

Responsibility and Accountability in the World of Futures Trading: Analysis of Futures Brokers and Broker Representatives Under the Spotlight of Civil Law and BAKTI Arbitration"

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Abstract

This study aims to examine the role of Article 1367 of the Civil Code in determining the duties of Futures Brokers and Futures Broker Representatives in the context of Indonesian commodity futures trading, with a focus on the consequences for violations of these duties by Futures Broker Representatives. respond to it. This methodology is based on normative legal principles and is based on research into relevant literature and examination of BAKTI rulings in the field of commodity futures trading arbitration. Findings from this study highlight the importance of taking into account the Futures Broker Representative's level of professionalism as well as any applicable rules and regulations when determining the extent to which the Futures Broker is legally liable for the Futures Broker Representative's conduct. In order to provide fairness and clarity in commodity futures trading, this study's findings suggest that current rules need to be revised and adjusted. The study also suggests directions for future research on the dynamics of futures trading's legal aspects.

I. Introduction

The phrase "responsibility" does not have a suitable meaning when used alone. A person's ex ante responsibilities for their future actions and behavior (such as role, normative, and moral obligations) and their ex post attributions (such as role, normative, moral, causal, judgment, and perceived attribution) are generally what people mean when they talk about responsibility. (Bergsteiner & Avery, 2010).

Responsibility, on the other hand, might mean different things depending on the context. It can mean dedication to an activity that has nothing to do with acknowledging the other party's rights. Accordingly, opportunities and prudent decisions may impact the agent's subjective perspective on the circumstance and the planned action's unique context, which in turn affects the agent's level of responsibility (Dellavalle, 2019). Nonetheless, according to the Big Indonesian Dictionary (KBBI), one definition of responsibility is "the duty to bear everything," which includes the risk of being sued, blamed, or sued in the event of an incident. One meaning of responsibility in a legal dictionary is "the duty to perform an act in accordance with an order." (Eriza et al., 2016).

The Quarterly Point states that in order for someone to be held legally responsible, there must be some foundation upon which it is based. This foundation must include both the right to suit and the duty to be held accountable (Rasuh, 2016). Additionally, there are other schools of thought under the notion of responsibility for illegal conduct (tort liability), as put out by Abdulkadir Muhammad. These schools of thought include (Muhammad, 1999):

- a. A defendant may be held liable for damages caused by an illegal conduct that was willfully carried out (international tort responsibility), but only if the defendant knew or should have known that their actions would cause injury to the plaintiff.
- b. Negligence tort liability, which arises from wrongdoings caused by carelessness, rests on the intertwined concepts of culpability and law.
- c. Whether an offender acts knowingly or unknowingly, he has full responsibility for all consequences that may follow from his illegal behavior (strict liability). This is true regardless of whether the offender's purpose was to do harm or not.

Articles 1365–1380 of the Civil Code govern "Unlawful Actions" in Indonesia that have their origins in Continental Europe, according to Rosa Agustina's book *Unlawful Actions*. (Sari, 2018). First, there is personal responsibility for one's own criminal activities as well as responsibility for the unlawful acts of others and the things under one's control, as outlined in these paragraphs. That is stated in the Civil Code, Article 1367, paragraph 1: "Losses incurred by an individual might be attributable to his own acts, the acts of his dependents, or even items that are under his control."

A broad formulation in the Civil Code, article 1367 paragraph (1), divides

responsibility into

1. Responsibility for other people's actions
 - a. Responsibility for actions carried out by dependent people in general;
 - b. Responsibilities of parents and guardians towards minor children (article 1367 paragraph 2 of the Civil Code);
 - c. Responsibility of the employer and the person who represents the affairs of the person they employ (article 1367 paragraph 3 of the Civil Code);
 - d. Responsibilities of school teachers and head craftsmen towards their students and craftsmen (article 1367 paragraph 4 of the Civil Code)
2. Responsibility for goods under his control
 - a. Responsibility for goods in general (article 1367 paragraph 1 of the Civil Code);
 - b. Responsibility towards animals (article 1368 of the Civil Code)
 - c. Owner's responsibility for the building (article 1369 of the Civil Code).

Employers are liable under article 1367 paragraph (3) of the Code of Civil Law not only for obligations under the employment bond but also for those that extend outside the employment bond, as long as the individual receiving the order carries it out autonomously, either under his own leadership or has previously completed the task. This is according to MA Moegni Djojodirdjo. in compliance with his directions (Eman, 2022). Employers are held liable for their workers' criminal activities, as stated in article 1601 of the Code of Civil Law (AJIE, 2013):

"In a labor agreement, both the employer and the worker commit to working together for a certain period of time in exchange for payment."

The Hoge Raad decision dated November 4 1938 also regulates responsibility for actions that are outside the duties assigned to subordinates (Saltman, 2003), but is closely related to the subordinate's responsibilities to the point that it may be considered part of their job (MH, 2021). The purpose of holding subordinates accountable under article 1367 paragraph (3) of the code of civil law is to compensate for losses that result from activities that do not directly pertain to their assigned duties, but are so closely related that they are considered to be performed in the course of the subordinate's employment (Efrianto & Wiyanti, 2022).

The decision of the Commodity Futures Trading Arbitration Board (BAKTI) in Case No. Reg: 020/BAKTI -ARB/08.2014 dated 22 January 2016 states that although absolute responsibility (without error) is clearly regulated in article 1367 paragraph (3) of the Civil Code, its implementation is still incorrect. Customers and Futures Broker Representatives might nevertheless fall victim to unseen fraud in the real world, despite having received explicit instructions on how to conduct commodity futures trading operations. The client notifies the futures broker representative and

provides the representative with the customer's transaction access code so that the customer may trade commodities in the futures market. The customer continues to do so until the customer suffers a loss and requests that the futures broker assume responsibility.

In response to this issue, the Futures Broker withheld payment until the subject was brought before the Commodity Futures Trading Arbitration Board (BAKTI) under the June 14, 2014, Mandate Grant Agreement. In a decision dated January 22, 2016, the Commodity Futures Trading Arbitration Board (BAKTI) addressed this issue by penalizing the futures broker that was responsible for returning part of the customer's funds, without penalizing the futures broker representative, based on the following factors:

" So long as the components of an illegal conduct are satisfied, according to Article 1365 of the Civil Code, a plaintiff does not need to have an agreement with the defendant in a District Court case for an unlawful act, if the Respondent's position is accurate. But, even in an arbitration forum, the plaintiff and defendant still need to have an agreement for there to be any claims for illegal activities. Third parties cannot be included as parties in an arbitration dispute, with the exception of intervening parties, unless an agreement is reached in accordance with Law 30/1999, as mentioned above. The Arbitration Rules and Procedures of the Commodity Futures Trading Arbitration Board (BAKTI) and the Arbitration Process acknowledge third party intervention as voeging, tussenkomst, or vrijwaring. However, in the present case, the PARTIES' arguments and objections are not meant for the third party as the intervening party, but rather for the party being sued (defendant/respondent)".

Besides that, the following factors have been examined by the Commodity Futures Trading Arbitration Board (BAKTI) when deciding whether or not to penalize the Futures Broker who is liable for the return of portion of the Customer's funds:

Article 1367 of the Civil Code which states:

" When someone's dependents inflict harm, the individual is just as liable as the person themselves for their losses. "

Article 5 paragraph (1) SK 63 as amended by SK 64 reads:

" When engaging in futures trading, the futures broker is liable for the acts of any futures broker employee or affiliated party. "

Article 504 paragraph (2) letter H of the Exchange Rules and Regulations reads:

"The stock exchange member is personally liable for any acts, omissions, noncompliance, or failures done by official workers, representatives, or any third

parties acting in the course of their job or position.”

The decision of the Commodity Futures Trading Arbitration Board (BAKTI) suggests that article 1367 of the Civil Code, which governs relationships between parents and children, employers and subordinates, teachers and students, and the head of a craftsman and his or her employees, cannot be strictly applied in this case. This is due to the fact that a Futures Broker Representative is someone with knowledge and experience in futures contract trading brokerage and must pass the exam administered by CoFTRA, as stated in Articles 55, 56, 57, and 58 of Republic of Indonesia Government Regulations No. 49 of 2014 regarding the Implementation of Commodity Futures Trading. In addition, a Futures Broker Representative is bound to follow the regulations outlined in Articles 4 and 7 of the Regulation of the Head of the Commodity Futures Trading Supervisory Agency (64/BAPPEBTI/Per/1/2009) while performing his duties. This regulation amends the previous regulations (63/BAPPEBTI/Per/9/2008) that addressed technical provisions for futures broker behavior.

Commodity Futures Trading Arbitration Board (BAKTI) processes have flaws, as stated in Article 30 of Law no. 30 of 1999 about Arbitration and Alternative Dispute Resolution:

“The parties to the dispute and the arbitrator or arbitration panel hearing the case can both agree that third parties not included in the arbitration agreement can join and participate in the arbitration process to resolve the dispute if there is an interest involved”.

This article suggests that third parties may be involved in arbitration proceedings via voeging, tussenkost, or vrijwaring, but that this does not apply when the third party is also a defendant or respondent. A significant debate has been sparked by the January 22, 2016, decision of the Commodity Futures Trading Arbitration Board (BAKTI) in Case No. Reg: 020/BAKTI -ARB/08.2014, which pertains to the legal framework of commodity futures trading and the application of absolute responsibility. The case exemplifies the difficulty of enforcing laws pertaining to the financial and commerce industries, despite the fact that Article 1367 paragraph (3) of the Civil Code clearly governs accountability for the acts of those who are supervised.

First, it is clear from this decision that futures brokers must be aware of the restrictions of responsibility that apply to their business. Although it is stated in legal conventions that workers or associated parties are responsible for their acts, the reality of commodities futures trading activities necessitates greater clarification on the extent of this obligation, particularly when it comes to clients having access to and using transaction codes.

Secondly, the arbitration judgment of the Commodity Futures Trading Arbitration Board (BAKTI) highlights the significance of agreements in defining the extent of obligation. While under common law torts may be imposed even in the absence of an

agreement between the parties involved, under arbitration, such an agreement is absolutely necessary in order to establish liability. This proves that parties' contractual connections are very important in deciding their rights and responsibilities in an arbitration setting.

Third, the case also throws light on the duties and restrictions placed on futures broker agents. Although futures broker representatives are subject to regulations and must fulfill certain criteria, it is unclear how much of a responsibility the broker has for an agent's acts, particularly when such acts are carried out without the broker's awareness or approval. This makes one wonder whether there isn't room for improvement in our current regulatory and supervisory structures to better safeguard consumers and forestall misuse.

Finally, the consequences of this case highlight the need to address the legislative systems that enable third parties to intervene in arbitration proceedings. This highlights the need of allowing relevant third parties, who may significantly aid in dispute settlement, to have their interests taken into account throughout the arbitration process.

Given the intricate nature of the connection among customers, broker representatives, and brokers, this verdict emphasizes the significance of correct legal interpretation and implementation in the setting of commodities futures trading. It further demonstrates the need for more transparent rules with strong enforcement measures to safeguard everyone concerned.

According to the information provided, the main question that this study aims to answer is: (1) In relation to the application of Article 1367 of the Civil Code, how does the duty of Futures Brokers and Futures Broker Representatives relate to the legal breaches committed by Futures Broker Representatives? (2) In cases involving procedural law and the Commodity Futures Trading Arbitration Agency (BAKTI), which does not acknowledge other parties other than as intervening parties, may the Futures Broker Representative be held legally responsible without regard to his own errors?

2. Research Methods

To unravel the complexity of liability in commodities futures trading, this study employs a normative juridical methodology. By reviewing the relevant literature, this study delves into the established legal standards found in statutes, case law, and the quasi-judicial Commodity Futures Trading Arbitration Board (BAKTI) rulings. Rather than focusing on the sheer volume of rules, this qualitative investigation examines the content of the legislation.

Interviews with relevant parties, such as judges, the Commodity Futures Trading Arbitration Agency (BAKTI), and Bappebti, enrich the data with viewpoints that cannot be derived from text alone, while an interpretative approach to lawsuit documents and court decisions exposes the legal dynamics contained therein. Not only does qualitative juridical analysis methodically arrange the facts acquired, but it also examines the value and positive impacts of legal certainty. Therefore, this study not only examines legal standards in detail but also puts them to the test in practice, opening the door to a more nuanced understanding of the state's function in settling disputes involving commodities futures trading in Indonesia.

This study will use this research strategy to address the topic of what happens when futures brokers and futures broker representatives break the law. This study gives a thorough picture of the configuration of legal obligation in practice by analyzing legal documents and conducting interviews. It focuses on Article 1367 of the Code of Civil Law. In addition, this study sheds light on the limitations of futures broker representatives' responsibilities by investigating the rules governing the Commodity Futures Trading Arbitration Agency (BAKTI) and how they are put into practice, particularly in cases involving third party restrictions. Important insights into the underlying legal dynamics and how they interact with principles of procedural law to create responsible and equitable results in dispute resolution are offered by this.

3. Results and Discussion

The Position of Futures Brokers and Futures Broker Representatives in Relation to Application Cases at the Commodity Futures Trading Arbitration Board (BAKTI)

Innovations in IT have changed the way people live their lives, particularly in the corporate sector. More and more people are doing business and investing online; one example is Forex Trading. Trading foreign exchange (Forex) entails buying and selling currencies of other countries (Budi, 2005). One way to make money in foreign exchange (Forex) trading is to purchase and sell a country's currency. The money markets and commodities futures exchanges are two examples of these high-risk, high-reward ventures that need ability and carry a high degree of danger, but also provide the possibility of substantial returns (Wójcik et al., 2017).

According to Forex trader Frento T. Suharto, who claims that all investments have the danger of loss, it is crucial to grasp the idea of high risk-high return (MM, 2014). The rapid price fluctuations in foreign exchange make it an ideal market for high-risk traders. The foreign exchange market (Forex) is open around the clock, every day of the year, and it features transactions originating in the Americas, Europe, Asia, and Australia. It runs around the clock thanks to a worldwide network of banks, businesses, and people (Mahendra & Supheni, 2018).

Indonesian forex trading has progressed from 18th-century commodities dealing to 21st-century internet trading, a kind of foreign exchange. Investors may trade foreign currencies from the comfort of their own homes with this innovative method (Liu et al., 2020), facilitating less expensive investment execution and doing away with the need for traditional brokerage offices (Ferlianto, 2013). A technical guideline and business authorization for foreign currency trading must be provided by the Indonesian Commodity Futures Trading Supervisory Agency (Bappebti) in accordance with Law no. 10 of 2011 about Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading.

A futures broker is an organization that facilitates the purchase and sale of commodities via the use of futures contracts (Rosenthal, 2006), customer-requested

derivative contracts, including those pertaining to sharia law (Litoama, 2018). As part of their obligations under Indonesian Government Regulation No. 49 of 2014, they are required to withdraw a certain amount of money or securities as margin.

Several articles address the specifics of futures broker business, including:

1. Article 45 establishes the standards for Futures Brokers, who must be members of the Futures Exchange and must be limited liability businesses that have secured a business license from the Head of CoFTRA in order to engage in this activity.
2. Futures brokers are obligated to meet capital requirements according to Article 46, with additional measures governed by the rules of the Head of CoFTRA.
3. The process for submitting an application for a business license as a futures broker to the Head of CoFTRA is outlined in Article 47, along with the necessary documentation that must be included.
4. A futures broker business license application must be submitted to the Head of CoFTRA by a certain date, as specified in Article 48.
5. The Regulation of the Head of CoFTRA regulates other conditions surrounding futures broker registration, as stated in Article 49.
6. A Futures Broker is required under Article 50 to have three Futures Broker Representatives at the very least.
7. According to Article 51, a Futures Broker is required to choose one Compliance Director who fulfills certain qualifications.
8. The ban of certain individuals controlling futures brokers and the duty to declare this controlling party to the head of CoFTRA are governed by Article 52.
9. Article 53 details the steps a futures broker must take to establish a branch office.
10. The ability to join more than one futures exchange is granted to futures brokers under Article 54, who are then required to notify the Head of CoFTRA of their memberships.

Futures brokers in Indonesia are subject to stringent regulations designed to protect traders, investors, and the general public from any potential harm. The significance of stringent regulations in the industry is highlighted by Regulation Number 63 / BAPPEBTI / Per / 9/2008, which states that every futures broker representative must be a permanent employee at the futures broker company in question and possess an official permit from Bappebti.

In addition, this duty is widened in many provisions of Law no. 10 of 2011. According to Article 50, Futures Brokers are required to know their clients' histories, financial situations, and expertise levels when it comes to futures trading. Because of this, clients may be certain that they will obtain services tailored to their specific requirements and budgets. Before transactions can begin, consumers must receive risk warnings and company information materials from futures brokers. Brokers must also

sign into agreements with clients to ensure that everyone understands the terms and dangers involved.

To ensure the safe and transparent administration of customer-withdrawn margin used as transaction collateral, Article 51 establishes regulations. Article 52, meantime, emphasizes that all transactions must be accompanied by written orders from clients. This further supports the ideals of transparency and compliance in all trading activities.

However, Article 55 safeguards the privacy and security of consumer data and information, ensuring that it remains secret throughout the commodities futures trading process. Additional safeguards are provided by Articles 127–132 of Republic of Indonesia Government Regulation No. 49 of 2014, which manages conflicts of interest, establishes stringent criteria for reporting transactions and accounting, and ensures compliance with legislation.

The roles and duties of futures brokers are defined in Regulation of the Head of CoFTRA Number 64/BAPPEBTI/Per/1/2009, which is part of the framework for implementing operational standards and regulations. Futures brokers are required to adhere to the operational and behavioral standards laid forth in this law, which prohibits them from engaging in any activity that would compromise the market or their customers' interests (Articles 5 and 6).

One of the most important parts of the commodities futures trading ecosystem is the futures broker representative, particularly when it comes to online forex trading. The significance of the job of Futures Brokerage Representative is shown by the fact that, while not all regulations provide a precise definition of the word, the requirements and qualifications for this role are clearly laid out (Cummins & Weiss, 2009).

It is clearly stated in Regulation 63/BAPPEBTI/Per/9/2008 of the Head of the Commodity Futures Trading Supervisory Agency (Bappebti) that anybody engaging in futures trading must first get a Futures Broker Representative authorization from Bappebti (Rahman et al., 2024). In addition, these people need to be full-time workers for the appropriate futures broker, where they are expected to adhere to high levels of professionalism and follow all necessary employment laws.

Articles 55–58 of Government Regulation No. 49 of 2014 of the Republic of Indonesia outline the criteria for becoming a Futures Broker Representative licensee. The following are some of the requirements: a background in trading futures contracts and derivatives; proof of education; certification by examination; and endorsements from brokers. Their upcoming projects. There are certain requirements for the application procedure, such as obtaining the head of CoFTRA's approval of the application form, and a specific amount of time for a decision on the application.

The person must adhere to a set of regulations specified in Regulation of the Head of CoFTRA Number 64/BAPPEBTI/Per/1/2009 and Regulation of the Head of CoFTRA

Number 63/BAPPEBTI/Per/9/2008 after becoming an authorized Futures Broker Representative. There are a lot of regulations put in place to keep futures trading honest and open, such as not taking clients from certain backgrounds, not giving them accurate information, and not collecting cash.

In addition to protecting the privacy of their clients' information, futures broker representatives must explain the hazards of futures trading to potential clients. They need to make sure their clients are well-informed about futures trading before they do transactions, and they need to provide them accurate and comprehensive information about the services and products they offer.

The parties must first enter into an Arbitration Agreement in accordance with the provisions of Article 1 paragraph (3) of the Regulations before a dispute can be reviewed and resolved through the Commodity Futures Trading Arbitration Board (BAKTI). The following matters are addressed by the Commodity Futures Trading Arbitration Board under the following number: Per-01/BAKTI/01.2009: Rules and Procedures for Arbitration:

"A civil dispute can be resolved through arbitration by the Commodity Futures Trading Arbitration Board (BAKTI) instead of going to court if the parties involved have agreed to do so in writing and the dispute is resolved in accordance with these rules and procedures."

Also, according to Article 1 paragraph (12) of the Commodity Futures Trading Arbitration Board Regulations Number: Per-01/BAKTI/01.2009 covering Arbitration Rules & Procedures, what is meant by an arbitration agreement is:

"It is possible for the Parties to agree to resolve any disputes that may arise between them in relation to the agreement or the business transaction at hand through arbitration if they include an arbitration clause in their written agreement or if they make a separate agreement after a dispute has arisen."

What follows is the procedure for the Commodity Futures Trading Arbitration Board (BAKTI) events (Aswandi, 2019):

1. A Request for Arbitration (lawsuit) against the opposite party (Respondent/Defendant) must be registered with the Commodity Futures Trading Arbitration Board (BAKTI) by one of the parties to the dispute (the Applicant/Plaintiff). You may submit your request for arbitration with the Commodity Futures Trading Arbitration Board (BAKTI) Secretariat and go all the way up to the Chairman. In addition to the required attachments, the application must include the following: the names and addresses of the Parties, a description of the dispute, and the specifics of the claim.

2. 2. Through the Commodity Futures Trading Arbitration Board (BAKTI) Secretariat, the Chairman of the Board will verify that the Arbitration Application paperwork is comprehensive. Arbitration Requests are entered into the Case Register Book of the Commodity Futures Trading Arbitration Agency (BAKTI) after they are complete. To ensure a prompt response within the allotted period, the Respondent will be supplied a copy of the Request for Arbitration.
3. The Secretariat of the Commodity Futures Trading Arbitration Board (BAKTI) is entrusted by the Chairman of the Commodity Futures Trading Arbitration Board (BAKTI) to facilitate the process of the Parties selecting one arbitrator each. These two arbitrators will then work together to select a third arbitrator. In some cases, the parties may agree that a single arbitrator will review and provide a decision.
4. In the first hearing, the arbitral panel or single arbitrator will hear the case. The examination schedule is decided upon at the first hearing by the Arbitration Panel/Sole Arbitrator.
5. The Arbitration Panel or the Sole Arbitrator will attempt to mediate a settlement between the disputing parties before moving on to the examination phase. If the parties are able to reach an agreement via mediation, the arbitrators will record the terms of the settlement in a Deed of Peace, which will be legally binding much like a court ruling. The arbitration process will proceed, nevertheless, in the event that the peace talks break down. There will be no closure to the peace process until the Arbitration Award is rendered.
6. Substantive procedures and rules of the Commodity Futures Trading Arbitration Board (BAKTI) are followed throughout the closed-door arbitration examinations. The deadline for the examination to be conducted is 180 days from the election of the Arbitration Panel or Sole Arbitrator, however it may be extended if necessary. Here are the steps involved in the arbitration examination: answering questions, responding to questions, submitting duplicates, hearing parties' statements, submitting and matching evidence documents, hearing witnesses' and experts' statements, submitting and matching additional evidence (if any), and finally, submitting conclusions.
7. The decision will be read out by the arbitration panel or sole arbitrator no later than 30 days after the completion of the examination. Because of the binding nature of this ruling, the usual avenues of legal recourse, such as appeals and cassation, are unavailable. Next, the District Court where the Respondent resides will be notified by the Session Secretary to record the Arbitration Award.

If the parties involved in a civil issue are unable to resolve it via the courts, they may seek redress through the Commodity Futures Trading Arbitration Board's (BAKTI) arbitration processes and methods. Forming an Arbitration Panel, conciliation attempts, a concentrated and closed examination, and finally, a final and binding judgment are all

steps in the process that starts with the registration of an arbitration request.

Legal Responsibility of Numerical Brokers and their Representatives within the Framework of Article 1367 of the Civil Code

You should be familiar with the following table, which presents the instances in this study in chronological order, before diving into the major discussion:

Table 1

Summary of Arbitration Case Between German Gurning and PT. Millennium Futures Manager

Aspect	Details
Chronology of Cases	Deputy Broker Hendrik spent 300,000,000 Rp on behalf of German Gurning at PT. Millennium Futures Manager. The daughter of German, Rosmauli Gurning, lost money because she used the supplied username and password to make transactions. When negotiations broke down, PT. Millennium was sent to BAKTI, the Commodity Futures Trading Arbitration Agency.
Petitioner's Application	In a case brought before the Commodity Futures Trading Arbitration Board (BAKTI) by Ajis Isnawan on behalf of PT. Millennium, German Gurning was found guilty of breach of contract for divulging login credentials to other parties and was ordered to apologize for defamation.
Respondent's Answer	German Gurning counterclaimed, stating that he was misled and lacked knowledge about futures trading, and he rejected the allegations. Gurning has rejected the Trust Agreement and is demanding a refund of Rp. 400,000,000 in investment monies.
Commodity Futures Trading Arbitration Board (BAKTI) Decision	After reviewing PT's case, the BAKTI (Commodity Futures Trading Arbitration Board) dismissed all assertions. Chosen PT over Millennium and Gurning. A portion of Gurning's investment capital, totaling Rp. 267,050,000, must be returned by Millennium. Both sides will be responsible for paying the legal fees associated with this matter, and the ruling is final and binding.
Legal Considerations of the Commodity Futures Trading Arbitration Board (BAKTI)	There must be an agreement between the plaintiff and the defendant for a third party to be included in the arbitration, according to the Commodity Futures Trading Arbitration Board (BAKTI). The arbitration must also take into account the regulations and Article 1367 of the Civil Code, which establish the Futures Broker's responsibility for the acts of their employees or representatives.

Indeed, when a Futures Broker provides a Customer with their transaction access code, also known as a Personal Access Password, this is considered a highly personal matter that is governed by both the Customer's agreement with the Broker Company and Article 6 letter f of the Regulation of the Head of the Trade Supervisory Agency Commodity Futures Number 64/BAPPEBTI/Per/I/2009. This regulation amends the Head of the Commodity Futures Trading Supervisory Agency Number 63/BAPPEBTI/Per/9/2008, which states:

"In carrying out Futures Trading activities, Futures Brokers are prohibited from:

1. Arranging futures contract transactions via the use of foreign labor rather than Indonesian natives to interact directly with potential consumers or customers;

2. Searching for potential clients via adverts for open jobs;
3. the first Margin fund deposit from the customer must be made in cash; 64/BAPPEBTI/Per/1/2009, Regulation of the Head of the Commodity Futures Trading Supervisory Agency. Event: January 9, 2009
4. take in customers' Margin deposits even when the sender's identity doesn't match the one on file with the Trustee Agreement;
5. offering Margin Customers access to borrowing capital;
6. share the Customer's PAP (Personal Access Password) with other parties that are not the Customer;
7. delegating the responsibilities of transaction execution to those responsible for transaction settlement and vice versa;
8. process the customer's withdrawal and pay for it in cash;
9. move money from the Futures Broker's Separate Account to another account whose details don't match those on the Customer's Withdrawal Bank Account as specified in the Application for Opening a Transaction Account;
10. Invest the money that customers have put into a separate account for anything other than paying fees and charges related to futures contracts; or
11. provide Daily Statements (Reports on Transactions) to anybody other than the Customer or someone authorized by them.

A Futures Broker is prohibited from disclosing the Customer's transaction access code (Personal Access Password) to any third party, as stated in the Regulation of the Head of the Commodity Futures Trading Supervisory Agency, which governs the technical provisions for futures broker behavior. Article 52 paragraph (1) of Law Number 32 of 1997 governing Commodity Futures Trading, as revised by Law Number 10 of 2011, and its explanation, sets forth the following, which is also in accordance with this Regulation of the Head of the Commodity Futures Trading Supervisory Agency:

"It is against the rules for futures brokers to trade futures contracts, sharia derivative contracts, or any other type of derivative contract on behalf of customers unless the customers or their proxies give written orders for each transaction."

Furthermore, the explanation of Article 52 paragraph (1) explains:

"The execution of Customer Derivative Contracts, Sharia Derivative Contracts, and Futures Contract transaction requirements must be supported by written instructions from the relevant Customer or their representative. You can see the customer's intended purchase or sale of contracts, as well as their desired quantity, in the order. No Futures Broker or any employee of a Futures Broker may serve as a customer's proxy. To rephrase, Clients are not allowed to delegate transactional power to Futures Brokers verbally or in writing."

Similarly, it is against the rules for a Futures Broker Representative to obtain the Customer's Personal Access Password (TAP) while performing his job duties. This prohibition is outlined in Article 4 letter g and Article 7 letter d of the Regulation of the Head of the Futures Trading Supervisory Agency Commodity Number 64/BAPPEBTI/Per/I/2009, which amends the Regulation of the Head of the Commodity Futures Trading Supervisory Agency Number 63/BAPPEBTI/Per/9/2008, which states:

Article 4 letter g states (Dungga et al., 2023):

"In direct contact with prospective Customers or Customers, Futures Broker Representatives who carry out business activities of Futures Brokers as intended in

Article 1 paragraph (2), are prohibited from:

1. accept prospective customers if they know the prospective customer concerned:
 - a. has been declared bankrupt by the court;
 - b. has been declared to have violated the provisions of this Law and/or its implementing regulations by a judicial body or CoFTRA;
 - c. officials or employees:
 - 1) CoFTRA, Futures Exchange, Futures Clearing House; And
 - 2) Treasurer of an institution that serves the public interest, unless the person concerned is authorized by that institution.
2. directly or indirectly influencing prospective Customers or Customers by providing misleading information to carry out Futures Contract transactions, including: offering fixed income or profit sharing;
3. offering a Futures Contract that does not receive approval from Bappebti;
4. accept customers whose source of funds comes from several people combined in one account;
5. receive Customer funds (Initial Margin) in cash;
6. receive Customer funds (Initial Margin) before signing the Risk Notification document and the Trust Agreement document;
7. **receive the Customer's transaction access code (Personal Access Password);**
8. make agreements in any form with prospective Customers or Customers except the agreements regulated in this Regulation; or
9. receive authorization from the Customer to carry out transactions on behalf of the Customer concerned.

Furthermore, Article 7 letter d states:

"Futures Broker employees or other parties who have an interest in the Futures Brokerage Company are prohibited from:

1. receive a power of attorney in any form from a prospective Customer or Client except certain powers of attorney as regulated in this Regulation;
2. directly or indirectly influencing prospective Customers or Customers by providing misleading information to carry out Futures Contract transactions, including: offering fixed income or profit sharing;
3. make agreements in any form with prospective Customers or Customers except the agreements regulated in this Regulation;
4. **receive and use the Customer's transaction access code (Personal Access Password);**
5. make or publish false statements whose contents are not in accordance with laws and regulations in the field of Futures Trading; or
6. receive Daily Transaction Reports (Daily Statement)".

According to the two rules outlined in the Commodity Futures Trading Law and the Regulation of the Head of the Commodity Futures Trading Supervisory Agency, which governs the technical aspects of futures broker conduct, it is forbidden for a futures broker to share the customer's PAP (personal access password) with anyone other than the customer. What's more, a futures broker cannot act as a proxy for the customer; in other words, the customer cannot grant the futures broker the power to do transactions on their behalf without explicit written instructions from the customer. It has also been forbidden for a Deputy Futures Broker to receive or use the Customer's Personal Access Password, which is used to access their transactions. Everything said so far makes the roles of Futures Broker and Futures Broker Representative crystal clear when it comes to trading commodities futures. However, what happens if a Futures Broker Representative gains access to a customer's account through a personal password and uses it to make transactions? What happens if this happens without the Futures Broker knowing? Then the Futures Broker is stuck paying for the losses caused by the illegal transaction. In connection with the Decision of the Commodity Futures Trading Arbitration Board (BAKTI) in Case No. Reg: 020/BAKTI-ARB/08.2014, which ordered the Futures Broker to repay the Customer's funds, the Futures Broker may be held liable for errors made by the Futures Broker Representative. This decision took into account various factors, including Article 1367 of the Civil Code, which states:

"Losses incurred by an individual are not limited to those directly attributable to his own acts, but also include those attributable to his dependents or to property under his control."

Legal responsibility for injuries sustained by minors living in their care or under their guardianship rests with the parents or legal guardians. Those in positions of authority, whether as employers or agents, may be held financially responsible for any harm that their employees or subordinates produce while on the job.

If his pupils or employees destroy something while they were under his supervision, the instructor or head craftsman is liable. If the parent, teacher, or head craftsman can show that they were unable to stop the wrongdoing, then the aforementioned liability ceases.

The book *Unlawful Actions* by Rosa Agustina states that articles 1365–1380 of the Civil Code govern "Unlawful Actions" in Indonesia that have their origins in Continental Europe. First, there is personal responsibility for one's own criminal activities as well as responsibility for the unlawful acts of others and the things under one's control, as outlined in these paragraphs. According to the first paragraph of Article 1367 of the Civil Code:

"Anyone may be held liable for damages that result from his own acts, the acts of his dependents, or the objects that are in his possession, regardless of who is at fault.."

A broad formulation in the Civil Code, article 1367 paragraph (1), divides responsibility into:

1. Responsibility for other people's actions
 - a. Responsibility for actions carried out by dependent people in general;
 - b. Responsibilities of parents and guardians towards minor children (article 1367 paragraph 2 of the Civil Code);
 - c. Responsibility of the employer and the person who represents the affairs of the person they employ (article 1367 paragraph 3 of the Civil Code);
 - d. Responsibilities of school teachers and head craftsmen towards their students and craftsmen (article 1367 paragraph 4 of the Civil Code)
2. Responsibility for goods under his control
 - a. Responsibility for goods in general (article 1367 paragraph 1 of the Civil Code);
 - b. Responsibility towards animals (article 1368 of the Civil Code)
 - c. Owner's responsibility for the building (article 1369 of the Civil Code)(Agustina, 2003).

According to Rosa Agustina's analysis, as stated in Article 1367 paragraph (1) of the Code of Law, one is not only personally liable for their own illegal activities, but also for the unlawful acts of others and the products under their supervision. Civil. Additional clauses in paragraphs (2), (3), and (4) of Article 1367 govern the entities liable for damages caused by individuals under their care, including parents and guardians for damages caused by children in their care, employers and masters for damages caused by their subordinates, and heads of craftsmen and school teachers for damages caused by their students and employees.

Parents, school teachers, and head craftsmen are exempt from liability if they can demonstrate that they were unable to prevent the acts for which they are legally liable,

as outlined in Article 1367 paragraph (5) of the Civil Code. This provision limits the degree to which an individual can be held accountable for damages caused by the actions of others. The wording of paragraph (5), however, does not specify how much of an employer's responsibility is required in the event that an employee makes a mistake.

It is believed that an employer's obligation towards its subordinates has no bounds because no formulation has been provided to clarify these boundaries. In actuality, people tend to hold employers liable for their employees' behavior, even when there is no wrongdoing on their part, since there are no rules limiting employers' culpability. In order to avoid any ambiguity in the law, this view must be expressly controlled since it is considered improper.

In essence, the employer bears responsibility for the worker's behavior in relation to the tasks assigned to him. In accordance with their assigned responsibilities and powers, employers must monitor employee behavior. The employer shall not be held liable for any damages that may have resulted from an employee's illegal actions, such as failing to fulfill their tasks or exceeding their power. Employees may operate outside of their scope of power when given the green light by their superiors, or vice versa; as a result, employers should exercise restraint in holding their subordinates accountable for illegal behavior. There can be no combination of an employer's and an employee's individual responsibilities.

The third paragraph of article 1367 of the Civil Code, which was previously mentioned, is discriminatory because it holds the employer entirely accountable for his subordinates' mistakes, regardless of whether the employer can prevent those mistakes or not. Case Reg No: 020/BAKTI-ARB/08.2014 Commodity Futures Trading Arbitration does not warrant the application of Article 1367 of the Civil Code because it does not reflect legal certainty and justice. This is because, in this case, the employer and the person appointing another person to represent their affairs have supervised and prevented the activities of their servants or subordinates. However, if the servants or subordinates violate the supervision and prevention carried out by the employer and the person appointing another person to represent them, leading to wrongdoing or harm to third parties, the responsibility for third parties' violations or errors is on the employer and the person appointing another person to represent them.

If the application of Article 1367 to this issue is connected to the notion of justice according to classical philosophy from Aristotle, which stresses balance or proportion, then the decision of the Commodity Futures Trading Arbitration Board (Reg No: 020/BAKTI-ARB/08.2014) is very unsuitable. Aristotle said that in a state everything must be aimed towards lofty goals, notably goodness, and that virtue must be perceived via justice and truth, as cited by JH Rapar in his book political philosophy. By stating that equal rights must be the same among the same individuals, Aristotle demonstrates the importance of balance or proportion in his theory of justice.

So, although it's true that justice might imply equal rights, it's equally important to recognize that justice can imply unequal rights. Here, fairness is defined as ensuring that everyone receives their just share in a proportionate manner (Irawan & Pratama, 2023). This is why we need to talk about the similarity or difference in the legal status of a futures broker's connection with a futures broker representative. Paragraph two of Article 1 of the Commodity Futures Trading Supervisory Agency Regulation (63/BAPPEBTI/Per/9/2008) on Technical Provisions for Futures Broker Behavior stipulates that, in compliance with applicable employment laws and regulations, the Futures Broker Representative must be considered a permanent employee of the Futures Broker in question.

Article 1 paragraph (15) of Law no. 13 of 2003 concerning Employment states that an employment relationship is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages, and orders. This is supported by the regulations of the head of the commodity futures trading supervisory body, which can be seen above. According to these regulations, the legal relationship between the Futures Broker and the Futures Broker Representative is a working relationship. An employment agreement is the foundation of the employment relationship between a futures broker and a futures broker representative, according to the Employment Law's definition of an employment relationship. An employment contract is defined as an agreement outlining the terms and circumstances of employment as well as the rights and responsibilities of both the employer and the worker or laborer, as stated in Article 1 paragraph (14) of Law no. 13 of 2003 concerning Employment.

According to the previous definition, the entrepreneur's position is stronger than that of the worker or laborer because he or she owns the capital. However, the work agreement has regulated the terms of work, rights, and obligations of the parties so that it appears like both the entrepreneur and the worker or laborer are in the same position. The essential aspect in Aristotle's thought is fairness, where everyone receives what is their right proportionately. This includes situations where entrepreneurs or bosses do not have the same status as workers or laborers, but Aristotle still considers this to be justice, specifically unequal rights.

The Futures Broker must bear full responsibility for errors committed by the Futures Broker Representative, even if the Futures Broker was unaware of the mistake—this is something that the Commodity Futures Trading Arbitration Board (BAKTI) failed to notice when deciding to penalize the Futures Broker. The futures market will get the access code for the customer's transaction.

The Commodity Futures Trading Arbitration Board (BAKTI) should have known from its own legal analysis that Article 1367 of the Civil Code is discriminatory in and of itself since it holds employers totally accountable for their employees' mistakes

regardless of whether or not they have the ability to ensure that their employees do not make harmful mistakes.

The idea that an employer's obligation towards its subordinates has no bounds can arise from the lack of a framework addressing these questions. Aristotle defined distributive justice as the kind of justice that ensures everyone receives what is rightfully theirs, so it is proportionate; thus, this view is considered improper and requires precise regulation to avoid legal ambiguity, which may lead to injustice. To be fair, there must be a proportionate distribution of benefits. The Futures Broker here is within his rights to avoid liability for the actions of his subordinate, the Futures Broker Representative. In light of this, the Commodity Futures Trading Arbitration Board's (BAKTI) decision that the Futures Broker must reimburse the Customer for funds used in obviously illegal transactions, which was based on Article 1367 of the Civil Code, does not apply here.

In addition, according to Article 1367 paragraph (3) of the Regulation of the Head of the Commodity Futures Trading Supervisory Agency Number: 63/BAPPEBTI/Per/9/2008 concerning Technical Provisions for Futures Broker Behavior, "Implementation of business activities as referred to in paragraph (1) carried out by an individual who has obtained a Futures Broker Representative permit from Bappebti" clarifies that a Futures Broker Representative is not just any subordinate in the commodity futures trading industry, but rather a professional. A Futures Broker Representative is required to meet the criteria outlined in Articles 55–58 of the Government Regulation of the Republic of Indonesia Number 49 of 2014 for the Implementation of Commodity Futures Trading in order to acquire approval from CoFTRA. which means:

Article 55 states:

Carrying out activities as a Futures Broker Representative can only be carried out after obtaining permission from the Head of CoFTRA.

Article 56 states:

Permits as Futures Broker Representatives are only given to individuals who have expertise in the field of brokerage trading in Futures Contracts, Sharia Derivative Contracts and/or other Derivative Contracts.

Article 57 states:

- (1) An application to obtain a permit as a Futures Broker Representative is submitted to the Head of CoFTRA accompanied by the following documents:
 - a. Formal education diploma;
 - b. certificate of passing the professional examination held by the Head of CoFTRA; And
 - c. recommendation from the relevant Futures Broker

- (2) The application as intended in paragraph (1), is submitted using a form whose form and contents are determined by the head of Bappebti.

Article 58 states:

- (1) The Head of CoFTRA is obliged to grant or reject the application submitted by each Party to obtain a business license as a Futures Broker Representative no later than 32 (thirty two) working days from the time the application is received in full.
- (2) The Futures Broker Representative's permit is valid as long as the Futures Broker Representative is still actively carrying out his activities.

In light of the foregoing, it appears that the Futures Broker is not liable for the Futures Broker Representative's infractions of the law as they pertain to the application of Article 1367 of the Civil Code. However, in cases involving procedural law in disputes at the Commodity Futures Trading Arbitration Board, which does not acknowledge third parties unless they are intervening parties, the Futures Broker Representative may be exempt from liability for his own mistakes as a result of procedural shortcomings at the Commodity Futures Trading Arbitration Board, as seen in Decision No.Reg: 020/BAKTI-ARB/08.2014, which solely demands the Futures Broker to repay the money. The client mentioned one of his factors as follows:

If the case involves a District Court complaint for an illegal conduct, where the plaintiff is not required to establish an agreement with the defendant provided that the elements of the crime are met (as stated in Article 1365 of the Civil Code), then the Respondent's claim holds water. An agreement between the Plaintiff and the Defendant is still necessary for claims for illegal activities in an arbitration venue. Only an intervening party or third party may be named as a party to an arbitration proceeding without the prior consent of the parties, as stated in Law 30/1999. According to the Arbitration Rules and Procedures of the Commodity Futures Trading Arbitration Board (BAKTI), which are part of the Arbitration Process, third parties can intervene through voeging, tussenkomst, or vrijwaring. However, in a quo suit, the third party is not considered an intervening party but rather a party that is being sued (defendant/respondent).

The Commodity Futures Trading Arbitration Board (BAKTI) is a forum for resolving disputes involving commodities futures trading. To initiate this process, the parties involved must first enter into an arbitration agreement, as specified in Article 1 paragraph (3) of the Regulations governing the Futures Trading Arbitration Board. A written agreement between the parties involved can lead to arbitration by the Commodity Futures Trading Arbitration Board (BAKTI), which is a way to resolve a civil dispute outside of the general court. This is stated in Commodity Number: Per-01/BAKTI/01.2009, which pertains to the rules and procedures of arbitration. disagreements that are settled via the use of these rules and processes, which will be

called Arbitration from now on.

Also, according to Article 1 paragraph (12) of the Commodity Futures Trading Arbitration Board Regulations Number: Per-01/BAKTI/01.2009 covering Arbitration Rules & Procedures, what is meant by an arbitration agreement is:

"It is possible for the Parties to agree to resolve any disputes that may arise between them in relation to the agreement or the business transaction at hand through arbitration if they include an arbitration clause in their written agreement or if they make a separate agreement after a dispute has arisen."

According to the rules and processes of the Commodity Futures Trading Arbitration Board (BAKTI), parties may resolve their disagreement via arbitration provided they sign an arbitration agreement with the board. It is well recognized that the Futures Broker and the Customer are the only parties to the Trust Agreement. Contrary to what is stated in the agreement, the Futures Broker Representative is not a party. Reason being, a Futures Broker Representative can't possibly submit himself as an intervening party in a dispute before the Commodity Futures Trading Arbitration Board (BAKTI), which only recognizes third parties as intervening parties. Consequently, he is absolved of any accountability for his own mistakes. Specifically in his capacity as the one who admits culpability.

The author's claims about the need for a return to the philosophy of law—specifically, law for humans—raise the question of whether or not the above-mentioned description is connected to Prof. Satjipto Raharjo's progressive legal theory. Humans are elevated to the position of law's determinant and point of direction in this philosophical framework. People should be the primary focus of the legal system, not the other way around. Consequently, human interests are inherent in the legal system. The capacity of a legislation to promote human well-being is a measure of its excellence. Because of this, progressive laws become oriented toward "ideology": laws that support justice and the people.

Every time, legal rejuvenation is done in this rationale. The focus of progressive law has shifted from rules to the innovative capacity of legal actors to put the law into practice at the appropriate moment and place, rather than the other way around. Creative interpretation of current legislation allows progressive legal practitioners to make changes without waiting for revisions to the law. Progressive legal actors can always find new ways to interpret legislation, thus bad regulations aren't a barrier to justice for the people and those seeking it.

Because of this, the law's advantages cannot be realized without the involvement of creative legal actors who can transform the law into the societal interests they are obligated to uphold. This idea posits that a formal logical method cannot be used to directly uncover justice. Since institutions are the true means by which justice is

achieved, it is "sought" after justice has been established to use formal logical arguments in order to formulate a formal juridical conclusion that is seen to be equitable. According to proponents of progressive legislation, the rule of law is subservient to ends other than its own preservation. (Tanya et al., 2010).

The Commodity Futures Trading Arbitration Board should base its decision in Case No. Reg: 020/BAKTI-ARB/08.2014 on the progressive legal theory articulated by Prof. Satjipto Raharjo. Submitted on January 22, 2016. As a legitimate entity, the Commodity Futures Trading Arbitration Board (BAKTI) has an obligation to find innovative ways to apply the law in a way that benefits society. Furthermore, it is clearly understood by the Commodity Futures Trading Arbitration Board (BAKTI) that the following regulations apply to futures brokers: first, that no futures broker may disclose customer transaction access codes (personal access passwords) to any third party without the customer's explicit written consent; second, that no futures broker may act as a proxy for the customer; and third, that no customer may grant futures broker the authority to execute transactions on their behalf without explicit written instructions.

It has come to light that a Futures Broker Representative has secretly broken the regulation that forbids them from getting and utilizing the Personal view Password, which is a code that customers use to view their transactions. Nevertheless, after reviewing Article 1367 of the Civil Code, the Commodity Futures Trading Arbitration Board (BAKTI) chose to penalize the accountable Futures Broker and reimburse the Customer's monies without penalizing the Futures Broker Representative. In this particular situation, Article 1367 of the Civil Code does not apply since, regardless of whether the employer had any control over his subordinates' actions, the employer is fully liable for any errors made by his employees.

Here, not only has the Futures Broker overseen and prevented the Futures Broker Representative's actions, but sending and using the Customer's transaction access code (Personal Access Password) is also forbidden by the Commodity Futures Trading Law and the Regulation of the Head of the Commodity Futures Trading Supervisory Agency, which governs the technical aspects of futures broker conduct.

In addition, according to Article 1367 paragraph (3) of the Regulation of the Head of the Commodity Futures Trading Supervisory Agency Number: 63/BAPPEBTI/Per/9/2008 Concerning Technical Provisions for Futures Broker Behavior, a Futures Broker Representative is not considered an ordinary subordinate in the commodity futures trading business. Instead, they are considered a professional. To obtain a license as a Futures Broker Representative, one must also fulfill the requirements outlined in Articles 55–58 of the Republic of Indonesia Government Regulation No. 49 of 2014 regarding the Implementation of Commodity Futures Trading, as well as the regulations outlined in Article 1 paragraph (2) of Bappebti. Therefore, the decision will undoubtedly lack legal certainty and justice if the Futures

Broker is still punished by the Commodity Futures Trading Arbitration Board (BAKTI) for a violation of Article 1367 of the Civil Code, which does not specify the boundaries of an employer's duty towards his employees. It is worth noting that the Commodity Futures Trading Arbitration Board (BAKTI) can take the initiative to interpret Article 1367 of the Civil Code creatively, allowing for changes to be implemented even in the absence of new regulations. The Commodity Futures Trading Arbitration Board (BAKTI) may continue to provide justice to the people and justice seekers, even if Article 1367 of the Civil Code is weak, since they are able to interpret regulations in a new way every time.

4. Conclusion

There are limits to how much the Futures Broker must pay attention to whether the Futures Broker Representative does anything wrong. Though, generally speaking, superiors are liable for subordinates' acts under Article 1367 of the Civil Code, exceptions are necessary in the futures trading industry due to the high level of expertise required of Futures Broker Representatives and the unique restrictions that apply to them. When the Futures Broker's Representative violates the rules by acting without the Futures Broker's knowledge or approval, this becomes very important. But, since the arbitration process restricts claims to the original agreement's parties, Futures Broker Representatives may be indirectly absolved of legal responsibility for errors made by the Commodity Futures Trading Arbitration Board's (BAKTI) procedural legal mechanism, which does not acknowledge third parties except as intervening parties. This conclusion highlights the significance of looking at particular instances according to the relevant facts and rules, along with the need of having a comprehensive grasp of the legal relationships and duties involved in futures trading.

References

- Agustina, R. (2003). *Perbuatan melawan hukum*. Universitas Indonesia, Fakultas Hukum, Pascasarjana.
- AJIE, I. W. (2013). *TANGGUNG JAWAB DIREKSI DALAM HAL TERJADI KESALAHAN YANG DILAKUKAN OLEH KARYAWAN* [PhD Thesis, Universitas Islam Indonesia]. <https://dspace.uui.ac.id/handle/123456789/9403>
- Aswandi, A. (2019). UPAYA HUKUM DALAM PENYELESAIAN SENGKETA PERDAGANGAN EMAS BERJANGKA PADA PT. RIFAN FINANCINDO BERJANGKA PEKANBARU. *JCH (Jurnal Cendekia Hukum)*, 4(2), Article 2. <https://doi.org/10.33760/jch.v4i2.107>
- Bergsteiner, H., & Avery, G. C. (2010). A theoretical responsibility and accountability framework for CSR and global responsibility. *Journal of Global Responsibility*, 1(1), 8–33. <https://doi.org/10.1108/20412561011038529>
- Budi, P. (2005). *Revolusi Investasi di era Cyber Dengan Forex On-Line Trading*. Cemerlang.
- Cummins, J. D., & Weiss, M. A. (2009). Convergence of Insurance and Financial Markets: Hybrid and Securitized Risk-Transfer Solutions. *Journal of Risk and Insurance*, 76(3), 493–545. <https://doi.org/10.1111/j.1539-6975.2009.01311.x>
- Dellavalle, S. (2019). Responsibility and Rights. *German Law Journal*, 20(4), 449–467. <https://doi.org/10.1017/glj.2019.31>
- Dungga, W. A., Muhtar, M. H., & Djaafar, L. (2023). The Assessment of Indonesia's Religious Courts

- in Resolving Shari'ah Banking Disputes According to the Principles of Justice. *Manchester Journal of Transnational Islamic Law & Practice*, 19(3), 179. <https://openurl.ebsco.com/contentitem/gcd:174026164?sid=ebsco:plink:crawler&id=ebsco:gcd:174026164>
- Efrianto, L. B. P., & Wiyanti, D. (2022). Tanggung Jawab Bank Terhadap Nasabah yang Dananya Terbukti Digunakan oleh Karyawan Bank. *Jurnal Riset Ilmu Hukum*, 107–112. <https://doi.org/10.29313/jrih.v2i2.1457>
- Eman, V. C. (2022). PERTANGGUNG JAWABAN RUMAH SAKIT BERDASARAKAN DOKTRIN CORPORATE NEGLIGENCE. ANALISA TERHADAP PASAL 46 UNDANG-UNDANG NOMOR 44 TAHUN 2009 TENTANG RUMAH SAKIT. *LEX PRIVATUM*, 10(1), Article 1. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/38075>
- Eriza, N., Hanifah, M., & Hasanah, U. (2016). *Tanggung Jawab Ganti Rugi Atas Pemutusan Kontrak Kerja Sepihak terhadap Pekerja oleh Pt.sucofindo Episi Kota Pekanbaru Berdasarkan Undang-undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Nomor 2)* [Journal:eArticle, Riau University]. <https://www.neliti.com/publications/186409/>
- Ferlianto, L. R. (2013). *FOREX OnLine Trading TREN INVESTASI MASA KINI*. Elex Media Komputindo.
- Irawan, M. A., & Pratama, M. R. (2023). Tinjauan Biografi Tokoh Filsafat: Aristoteles. *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora*, 1(02), Article 02. <https://journal.forikami.com/index.php/nusantara/article/view/587>
- Litoama, F. (2018). Kepastian Hukum Investasi Perdagangan Berjangka Komoditi Berdasarkan Undang-Undang Nomor 10 Tahun 2011 Tentang Perdagangan Berjangka Komoditi. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, 9(1). <https://core.ac.uk/download/pdf/337609760.pdf>
- Liu, L., Tan, S., & Wang, Y. (2020). Can commodity prices forecast exchange rates? *Energy Economics*, 87, 104719. <https://doi.org/10.1016/j.eneco.2020.104719>
- Mahendra, P. T., & Supheni, I. (2018). Analisis Pengambilan Keputusan Investasi untuk Meraih Profit Konsisten pada Pasar Uang Online (Studi Pada Lembaga Pendidikan dan Pelatihan Kerja Financial Education Nganjuk). *Jurnal Ilmiah Cendekia Akuntansi*, 4(2), Article 2. <https://ejournal.uniska-kediri.ac.id/index.php/CendekiaAkuntansi/article/view/285>
- M.H, D. A. S., S. H. (2021). *Kecelakaan Lalu Lintas dan Pertanggungjawaban Pidana Korporasi: Dalam Perspektif Hukum Pidana Indonesia*. Penerbit Alumnus.
- MM, F. T. S., SH. (2014). *Mengungkap Rahasia Forex*. Elex Media Komputindo.
- Muhammad, A. (1999). *Hukum Perusahaan Indonesia*. Citra Aditya Bakti.
- Rahman, I., Muhtar, M. H., Mongdong, N. M., Setiawan, R., Setiawan, B., & Siburian, H. K. (2024). Harmonization of Digital laws and Adaptation Strategies in Indonesia focusing on E-Commerce and Digital transactions. *Innovative: Journal Of Social Science Research*, 4(1), Article 1. <https://doi.org/10.31004/innovative.v4i1.8240>
- Rasuh, D. J. (2016). KAJIAN HUKUM KEADAAN MEMAKSA (FORCE MAJEURE) MENURUT PASAL 1244 DAN PASAL 1245 KITAB UNDANG-UNDANG HUKUM PERDATA. *LEX PRIVATUM*, 4(2), Article 2. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/11366>
- Rosenthal, L. (2006). A Theory of Governmental Damages Liability: Torts, Constitutional Torts, and Takings. *University of Pennsylvania Journal of Constitutional Law*, 9, 797.
- Saltman, A. I. (2003). The Government's Liability for Actions of Its Agents That Are Not Specifically Authorized: The Continuing Influence of "Merrill and Richmond." *Public Contract Law Journal*, 32(4), 775–864.

- Sari, E. O. (2018). TINJAUAN YURIDIS TINDAK PIDANA CYBERCRIME DALAM PERSPEKTIF HUKUM PIDANA. *Jurnal Cakrawala Hukum*, 13(2), Article 2. <https://ejournal.up45.ac.id/index.php/cakrawala-hukum/article/view/381>
- Tanya, B. L., Simanjuntak, Y. N., & Hage, M. Y. (2010). *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (Vol. 45). Genta Publishing.
- Wójcik, D., MacDonald-Korth, D., & Zhao, S. X. (2017). The political–economic geography of foreign exchange trading. *Journal of Economic Geography*, 17(2), 267–286. <https://doi.org/10.1093/jeg/lbw014>