

Legal Protection Assurance In Cryptocurrency Transactions

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Abstract

This research aims to analyze the law arising from cryptocurrency transactions in the form of Bitcoin, where the Bitcoin phenomenon causes several legal problems that still need to be clarified on the regulation regarding the use and legal protection arising from the Bitcoin phenomenon. This research is included in normative or doctrinal legal research because this research uses positive norms in the legal system. The technique of data collection is done by literature study. The data analysis technique uses deductive logic by concluding general problems to concrete problems faced. Based on this research, the results show that although MUI has issued a fatwa on the prohibition of Cryptocurrency, Indonesia still needs regulation on Bitcoin virtual currency. So that legal protection for users of this transaction does not obtain legal certainty from the State when there is a default or other unlawful act in the transaction.

Keywords: *Bitcoin Users, Legal Protection, Payment Instruments.*

Abstrak

Penelitian ini bertujuan untuk menganalisis hukum yang timbul dari transaksi cryptocurrency dalam bentuk Bitcoin, dimana fenomena Bitcoin menimbulkan beberapa permasalahan hukum yang masih perlu diperjelas pengaturan mengenai penggunaan dan perlindungan hukum yang timbul dari fenomena Bitcoin. Penelitian ini termasuk dalam penelitian hukum normatif atau doktrinal karena penelitian ini menggunakan norma-norma positif dalam sistem hukumnya. Teknik pengumpulan data dilakukan dengan studi literatur. Teknik analisis data menggunakan logika deduktif dengan menyimpulkan masalah umum ke masalah konkrit yang dihadapi. Berdasarkan penelitian ini, diperoleh hasil bahwa meskipun MUI telah mengeluarkan fatwa tentang pelarangan Cryptocurrency, Indonesia masih memerlukan pengaturan mengenai mata uang virtual Bitcoin. Sehingga perlindungan hukum bagi pengguna transaksi ini tidak mendapatkan

kepastian hukum dari Negara ketika terjadi wanprestasi atau perbuatan melawan hukum lainnya dalam transaksi tersebut..

Kata Kunci: Perlindungan Hukum, Pengguna *Bitcoin*, Alat Pembayaran

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Introduction

Following the development of all-digital technology, which has penetrated transaction tools with the emergence of new payment methods received public attention, virtual payment instruments, and a series of computer programming codes used in transactions in the virtual world called cryptocurrencies or cryptocurrencies. Cryptocurrencies are the same as other computer data, such as music and movies, so that they can be destroyed and hidden.¹ So far, there are 88 cryptocurrencies, with the top three by market capitalization being Bitcoin, Ripples and Litecoin. Bitcoin began to receive attention when Bitcoin was used as a means of payment on the Silkroad, an illegal drug trade market. In addition, Bitcoin has the support of several important people in the world of information technology, and also Bitcoin is accepted as a means of payment on several sites such as wordpress.com and online gaming company Zynga inc, an online retailer from the United States Overstock.com, also accepts Bitcoin.²

Bitcoin offers an easier way of paying without needing a bank account, credit card or middleman.³ Unlike other online currencies that are bank-related and use payment

¹ Arpan Kumar Kar, 'What Affects Usage Satisfaction in Mobile Payments? Modelling User Generated Content to Develop the "Digital Service Usage Satisfaction Model"', *Information Systems Frontiers*, 23.5 (2021), 1341–61 <<https://doi.org/10.1007/s10796-020-10045-0>>.

² Peter C. Verhoef and others, 'Digital Transformation: A Multidisciplinary Reflection and Research Agenda', *Journal of Business Research*, 122.July 2018 (2021), 889–901 <<https://doi.org/10.1016/j.jbusres.2019.09.022>>.

³ Adrian Blundell-Wignall, 'The Bitcoin Question: Currency versus Trust-Less Transfer Technology', *OECD Working Papers on Finance, Insurance and Private Pensions*, 37, 2014, 1 <<http://www.oecd->

systems such as Paypal, Bitcoin is directly distributed between users without the need for intermediaries. The concept of forming Bitcoin is a virtual currency resulting from cryptography (cryptocurrency) which can continue to grow in the future.⁴ This cryptocurrency concept is completely identical to the terms of the legal medium of exchange, which is unique, not easily damaged, and mutually agreed upon. However, along with the development of Bitcoin, the Bitcoin phenomenon raises several legal problems. The unclear regulation governing the use and legal protection of Bitcoin users causes unclear legal consequences from the Bitcoin phenomenon.⁵

The use of Bitcoin as a means of payment is against Law no. 7 of 2011 concerning Currency, from now on referred to as the ("Currency Law"), in which only Rupiah is recognized as legal tender in Indonesia. In addition, Bitcoin, often referred to as a cryptocurrency or crypto Currency, raises several problems, namely whether Bitcoin has fulfilled what is called a currency.⁶ In addition to the issue of Bitcoin as a means of payment, the Bitcoin electronic system itself also raises several legal problems where a piece of electronic information can only be declared valid if the information comes from a legitimate electronic system as regulated in Article 5 paragraph 3 of the ITE Law which states that "electronic information and Electronic documents are declared valid if they use an electronic system following the provisions stipulated in this law."

Compared to other countries, such as the United States and Japan, Indonesia is far behind these countries in regulating Bitcoin. The United States has a pro-Bitcoin stance. The United States Treasury considers Bitcoin to be a Money Service Business ("MSB"), but not a currency.⁷ This definition places it under several obligations, such as reporting, registration, and keeping records. For the Internal Revenue Service ("IRS"), Bitcoins are considered property with applied taxation.⁸ Similarly, Japan also recognizes the potential

ilibrary.org/finance-and-investment/the-bitcoin-question_5jz2pwjd9t20-en%5Cn<http://dx.doi.org/10.1787/5jz2pwjd9t20-en>>.

⁴ Craig K. Elwell, M. Maureen Murphy, and Michael V. Seitzinger, 'Bitcoin: Questions, Answers, and Analysis of Legal Issues', *Virtual Currencies: Regulatory and Tax Compliance Issues*, 2014, 97–120.

⁵ Cameron Dark and others, 'Cryptocurrency: Ten Years On', *RBA Bulletin*, June.June 2019 (2019), 195–214.

⁶ Cut Nova Rianda, 'Analysis of Bitcoin'S Impact on Users and Their Impact on the Value of the Rupiah and the Role of the Government in the Presence of Bitcoin', *Jurnal Ilmiah Teunuleh*, 2.2 (2021), 337–45 <<https://doi.org/10.51612/teunuleh.v2i2.50>>.

⁷ Irina Cvetkova, 'Cryptocurrencies Legal Regulation', *BRICS Law Journal*, 5.2 (2018), 128–53 <<https://doi.org/10.21684/2412-2343-2018-5-2-128-153>>.

⁸ Maria Zakharova and Vladimir Przhilenskiy, 'EXPERIENCES OF LEGAL INTEGRATION AND RECEPTION BY THE BRICS COUNTRIES: FIVE PASSENGERS IN A BOAT (WITHOUT A DOG)', *BRISCS Law Journal*, V.2 (2018)

of Bitcoin. Optimistic and confident in asking the Bitcoin community in Japan to form a Self-regulatory authority, from now on referred to as JADA (Japan Authority of Digital Assets). JADA serves to regulate the standards and code of ethics for the use of Bitcoin in Japan and enforce Bitcoin as a virtual currency by allowing the issuance of bonds with the value of Bitcoin assets.⁹ Based on this, it would be very interesting to discuss the importance of legal certainty in this crypto Currency in Indonesia so that the parties involved or transacting feel safe and comfortable using it.

Methods

The method with a normative juridical approach is used by applying normative legal research, namely research that refers to legal norms contained in legislation and court decisions, to answer the main problems in this research. The normative legal approach is carried out by researching legal principles, legal systematics, and comparative law to discover a new legal philosophy. The approach taken is the statutory-approach approach, the conceptual approach, and the comparative approach.¹⁰ A statutory approach is taken to examine the rules relating to Bitcoin transaction regulation to provide legal protection for Bitcoin users. This research is included in a qualitative descriptive analysis that will involve the literature to obtain theoretical scientific material that can be used to analyze the substance of this paper's discussion.

Analysis and Discussion

Indonesia is a country that adheres to the continental European legal system or Civil Law or *Rechtsstaat*. From the history and politics of law, sources of law, and the law enforcement system. The main principle that forms the basis of the continental European legal system is that the law has binding force because it is embodied in regulations in the form of laws and systematically arranged in certain codifications or complications. The European Continental legal system has two classifications, namely the classification into the field of "public law" and "private law". Public law includes legal regulations that

<<https://doi.org/10.21684/2412-2343-2018-5-2-4-23> This>; Paolo Tasca, 'Digital Currencies: Principles, Trends, Opportunities, and Risks', *SSRN Electronic Journal*, 2015, 1–110 <<https://doi.org/10.2139/ssrn.2657598>>.

⁹ S Shirai, *Growing Central Bank Challenges in the World and Japan: Low Inflation, Monetary Policy, and Digital Currency*, 2020 <<https://www.adb.org/publications/growing-central-bank-challenges-world-japan-low-inflation-monetary-policy-digital-currency>>.

¹⁰ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>.

regulate the power and authority of the ruler/state and the relations between society and the state. This public law includes constitutional, state administrative, and criminal law.¹¹

Private law includes legal regulations governing the relationship between individuals in meeting the necessities of life for the sake of their lives. Included in private law is civil law and commercial law.¹² The provisions of everything related to transaction activities in Indonesia have been regulated in Article 1320 of the Civil Code concerning the terms of the agreement. The provisions in this article also apply to online buying and selling transactions and are strengthened by the ITE Law, which regulates electronic transactions. Article 1 point 6 of the ITE Law reads as follows "Electronic System Operation is the use of Electronic Systems by state administrators, Persons, Business Entities, and the public"

The conditions for the agreement's validity are regulated in Article 1320 of the Civil Code; among others, the agreement, namely the treatment of the word agreement to agree, means that both parties must have freedom of will. The parties do not receive any pressure that results in defects in the realization of the will. The definition of agreed is described as a statement of will that is agreed upon between the parties. The statement of the party offering is called the offer. The statement of the party who accepts the offer is called acceptance. The next is related to Skills which is the ability to agree. According to the law, competence includes the authority to take legal action.¹³ On the other hand, there is a certain matter related to the object of the agreement (Article 1332 to Article 1334 of the Civil Code). The object of the agreement that can be categorized in Article 1332 to Article 1334 is the object that will exist as long as the type can be determined and counted. Moreover, the second is objects that can be traded (goods used for the public interest cannot be the object of the agreement). An agreement whose object is unclear because the type cannot be determined, cannot be traded, cannot be valued in money, or is impossible to enforce, becomes null and void.¹⁴

¹¹ Diya Ul Akmal, 'Indonesian State of Law Is an Aspired Concept', *Nurani Hukum*, 4.1 (2021), 77 <<https://doi.org/10.51825/nhk.v4i1.9265>>.

¹² Anna Triningsih, 'Pengadilan Sebagai Lembaga Penegakan Hukum (Perspektif Civil Law Dan Common Law)', *Jurnal Konstitusi*, 12.1 (2016), 134 <<https://doi.org/10.31078/jk1218>>.

¹³ Sisca Ferawati Burhanuddin, 'Enrichment : Journal of Management Franchise Agreement in Civil Law Perspective Enrichment : Journal of Management', 12.1 (2021), 39–43.

¹⁴ Dian Eka Pusvita Azis and Nurhaedah Nurhaedah, 'Juridical Review The Implementation of Oral Agreement Is Associated with the Law of Treaties and Law Number 8 Year 1999 Concerning Consumer Protection', *Substantive Justice International Journal of Law*, 1.1 (2018), 56

Finally, the fourth is related to a legal cause. The fourth condition for a valid agreement is a legal cause. The law does not provide an understanding of the cause (Dutch *Oorzaak*, Latin *causa*).¹⁵ The definition of *Causa* is not the cause that encourages the parties to agree because what is the motive of a person to agree is not a legal concern. According to jurisprudence, what is interpreted as *causa* is the content or intent of the agreement. Through the condition of *causa*, in practice, it is an attempt to place the agreement under the supervision of the judge.¹⁶ The first two conditions are called subjective conditions because they concern the parties to an agreement; if these conditions are not fulfilled, the agreement can be canceled. In order to cancel an agreement, there is a minimum initiative of one of the parties who feel aggrieved to cancel it). In comparison, the last two conditions are called objective conditions because they relate to the agreement itself or the object of the agreement made. If these conditions are not fulfilled, then the agreement is null and void (from the beginning, it was considered that there was never an agreement, so there was no need for cancellation).¹⁷

The legal consequences of an online sale and purchase agreement are legal if they meet the provisions of Article 1320 of the Civil Code, which must meet these four conditions. Terms 1 and 2 are called subjective conditions because they involve people; if conditions 1 and 2 do not exist, then the agreement is still valid but can be canceled.¹⁸ Those who cancel are the parties who feel aggrieved. While conditions 3 and 4 are called objective conditions because they involve goods, if the objectives are not met, the agreement is null and void, meaning that the agreement is considered to have never existed. Transactions in the national payment system are always closely related to

<<https://doi.org/10.33096/substantivejustice.v1i1.13>>; Ery Agus Priyono, Budiharto Budiharto, and Asri Hayyunniarizka Wulandari, 'Regulations for E-Commerce Agreement According To Ict Act and Title Iii of Indonesian Civil Code', *Diponegoro Law Review*, 4.1 (2019), 76 <<https://doi.org/10.14710/dilrev.4.1.2019.76-88>>.

¹⁵ PJW Schutte, 'The Characteristics of an Abstract System for the Transfer Of', *PER/PELI*, 15.3 (2012).

¹⁶ H Sugiyono, A R Budiono, and ..., 'The Legality of the Toll Road Concession Agreement Which Has Revenue Its Investment and Has Obtained a Reasonable Profit', *PalArch's Journal of ...*, 17.9 (2020), 10270–90 <<https://www.archives.palarch.nl/index.php/jae/article/view/6817>>.

¹⁷ Akhmad Budi Cahyono, 'Implementation of Common Law Doctrine in Indonesian Law of Obligation', *Atlantis Press*, 130.Iclave 2019 (2020), 320–26 <<https://doi.org/10.2991/aebmr.k.200321.041>>.

¹⁸ Widaningsih, 'The Implementation of Good Faith Principles in Online Sale and Purchase', *Kertha Wicaksana*, 13.3 (2019), 62–68.

payment instruments, which in the payment system are the duties of Bank Indonesia.¹⁹ The national payment system is implemented in the form of Bank Indonesia's task to maintain rupiah stability as mandated in Act Number 23 of 1999 concerning Bank Indonesia, from now on referred to as the ("UUBI"). In general, the payment system has a goal: to encourage the national economy and increase economic activity through a more conducive business environment and to increase foreign power and the image of the national economy to encourage foreign investors to enter Indonesia. The payment system covers payment instruments, banking procedures, and the interbank fund transfer system used in the payment process. The payment system can be interpreted as transferring a certain amount of money from one party to another due to an economic transaction. So it can be associated with payment instruments such as checks, Bilyet Giro, money orders, electronic funds transfers, ATM cards, debit cards, credit cards, and e-money or electronic money such as Bitcoins.²⁰

Bitcoin, which offers speed in cross-border transactions and a high level of anonymity, makes Bitcoin the preferred means of payment in certain communities. In practice, Bitcoin is often referred to as a cryptocurrency or cryptocurrency because it is intended to replace conventional money in transactions.²¹ Money based on the opinion of experts, in general, is something (object) that is generally accepted in the process of exchanging goods and services. The first requirement for an object to theoretically be used as money is an object; the object here is an economic good because it contains a scarce good, so the object must be rare or difficult to obtain. In the commodity money system, the meaning of the rare object is a precious metal, namely gold; as a valuable object, gold supports (back up) money issued by the government, Bitcoin with its system tries to imitate the pattern of scarcity in precious metals, the Bitcoin system limits the

¹⁹ Muhammad Ikhsan Lubis, 'Online Buying and Selling Transactions Under International Private Law', *Journal of Private and Commercial Law*, 2.1 (2018), 17–32 <<https://doi.org/10.15294/jpcl.v2i1.14499>>.

²⁰ Atharyanshah Puneri, 'Comparing the Contract Between Islamic and Indonesian Laws', *Indonesian Journal of Law and Society*, 1.2 (2020), 145 <<https://doi.org/10.19184/ijls.v1i2.18171>>.

²¹ Harish Natarajan, Solvej Karla Krause, and Helen Luskin Gradstein, 'Distributed Ledger Technology (DLT) and Blockchain', *FinTech Note*, 1, 2017, 1–60 <<http://hdl.handle.net/10986/29053%0Ahttp://documents.worldbank.org/curated/en/177911513714062215/pdf/122140-WP-PUBLIC-Distributed-Ledger-Technology-and-Blockchain-Fintech-Notes.pdf>>.

production of every Bitcoin produced so that there is an artificial scarcity besides other important elements of money is accepted by society to trade it.²²

Money functions as a medium of exchange; namely, with money, one can directly exchange money for the goods/services needed. Money is a means of storing value (store value), i.e., money can be used to store wealth, a unit of account (unit of account). Rupiah is money because Rupiah has all three functions. Furthermore, money is legally defined according to the Blacklaw Dictionary as "The medium of exchange authorized or adopted by a government as part of its currency." At the same time, article 1, number 1 of the Currency Law states: "Currency is money issued by the Unitary State of the Republic of Indonesia. Indonesia from now on referred to as Rupiah." The two legal definitions show that something can be called money when it is legalized or adopted by a legitimate government. The conditions for money are cumulative so that if one of the conditions is not fulfilled, then an object cannot be used as money; Bitcoin does not meet the requirements to be recognized, can be standardized, have a stable value and sufficient amount so that Bitcoin clearly cannot be said to be money. Juridically, the government has banned the use of virtual Currency as a type of payment instrument.²³

However, the government still needs to issue clear regulations regarding virtual currency trading activities among the Indonesian people. Certainty is a certain state. The law must be certain and fair. It must guide conduct and fairness because the code of conduct must support a proper order. The law can carry out its functions only because it is fair and carried out with certainty.²⁴ Legal certainty is a question that can only be answered normatively rather than sociologically.

Moreover, according to Kelsen, the law is a system of norms. Norms are statements emphasizing aspects of "should" or *Dassollen* by including rules about what

²² Muhammad Athar Nadeem and others, 'Investigating the Adoption Factors of Cryptocurrencies—A Case of Bitcoin: Empirical Evidence From China', *SAGE Open*, 11.1 (2021) <<https://doi.org/10.1177/2158244021998704>>; Fran Casino, Thomas K. Dasaklis, and Constantinos Patsakis, 'A Systematic Literature Review of Blockchain-Based Applications: Current Status, Classification and Open Issues', *Telematics and Informatics*, 36.November 2018 (2019), 55–81 <<https://doi.org/10.1016/j.tele.2018.11.006>>.

²³ Guogang Wang, 'Marx's Monetary Theory and Its Practical Value', *China Political Economy*, 2.2 (2019), 182–200 <<https://doi.org/10.1108/cpe-10-2019-0026>>; Mustikawati Mustikawati, Fadila Fadila, and Muharir Muharir, 'Analysis of the Using of E-Money in Industrial Revolution 4.0', *I-ECONOMICS: A Research Journal on Islamic Economics*, 5.2 (2019), 164–82 <<https://doi.org/10.19109/https://doi.org/10.19109/ieconomics.v5i2.5025>>.

²⁴ D Irma and others, 'The Future of Cryptocurrency Legality in Indonesia', *Journal of Economics ...*, 1.1 (2021), 20–23 <<https://journal.privietlab.org/index.php/JEBL/article/view/87>>.

must be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, concerning fellow individuals and with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty ²⁵.

Indonesia currently has no regulations that regulate everything related to Bitcoin transactions as a virtual currency.²⁶ So far, the Indonesian government has only made a statement to the public regarding the existence of Bitcoin. Based on the legal certainty theory above, there is a legal vacuum regarding virtual currencies in Indonesia. Society does not have guidelines on what is allowed and what is prohibited for the presence of Bitcoin as a virtual currency. Because of the absence of legal certainty and protection, the government provides to the community. Moreover, the legal standing of virtual Currency in Indonesia is still in the gray area.²⁷ In Indonesia, B. I have already explained Bitcoin in its press release BI stated that "Paying attention to Law no. 7 of 2011 concerning Currency and Law no. 23 of 1999 which was later amended several times, most recently by Law no. 6 of 2009, Bank Indonesia stated that Bitcoin and other virtual currencies are not legal currencies or payment instruments in Indonesia. The public is advised to be careful of Bitcoin and other virtual currencies.

The owner/user of Bitcoin and other virtual currencies bears all risks related to the ownership/use of Bitcoin. It is also reinforced by the existence of PBI Number 17/3/PBI/2015 concerning the mandatory use of the Rupiah, wherein the Rupiah must be used for all transactions in the territory of the Unitary State of the Republic of Indonesia. in article 15 paragraph (1) of the BI Law, in carrying out its duties, BI has the authority to carry out and give approvals and permits for the implementation of payment system services; require payment system service providers to submit reports on their activities; and determine the use of payment instruments. Besides being said to be money, Bitcoin is often associated with electronic money; apart from not having the characteristics and requirements of being money, Bitcoin is also inappropriate to be categorized as electronic money in Article 1 point 3 of Bank Indonesia Regulation Number 16/8/PBI/2014

²⁵ Soonpeel Edgar Chang, 'Legal Status of Virtual Currency in Indonesia in the Absence of Specific Regulations', *Indonesia Law Review*, 8.3 (2019), 328 <<https://doi.org/10.15742/ilrev.v8n3.485>>.

²⁶ Irma and others.

²⁷ Chang.

concerning Changes to Bank Indonesia Regulation Number 11/12/PBI/2009 concerning Electronic Money (Electronic Money) states that the elements of electronic money are issued based on money that is deposited in advance to the issuer; the value of money is stored electronically in a media server or chip; used as a means of payment to merchants who are not the issuers of the electronic money; and the value of electronic money managed by the issuer is not a deposit as referred to in the law governing banking.²⁸

One of these elements is that electronic money must be issued based on conventional money that is deposited first. At the same time, Bitcoin is created through a mining process so that Bitcoin is created according to computer algorithms unrelated to the money deposited in advance by the user so that Bitcoin does not meet these elements. Electronic money element. Therefore, payment system operators are prohibited from processing all transactions using virtual currencies, including Bitcoin. Article 34 letter an of PBI Number 18/40/PBI/2016 states, "Payment System Service Providers are prohibited from processing payment transactions using virtual currency"

Besides being said to be money, Bitcoin is often referred to as a commodity. According to the Blacklaw Dictionary, commodities or commodities are: "1. An article of trade or commerce. The term embraces only tangible goods, such as products or merchandise, as distinguished from services 2. An economic good, esp. A raw material or an agricultural product." From this definition, a commodity is an item that is traded in economic activity, so to determine whether Bitcoin is a commodity, it must first be determined whether Bitcoin is a good or not. Virtual objects are objects that are intangible and exclusive. a program or computer data that is categorized as a digital object has properties similar to objects in the real world, namely ²⁹:

- a. Exclusive (Rivalrous) which is a virtual object that can only be owned by one person, each Bitcoin is unique which consists of a computer programming code that is locked by cryptography so that each Bitcoin unit. Unlike other Bitcoin units, Bitcoin can only be accessed legally by its owner because it is protected by a private key. besides Bitcoin can be stored into the owner's electronic device so that Bitcoin can only be owned by one person.

²⁸ Irma and others; Chang.

²⁹ Irma and others.

- b. Persistence is a virtual object must be fixed and does not change its shape, a Bitcoin is a series of computer programming code that is locked with cryptographic techniques so that the programming code is protected and cannot be changed.
- c. Interconnected (Interconnected) i.e. A virtual object must be connected so that apart from the owner, other people can also access the object so that the owner can defend the object from others and can also give the object to others, Bitcoin is in a peer to peer system so that Bitcoin users can connect to each other.

Based on this it appears that Bitcoin meets the requirements as an object. Objects according to articles 504, 505 and 506 of the Civil Code consist of bodily and immovable objects as well as movable and immovable objects, the division of these objects is distinguished by their nature, purpose of use and determined by law. then the object moves because it is an object that can move or can be moved. Bitcoins can be stored in electronic devices and servers and can also be transferred easily so that Bitcoin is a movable object. In article 1 number 5 of the ITE Law which reads, as follows "Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate Electronic Information". peer to peer means that there is no one central server in this system so that this system runs based on the resources of the interconnected users. Bitcoin is an electronic system that is like money ³⁰. A person who has an information then the ownership of the information will be on him, the information is then used in economic activities such as a means of payment and investment, people trade the information so that there is a commercialization of the information. The Bitcoin system provides access to its users to make payments, in this case Bitcoin is not seen as objects or money but as an information system that operates with properties similar to money, this system is peer to peer and each unit of Bitcoin is an electronic agent that operates on behalf of the system. on the user, the execution of the electronic agent by sending or transferring to another party is considered a transaction based on the agreement of the parties who accept Bitcoin as a means of payment ³¹.

³⁰ Jonathan Hendson Passagi, 'Bitcoin: A Comparative Study of Cryptocurrency Legality in America and Indonesia', *Juris Gentium Law Review*, 5.2 (2017), 64–71.

³¹ Juliya Kharitonova and Larissa Sannikova, 'Digital Economy and Law: Russian Experience', *Proceedings of the 1st International Scientific Conference 'Legal Regulation of the Digital Economy and Digital Relations: Problems and Prospects of Development' (LARDER 2020)*, 171. Larder 2020 (2021), 103–10 <<https://doi.org/10.2991/aebmr.k.210318.016>>; Shamil Shovkhalov and Hussein Idrisov, 'Economic

Indonesian people treat Bitcoin buying and selling activities like gold buying and selling activities in general. Bitcoin is treated as a digital asset that can be bought or sold at any time, depending on the market price. The users of this Bitcoin service sell their digital assets when the price is favorable for their users. If we look at Russia, it has created its own digital asset called Ethereum. If the Government of Indonesia can create local digital assets, these assets can be traded on national and international markets. If this technology has been adapted, then this can facilitate digital asset transactions and facilitate the procurement of transaction records for buying and selling digital assets in Indonesia. There must be clear rules governing the terms and conditions for potential users of this service if this cryptocurrency technology is established in Indonesia, so that there will be a clear track record of buying and selling these assets ³².

Based on the description above, it can be concluded that the legal regulation of Bitcoin transactions in the United States is the purpose of federal law to enforce Bitcoin or other virtual currencies as a business currency, security, and commodity. The exclusion of Bitcoin as a currency in the United States means that requires it to be included in taxable property, there are tax subjects, namely the users. In the CFTC, Bitcoin is considered a commodity, which means products related to the value of digital assets including Bitcoin and other cryptocurrencies, can be structured as securities products that are subject to registration under the SEC. In Japan, legal arrangements regarding Bitcoin transactions were passed in April 2017. Japan amended the law on payment services or PSA which is part of the Banking Act or Banking Act, amended to allow digital currency (cryptocurrency) to be used as legal payments. . and apply AML/KYC regulations to virtual currency exchange through the on Prevention of Transfer of Criminal Proceeds regulations.

Transactions using Bitcoin in Indonesia are still unclear on the legal basis. Because of this uncertainty, transactions using Bitcoin cannot be said to be legal. Bitcoin and its variations are often called cryptocurrencies or cryptocurrencies, do not qualify as a means of payment either in theory or in law. Where in the law Bitcoin currency cannot be said to be a currency. In addition to not being called a currency, Bitcoin also cannot be said to be electronic money as has been explained in PBI Number 16/8/PBI/2014 which

and Legal Analysis of Cryptocurrency: Scientific Views from Russia and the Muslim World', *Laws*, 10.2 (2021), 32 <<https://doi.org/10.3390/laws10020032>>.

³² Irma and others.

requires that electronic money be issued on the basis of the value of money that was deposited in advance by the holder to the issuer, the value of money stored electronically in a medium such as a server or chip, is used as a means of payment to merchants who are not the issuers of the electronic money, and the value of electronic money deposited by the holder and managed by the issuer and is not a deposit. Bitcoin continues to be produced through the Mining process by following the existing algorithm, an electronic money must be circulated based on the money deposited so that Bitcoin is not properly said to be electronic money. Bitcoin also cannot be said as money because Bitcoin is not an object, Bitcoin is an information system used by some people as a means of payment and investment, legally Bitcoin cannot be said as an object because it does not meet some legal requirements to be classified as an object ³³.

Legal Protection for Bitcoin Users in Indonesia

The state is an institution which is a system that regulates the relationships established by and among humans themselves. The state is a tool to achieve the most important goals such as a system that houses humans in carrying out their activities. As a sovereign country, the Republic of Indonesia has the same position and obligations as other countries in the world, namely to maintain world peace and protect its citizens. The state as a regulator has a supervisory role and provides legal protection to its citizens ³⁴. In line with that, Article 28D of the 1945 Constitution of the Republic of Indonesia also states that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. The presence of a virtual currency type Bitcoin in Indonesia has not specifically been legally regulated, the presence of Bitcoin was stated by the government, namely Bank Indonesia on February 6, 2014, that Bitcoin is not a legal tender in Indonesia and any risk of loss or loss of ownership or use Bitcoin is borne solely by the owner or user of Bitcoin and other virtual currencies.

So far, Bitcoin is used as a business or business area with a speculative model of looking for price differences whose purpose is to seek profit by buying digital currency when the price drops and selling it at an increasing or high price because digital currency

³³ Chang.

³⁴ Malicia Evendia and others, 'The Legal Politics of Recall Right of Political Parties Relevance with the System of Popular Sovereignty In Dynamics of the Constitution of Indonesia', *Pattimura Law Journal*, 5.1 (2020), 20 <<https://doi.org/10.47268/palau.v5i1.477>>.

exchange rates always fluctuate from minute to minute. According to Oskar Darmawan as CEO of Bitcoin Indonesia in his interview with Coverage 6, that until now Bitcoin is still growing in Indonesia³⁵. The presence of Bitcoin as a virtual currency in Indonesia as an electronic product has been a concern of the state since the beginning, but until now the government has not determined the steps on how to formulate written regulations regarding its circulation and supervision. The use of Bitcoin has spread widely throughout Indonesia. In our own country, a special marketplace for Bitcoin has been established with the aim that Indonesia can have its own market movement. Bitcoin as a medium of exchange in trading transaction activities becomes a means of speculation (investment) in order to reap a certain profit margin³⁶. The connection with transaction and investment activities as well as exchange using Bitcoin certainly cannot be separated from regulations related to trading through electronic systems. Indonesia itself already has its regulations, namely in the form of Law no. 7 of 2014 concerning Trade where it has been explained that Trading through Electronic Systems is Trade whose transactions are carried out through a series of electronic devices and procedures.

Article 65 of the Trade Law affirms that every business actor who trades goods and/or services using an electronic system is required to provide complete and correct data and/or information, prohibited from trading goods or services that are not in accordance with what is offered. And the provisions also regulate that people or business entities experiencing disputes related to trade transactions through electronic systems can resolve disputes through courts or other dispute resolutions, including negotiation, conciliation, mediation, or arbitration in accordance with the provisions of the legislation. In an effort by the government to provide protection to the public from security and comfort disturbances as a result of the misuse of Electronic Information and Electronic Transactions, the government is currently making a new legal product by enacting Law No. 19 of 2016 concerning ITE which is an improvement from Law No. 11 of 2008 concerning ITE. In the new ITE Law there is a role for the government in preventing the dissemination and use of Electronic Information and/or Electronic Documents that have prohibited and unlawful content.

³⁵ Oscar Darmawan, *Crypto Currency Mata Uang Digital Dunia* (Jakarta: Jasakom, 2014).

³⁶ Chang.

Basically the ITE Law has regulated all provisions for violations and crimes committed through electronic media or cybercrime with the aim of protecting users from losses or other legal problems in electronic transactions, including:

1. Hacking which is the perpetrator of the crime of accessing the victim's electronic system can be applied Article 30 paragraph (1) in conjunction with Article 46 of the ITE Law. The perpetrator intentionally accessing the Electronic System with the aim of obtaining Electronic Information and/or Electronic Documents can be applied Article 30 paragraph (2) in conjunction with Article 46 of the ITE Law. Perpetrators intentionally and without rights or against the law accessing Computers and/or Electronic Systems in any way by violating, breaking through, exceeding, or breaking into the security system can be applied Article 30 paragraph (3) in conjunction with Article 46 of the ITE Law
2. Cracking, namely the perpetrator by changing, adding, reducing, transmitting, destroying, removing, transferring, hiding an Electronic Information and/or Electronic Document belonging to the victim can be applied Article 32 paragraph (1) in conjunction with article 48 of the ITE Law. move or transfer Electronic Information and/or Electronic Documents to the Electronic System of another person who is not entitled to violate Article 32 paragraph (2) Jo Article 48 of the ITE Law.
3. Spoofing is the perpetrator of the crime of manipulating, creating, changing, deleting, destroying Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if authentic data can be applied Article 35 in conjunction with the ITE Law.
4. Sniffing is a criminal who intercepts or intercepts Electronic Information and/or Electronic Documents in a certain Computer and/or Electronic System which may be subject to Article 31 in conjunction with Article 47 of the ITE Law.
5. Online fraud that spreads false and misleading news that results in consumer losses in electronic transactions violates Article 28 paragraph (1) in conjunction with Article 45A of the ITE Law.

However, problems arise when the government's efforts to minimize losses experienced by Bitcoin users are not immediately regulated and/or implemented in accordance with the provisions of the ITE Law. On the other hand, Bitcoin users can be subject to imprisonment and fines except for acts that are excluded in the Currency Act

regarding the use of Bitcoin as a means of payment. Statement of B.I in Bank Indonesia Press Release No. 16/6/DKom with the title “Bank Indonesia Statement Regarding Bitcoin and Other Virtual Currency” states clearly the risks that will be borne by the use of Bitcoin in the territory of Indonesia. so that in this case the Indonesian government is not responsible for the risks experienced by its citizens. This is clearly contrary to the principle in international law, namely the responsibility to protect principle. The basic principle/core principle of this principle is that state sovereignty has implications for state accountability, and the primary responsibility is to protect its citizens³⁷.

This basic principle does not limit the form of protection that a state must provide to its citizens, meaning that the protection provided by the state in this case is not limited to protection in the form of protection against the threat of violence, but also protection against all forms of threats that can harm its citizens. If it is associated with the absence of legal certainty on the position of Bitcoin, it is clear that the threat that will arise from the absence of legal certainty is the absence of harmonization of the regulations that have been in effect, furthermore this will have a systemic impact on the legal system in Indonesia³⁸. Recognition of the direct use of Bitcoin can provide convenience and benefits for Indonesia, another feedback that may be obtained by the Indonesian government if it recognizes Bitcoin as a legal tender is that Indonesia can collect taxes on companies providing Bitcoin services where tax is one of the revenues. The position of Bitcoin which is still in the gray area causes the Indonesian Government to provide legal certainty to the Bitcoin phenomenon that occurs in the community, of which there are two options regarding actions that can be taken by the government. The first option is to provide an acknowledgment, and the other option is to provide a statement that the use of Bitcoin in Indonesia is illegal³⁹.

Based on the description above, it can be concluded that legal protection for Bitcoin users in the United States is not necessarily applied to Bitcoin users like exchangers and organizers who are subject to BSA, and register as MSB. This is because the working groups of various federal agencies dealing with virtual currencies are not focused on consumer protection. so the virtual currency settings in the United States overlap. For now, the CFPB as a law enforcement agency in consumer protection only

³⁷ Irma and others.

³⁸ Nadeem and others.

³⁹ Passagi.

issues advice or warnings regarding the risk of virtual currency to consumers, without any action that can be taken legally in losses or any risks experienced by consumers or users ⁴⁰. In Japan, after the fall of Mt. Gox, a member of the FSA board proposed the establishment of a regulation on customer protection that applies to virtual currency exchangers and a regulation on AML/CFT (anti-money laundering and prevention of terrorist financing). A number of measures have been implemented to provide legal protection for Bitcoin users, such as measures to securely manage information, governance of trusted parties, providing clear information to customers, segregation of virtual currency and foreign exchange assets. And under AML/CFT regulations, virtual currency exchange service providers comply with PTCP laws and implement KYC procedures.

In Indonesia, the absence of clear regulations and acknowledgment of the use of Bitcoin virtual currency in Indonesia causes Bitcoin virtual currency users in Indonesia not to get legal protection regarding the ownership and/or use of Bitcoin, so all risks to the ownership and/or use of Bitcoin must be taken into account. borne by Bitcoin users themselves. The Indonesian government cannot perform maximum supervision and control over the use of Bitcoin in Indonesia, which supervision and control can be carried out optimally if the government gives recognition to the status of the virtual currency bitcoin in Indonesia, so that the cooperation between the government and business companies (government to business)) can be implemented, and minimize Bitcoin abuse because there is no clear regulation regarding the use of Bitcoin in Indonesia ⁴¹.

Conclusion

Bitcoin continues to be produced through the Mining process by following the existing algorithm. Electronic money must be circulated based on the money deposited, so Bitcoin is not properly said to be electronic. Bitcoin also cannot be said to be money because Bitcoin is not an object; Bitcoin is an information system used by some people as a means of payment and investment, legally Bitcoin cannot be said to be an object because it does not meet some legal requirements to be classified as an object. Legal protection in Indonesia related to the use of crypto money The absence of clear regulations and recognition of the use of virtual currency Bitcoin in Indonesia causes

⁴⁰ Cahyono.

⁴¹ Irma and others.

Bitcoin virtual currency users in Indonesia not to get legal protection related to ownership and use of Bitcoin, so the Bitcoin user must bear all risks to ownership or the use of Bitcoin. The Indonesian government cannot carry out maximum supervision and control over the use of Bitcoin in Indonesia, which supervision and control can be carried out optimally if the government gives recognition to the status of the virtual currency Bitcoin in Indonesia, so that cooperation between the government and business companies (government to business)) can be implemented, and minimize the misuse of Bitcoin because there is no clear regulation regarding the use of Bitcoin in Indonesia.

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