:

a. The existence of a tort.

When associated with an online trading agreement between the Futures Broker and the customer, the agreement can be said to violate the legislation, because the agreement contains an exoneration clause containing a clause of limitation or transfer of responsibility, which violates the provisions in Article 18 paragraph (1) letter a of Law Number 8 Year 1999 concerning Consumer Protection which reads "Business actors in offering goods and / or services intended for trade are prohibited from making or including standard clauses in every document and / or agreement if it states the transfer of responsibility of the business actor.

b. The existence of an element of fault.

As stipulated in Form Number III.PPP.1 of the Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior which contains a standard agreement format to bind customers in conducting online trading activities, where the standard agreement format is an integral part of the Bappebti regulation. It can be explained that in the format of the standard agreement that is used as a benchmark by the Futures Broker to bind the customer, there are several exoneration clauses containing restrictions or transfer of responsibility. This means that the exoneration clause contained in the standard agreement format has indeed been prepared and deliberately for the benefit of customers in terms of conducting online trading activities.

c. Existence of Loss Suffered.

Based on the agreement between the Futures Broker and the customer which contains an exoneration clause, of course it will have implications for the imbalance of the position in the agreement. In addition, the standard agreement also contains clauses that are very burdensome for customers, so that the existence of these clauses can make customers suffer losses. Losses here are divided into 2 (two), namely material and immaterial. The provision of compensation according to the Civil Code is as follows:

- a) Compensation for all tortious acts (Article 1365 of the Civil Code);
- b) Compensation for acts committed by others (Article 1367 of the Civil Code). Article 1367 paragraph (1) of the Civil Code, a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are his dependents or caused by goods under his supervision (vicarious liability).
- c) Compensation for the owner of the body (Article 1368 of the Civil Code)
- d) Compensation for the owner of a collapsed building (Article 1369 of the Civil Code)
- e) Compensation for the family left behind by the person killed (Article 1370 of the Civil Code)
- f) Compensation for bodily injury or disability (Article 1371 of the Civil Code)
- g) Damages for acts of defamation (Article 1372 of the Civil Code)

d. There is a Causal Relationship Between Fault and Loss.

In this case, it means that there is a causal relationship between the act committed and the consequences that arise. For example, the loss incurred is caused by the perpetrator's actions or in other words, the loss would not have occurred if the perpetrator had not committed the unlawful act. In this case, an online trading investment agreement containing an exoneration clause can be said

¹⁵ Sugeng Istanto, Loc.Cit

¹⁶ Salim HS.Op.Cit, p. 208

¹⁷ Sidharta, 2004, Indonesian Consumer Protection Law, Grasindo, Jakarta, p. 62.

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to be a legal action carried out on the basis of a defect of will, where the implementation is carried out based on an abuse of circumstances which relates to the conditions that exist at the time of the agreement, which makes one of the two parties not free to express his will.¹⁸ This abuse of circumstances is a form of defect of will.

Abuse of circumstances is a limiting factor and interferes with the free will to enter into a contract between the parties. It contradicts the principle of freedom of contract and the principle of consensuality, as it interferes with the existence of the contract. So, it is logical that a contract whose agreement occurs due to an abuse of circumstances, so that it is not in accordance with the will, then the existence of the contract will be canceled. Then, the loss due to the abuse of circumstances must be proven in court to cancel the contract. How much and in what form the abuse of circumstances occurred does not matter and can be interpreted broadly. The loss that must be proven is not only material loss, but also includes immaterial loss. The act is certainly one of the main elements of tort. With the discovery of an act of misuse of circumstances, customers who feel they have suffered a loss on the standard agreement can make efforts to sue for Unlawful Acts (PMH) to the Court to be able to cancel the agreement and claim damages.

Based on some of the elements that have been described, it can be said that the online trading agreement between the Futures Broker and the customer has fulfilled the elements of unlawful acts (PMH), therefore customers who are harmed by the standard agreement can claim losses by filing a lawsuit against the law to the Court.

CONCLUSIONS AND SUGGESTIONS

Based on the discussion above, the following conclusions can be drawn:

1. The standard online trading agreement contains clauses that accommodate risks such as no guarantee of information or recommendations, limitation of the responsibility of futures brokers, futures brokers are not responsible for communication failures, transfer of funds. In this case there is an inconsistency between the attachment of the agreement contained in the Regulation of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia Number 4 of 2018 concerning Technical Provisions on the Behavior of Futures Brokers with Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection. It is explained that in Article 18 paragraph (1) letter a of the GCPL states "Business actors in offering goods and / or services intended for trade are prohibited from making or including standard clauses in every document and / or agreement if it states the transfer of responsibility of the business actor." On the one hand, Article 18 paragraph (1) letter a prohibits making or including an exoneration clause on the other hand, the attachment to the agreement contained in Bappebti Regulation Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior contains an exoneration clause. With the inconsistency of these norms, it has implications for the potential losses that will occur to customers. However, in practice in the field, the standard agreement guidelines attached to the Bappebti Regulation are the basis for binding customers, because of this inconsistency, this Bappebti regulation should remove the exoneration clause contained in the violating online trading agreement, so that in the future an agreement can be made that does not contain an exoneration clause that violates the law. Seeing some of the clauses that have been described related to investment trading agreements, tend to be burdensome on customers, so that it can have implications for customers experiencing losses in online trading, therefore balance and certainty in the agreement can be said to be absent. Imbalance arises if the clauses in the standard agreement are so burdensome that they create inequality for rights and obligations in the agreement.
2. The liability of the Futures Brokerage Company for customers who suffer losses due to the existence of a standard agreement between the Futures Broker and the customer regarding online trading can be requested on the principle of error committed by the Futures Broker, because the online trading standard agreement contained in Bappebti Regulation Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior has violated the provisions of Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection. Because the agreement violates the laws and regulations, namely Article 18 paragraph (1) letter a of the GCPL, it can be said that the online trading agreement between the Futures Broker and the customer has fulfilled the elements of a tort as stipulated in Article 1365 of the Civil Code regarding the existence of a tort, the element of fault, the loss suffered, the existence of a causal relationship between the fault and the loss, therefore the customer who is harmed by the standard agreement can claim damages by filing a tort claim to the Court.

Based on the above discussion, the following suggestions can be made:

1. To the Government, especially the Commodity Futures Trading Supervisory Agency (Bappebti) to be able to move proactively in terms of carrying out its functions, namely supervision of commodity futures trading. Furthermore, Bappebti must evaluate

¹⁸ Muhammad Syaifuddin, 2019, Contract Law (Understanding Contracts in the Perspective of Philosophy, Theory, Dogmatics, and Legal Practice) Enrichment Series of Bond Law, CV. Mandar Maju, Jakarta, p.55

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and even revoke the regulations that have been issued, namely Bappebti Regulation Number 4 of 2018 concerning Technical Provisions for Futures Broker Behavior, where in the regulation there is a standard agreement format containing an exoneration clause that can make customers or the public trapped, misguided and can experience losses. Furthermore, these stakeholder institutions must be able to synergize with each other to be able to maintain and provide protection to the public in terms of carrying out online trading activities.

2. To the public to be careful in choosing investment media, especially online trading. Where online trading is an investment medium that is full of high risks and the public is expected not to be easily tempted and believe in high profit offers, because this can actually make people trapped and experience losses.
3. To academics, research should be used as a reference for future research related to the Legal Liability of Futures Brokerage Companies for Risks in Standard Agreements that Result in Losses to Customers in Online Trading Investments, so that it can become a juridical study in developing concepts and doctrines in terms of the urgency of the meaning of the balance of rights in standard agreements, in order to protect the rights of customers.

REFERENCES

BOOKS

- 1) Muhammad Syaifuddin, 2019, Contract Law (Understanding Contracts in the Perspective of Philosophy, Theory, Dogmatics, and Legal Practice) Enrichment Series of Bond Law, CV. Mandar Maju, Jakarta.
- 2) Peter Mahmud Marzuki, 2008, Normative Legal Research Brief Overview, Rajawali Pers, Jakarta.
- 3) Sidharta, 2004, Indonesian Consumer Protection Law, Grasindo, Jakarta.
- 4) Soerjono Soekanto and Sri Mamudji, 2007, Normative Legal Research: A Brief Overview, PT. Raja Grafindo Persada, Jakarta.
- 5) Sumantoro, 1990, Introduction to the Capital Market in Indonesia, Ghalia Indonesia, Jakarta.

JOURNAL

- 1) Dewa Ayu Fera Nitha and I Ketut Westra, 2020, Cryptocurrency Investment
- 2) Based on Bappebti Regulation No. 5 of 2019, Udayana Master of Law Journal, E-ISSN: 2502-3101, P-ISSN: 2302-528X, Vol.9, No. 4, pp. 713
- 3) Dwi Jauhartono, Efridani Lubis, 2015, Piracy of Journalistic Works in Internet Media, Scientific Journal of Juanda University of Bogor Vol 7 Number 1, p. 1

INTERNET

- 1) https://www.setneg.go.id/baca/index/presiden_jokowi_investasi_jangkar_pemulihan_ekonomi_indonesia, accessed on June 01, 2022, at 16.00 WITA
- 2) <http://fxkeybizz.blogspot.com/2009/08/mekanisme-dan-legalitas-forex.html>, accessed on June 01, 2022, at. 16.20 WITA
- 3) <http://bappebti.go.id/pialangberjangka>, accessed on May 16, 2022, at. 12.45 Wita



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