

The Use of Cryptocurrency as a Payment Instrument

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Abstract

This article aims to know the impact of using *cryptocurrency* that replace conventional money as a means of payment in Indonesia. This article belongs to the type of normative legal research that is prescriptive to produce a new concept in resolving the problems faced by supported by a legal approach and a case approach. The data used is secondary data with primary binding and fundamental material. Data collection techniques using library studies. The data analysis technique used by the authors is a silogism analysis. Results show that as a consequence of legal usage *cryptocurrency* to replace uses of conventional currency as the means of payment in Indonesian can not or is proven to violate certain rules which can make *cryptocurrency* a tool of crime on the basis of its use as a means of payment, giving rise to negative ideas of its usefulness and can be detrimental to the state.

Keywords: *legal consequence, payment tools, payment systems, conventional currency, cryptocurrency*

A. Introduction

The world trade development which grew rapidly as time goes by has an impact in influencing payment systems. Along with the enhancement of the world economy globalization[1][2], the need for speed, convenience and security of financial transactions is increasing. Therefore, there is a need of reliable and easy payment system for banking customers. The payment system is a mechanism that includes arrangements used for payment through value exchanges between individuals, financial institutions both domestically and globally[3]. The development in buying and selling transactions that no longer have walls which limits the parties cause the development of payment instruments.

Cryptocurrency is a digital currency that uses cryptographic technology as a security which is difficult to be falsified, where transactions can be done or must be done on the internet (online), and each data transaction is encrypted using certain cryptographic algorithms[4]. The difference in cryptocurrency from existing currencies[5] is that the crypto currency is not issued by the central authority, there is no interference or manipulation by the government. At first, this cryptocurrency was not seen as an exchange rate that could represent the existing digital currency. However, due to its rapid development, the crypto currency was immediately known by many people. This electronic money uses chip-based and server-based types which still require the role of a third party to overcome the issue of compatibility between electronic reading terminals (EDC) in order to exchange customer

information regarding the account debit process. That is why payment technology was developed using the cryptocurrency (Cryptography) method. This cryptocurrency theory was first published by David Chaum from the University of California in 1982[6]. One of the most famous types of cryptocurrency in the world is Bitcoin. Bitcoin was discovered by Satoshi Nakamoto on January 3th, 2009 by a peer to peer implementation (connecting network)[7]. After that, then developed the other forms of cryptocurrency such as Ethereum (ETH), Bitcoin Cash, Lite Cash, etc. Because it is in the form of digital currency, the method of distributing cryptocurrency is given to those who conduct mining.

The development of global e-commerce raises the need for a fast, secure and confidential payment system. The payment system is a mechanism that includes arrangements that are used to deliver payments through value exchanges. The problem faced is how cryptocurrency can be utilized for payment systems in Indonesia. Crypto money in Indonesia is considered not as a means of payment, but is included in the commodity of digital assets, it is based on Regulation of the Minister of Trade number 99 of 2018 on General Policy for the Implementation of Crypto Asset. However, the phenomenon of crypto money was already developing.

Companies that are now officially accepting this cryptocurrency, according to Flexa, are Barnes & Noble, Baskin Robbins, Bed Bath & Beyond, Caribou Coffee, Crate & Barrel, Express, GameStop, Jamba Juice, Lowe's, Nordstrom, Office Depot & OfficeMax, Petco, Regal Cinemas, Ulta Beauty, Amazon's Whole Food Market, and of course, there's Starbucks, though it's not

part of the official launch[8]. Even Facebook CEO, Mark Zuckerberg, announced the emergence of crypto money provider company, that is Calibra[9]. This financial service allows users to transact on cryptocurrency trading networks. This electronic money phenomenon raises several legal issues. The unclear status of crypto money causes unclear legal consequences arising from the crypto money phenomenon. And a question arises, what are the consequences if crypto money is used as a means of payment? This research will be useful in helping the efficient movement of money in the community, thereby helping to increase public confidence in the rupiah, thereby indirectly contributing to the smooth running of the Indonesian economy. Because it is supported by a payment system that is easier, safer and faster, and also not forgetting what legal consequences caused in the use of cryptocurrency as a means of payment in Indonesia.

2. RESEARCH METHODS

This article belongs to the type of normative legal research. The nature of the research is prescriptive research, that is a research which produce new concepts in solving problems encountered[10]. The research approach that was used in this research is statue approach and case approach[11]. The type of data that was used by the author in this study is secondary data, that is data obtained through the review of existing libraries. In this case, secondary legal materials are journals, books and doctrines of experts regarding an analysis, and also Primary Legal Materials as legal material that is binding and fundamental. The legal material collection technique that was used in this legal research is document study or library research.

3. RESEARCH RESULTS AND DISCUSSION

The legal consequences are first preceded by legal actions. The legal actions themselves generally are an act of the law and is given a legal effect based on the assumption that the legal subject who commits the act does indeed want a legal effect or the arising of a related legal effect. Legal actions can be in accordance or according to legal regulations and unlawful acts. Kinds of legal consequences such as acts carried out by one legal subject to legal objects where there are certain consequences of actions that have been regulated by law or others such as actions carried out that intersect with the rights and obligations that are regulated in the law, namely the constitution. Cryptocurrency in Indonesia is unclear, Bank Indonesia stipulates that this type of cryptocurrency cannot be used in Indonesia because its value is unstable and does not have a definite shape. Cryptocurrency itself comes from a blockchain network which contains numbers that become valuable[12]. Another thing, Cryptocurrency has no Institution regulating its circulation or circulation. Whereas, to be

able to become a valid currency in Indonesia, it must have an Institution or has an electronic money server to monitor anywhere the transaction turnover or its use as a payment instrument or as a storage device. In conventional currencies, there is a serial number on each printed money so that this can facilitate tracking where the money is circulating. If Cryptocurrency is used as a currency, there will be problems in tracing it if it is already circulating.

It can be stated that the absence of specific rules in regulating the existence and circulation of Cryptocurrency makes confusion for Cryptocurrency users between those who use it as a means of payment or transaction activities and those who use it as a means of storing. This makes the user does not have a legal umbrella along with the absence of regulations regarding the existence and circulation related to Cryptocurrency. Due to the absence of a specific legal umbrella, it is more difficult to control over Cryptocurrency as a payment instrument or exchange instrument that is legally valid. It becomes difficult when there is no government institution involved in regulating the circulation of this cryptocurrency with parties currently in Indonesia better known as providers of buying and selling Cryptocurrencies. The cryptocurrency is the currency which has invisible circulation, even though the providers of cryptocurrency services have buy-and-sale circulation data, but still they does not fully have circulation data throughout the world or are only those who have entered and exited through their services. To be able to determine that Indonesia is eligible to use cryptocurrency as a payment transaction, we must first look at the rules of law in other countries as well as the legal consequences they provide to its users.

Countries which Acknowledge the Use of Cryptocurrency

Some of the closest countries to Indonesia that also acknowledge the legitimate use of cryptocurrency are:

1. Japan, as a developed country, Japan stated that the use of cryptocurrency was legal in April 2017 under the Payment Services Act (PSA) regulation, which is to protect users and provide registration for exchanges with Japanese conventional money, namely the yen with the owner of the exchange services from crypto to conventional money. Besides that, cryptocurrency is considered as property, the National Tax Agency (NTA) categorizes Cryptocurrency as other income - for example, a GMO company engaged in advertising gives salary to its employees in the form of Cryptocurrency so it is considered legal as a currency and can be used as a transaction tool. Cryptocurrencies in Japan have added tax value for investors who use Cryptocurrency as an investment tool or saving tool with a range of 15% - 55% to keep the exchange rate with conventional money

stable[13]. Regulations are made to keep Cryptocurrency with conventional currencies at reasonable limits, the Japan Financial Services Agency (FSA) makes efforts to provide regulations regarding trade and exchange in the form of legislation whereby every use of Cryptocurrency in payment transactions or investment savings devices must be registered with the Japan Financial Services Agency (FSA) to be used and it requires confirmation from the FSA for approximately six months to operate for payment instruments and investment savings devices. This is done in order to maintain security of users and service providers, namely the FSA[14];

2. Singapore declared that cryptocurrency is legal. It was the first country that accepted Cryptocurrency legally in the region or in the Southeast Asia region of its neighbors[15]. But Cryptocurrency is not considered as a currency, but the Singapore tax authority declares Cryptocurrency as an item, so the Singapore tax authority applies a tax on goods and services. Singaporeans treat Cryptocurrency with regulations made by the Monetary Authority of Singapore (MAS) to regulate the exchange of cryptocurrencies with the existing legal framework. In this regard, MAS issues information to the public about the risks of using Cryptocurrency which explains that even though there are regulations from the MAS, the community is still expected to be careful if the use of cryptocurrency around has indications for money laundering, or crime related to money. This country makes Cryptocurrency as the same subject as conventional currencies, so that legally there is no difference with conventional currencies, but the way of view of the use is used as the value of goods not the value of currency and does not need to register to Cryptocurrency services so that their circulation cannot be traced by the services related to Singapore.
3. Malaysia, this developing country is supported by BNM (Bank Negara Malaysia) which provides strict rules about Cryptocurrency exchanges as assets traded, on the condition there are reports provided on every exchange procurement where the seller and buyer must provide background information data about the type of local currency which is exchanged with the type of cryptocurrency, it must be clearly written in the report. This avoids fraud in the transparency of the exchange, so that money laundering or fraudulent transactions does not occur. The use of crypto without a report or outside the report provided will be a personal responsibility. If the user requests responsibility for the use of outside the report provided, then the user will receive a fine or witness according to the rules that have been given. Then regarding the use as a means of payment, although not legally recognized about the use of

crypto as a means of payment, but the BNM is not fully responsible for outside use of the crypto wallet service provider. This is done so that there is no falsification of the amount of Cryptocurrency that goes in or out[16].

Countries which Oppose the Use of Cryptocurrency

There are several countries that refuse the use of cryptocurrency in terms of asset tools and the use of payment instruments, they are:

1. Russia. The Central Bank of Russia believes that virtual currencies violate currency laws and banking laws. Then the Ministry of Finance announced its intention to limit the use of Cryptocurrency as a means of payment. In February 2015, the Russian Government claimed that all kinds of cryptocurrency could not be used by individuals or legal entities. Indeed, Russia's crackdown on this currency has been proven, with at least six Cryptocurrency sites blocked in early 2015[17].
2. China. This country has various types of cryptocurrencies since 2013. The People's Bank of China states the use of buying or selling cryptocurrency is permitted and the use of it as a means of payment between countries is also permitted if the seller also accepts the payments via Cryptocurrency. But in 2017, the People's Bank of China has developed their own Cryptocurrency which will be patented directly in China only. So, in September 2017 the People's Bank of China broke the Cryptocurrency bitcoin exchange which will be replaced by Cryptocurrency developed by the People's Bank of China as a cryptocurrency which subject to the conventional Chinese currency (yuan) and the rules made by the People's Bank of China regarding the Cryptocurrency they made. Indirectly, Cryptocurrency users who have used various types of Cryptocurrency circulating in the world must immediately convert it to Cryptocurrency owned by the People's Bank of China so that it can be reused[18].

The Indonesian side responded to the use of cryptocurrency

Obviously, Cryptocurrency itself does not meet the requirements of payment instruments in Indonesia, for example crypto money cannot be standardized or equated with a payment instrument that has already been spread, namely rupiah[19], because the Cryptocurrency system itself uses peer-to-peer networks or blockchain which is open[20] and its widespread use is related to the absence of authority to guarantee or regulate the use of Cryptocurrency in Indonesia. Then there is no government recognition of Cryptocurrency

regulations in Indonesia. Bank Indonesia states that Cryptocurrency is not in accordance with several laws that apply in Indonesian banking such as Law No. 7 of 2011 concerning about currency and Law of the Republic of Indonesia No. 23 of 1999 concerning about Bank Indonesia. The Currency Act explains that currency is the money issued by Bank Indonesia as the owner of the authority and as the Central Bank, called as the rupiah and in the Bank Indonesia law, it is stated that the legal currency in circulation in Indonesia is rupiah currency.

One principle that is relevant to this problem is the principle of transparency, Law No. 23 of 1999 concerning about Bank Indonesia, explains that the principle of transparency in question is ensuring that the organizer provides information to customers or consumers verbally or in writing, including information through electronic which is clearly and easily understood. The organizer is obliged to provide information regarding the benefits, risks and consequences for consumers for the use of the payment system. The information provided verbally or in writing is in accordance with Bank Indonesia regulations regarding payment systems in languages that are easy to understand and use writing that is understood by all customers or consumers in the form of written information. The information provided must be provided by the organizer to consumers accurately, current, clear, not misleading, honest and ethical.

For legal certainty and legal consequences, the use of cryptocurrency has several rules that have been regulated as follows:

1. Article 34 of Bank Indonesia Regulation Number 18/40 / PBI / 2016 concerning the Implementation of Payment Transaction Processing states that the Payment System Service providers are prohibited from processing payment transactions using virtual currency, the intended virtual currency is digital money issued by parties other than monetary authorities obtained by mining (Cryptocurrency) with several types, namely Bitcoin, Litecoin, Ripple, Ethereum and other related types;
2. Article 2 paragraph 1 of Law Number 7 of 2011 concerning Currency states that the Currency of the Republic of Indonesia is Rupiah;
3. Article 21 paragraph 1 of Law Number 7 of 2011 concerning Currency states that rupiah must be used in every transaction that has a purpose for payment; other obligations that must be fulfilled with money; and / or other financial transactions;
4. Law Number 6 of 2009 concerning Bank Indonesia states that Bitcoin and other Virtual Currency are not legal currencies or payment instruments in Indonesia, and all risks related to ownership or use of bitcoin and similar virtual currencies are borne solely by the owner or user of bitcoin and other virtual currencies. Indirectly the use of

Cryptocurrency is explained that it is not the responsibility of the state.

5. Regulation of the Minister of Trade (Permendag) Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures; This regulation will become the legal basis for trading crypto assets as one of the commodities that can be the subject of a futures contract, and / or other derivative contracts traded on a futures exchange.
6. In addition to the above regulations, there are four rules released by Bappebti (Commodity Futures Trading Regulatory Agency), namely:
 - a. Bappebti Regulation No. 2 of 2019 concerning Operation of Commodity Physical Markets on the Futures Exchange;
 - b. Bappebti Regulation No. 3 of 2019 concerning Commodities which can be subject to Futures Contracts, Sharia Derivative Contracts and / or Other Derivative Contracts Traded on the Futures Exchange;
 - c. Bappebti Regulation No. 4 of 2019 concerning Technical Provisions for the Implementation of Digital Gold Physical Market in the Futures Exchange; and
 - d. Bappebti Regulation No. 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange.

4. CONCLUSION

The use of Cryptocurrency in Indonesia caused violation of the rules or laws that have been made and also become a risk, such as money laundering and other criminal acts. Statement of Article 34 of Bank Indonesia Regulation Number 18/40 / PBI / 2016, concerning the Implementation of Payment Transaction Processing, explains Cryptocurrency does not have the authority to regulate and distribute circulation and distribution, because of its fluctuating exchange rates and because its use is carried out in computer systems with internet networks, referred to peer to peer or blockchain, cannot be monitored by the authorities.

5. SUGGESTIONS

There is a need of regulations for governing and explaining Cryptocurrency as a means of payment in Indonesia. The existing regulations only regulate the use of cryptocurrency as a means of payment and regulate the prohibition for using it in Indonesia. The rules relating to Cryptocurrency ownership must also be explained so that users do not report about the loss or manipulation data from the use of Cryptocurrency. This effort is to prevent the misuse of Cryptocurrency, if its users also have regulations, then if something happens, can report or sue to the state or the authorities. Consideration regarding the use of Cryptocurrency must also be informed to users and the public so that there is

no misunderstanding regarding the use of Cryptocurrency in Indonesia.

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