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# Legal Protection in Foreign Exchange Trading Activities with Profitable Strategies

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**ABSTRACT**

Foreign exchange trading is used free floating system and does not use fixed rate system or fixed exchange rate as stipulated at the International Conference "The Bretton Woods". In foreign exchange trading can be classified as several active actors who conduct foreign exchange transactions, namely central banks, individuals or public companies, brokers or brokers, governments, speculators and arbitrators. The purpose of this study is to provide the public with an understanding of the legal basis of implementing foreign exchange trading and the legal protection provided to traders for their profitable strategies in trading foreign exchange based on Indonesian positive law. This normative legal research examines the problem of norms in the form of blurred norms based on the use of a statutory approach. Based on the results of the study conducted, it was found that the legal basis for the implementation of foreign exchange is the Commodity Futures Trading Law and further regulations stipulated by the Head of BAPPEBTI, including the Head of BAPPEBTI Regulation No. 109 / BAPPEBTI / PER / 01/2014 j.o Head of BAPPEBTI Regulation No. 95 / BAPPEBTI / PER / 06/2012. Then concerning guaranteeing legal protection for a profitable trading strategy in forex trading, it can be protected as a trade secret through the Trade Secret Law so that forex traders can file a lawsuit to the District Court for violations of the forex trading strategywhich is owned by a trader to be asked for termination of actions and /or compensation (vide Article 11 of the Trade Secret Law).

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## INTRODUCTION

Globalization enables business practices that can involve countries from different parts of the world. One example of business practices that involve various countries in international trade is foreign exchange trading (hereinafter referred to as foreign exchange). Foreign exchange trading, commonly known as foreign exchange trading (hereinafter referred to as forex), is a type of trading transaction that consistently takes place 24 hours a day in the world's money markets with the trading object being the currency of a country. Looking at the world's historical treasury, the practice of foreign currency exchange cannot be separated from "The Bretton Woods Conference", an International Monetary Conference in 1944, at the initiative of the United States, which determined several agreements, namely the establishment of exchange rates by each participating country on the USD currency, the determination of the USD value on gold, the sale of gold to every official holder of USD at a fixed price, and lastly the determination of the limit of not exceeding 1% or 10% in compelling circumstances on the exchange rate of currencies with USD.

Following the International Conference, the United States and various countries around the world experienced significant economic growth. The establishment of the World Bank and the International Monetary Fund, two years after the International Conference, was also based on the desire to oversee this system. Over time, in 1970, foreign exchange trading (trading foreign exchange) emerged and developed as an alternative business that offered many benefits. Foreign exchange trading uses a free-floating system and does not use a fixed rate system or a fixed exchange rate as stipulated in the "The Bretton Woods" International Conference. The free-floating system emphasizes the freedom of exchange rates to fluctuate in accordance with the main world markets with various influencing factors. It is this use of the free-floating system that then makes various individual investor actors or active market actors engage in foreign exchange trading with the hope of making profits or profit-making from the movement/change in the exchange rate of foreign currencies. The rapid development of foreign exchange trading has given rise to the need for institutions that oversee foreign exchange trading, so the Futures Contract Arbitration Body (Future) was established, namely the International Money Market, the Tokyo International Financial Future Exchange, and the London International Financial Futures Exchange.

In foreign exchange trading, there are several active players who conduct foreign exchange transactions, namely central banks, individuals or corporate entities, brokers, governments, speculators, and arbitrageurs. There are also several factors that can affect exchange rates, which can also affect profits and losses in foreign exchange trading, namely inflation rates, foreign currency supply and demand, interest rates, balance of payments positions, and government supervision. Conducting foreign exchange trading is not an easy matter, it requires special skills and the right strategy to read the state of the main world markets and the movement of exchange rates that occur. Each player must have the ability to read foreign exchange charts, understand the right trading volume, accurately set trading timeframes, understand global market sentiment, and be able to make the right decisions to buy and exchange foreign currencies. Considering the difficulty in doing these things accurately, a specific strategy or method is needed to be able to obtain large profits when conducting foreign exchange trading. In practice, there are several foreign exchange trading strategies that are commonly known by all business actors, namely the martingale trading strategy, trading by news, and pending order trading. The desire to continue to obtain greater profits in foreign exchange trading has given birth to various new methods or strategies that are more profitable or advantageous. The legal issue that then arises is related to the desire of foreign exchange trading actors to obtain legal certainty regarding legal protection for profitable strategies so that they are not used or known by other parties. The ambiguity or obscurity of the existing norms is related to the form of legal protection that can be given for profitable strategies or methods owned by foreign exchange trading actors under Indonesian positive law.

Indah Kusuma Wardhani conducted research with a similar theme with the title ""Legal Protection for Customers in Forex Trading According to Law No. 10 of 2011 Concerning Amendments to Law No. 32 of 1999 Concerning Commodity Futures Trading", which discusses the form of protection provided by law for customers who suffer losses in foreign exchange trading. Furthermore, Allysthia M Renti, through the title "Commodity Futures Trading and Legal Review of Forex and Foreign Stock Index Derivative Contracts in the Futures Trading Industry in Indonesia," discusses problems related to foreign exchange trading from the perspective of derivative contract law based on Indonesian positive law.

Based on several previous studies, it can be understood that related to research on legal issues, namely legal protection for profitable strategies in foreign exchange trading, has never been done before. Therefore, based on this, the author wishes to conduct further research related to the basic legal issues of foreign exchange trading and the form of legal protection that can be given for profitable strategies owned by foreign exchange trading actors. Then the author chose the title "LEGAL PROTECTION IN FOREIGN EXCHANGE TRADING ACTIVITIES WITH PROFITABLE STRATEGIES."

## RESEARCH METHOD

This normative legal research examines the problem of the vagueness of norms, or vague norms, in the legal regulation of legal protection given to profitable strategies owned by traders in foreign exchange trading. The sources of legal materials in this research include primary and secondary legal materials. Then, the approach in this research is a legislative approach that examines all library materials related to the problems being studied. The technique for collecting legal materials in this research is done through document study techniques, while the analysis technique used is a deductive analysis technique.

### Legal Basis for Conducting Foreign Exchange Trading

Foreign exchange trading can be understood as trading that occurs 24 hours a day in major world markets by trading the currency of one country against the currency of another country at a high rate of price movement acceleration and a certain level of liquidity. Susanto stated that the value of transactions in foreign exchange trading reaches 3 trillion USD or more per day. What makes foreign exchange trading one of the main trades in the world is because of its high investment process with a return on investment rate of more than 5%-10% per month, allowing businesses to obtain very large profits. In foreign exchange trading, there are two types of currency pairs that are the objects of foreign exchange trading, namely cross currency pairs and major currency pairs. Cross currency pairs consist of EUR/CHF, EUR/GBP, CHF/GBP, which do not involve USD, while in major currency pairs, the currency involves USD. Then in foreign exchange trading, there are several actors involved in its implementation, namely:

a) Central Bank: Plays a role in stabilizing the exchange rate of foreign currencies.
b) Commercial Banks: Commercial banks involved in foreign exchange trading are foreign exchange banks that channel and collect funds in currencies other than rupiah.
c) Non-Financial Companies: Non-financial companies are involved in foreign exchange trading due to their cross-border trade activities.
d) Foreign Exchange Brokers: Foreign exchange brokers are companies specifically created to provide brokerage services as intermediaries to meet the needs of their clients in the money market. They receive compensation for the services they provide.
e) Private Traders: Private traders are individuals or groups of individuals who actively invest in the foreign exchange market with the goal of profiting from fluctuations in global currency movements.
f) Bank and Non-Bank Dealers: Bank and non-bank dealers have access to activities in the interbank market and client market, with the goal of earning profits from the difference between the buying and selling prices of foreign currencies.
g) Speculators: Speculators engage in activities in the money market through the buying and selling of commodities with the hope of earning short-term profits from changes in currency prices.

Theoretically, foreign exchange trading is classified as commodity futures trading or trading conducted by commodity futures brokerage companies on an alternative trading system (hereinafter referred to as ATS). Examining Indonesian positive law, the legal umbrella for conducting commodity futures trading is Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading (hereinafter referred to as the Commodity Futures Trading Law). Referring to Article 1 point 1 of the Commodity Futures Trading Law, it is determined that "Commodity Futures Trading, hereinafter referred to as Futures Trading, is anything related to the buying and selling of Commodities with the withdrawal of Margin and with subsequent settlement based on Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts." Related to the instruments traded on the commodity futures market, it is not only primary commodities, namely plantation, agricultural, and mining products, but also includes financial instrument commodities, such as foreign exchange futures contracts or foreign exchange. The contracts used in foreign exchange trading can be derivative contracts that are traded on an alternative trading system, namely the contract for difference stock index, contract for difference foreign currency, and contract for difference commodity.

Referring to Article 1 point 6 of the Commodity Futures Trading Law, it is determined that the definition of a derivative contract is "a contract whose value and price depend on the Commodity subject." Furthermore, the definition of an alternative trading system is also regulated in Article 1 point 10, which states that "Alternative Trading System is a trading system related to the buying and selling of Derivative Contracts other than Futures Contracts and Sharia Derivative Contracts, which is conducted outside the Futures Exchange, bilaterally with the withdrawal of Margin registered with the Futures Clearing Institution." Then, for the guidance, regulation, development, and supervision of Futures Trading, it is carried out by a government institution, namely the Commodity Futures Trading Supervisory Agency (hereinafter referred to as BAPPEBTI) according to Article 1 point 3 of the Commodity Futures Trading Law. Examining Article 2 of BAPPEBTI Head Regulation No. 109/BAPPEBTI/PER/01/2014 concerning Derivative Contracts in the Alternative Trading System (hereinafter referred to as BAPPEBTI Head Regulation concerning Derivative Contracts in ATS), it is determined that derivative contracts must meet the requirements, namely "having a reliable price reference from other derivative markets that can be accessed continuously, being in demand by at least 2 (two) alternative trading system organizers, having specifications and standards, and having economic benefits as a means of risk transfer."

Furthermore, through Article 17 paragraph (1) of BAPPEBTI Head Regulation No. 95/BAPPEBTI/PER/06/2012 concerning the Alternative Trading System, it is determined that the implementation of foreign exchange trading on the Alternative Trading System is organized as follows:

a) Article 17 paragraph 1 letter a "The Alternative Trading System Organizer is obliged to provide buy and sell price quotations at any time during trading hours."
b) Article 17 paragraph 1 letter b "Participants in the Alternative Trading System must have a system that guarantees price transparency, which enables Clients to obtain the best price and the opportunity
c) Article 17 paragraph 1 letter c "Buy and sell price quotations are real offers and demands and not merely indicative prices" that are the same for trading."
d) Article 17 paragraph (1) letter d "All transactions that occur in the Alternative Trading System by the Organizer and Participants in the Alternative Trading System must be reported to the Futures Exchange and registered with the Futures Clearing Institution."
e) Article 17 paragraph (1) letter e "Participants in the Alternative Trading System are obliged to create trading procedures (trading rules), which are reviewed by the Futures Exchange and then submitted by the Futures Exchange to BAPPEBTI for approval."
f) Article 17 paragraph (1) letter f "The form and content of trading procedures (trading rules) as referred to in letter e are regulated by the Futures Exchange and then submitted by the Futures Exchange to

BAPPEBTI for approval."

g) Article 17 paragraph (1) letter g "The mechanism for implementing clearing and guaranteeing transactions that have been registered with the Futures Clearing Institution is carried out in accordance with the Regulations and Rules of the Futures Clearing Institution."
h) Article 17 paragraph (1) letter h "Further technical regulations regarding reporting and registration are carried out by the Futures Exchange together with the Futures Clearing Institution."

**Legal Protection of Profitable Foreign Exchange Trading Strategies**

Legal protection is protection given through legal means. Referring to Article 1 point 12 of the Commodity Futures Trading Law, the definition of a participant in the Alternative Trading System is determined as "a Futures Broker who is a Clearing Member who engages in the buying and selling of Derivative Contracts other than Futures Contracts and Sharia Derivative Contracts, on behalf of Clients in the Alternative Trading System." Then, related to the parties mentioned in the Commodity Futures Trading Law, it is explicitly explained through Article 1 point 13, which states "individuals, cooperatives, other business entities, joint ventures, associations, or groups of individuals, and/or organized companies." In conducting foreign exchange trading, not a few foreign exchange trading actors have a special strategy to obtain large profits, given the complexity of currency movements in major world markets. This strategy is commonly referred to as a profitable strategy. A profitable strategy is a special method or way used in conducting foreign exchange trading to obtain large profits. Some trading forex strategies that are generally known are the Martingale Trading Strategy, Pending Order Trading, and Trading By News. The Martingale strategy focuses on the method of covering the total losses from previous transactions and obtaining profits by doubling the capital. In this strategy, there is a risk that will always increase in subsequent transactions. Then, the Pending Order Trading strategy emphasizes the process of ordering foreign currency exchanges with four basic frameworks, namely buy stop, sell stop, buy limit, and sell limit, while the last strategy, Trading By News, is a strategy based on the process of observing Tradeable News in detail, so that it can read the movements of the foreign exchange market accurately and accurately to obtain profits.

Besides the common strategies already known in foreign exchange trading, there are also various special strategies created by foreign exchange traders to obtain high profits in conducting foreign exchange trading in major world markets. The existence of profitable strategies owned only by certain parties in foreign exchange trading is certainly important to obtain legal protection. Examining it from the perspective of positive law, profitable strategies in foreign exchange trading can be interpreted as a company trade secret. An understanding of trade secrets can be found in Article 1 point 1 of Law No. 30 of 2000 concerning Trade Secrets (hereinafter referred to as the Trade Secrets Law), which states "information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the trade secret." What makes profitable strategies in foreign exchange trading classified as trade secrets is because the strategy is information about valuable ways or methods to obtain large profits in trading, which is not known to the general public. Based on this, profitable strategies meet the elements of a trade secret according to the Trade Secrets Law

Referring to Article 3 paragraph (1) of the Trade Secrets Law, it is determined that "Trade Secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts." Paragraph (2) states that "Information is considered confidential if the information is only known to certain parties or is not known to the general public." Paragraph (3) states that "Information is considered to have economic value if the confidentiality of the information can be used to carry out commercial activities or businesses or can increase economic profits." And paragraph (4) states that "Information is considered confidential if the owner or the parties who control it have taken reasonable and proper steps." The rights owned by the owner of a trade secret are that the trade secret can be used by themselves, granted a license to another party, and can prohibit other parties from disclosing it to third parties or using the trade secret for commercial purposes as determined by Article 4 of the Trade Secrets Law. The guarantee of legal protection for trade secrets is evident in the establishment of provisions for trade secret violations in Chapter VII of the Trade Secrets Law, which must be heeded by all parties in conducting trade, including:

a) Article 13 of the Trade Secrets Law states "Trade Secret Violation also occurs when a person intentionally discloses a Trade Secret, violates an agreement or violates a written or unwritten obligation to protect the Trade Secret in question."
b) Article 14 of the Trade Secrets Law states "A person is considered to have violated another party's Trade Secret if they obtain or control the Trade Secret through means that contradict applicable laws and regulations as determined by the essence of the."

Based on these facts, it can be understood that one form of legal protection provided for profitable strategies in foreign exchange trading is that any party who discloses or uses the profitable strategy without the permission of the holder of the foreign exchange trading strategy trade secret rights can be sued in the district court on suspicion of committing an illegal act, so that they can then be sued to stop the act and/or provide compensation (see Article 11 of the Trade Secrets Law).

**CONCLUSION**

Foreign exchange trading is a type of trading transaction that consistently takes place 24 hours a day in the global money market with the object of trade being the currency of a country. Foreign exchange trading is conducted on an alternative trading system with derivative contracts, therefore, the legal basis for conducting foreign exchange trading is the Commodity Futures Trading Law (PBK) and the Commodity Trading Supervisory Agency (BAPPEBTI) in accordance with Article 1 point 3 of the Commodity Futures Trading Law. The BAPPEBTI Head Regulation concerning Derivative Contracts in the Alternative Judicial System.

**SUGGESTION**

Then, related to the legal protection given to profitable strategies owned by a trader in conducting foreign exchange trading, it can be guaranteed as a company trade secret through the provisions contained in Article 1 point 1 of the Trade Secrets Law. Therefore, for trade secret violations, lawsuits can be filed in the District Court to request the cessation of the act of using profitable strategies in foreign exchange trading, as well as compensation for losses suffered as a result of the disclosure of the strategy to third parties. The author's suggestion from what has been discussed previously to maintain the confidentiality of profitable strategies, which is a valuable method to obtain very large profits, is the need for clear legal protection to maintain the safety of profitable strategies and ensure they can be implemented well, without harming a company. With clear legal protection to maintain profitable strategies, a company can properly operate its business if a strategy leaks, and it can be dealt with legally in a clear manner.

**REFERENCE**


Darmawan, M. Daud. "Mengenal Bisnis Valuta Asing Untuk Pemula”. Edisi Pertama. Pinus. Yogyakarta. (2007).

Jonaedi Efendi. Metode Penelitian Hukum: Normatif dan Empiris. Prenada Media, (2018).

PNH Simanjuntak. Hukum Perdata Indonesia. Kencana. Jakarta, 2017.

Soekanto, Soerjono, and Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta. PT. Raja Grafindo Persada 2003.

Busman, Busman, Nurhayati Nurhayati, Fiqi Amali, and Zainal Muttaqin. "Penerapan Big Data Pada Forex Trading Menggunakan Analisa Statistik Dengan Breakout Strategy." Jurnal Pseudocode 4, no. 2 (2017).

Gerungan, Anastasia E. "Perlindungan Hukum terhadap Rahasia Dagang Ditinjau dari Aspek Hukum Perdata dan Pidana di Indonesia oleh: Anastasia E. Gerungan." Jurnal Hukum Unsrat 22, no. 5 (2016).

Kusuma, Nugroho. "Metode Analisa Fundamental dan Teknikal Pergerakan Mata Uang Asing (FOREX) Pada Bursa Berjangka di PT Monex Investsindo di Surakarta." Yustisia Jurnal Hukum 1, no. 3 (2013).

Liyanto, Liyanto, and Alwiyah Alwiyah. "Analisis Teknikal Untuk Mendapatkan Profit Dalam Forex Trading Online." Jurnal Studi Ekonomi 17 (2012).

Mahendra, Anak Agung Gede, I. Gusti Ayu Puspawati, and Ida Bagus Putu Sutama. "Perlindungan Hukum Terhadap Nasabah Perusahaan Pialang Berjangka." Kertha Semaya: Journal Ilmu Hukum 5, no. 2. (2016).

Maulid, Nugrah, Imam Koeswahyono, and Yuliati Yuliati. "Perlindungan Hukum Bagi Nasabah Pialang Perdagangan Berjangka Dalam Hal Terjadinya Wanprestasi Yang Dilakukan Oleh Pihak Pialang Perdagangan Berjangka." Adil: Jurnal Hukum 8, no. 2 (2017).

Nugroho, Fauyhi Eko. "Trading Otomatis Perdagangan Forex Menggunakan Metode Martingale Dan Candlestick Sebagai Acuan Transaksi Di Exness." Simetris: Jurnal Teknik Mesin, Elektro dan Ilmu Komputer 7, no. 1 (2016).

Paat, Yanni Lewis. "Penyelesaian Sengketa Rahasia Dagang Menurut Hukum Positif Indonesia." Lex et Societatis 1, no. 3 (2013).

Renti, Allysthia M. "Perdagangan Berjangka Komoditi dan Kajian Hukum Kontrak Derivatif FOREX dan Indeks Saham Asing Dalam Industri Perdagangan Berjangka di Indonesia." Jurnal Hukum & Pembangunan 42, no.1 (2012).

Sari, Martina Ratna Paramitha. "Pengawasan Bappebti (Badan Pengawas Perdagangan Berjangka Komoditi) terhadap Pialang Perdagangan Berjangka dalam Hal Tindakan Menyalahgunakan Dana Nasabah." Kumpulan Jurnal Mahasiswa Fakultas Hukum 1, no. 1 (2013).

Suratman. "Expert Advisor Foreign Exchange Menggunakan Simple Moving Average." Jurnal Bangkit Indonesia 7, no. 1 (2018).

Suryani, Suryani. "Transaksi valuta asing sarf dalam konsepsi fikih mu’amalah." Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan 13, no. 2 (2013).

Wardhani, Indah Kusuma. "Perlindungan Hukum bagi Nasabah dalam Forex Trading Menurut Undang-Undang No. 10 Tahun 2011 Tentang PerubahanUndang-Undang No. 32 Tahun 1999 Tentang Perdagangan Berjangka Komoditi (Studi Kasus di PT. Finex Berjangka)." Lex Librum: Jurnal Ilmu Hukum 3, no. 1 (2016).

Syahviera, Nabhiella Putri. "Efektifitas Pasal 1 Surat Keputusan BAPPEBTI Nomor 99/bappebti/per/11/2012 Tentang Penerimaan Nasabah secara Elektronik On-line di Bidang Perdagangan Berjangka Komoditi

untuk Melindungi Nasabah (Studi di PT Millenium Penata Futures)." Kumpulan Jurnal Mahasiswa Fakultas Hukum 1, no. 1 (2014).
Ginanjar MR, Tirtayanti S, Syafitri IK. The Effect of Cuddle Theraupeutic: Side Sitting Position on Immunization Injection Pain Scale In Babies Aged 2-12 Months. J Masker Med. 2024;12(1):100–9.