

THE ANALYSIS OF INDONESIAN LAW TO LEGALITY TRANSACTIONS USING VIRTUAL CURRENCY OR BITCOIN

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ABSTRACT

Bitcoin is a series of programming codes which are then secured using cryptography which is used by certain communities as a means of payment. In economics the use of virtual currencies or bitcoin is prohibited by law, but in practice these transactions are widely used. Therefore the following problems arise, what is the position of the virtual currency (Bitcoin) in buying and selling transactions in Indonesian law and how the legal consequences of buying and selling transactions using virtual currency (Bitcoin), as well as how efforts can be made by Bank Indonesia and the Authority Financial Services for buying and selling transactions using virtual currency (Bitcoin).

This research method uses descriptive analytical research method with normative juridical approach. The research data uses secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. Data analysis is a qualitative-juridical approach.

The purpose of this study is to examine the legality of the use of virtual currencies namely Bitcoin as a means of payment in Indonesia which according to the law is not exactly said to be a currency or an object (barter) but is an information system that has properties such as money, the implementation of the Bitcoin system and its use in Indonesia is also not in line with the law. Bitcoin should not be operated and followed up on every transaction.

Keywords: Transaction, currency, bitcoin.

INTRODUCTION

The use of virtual currency such as bitcoin become a trend in trading transaction. Foundation uses of bitcoin is their sense of security in dealing with the absence of government intervention. But the Indonesian law not yet give legal certainty to the payments with virtual currency such as bitcoin. Act on Currency explains that the currency is a currency issued by the Republic of Indonesia, hereinafter referred to Rupiah. Money is legal tender. As an independent and sovereign state currency is a symbol of state sovereignty must be respected and proud of by all citizens. Although the law explicitly stipulate that the payment instrument is rupiah, using bitcoin in trading traffic is increasing. Along with the advancement of information and communication technology, the practice of trading can be done by the internet, or e-commerce, or with the Financial Technology who are not face to face. Therefore bitcoin increasingly popular because of Bitcoin can be obtained through the purchase of various methods of exchange. The best exchanges is available including at coinbase, Indacoin, Kraken, Local Bitcoins and Spectro Coin. Bitcoin is used as a means of payment in places such as e-commerce web sites, physical stores, restaurant. Bitcoin has a high risk that can disrupt the stability of the financial system, risk-prone to money laundering and financing of terrorism as well

as harming consumers. Trading transactions electronic regulated in the Law on Information and Electronic Technologies is valid if there is an agreement of the parties, carried out by legal subjects capable or authorized to represent in accordance with the provisions of the legislation, there are certain things, and the object of the transaction must not conflict.

Bitcoin is referred to as cryptocurrency or crypto currency that raises permasalahan namely how the legality of Bitcoin has fulfilled what is referred to as a legal currency in Indonesia and how the government's efforts to face bitcoin transactions in order to provide legal certainty.

THEORETICAL FRAMEWORK

Definition of virtual currency

Virtual currency is a type of currency that was originally created for online entertainment. Virtual currency or virtual currency does not have any value because virtual currencies are not created to be used in real life (Dimaz A. Wijaya, 2016). Examples of virtual currencies are points or coins that are earned when winning an online game and can exchange these points for certain features in the game. This is one of the earliest forms of virtual currency. There are several types of virtual money, including Digital currency, Virtual currency, Cryptocurrency. Digital currency can be defined as a currency that is stored and transferred electronically. The term digital currency has only become popular in recent years, but in reality the digital currency has been around for a long time. One example is E-Gold is a digital currency that uses gold for transactions built in 1996. In addition, there is also a Liberty Reserve that was formed in 2006. This system allows users to exchange dollars or euros into Liberty Reserve Dollars or Liberty Reserve Euros for a fee of 1%. But Liberty Reserve Dollars and Liberty Reserve Euros have a bad reputation because many people use both services for money laundering. Not only that, digital currency is also used by people who have large incomes to manipulate taxes. In the end, both were closed by the United States government.

Cryptocurrency is a form of digital money that is designed to be a safe and mostly anonymous currency. It is also the internet-related currency that uses cryptography, a process of changing information that is almost unbreakable, to track purchases and transfers (Milestone, 2013). Cryptography itself was first made during World War II. However, with the development of the digital era, cryptography has become increasingly sophisticated with elements of mathematical theory and computer science to create a secure system for exchanging information and money online. Today, one of the most popular virtual currencies, Bitcoin, is the most commonly traded type of cryptocurrency. Bitcoin is not only a trendsetter, delivering waves of cryptocurrency built on decentralized peer-to-peer networks, but also becoming de facto standard for cryptocurrency.

The legality of bitcoin as cryptocurrency

The development of Bitcoin in Indonesia itself is still not supported by adequate regulations. However, Bank Indonesia (BI) in Bank Indonesia Regulation number 18/40 / PBI / 2016 of 2016 concerning the Implementation of Payment Transaction Processing explains that what is meant by virtual currency is digital money issued by parties other than monetary authorities obtained by mining, purchase, or transfer of gifts (reward) including Bitcoin, Blackcoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. Not included in the definition of virtual currency is electronic money (<http://w.w.w.law.gov.>) If related to Article 1 number (1) and (2) of Law No. 7 of 2011 concerning Currency as a transaction tool, the digital currency Bitcoin is not a legal payment instrument. This can be clarified in terms of money:

"Money is a legal payment tool. Whereas meant by currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as Rupiah "

In addition to legitimate transaction instruments, it is further clarified in Chapter V Use of Rupiah Article 21 paragraph (1), namely rupiah must be used in:

- a. every transaction that has a payment destination;
- b. settlement of other obligations that must be fulfilled with money; and / or
- c. other financial transactions conducted in the territory of the Unitary Republic of Indonesia.

Payment regulation of cryptocurrency transaction.

The process of buying and selling transactions electronically (e-commerce) and conventional buying and selling transactions have in common. Both in electronic buying and selling transactions (e-commerce) as well as in conventional buying and selling transactions there are bidding processes, acceptance of offers (purchases), payment, and delivery of goods. What distinguishes the two transactions is that the electronic sale and purchase transactions (e-commerce) are carried out without face to face (meeting of traders and buyers) and the process occurs faster and easier.

In e-commerce transactions, the payment method is mostly done by transferring funds in various ways with the Switching, Payment Gateway, and Electronic Wallet facilities. Based on Article 1 paragraph (5) of Bank Indonesia Regulation Number 18/40 / PBI / 2016 concerning the Implementation of Payment Transaction Processing states, "Switching is an infrastructure that functions as a center and / or link for forwarding payment transaction data through networks that use payment instruments using cards, electronic money, and funds transfer. " Article 1 paragraph (6) explained, "Payment Gateway is an electronic service that allows traders to process payment transactions using payment instruments using cards, electronic money, and / or proprietary channels."

Conventional and electronic trading transactions can use the payment method through an electronic wallet, according to Bank Indonesia Regulation Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing Article 1 paragraph (7) explains the following "Electronic Wallet" called the Electronic Wallet is an electronic service for storing payment instrument data including payment instruments using cards and / or electronic money, which can also accommodate and to make payments. "

In the applicable rules, it is explained through Article 1 paragraph (9), (10), and (11) Bank Indonesia Regulation Number 18/40 / PBI / 2016 concerning the Implementation of Payment Transaction Processing which explains the organizers of "Switching, Payment Gateway, and Electronic Wallet is a Bank or Non-Bank Institution conducting Switching, Payment Gateways and Electronic Wallet activities. "

METHOD

The research method implemented in this paper is the juridical normative approach, using secondary data, supported by field data. Data is gathered through document studies and field observation, which includes observation and interview. Data is analyzed using juridical qualitative approach.

DISCUSSION

The position of the virtual currency (Bitcoin) in buying and selling transactions in Indonesia is connected with law No. 7 of 2011 concerning Currency. In a conventional buying and selling transaction or using an electronic system, it can be done using two payment systems, namely cash, which directly uses physical currencies, such as paper money and coins, and non-

cash payments using the pay now payment system, namely direct payment using debit from ATM, pay -later, that is, using credit cards, checks, fund transfers, electronic money, and electronic wallets, payment systems such as cash-like payment systems, in electronic money systems and electronic purses, some money is taken from the payer's account such as the payer's bank account before transaction carried out. From the electronic money payment system and electronic wallet, cryptography has an important role in terms of security, confidentiality and authentication, some security systems against payment systems can be divided into several forms, namely Cryptographic Systems, this system does not use cryptography at all, it means that it depends on security outside the network such as confirmation by fax as proof of authorization, other than that in the virtual activity of data sent in this system is very range because it is not protected.

The next system is a Shared-key cryptography system, this system bases authentication on cryptography published by a verifier and a prover, the two parties share secrets like DES key or keyword. Finally, digital signatures on public key systems, authentication on these systems are based on public key cryptography and parties must have confidential digital signatures and official certificates issued by the authorities. From the form of the system described earlier it can be seen that cryptography has an important role in providing authenticity and confidentiality in transactions through electronic media.

Bitcoin and its variations are often said to be "cryptocurrency" or crypto currencies because it is claimed to be used as a medium of exchange / payment for a service or object, even though it is said to be a Bitcoin currency does not qualify as a means of payment either theoretically or legally .

In the theory, the terms of money include: (1) Acceptability, the object must be generally accepted, in order to be recognized as a common medium of exchange an object must have a high value or at least guaranteed its existence by the ruling government; (2). Portability, easy to carry under any conditions and situations; (3). Durability, materials used as money must be durable; (4.) Divisibility, can be broken down into smaller units; (5). Uniformity, the quality tends to be the same; (6). Scarcity, the amount can meet the needs of the community and is not easy to fake; (7). Stability of value, has a value that tends to be stable from time to time; 8. Recognizability, recognized as a medium of exchange.

The terms of money are also explained in Bank Indonesia Regulation Number 16/8 / PBI / 2014 concerning Amendments to Bank Indonesia Regulation Number 11/12 / PBI / 2009 Concerning Electronic Money Article 1 paragraph (3) states that, "Money Electronic (Electronic Money) is a payment instrument that meets the following elements:

1. issued on the basis of the value of money paid in advance to the issuer;
2. the value of money is stored electronically in a media server or chip;
3. used as a means of payment to traders who are not the issuers of electronic money; and
4. the value of electronic money deposited by holders and managed by the issuer is not a deposit as referred to in the law governing banking. "

Bitcoin does not meet some of the conditions, firstly Bitcoin cannot be standardized, Bitcoin is an open source program and Bitcoin is run based on public participation, there is no central authority that can regulate Bitcoin so in theory everyone who understands programming can change the Bitcoin programming code provided it gets the approval of every computer that is running this program, because it is not possible to standardize Bitcoin.

The second condition that is not met by Bitcoin is recognized, every money must be recognized by the competent authority, Rupiah is money and has value because the state has the power to guarantee that Rupiah can be exchanged for goods and services in the territory of the Republic of Indonesia, therefore the recognition requirement is a condition the most important thing in the existence of money, the recognition of the distinction between ordinary

paper and money, Bitcoin is a program created by anonymous figures and has even been banned in some countries like China, therefore bitcoin does not meet this requirement.

The last requirement that is not met by bitcoin is a stable value, the value of bitcoin continues to change and is based on speculation alone without any definitive determinant of its value, its market value can change from USD 1,300 in September 2013 to around USD 500 in July 2014 and the value continues to fall and rise in accordance with public speculation, money must have a stable value in order to be used as a means of payment therefore Bitcoin does not meet this element.

Bitcoin does not meet the money requirements in theory and based on the Law of the Republic of Indonesia Number 7 of 2011 concerning Currency, in Article 1 paragraph (1), what is meant by "Currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as Rupiah." In the sense that it only recognizes the Rupiah as a legal medium of exchange, and based on the Law of the Republic of Indonesia Number 7 of 2011 concerning Currency, Bitcoin cannot be considered as money. Besides it can not be said as money, Bitcoin also can not be said as electronic money.

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 exactly said to be electronic money. Besides not qualifying as money because Bitcoin does not meet the requirements in the legislation, Bitcoin also cannot be said as money because Bitcoin is not an object, Bitcoin is a part of cryptocurrency is an information system used by some people as a means of payment and investment, as a Juridical Bitcoin cannot be said to be an object because it does not fulfill several legal requirements to be classified as objects, material elements according to experts, namely:

1. Can be controlled by humans;
2. Can be touched or not;
3. Can be valued in money or at least valuable to it; and
4. Is a single entity and is independent.

Bitcoin fulfills the first element because Bitcoin can be mastered, Bitcoin uses a cryptographic system in its authority and guarantees its authenticity, every Bitcoin user has two keys namely public key and private key, the cryptography on Bitcoin ensures the authenticity of Bitcoin by ensuring that only users who know the private key can access the Bitcoin that is stored in a digital wallet, besides the cryptography on Bitcoin also ensures the uniqueness of each user by using a unique cryptographic key for each user through the key derivation function by using a unique input parameter from the user (Jonathan B. Turpin, 2014).

The second requirement of material is touchable or not, bitcoin is a set of computer programming languages that are encrypted using cryptography to prevent modification without rights to cryptography bitcoin and bitcoin has no physical form, Bitcoin can be categorized as a right (Balazs Bodo at. all, 2018).

Efforts that can be done by Bank Indonesia and the Financial Services Authority for Buying and Selling Transactions Using Virtual Currency (Bitcoin). Bank Indonesia as the Central Bank in Indonesia based on Act Number 23 of 1999 concerning Bank Indonesia was declared effective on May 17, 1999 and as amended by Act of the Republic of Indonesia Number 6 of 2009, which gives status and position as a state institution independent in carrying out its duties and authority, free from interference by the Government and / or other parties, except for matters expressly stipulated in the law (Elli Ruslina, 2019).

The status of Bank Indonesia as both a public legal entity and a private legal entity is determined by law. As a public legal entity, Bank Indonesia has the authority to determine legal regulations which are the implementation of laws that bind the entire community in accordance with their duties and authorities. As a civil legal entity, Bank Indonesia can act for and on its own behalf inside and outside the court. The tasks of Bank Indonesia are explained in Bank

Indonesia Regulation Number 18/9 / PBI / 2016 concerning the Arrangement and Supervision of the Rupiah Currency Payment and Management System Article 2 paragraph (1) which states that, "Bank Indonesia shall conduct and regulate the Rupiah Payment and Management System " Article 2 paragraph (2) that, "In order to support the regulation and supervision of the Rupiah Money Payment and Management System as referred to in paragraph (1), Bank Indonesia shall conduct the regulation and supervision of Money Service Activities." Article 2 paragraph (3) that, "In conducting the regulation and supervision as referred to in paragraph (1) and paragraph (2), Bank Indonesia may coordinate with other authorized institutions and / or authorities." (Article 2 paragraph (1), (2) and (3) Bank Indonesia Regulation Number 18/9 / PBI / 2016 concerning Regulation and Supervision of the Payment System and Management of Rupiah Currency)

As a Central Bank, Bank Indonesia has other duties as follows:

1. Establish and implement monetary policy;
2. Organize and maintain a smooth payment system;
3. Regulate and supervise banks; and
4. As the last lending resort provider for commercial banks in the form of Bank Indonesia Liquidity Assistance (BLBI)

In order to carry out the tasks of regulating and maintaining the smooth operation of the payment system, Bank Indonesia has the following authority:

1. Determine the use of payment instruments, including issuing, distributing, withdrawing, and destroying money, including determining the type, price, characteristics of money, materials used, and the date of entry into force.
2. Arranging and administering the payment system, including the authority to grant licenses, to other parties to provide payment system services, regulate the clearing system and administer interbank clearing and conduct the final settlement (settlement) of interbank payment transactions.

Bank Indonesia also has the following authorities: 1. Give and revoke licenses for certain institutional and business activities from banks; 2. Establishing banking regulations; 3. Carry out bank supervision both directly and indirectly; and 4. Imposing sanctions against banks in accordance with statutory provisions.

In its implementation in the community, for those who use, organize and offer goods/services related to bitcoin have legal responsibilities in accordance with their respective roles, Bank Indonesia has the authority to impose sanctions as stipulated in Article 36 which states that, "In the case after the passage of time periods as referred to in Article 39 or after the entry into force of this Bank Indonesia Regulation, there are parties who provide payment system services without Bank Indonesia permission, Bank Indonesia has the authority to: a. submit a written warning; b. recommend to the competent authority to: 1. Stop business activities; 2. Revoke a business license granted by the competent authority.

Other sanctions are also contained in Bank Indonesia Regulation Number 18/9 / PBI/2016 concerning Regulation and Supervision of the Rupiah Currency Payment and Management System Article 19 which states that Bank Indonesia will impose sanctions in the form of: a. written warning; b. fines or sanctions for paying obligations; c. temporary suspension of part or all of the activities of providing Payment System services; d. change of membership status of the Bank Indonesia Payment System; and / or e. revocation of payment system service licenses, Rupiah Money Management providers, and / or Money Service Activity providers (Tiara Dhana Danella, Sihabudin, 2015).

The Financial Services Authority is formed with the aim that all activities in the financial services sector are organized regularly, fairly, transparently and accountably, are able to realize a financial system that grows sustainably and stably, and is able to protect the interests of consumers and society.

CONCLUSION

Bank Indonesia confirms that Bitcoin is not a legal payment instrument in Indonesia. Every sale and purchase transaction conventionally or electronically using Bitcoin payment instruments in Indonesia and carried out by parties who are subject to Indonesian law are not legally valid because they do not meet Article 1320 of the Civil Code regarding the legal terms of the agreement regarding halal causes, Article 1335, and 1337 of the Civil Code . Bitcoin does not meet the money requirements in theory and based on the Law of the Republic of Indonesia Number 7 of 2011 concerning Currency, in Article 1 paragraph (1), what is meant by "Currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as Rupiah." In the sense that it only recognizes the Rupiah as a legal medium of exchange, and based on the Republic of Indonesia Law No. 7 of 2011 concerning Currency, Bitcoin cannot be said to be money.

Bank Indonesia and the Financial Services Authority have the authority to follow up on every sale and purchase transaction in virtual currency (bitcoin). The rules regarding efforts and sanctions that can be carried out by Bank Indonesia and the Financial Services Authority against users, providers and those offering goods / services related to virtual currency or bitcoin have also been ratified and enforced in accordance with Law Number 7 of 2011 concerning Currency, Law-Act Number 7 of 2014 concerning Trade, Act Number 11 of 2008 concerning Information and Electronic Transactions, Government Regulation Number 82 of 2012 concerning Operation of Electronic Systems and Transactions, Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Operation of Transaction Processing Payment, Bank Indonesia Regulation Number 18/9 / PBI / 2016 concerning Regulation and Supervision of the Payment System and Management of Rupiah Currency, Bank Indonesia Regulation Number 18/17/ PBI /2016 concerning Second Amendment to Bank Indonesia Regulation Number 11/12/PBI/ 2009 concerning Electronic Money, and Law of the Republic of Indonesia Number 21 of 2011 concerning the Authority itas Financial Services.

Suggestion can be stated as bitcoin and its variations are often said to be cryptocurrency or crypto currencies because it is claimed to be used as a medium of exchange/payment for a service or object. Although said to be a currency, Bitcoin does not qualify as a means of payment either in theory or legally, it is necessary to socialize the public to better understand that Bitcoin cannot be used as a means of payment of all forms of transactions of any kind especially in the territory of the Unitary Republic of Indonesia. Bitcoin meets what is referred to as a currency and whether the legality of a transaction with bitcoin provides legal certainty.

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