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Bitcoins Positions as a Digital Currency and Protection of Users According to Positive Law

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Abstract

Rapid technological aadvances have a big impact, one of which is in the economic field. In this all-digital era, bitcoin has emerged as a digital medium of exchange. Bitcoin is a cryptocurrency that appeared precisely in 2009 by someone under the pseudonym Satoshi Nakamoto. In its transactions, bitcoin uses a peer-to-peer system so it does not involve third parties such as banks. The regulation on the use of bitcoin in Indonesia itself has not been specifically regulated, resulting in a legal vacuum. As a result of this legal vacuum, there are many question marks regarding the position of the use of the bitcoin currency, considering that it will lead to the aspect of legal protection that will be provided to bitcoin users. The purpose of this study is to find out the position and form of protection that will be given to its users. This research method uses a normative approach and a comparative approach. The results of this study show that bitcoin does not have a strong legal basis, with the existence of Law Number 7 of 1999 concerning consumer protection, it is hoped that it can be implemented to protect bitcoin users, this must also be supported by the participation of the government and socialization to the public regarding the understanding of the awareness of the use of bitcoin.

Keywords: *bitcoin, cryptocurrency, money*

Introduction

The world is currently experiencing very rapid technological advancement, judging from the all-digital era that has spread to almost all corners of the world. Indonesia is one of the tangible proofs of a country that is able to coexist with digital technology, this is a form of evidence of public openness to technological advances. Digital technology can affect several aspects of people's lives, one of which is in the financial sector. The existence of digital technology in the financial sector has changed the way we interact with money and financial services as a whole, from *online* transactions, *online* payments, to *online* investments. This digital technology has certainly brought convenience to some people, because in making a transaction users do not need to meet personally or face-to-face with other users, even users can carry out transactions anywhere and anytime through the services that have been provided. The digital age has brought quite a lot of innovation, as one very popular example is *blockchain*.

Blockchain is a set of networks that are interconnected using *cryptocurrency* techniques. *Blockchain* technology was first proposed in 1991 by Stuart Haber and W. Scott Stornetta and later applied by a person who did not reveal his real name, but used the pseudonym Satoshi Nakamoto, so it is known as the *trendsetter* of *blockchain* technology that is the basis *of the popular* cryptocurrency bitcoin. With the increasing popularity of *bitcoin* as a digital medium of exchange, *blockchain* technology is also expected to be able to be applied in various fields in the sense that it does not only focus on the financial sector. *Blockchain* technology has a decentralized nature so it is safe against data manipulation or hacking, making its application in the digital era very attractive. (Yeni & Kumala, 2020)

Bitcoin is not in physical form like money used by humans in general, but it is completely digital. This digital currency is not just an ordinary currency but a *revolutionary* program. The system that *bitcoin* uses in performing transactions is *peer-to-peer*. *Peer-to-peer* is a network that can connect users with other users in making transactions without involving third parties such as banks, because of its position that is not tied to any institution or financial body. This allows for the transfer of global value at a lower cost and without restrictions.

Bitcoin users in Indonesia are currently quite significant, although still far from other countries such as India, China and the United States. The *bitcoin* community in Indonesia also continues to grow as time goes by. This digital advancement often encourages people's desire to find alternatives to get profits, the emergence of *bitcoin* is one of the options that is quite attractive. Indonesians are interested in the potential profits that can be obtained through the sale or by investing in *bitcoin*, because the price that continues to rise can provide opportunities for users to reap greater profits. Even the selling value *of bitcoin* is interpreted to continue to increase in the future.

The most important part of a transaction is the existence of a payment instrument that is useful to support the transaction process so that it continues to run. Regulations that regulate the provisions of payment instruments are certainly the main basis for their legality in the eyes of the law, where money as a means of payment has been regulated in Law of the Republic of Indonesia Number 7 of 2011 concerning Currency as amended by Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Currency is a legal tender, and legal tender is a currency issued by the unitary state of the Republic of Indonesia which is called the rupiah. Inner currency in the Great Indonesian Dictionary is defined as a legal medium of exchange or measure of value (unit of calculation) made by the government of a country in the form of paper, gold, silver, or metal with a certain shape and image. Kasmir argues that the meaning of money is broadly interpreted as a means of payment or purchase for goods and services, and has a function as a unit of measurement that shows the value of goods and services sold or purchased (Kasmir, 2018).

The definition of money above can be concluded that money is a medium of exchange or a legal instrument of payment if issued by a party with special authority, so that the only currency recognized and valid in Indonesia is the rupiah currency. It can be said that *bitcoin* creates a legal vacuum in Indonesia because of the absence of specific regulations such as special laws that regulate directly so that it can increase the risk of abuse such as money laundering, illegal trading, fraud and many more. So that the question arises what is the position and what form of legal protection will be given to users.

Research Methods

The method used in this study is *normative* law research, by analyzing library materials and secondary data to collect information about regulations and literature that are considered relevant to the research topic. The approach used is to focus on legislation (*statute approach*), which is research on legal products. The intention is to study legal rules that can be associated with legal problems that are occurring. And this study also uses a conceptual approach, which is to examine the sources of law, legal functions that are still related to the discussion being researched (Nasution, 2008). In addition to using these two methods, this study also uses a comparative approach method, which is an interpretation to compare explanations based on legal comparison (Ali, 2009). A comparative approach is carried out by comparing the legislation of one country with another country on the same issue.

Results and Discussion

A. *Bitcoin* is a Legal Instrument of Payment and Has Legal Certainty According to the Laws and Regulations in Indonesia.

Payment instruments are the most important component in a payment system to support the system to keep running. In practice, there are still many people who use cash as a means of payment. The government through the central bank to meet people's needs for money, money was created in the form of coins and paper money. Not only that, as technology develops, the central bank issues bills in the form of current accounts, checks, and *credit cards*. Even in the development in Indonesia, *e-money (Electronic money)* has also emerged which has been recognized by the issuance of Bank Indonesia Regulation Number 11/12/PBI/2009 concerning Electronic *Money* (Brahmi & Darmadha 2018). The use of *e-money* is considered more efficient than the use of cash. *E-money* as an alternative in making payments provides ease, speed and comfort to its users in transactions. The form of *e-money* itself is not created in physical form, even so *e-money* still requires physical money in the form of rupiah currency which can then be deposited to the issuer through various ways, such as depositing it directly or through the issuing agent and also by debiting an account at the bank. The amount of money will then be added to the application or e-money media which is determined in rupiah according to the provisions and used to make transactions or payments by deducting the value of the balance from the person concerned on the e-money application. (Hendarsyah, 2016). So *that e-money* can be categorized as a legal and legitimate means of payment because one of the important conditions has been met, namely the use of the rupiah currency. Unlike *bitcoin*, *bitcoin* is generated through a mining mechanism that is not issued by the authorities.

Bitcoin users in Indonesia are currently experiencing a significant increase so that the *bitcoin* community is also expanding. *Bitcoin* has succeeded in becoming an innovation that is relied on by some people in the field of trading and investment, because in addition to the potential profits that will be obtained, the *relatively* increased price will also provide opportunities for users to reap profits many times from the first capital spent. The development of *bitcoin* caused both positive and negative reactions considering that *bitcoin* operates without supervision from financial institutions and the government because Bank Indonesia's regulations only cover the rupiah currency, which means there is no insurance protection in the event of a loss *of bitcoins*, theft and fraud. Therefore, the user must be fully responsible for all risks that may arise at any time without the involvement of a third party. In Indonesia, there are currently no strict regulations governing the use of *bitcoin* as a digital medium of exchange. *Bitcoin* requires special attention from the Indonesian central bank to establish a regulation that contains provisions on the use of *bitcoin* (Julianti & Apriani 2021).

The government has tried to appeal to the public through social media not to use bitcoin carelessly, because the government has considered that the use of *bitcoin* in Indonesia is an illegal category and cannot be considered legal, so that the provisions that regulate money are the main basis for currency legality before the law. In Law of the Republic of Indonesia Number 7 of 2011 concerning currency as amended by Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. What is meant by currency is a legal tender, and a legal tender is a currency officially issued by the unitary state of the Republic of Indonesia, which is then called rupiah. So that what can be used as a means of payment in Indonesia must be rupiah (jdihkemenkeugoid 2023).

Based on the applicable regulations, it can be interpreted that *cryptocurrencies* have no legal basis, and therefore *cryptocurrency* currencies such as *bitcoin* are not considered legal digital means of exchange. This is in accordance with *a statement* from Bank Indonesia on February 6, 2014. Thus, although *cryptocurrencies* are not legally recognized as one of the legal digital means of exchange, Indonesia's central bank does not prohibit the public from using cryptocurrency currencies. The risk of using *bitcoin* among the Indonesian people will be fully borne by each user and the Bank will not interfere with this (Noorsanti et. all, 2018).

B. Legal Protection Provided to *Bitcoin Users* in Indonesia

Bitcoin trading in Indonesia as one of the *cryptocurrency* assets is a high-risk activity. The price *of bitcoin* is constantly changing, where the value per coin can increase or decrease over time. This can increase the risk of loss as a result of buying or selling, and there is also no party willing to take responsibility for unpredictable changes. Given that no financial institution can protect *bitcoins* from their owners. In other words, if at any time *bitcoin* experiences a decrease in users so that the selling value *of bitcoin* is no longer meaningful, then all kinds of losses will be fully transferred to the owner.

The government provides a form of attention to victims of *bitcoin* users in the form of regulations regarding consumer protection as outlined in law number 8 of 1999, stated in article 3 that this law emphasizes a purpose of protection to consumers, namely to increase consumer understanding to protect their interests, this aims to prevent consumers from experiencing adverse effects as a result of using goods and/or services. In addition, this law seeks to empower consumers to make the right choices, defend their rights, and demand fair treatment. Establishing a system for consumer protection is essential in ensuring legal certainty, encouraging transparency through information disclosure, and providing ease of access to relevant information (Fitriono, 2018).

The existence of Law Number 8 of 1999 concerning Consumer Protection must be recognized by business actors and consumers as a legal basis, then both parties who have been involved in transactions, especially those related to *cryptocurrencies*, must understand this law. It is important to disseminate information to the public, this needs to be prioritized so that people can control themselves to be careful and have extensive knowledge so that it can be considered when making transactions involving *cryptocurrencies.* A country certainly has an important role in order to achieve its main goals, including the implementation of a regulation that is able to protect individuals from their various activities. In its role as an independent country, the Republic of Indonesia has a responsibility that is not much different from other countries, namely by supervising a series of state activities for the sake of creating global peace and ensuring legal certainty for its people. In accordance with this principle, the 1945 Constitution of the Republic of Indonesia Article 28D affirms that each person has the right to be recognized, given guarantees, and protected and given balanced treatment in the eyes of the law without discrimination (Yohandi et. all, 2017).

Bitcoin in Indonesia has had a fairly wide spread by reaching almost all corners of the country, so a special workshop for bitcoin trading has been established in Indonesia to grow its own market dynamics. As a digital medium of exchange, *bitcoin* not only facilitates buying and selling, but also functions as a tool for investing, which allows users to benefit from *relatively* upward market fluctuations. Activities using *bitcoin* such as trading, exchanging and investing in the use of *bitcoin* have a correlation with the regulations that regulate transactions through electronic media (Koeswanto & Taufik 2017).

The State of Indonesia already has relevant regulations in conducting transactions through electronic systems, namely in the form of provisions of Law Number 7 of 2014 which specifically regulates trade operated through electronic systems. This type of electronic trading is a transaction that is carried out using a device and then follows the steps on the system. According to the trade law, precisely in Article 65, every business entity that trades goods and services through an electronic system is obliged to provide accurate or true information and in accordance with what has been offered on electronic media (Hidayat et. al, 2023). In order to protect the public from disturbing insecurity as a result of misusing information on electronic media, in the end the current government is trying to develop a new provision with the enactment of Law Number 19 of 2008 concerning Information Transactions Through Electronic Systems. In this law, the government has a very important role in limiting the dissemination and use of this information (Habiburrahman & Atsar, 2002).

If it is associated with the consumer protection mechanism as an owner or investor in the use of cryptocurrencies, then the form of principle listed in article 2 of the consumer protection law number 8 of 1999 is related to what is required by law. The principles in question are the principle of justice, the principle of benefit, the principle of peace and the principle of security as well as the certainty and balance of the law. Regulations regarding consumer protection can be considered as appropriate provisions and in accordance with this, considering that Indonesia as a sovereign country must guarantee consumers, both users and business actors, in utilizing goods and/or services used by consumers. The principles mentioned earlier can be used as a basis for protection for *bitcoin users* in Indonesia and are the main task of the state in providing a sense of security, benefits and legal certainty for the use *of bitcoin* in Indonesia. A form of legal protection given to *cryptocurrency* users indicates that the government is able to use its authority in creating a regulation by providing legal certainty that can guarantee *bitcoin* users considering that its status is unclear in Indonesia (Syafdinan, 2023).

Bitcoin as a *cryptocurrency asset*, but its existence is not recognized as a legal and legal means of payment based on Law Number 7 of 2011 concerning the Rupiah Currency, but ratified based on the Regulation of the Minister of Trade Number 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading through the Commodity Futures Trading Supervisory Agency. The Commodity Futures Trading Supervisory Agency follows up on regulation Number 99 of 2018 concerning the Implementation of Crypto Asset Trading in BAPPEBTI regulation Number 3 of 2019. Then the regulation by BAPPEBTI Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets in the Futures Exchange, so that *bitcoin* can be traded and traded as an asset (Watung, 2019).

Regulation of the Commodity Futures Protection Supervisory Agency Number 5 of 2019 concerning the technicalities of organizing a physical market for crypto assets in the futures exchange states that even though crypto asset trading is established as a legal entity, it will not be effective. The regulations that have been issued by BAPPEBTI are still considered to be very less than optimal as a form of consumer protection in the Steps or procedures for complaining to crypto asset consumers if there is a possibility of something that has a detrimental impact on the party making the sale, be it an individual or a company that trades but does not have the asset itself (Nababan, 2022). Legal aspects that are able to provide protection for users must be stipulated in BAPPEBTI rules in order to create a legal product that is able to guarantee legal certainty for users if they ever suffer losses in criminal acts through the internet or *cybercrime.*

According to the author's analysis, the authority of the Commodity Futures Trading Supervisory Agency in the Regulation of the Minister of Trade Number 99 of 2018 which regulates the General Policy for the Implementation of Crypto Asset Futures Trading, which is then followed up in BAPPEBTI Regulation No.3 of 2019 concerning products traded on the futures exchange, as well as BAPPEBTI Regulation No.5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on the Futures Exchange There are no regulations that regulate to protect crypto users who are harmed by fraud, so the regulations are not optimal in providing protection for victims.

Legal regulations that are able to provide protection to victims of crypto users will be more appropriate if they are specifically regulated in laws and regulations, such as the provisions of Law Number 8 of 1999 which regulates Consumer Protection, because the provisions of the Law are one of the legal products that should be able to provide protection for *cryptocurrency* users in Indonesia. In Law Number 8 of 1999 concerning Consumer

Protection, it is stated that consumer protection is all forms of effort to ensure legal certainty to protect consumers, and consumers themselves are people who use goods and services that have been provided in society to seek profits, both for their own interests, their families and other people who are not for the purpose of being traded. In this regard, bitcoin and cryptocurrency investors are also part of consumers who should and should be guarded and protected by providing a form of legal certainty by Law Number 8 of 1999 concerning Consumer Protection in Indonesia.

Conclusion

The use of bitcoin in Indonesia is currently increasing because the soaring price provides opportunities for users to earn more profits However, bitcoin operates without any supervision from financial institutions and the government because regulations in Indonesia only cover the rupiah currency, this is based on Law Number 7 of 2011 concerning legal tender is the currency issued by the unitary state of the Republic of Indonesia, namely the rupiah. So bitcoin does not have a strong legal basis. In this case, the Government provides a form of attention to bitcoin users in the form of regulations regarding consumer protection outlined in Law Number 8 of 1999, namely by providing understanding to consumers to maintain their interests. It is necessary to disseminate information to the public, so that people are more careful in the use of bitcoin. A form of legal protection given to bitcoin users indicates that the government is able to exercise its authority in creating a regulation by providing legal certainty that can guarantee bitcoin users.

Suggestions

In relation to the conclusion above, the author expects the government to immediately issue a special regulation regarding the position of *cryptocurrencies*, this regulation can be in the form of legality that explicitly recognizes *bitcoin* as a legal digital asset, so that the Indonesian government can create a strong and adaptive legal framework in managing *cryptocurrencies.* Then the government needs to socialize the awareness of the use of bitcoin, it is hoped that the public as consumers can use this digital medium of exchange by studying and understanding all the good and bad risks in making transactions so as not to cause losses to bitcoin users themselves, so that people are not easily influenced and deceived in using bitcoin.

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