



Legal Protection For Cryptocurrency Investors In Trading Cryptocurrencies As Crypto Assets According To Civil Law In Indonesia

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Abstract: Crypto is a non-wuud commodity that is digital using cryptography. The legality of crypto assets in Indonesia has not received firm regulation in their use, and there is a need for a supervisory body that regulates all transaction activities for legal protection for investors in trading digital assets. The research method used in this study is to use normative juridical research methods, using a statutory approach (statute approach) and a conceptual approach (conceptual approach). The result of the discussion of this study is that for the legality of crypto assets, Bank Indonesia places them as digital money so that they are prohibited as a means of payment, while the Ministry of Trade places them as digital assets so that they are allowed to be traded on the Futures Exchange. Normatively, there is still opposition in looking at crypto money. Legal protection of investors who make crypto asset buying and selling transactions get legal protection for losses that can be caused both criminally, namely losses caused by cyber crime and civil losses due to Unlawful Actions.

Keywords: : Legal Protection, Crypto Asset, Investor, Currency

1. Introduction

Money has existed in Indonesia since the time of the ancient Mataram kingdom. At that time before knowing money, the system used in buying and selling transactions was done by exchanging with the same value, known as the barter system. Along with the changing times, the barter system began to be replaced with a means of transaction of goods or services called money.

The rapid development of technology continuously facilitates daily activities, technology develops in various aspects of human life, especially in the use of the internet which causes many activities to be easily carried out through digital media and become the choice of many people. The growing invasion has an impact that causes electronic commerce to grow in this case used to facilitate business transactions when investing.

Electronic-based trading has provided a major change in society and encouraged people to invest and make payments that were originally online-based have now developed

online without having to meet in person which resulted in reduced cash payments. The phenomenon of paperless payment instruments that are currently crowded and starting to develop in Indonesia is virtual currency or virtual currency which is also called cryptocurrency. The payment system in the economy also changes from time to time. As a result of these changes in life patterns on people's careers and busy lives, it has caused some other new phenomena in terms of transactions using digital money.¹

Cryptocurrency is a digital currency that uses an encryption system and also various forms of digital money are spread in the world. Within a few decades types of digital currencies began to emerge such as bitcoin, peercoin, auroracoin, Litecoin, ripple, and dogecoin. In its development of cryptocurrency, one of which is bitcoin, offers other methods to several consumers who are interested in bitcoin as a medium of payment or investment.²

Bitcoin as a pioneer of crypto currency has dominated the market and the existence of bitcoin as a virtual currency has attracted quite a lot of world attention because of the bitcoin factor that cannot be controlled by anyone, easy to use, fees in transactions that are fairly cheap and its value that can be raised and dropped drastically makes bitcoin a promising investment medium and is often referred to as digital gold. But with all the advantages that bitcoin has in the storage system and transactions are very risky as a medium for committing crimes such as money laundry, financing acts of terrorism, buying and selling drugs and weapons, fraud, and various kinds of crimes that use internet media.³

Crypto is an asset that is in demand today, the popularity of crypto currencies started by bitcoin has increased interest by people around the world including Indonesia. The legality of crypto assets in Indonesian law has not received firm regulation in its use. And there is still no regulatory body that regulates all transaction activities, making digital assets often used as illegal trading.

Crypto commodities from blockchain assets can be categorized as rights or interests and are included in commodities in Law No. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading. The development of crypto assets has been widespread among the public so that there is a need for legal certainty for business actors with the regulation of crypto asset trading.

Crypto assets are intangible commodities that are digitally shaped using cryptography, information networks, technology, and distributed ledgers to regulate the creation of new units, verify transactions and secure transactions without interference from other parties. Article 202 of Bank Indonesia Regulation Number 23/5/PBI/2021 concerning Payment Service Providers explains that bitcoin, blackcoin, dash, dogecoin, Litecoin,

¹ Ida Ayu Samhita Chanda Thistanti, I Nyoman Gede Sugiarta, I Wayan Arthanaya, 2022. Juridical Study on the Legality of Cryptocurrency in Indonesia, Vol. 3 No. 1

² Varriale, g, Bitcoin : how to regulate a virtual currency international financial lawreview, 2013, Page 12

³ Willy wong, bitcoin: a practical guide to understanding, mining and earning bitcoin, Semarang, Indraprasta Media, 2014 Page, 1

namecoin, nxt, peercoin, primecoin, ripple and ven are included in cryptocurrencies. The article explains that cryptocurrency or virtual currency is digital money issued by parties other than monetary authorities.

Therefore, payment service providers such as banks or institutions that facilitate other transactions are prohibited from accepting, processing or associating cryptocurrencies with other payment transactions. In Article 1 Number 2 of Law Number 7 of 2011 concerning Currency, rupiah as a currency issued by the unitary state of the republic of Indonesia as legal tender. The legality of cryptocurrencies that are still not recognized as valid in applicable law in Indonesia, the Commodity Futures Trading Supervisory Agency issued Regulation Number 7 of 2020 concerning the Establishment of a List of Crypto Assets That Can Be Traded in the Physical Market of Crypto Assets which legalizes cryptocurrencies as tradable assets.

The new regulation issued by Bappebti is considered still lacking in terms of legal protection for crypto investors, namely related to complaint procedures by investors in the event of a loss where the seller is not a company but rather individuals who sell their assets. Legal protection aspects for investors need to be regulated in Bappebti regulations so that investors can know the reporting procedures if they are harmed due to crime on the internet or cyber crime in crypto asset trading. Physical Traders of Crypto Assets on websites that support buying and selling crypto assets are not responsible for the ownership and risk of crypto asset trading transactions and their use is the responsibility of their respective users.

Other issues such as risk notification of the absence of underlying assets underlying the issuance of crypto asset transactions by Physical Crypto Asset Traders do not necessarily provide a good understanding to customers. Crypto Asset Customers who have already signed an agreement are considered to have accepted every risk that will arise in the future. Sale and purchase agreements between customers and merchants are often disputed because they are considered invalid due to several clauses that are not understood by customers.⁴

Investments made online such as investments using cryptocurrency as an asset trading tool have a fairly high return or profit, but some people and parties who are not sure about the validation of cryptocurrency. They assume that this phenomenon is still new and the price situation of cryptocurrencies tends to be unstable, because uncertainty about the legality and legal protection in the use of cryptocurrency as an investment instrument results in some people being less interested in using crypto as an investment instrument. Based on the background of the above problem, the author is interested in researching about "Legal Protection for Cryptocurrency Investors in Trading Cryptocurrencies as Crypto Assets According to Civil Law in Indonesia"

⁴ Muhammad Habiburrahman, Muhaimin, Abdul Atsar, Legal Protection for Users of Cryptocurrency Transactions in Indonesia, Journal of Education and Development of the South Tapanuli Institute of Education, Faculty of Law, University of Mataram. Page. 698

2. Method

This research method is prepared using normative juridical research types. Normative juridical research is research conducted by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem under study. The approach used in this study is the statutory approach (statute approach) and conceptual approach (conceptual approach). The technique of collecting legal materials used in this study is to use secondary materials or literature studies on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting Primary Legal Material is carried out by collecting material based on laws and regulations, using applicable rules, identifying laws and collecting laws and regulations in accordance with the issues discussed, Secondary legal materials by reading, recording, reviewing library materials, or searching through internet media related to the issues discussed, Tertiary legal materials are carried out and billed by reviewing and identifying Legal dictionaries and large dictionaries Indonesian.

Legal Material Analysis Techniques After the legal material, both primary, secondary and tertiary legal materials, has been collected, then an analysis of legal materials is carried out using qualitative descriptive analysis, meaning to describe or explain the provisions of laws and regulations and existing legal concepts associated with existing legal materials, conclusions are then drawn.

3. Legality of Trading Cryptocurrencies as Crypto Assets in Indonesia.

Virtual money has become a special thing in the world, including in Indonesia and is currently used as a means of transaction or investment in other countries such as the United States, Singapore, Australia, and other countries that legally legalize Crypto Currencies. The emergence of public attention to digital money is because along with the development of technology and people are also getting smarter in making digital investments. The term investment or investment is often known today, basically the term between the two is the same but the term investment is used in the language of legislation.

Based on Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 5 explains that Electronic Information and/or Electronic Records will be recognized as legal if they use electronic means systems by complying with the provisions set forth in this Law. In its provisions, it is then explained about the minimum requirements for using electronic facilities systems in the territory of the State of Indonesia, namely Can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in the application of electronic systems; Can re-show electronic information and/or electronic documents all in accordance with the retention period; ^{Equipped with procedures or instructions announced with language, information, or symbols that can be}

understood by parties related to the implementation of electronic systems; Have a continuous system to maintain the novelty, clarity and response procedures or responsibility of users; and can operate following procedures or pointers in electronic implementations.⁵

Crypto currencies used for payment instruments and exchange media as well as used as business facilities that use internet media and computer networks are also not spared from the circulation of regulations regarding electronic commerce. In electronic commerce must also have the same certificate license as other conventional entrepreneurs and the trading business certificate must meet the requirements as described above. In the Currency Law, it can be seen that Crypto Currency itself is not included as a legal payment medium but is inversely proportional to the ITE Law, it can be said that Crypto Currency itself meets the minimum requirements for use in electronic transaction systems.⁶

The regulation of money or currency in Indonesia is based on Law Number 7 of 2011 concerning Currency. In this law, money is "a symbol of state sovereignty that must be respected and proud by all Indonesian citizens". The above Bank Indonesia regulation is a response to the development of fintech (financial technology) in the era of the industrial revolution 4.0. Bank Indonesia responds to public needs by promoting "prudential principles and adequate risk management" and paying attention to "expanding access, national interest and consumer protection" (consideration of PBI 18/40/PBI/2016). With this regulation, Bank Indonesia actually answers the ambiguity of legal legality of crypto money because if it is based on Law Number 11 of 2008, crypto money meets the elements of the minimum requirements of the electronic system legalized in Indonesia.

Bank Indonesia Regulation Number 18/40/PBI/2016 is very limited in regulating crypto money. There is only one article that normatively states that virtual currency is prohibited in the operation of payment systems (article 34). The word used is "virtual currency", not "cryptocurrency". However, the statement in article 34 letter a is explained as follows What is meant by "virtual currency" is digital money issued by parties other than monetary authorities obtained by mining, purchasing, or transferring gifts (rewards) including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. Not included in the definition of virtual currency is electronic money. Bank Indonesia also issued another regulation, namely Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. In its regulation, Bank Indonesia reiterates that virtual currency is prohibited from being used by financial technology providers Article 8 paragraph 2.

Crypto assets in Indonesia are officially tradable. This crypto asset is more of an investment asset, not a currency. In accordance with the Letter of the Coordinating Minister for Economic Affairs Number S-302 / M.EKON / 09/2018 dated September 24, 2018, regarding the Follow-up Implementation of the Crypto Asset Regulation Report as a Commodity traded on the Futures Exchange, Crypto Assets are still prohibited as a

⁵ Ilyasa, R.M.A., "Bitcoin Legality in Business Transactions in Indonesia", *Lex Scientia Law Review*, Vol. 3(2), (2019), Page. 17

⁶Tobi Arfiandi, Igede Pasek Eka Wisanjaya "Security and Legal Protection for Investors in Virtual Crypto Asset Transactions", *Kertha Wicara Journal*, Vol.11 No. 4, (2022). Page. 7

means of payment, but as an investment tool can be included as commodities that can be traded on futures exchanges. With consideration, because economically the investment potential is large and if prohibited will have an impact on the number of investments that come out (capital outflow) because consumers will look for markets that legalize crypto transactions. Crypto Assets will first be regulated in the Minister of Trade which includes Crypto Assets as commodities traded on the Futures Exchange. Further arrangements related to technical matters and to accommodate inputs from Ministries/Institutions will be prepared implementing regulations in the form of Regulations of the Commodity Futures Trading Supervisory Agency (Bappeti). In terms of normative juridical, cryptocurrencies are also a concern of the Ministry of Commerce. With the background to provide protection efforts for the public and legal certainty for crypto money, the ministry issued Minister of Trade Regulation Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading. In this regulation, it turns out that there is a shift in provisions or definitions. Cryptocurrencies are no longer referred to as "digital money", but rather "commodities". Crypto assets "may be the subject of futures contracts traded on the Futures Exchange" (clause 1). This regulation is then technically followed by the Regulation of the Commodity Futures Trading Supervisory Agency (BAPPEBTI) Number 5 of 2019 concerning Technical Provisions for the Implementation of the Crypto Asset Physical Market on the Futures Exchange.

Based on the provisions of Indonesian law, crypto as an investment vehicle is referred to as crypto assets. Based on the provisions of Article 1 point 7 of the Regulation of the Commodity Futures Trading Supervisory Agency (Perbappebti) Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on the Futures Exchange "Crypto assets are intangible commodities in the form of digital assets, using cryptography, peer to peer networks, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without interference from other parties". Crypto Assets in Indonesia have actually been accommodated by several regulations, including the Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading.

4. Legal Protection of Cryptocurrency Investors in Trading Crypto Money as a Crypto Asset According to Indonesian Civil Law

The convenience of online transactions in this day and age is a virtual payment instrument or cryptocurrency. Cryptocurrency is a nickname given to a system that uses cryptographic technology to carry out the process of transmitting data securely and processing digital currency exchanges in a dispersed manner. In short, Cryptocurrency is a virtual currency system that functions like a standard currency that allows users to make payments virtually or transactions that occur.⁷

⁷ Nurfia Oktaviani Syamsiah, 'Study on Cryptocurrency as a Payment Instrument in Indonesia' (2017) Vol. 6 Indonesian Journal on Networking and Security

Basically, cryptocurrencies have two sides of use. Cryptocurrency can be used as a means of payment or currency which is the first purpose of the creation of the currency, and the other side is as a commodity or as a digital asset which is commonly referred to as Crypto Asset or Crypto Asset. Crypto assets are digital assets that utilize technology in cryptocurrencies, such as cryptographic technology and distributed ledgers or blockchain. The Ministry of Trade issued a regulation, namely the Minister of Trade Regulation Number 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading which recognizes crypto assets as commodities that are worthy of being a subject on the Futures Exchange. The regulation from the Ministry of Trade was then followed by the promulgation of four regulations of the Commodity Futures Trading Supervisory Agency (Bappebti) which regulates the technical implementation of crypto asset trading and digital gold on the Futures Exchange.

Commodity futures exchanges are trading platforms that can be used in the business world, as well as digital asset investors to protect against the risk of price fluctuations that exist in Cryptocurrency. In addition to functioning as a means of risk transfer, commodity futures exchanges also function as a means of effective and transparent price formation and price information that occurs can be used as a benchmark for futures exchange traders and investors. Since the regulation from the Ministry of Trade and Bappebti, Crypto coin trading business actors have begun to dare to open a business in the field of digital assets, one of which is PT. Indodax.

Legal relationship or Rechtsbetrekkingen according to Soeroso's understanding is a relationship between two or more legal subjects, where in this legal relationship the rights and obligations of one party face the rights and obligations of the other. While legal relations according to Muhammad Abdulkadir are legal rights and obligations of every citizen or individual in community life, and if these rights and obligations are not fulfilled they can be subject to sanctions according to law.⁸ In the scope of civil law, the legal relationship of the parties is based on an agreement, as contained in Article 1313 BW. In crypto asset transactions on Futures Exchanges, legal relations may occur between the parties. Based on the Regulation of the Commodity Futures Trading Supervisory Agency Number 5 of 2019 concerning Technical Provisions for the Implementation of the Crypto Asset Physical Market, regulates parties in crypto asset trading. These parties include Futures Exchanges, Members of Futures Exchanges which are divided into two, namely Physical Traders of Crypto Assets, Crypto Asset Customers, Futures Clearing Houses, Crypto Asset Storage Institutions.

Based on Bappebti Regulation Number 5 of 2019, it explains that there are two parties in crypto asset buying and selling transactions, namely Crypto Asset Physical Traders and Crypto Asset Customers. Traders here act as parties who facilitate crypto asset transactions between customers with one another. Customers here are referred to as Crypto Asset Customers who use the services of Crypto Asset Traders in buying and selling assets in the Crypto Asset Physical Market.

Losses in crypto asset transactions can be classified into two types, namely criminal losses due to cyber crime and civil losses due to unlawful acts (PMH):

⁸ Abdulkadir Muhammad., Indonesian Civil Law, PT Citra Aditya Bakti 2010. page. 2

1. Criminal losses due to cyber crime
 - a. Hacking, Perpetrators of criminal acts accessing the victim's electronic system can be subject to Article 30 paragraph 1 jo Article 46 of the ITE Law.
 - b. Online Fraud, Perpetrators intentionally and without rights spread false and misleading news that results in consumer losses in Electronic Transactions. Then it can be subject to Article 378 paragraph 1 jo Article 45A of the ITE Law, fraud in crypto asset transactions that use a false identity so that someone hands over their crypto asset funds to the wrong wallet can be subject to criminal sanctions in accordance with the regulations of the Criminal Code and the ITE Law.

2. Civil Losses Due to Unlawful Acts

Based on Article 1365 BW, if a person commits an Unlawful Act, he is obliged to pay compensation for his actions. As a result of losses in Unlawful Acts according to BW, the plaintiff can ask the defendant to compensate for the real losses he has suffered (Material) as well as profits that will be obtained in the future (Immaterial). It can be concluded that losses in civil crypto asset transactions caused by unlawful acts are fraud contrary to Article 1321 BW which reads "no agreement is valid if the agreement is given by error, or obtained by force or fraud", where bedrog or fraud is someone deliberately with will and knowledge causing error to others. Therefore, if there is a party to a crypto transaction on a futures exchange that is known in the agreement to contain elements of fraud, then the party who feels aggrieved can make an attempt to cancel (voidable), and not cancel by itself (null and void) so that the legal consequence of a defect of will in crypto asset transactions is that the agreement can be canceled (vernietigbaar).

According to Philipus M. Hadjon, there are two kinds of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent problems or disputes from occurring. Repressive legal protection that aims to resolve problems or disputes that arise. Preventive legal protection or known as ex-ante legal protection is legal protection provided before a violation occurs with the aim of preventing it from happening. This legal protection can be found in laws and regulations with a view to preventing a violation and providing limitations in carrying out an obligation.⁹

Dispute resolution in the rules made by Bappebti is where settlement is still prioritized through consensus deliberation, namely by conducting deliberation. One type of dispute resolution through non-litigation channels is Arbitration. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 Number 1 states "Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute." If consensus is not reached in the process, the parties to the disputed Physical Asset Crypto Trading transaction can settle through a forum provided by the Futures Exchange through the Commodity Futures Trading Arbitration Board (BAKTI). BAKTI specializes in civil disputes related to Commodity Futures Trading, Warehouse Receipt System and/or other transactions regulated in Bappetpti.

⁹ Muchsin, Legal Protection and Certainty for Investors in Indonesia (Master of Law Postgraduate Program of Sebelas Maret University 2003)

Criminal sanctions against criminals in Cyber Crime that result in losses to crypto asset customers or investors in the physical crypto asset market such as theft of a number of crypto assets from one's wallet to fraud that traps investors into making transfers to the wallet address of fraudsters. The crime is subject to sanctions based on Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), namely Article 45 which regulates criminal provisions and imposes imprisonment and fines.¹⁰ Based on the ITE Law, it is explained that online fraud occurs because perpetrators intentionally and without rights spread false and misleading news that causes consumer losses in Electronic Transactions. Based on this, it can be charged with article 28 paragraph 1 jo Article 45A of the ITE Law, as well as Article 378 of the Criminal Code. Based on the ITE Law, it is explained that online fraud occurs because perpetrators intentionally and without rights spread false and misleading news that causes consumer losses in Electronic Transactions. Based on this, it can be charged with article 28 paragraph 1 jo Article 45A of the ITE Law, as well as Article 378 of the Criminal Code.

Furthermore, repressive legal protection is protection provided after a dispute occurs. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and penalties given in case of disputes. Repressive legal protection is given losses suffered by parties to bitcoin transactions as crypto assets on futures exchanges. Types of repressive protection are;

- a. Losses in Bitcoin Transactions as Crypto Assets, Criminal losses in bitcoin transactions as crypto assets are possible for cyber crime and embezzlement of funds in crypto assets, because bitcoin transactions use the internet network. This is as regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and the Criminal Code (KUHP), for example such as scams or online fraud, hacking and embezzlement. Civil losses are possible in crypto asset transactions which include, due to unlawful acts and due to default.
- b. Dispute Resolution In Bitcoin Transactions As crypto assets, crypto asset transactions can be called business transactions. Therefore, in a business world that brings together the interests of many parties resulting in potential disputes and disputes cannot be avoided. Business disputes can be resolved in two ways, namely litigation and non-litigation.

5. Conclusion

Based on the provisions of the Law in Indonesia, that the legality of crypto assets Bank Indonesia places it as digital money so that it is prohibited as a means of payment, while the Ministry of Trade places it as digital assets so that it is allowed to be traded on the Futures Exchange. The legality of trading crypto currencies as Crypto Assets in Indonesia has been officially tradable. This crypto asset is more of an investment asset, not a currency. Crypto as an investment vehicle is referred to as crypto assets. Based on the provisions of Article 1 point 7 of the Regulation of the Commodity Futures Trading

¹⁰ Soerjono Soekanto, Introduction to Legal Research (UI Press 1984)

Supervisory Agency (Perbappebti) Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on Futures Exchanges. Crypto Assets in Indonesia have actually been accommodated by several arrangements, including the Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading and Regulation Number 7 of 2020 concerning the Establishment of a List of Crypto Assets that can be traded in the Physical Market of Crypto Assets which certifies cryptocurrencies as tradable assets.

Legal protection for investors who make crypto asset buying and selling transactions gets legal protection for losses that can be caused, civilly due to unlawful acts based on Article 1365 BW, if someone commits an Unlawful Act, he is obliged to pay compensation for his actions. As a result of losses in Unlawful Acts according to BW, the plaintiff can ask the defendant to compensate for the real losses he has suffered (Material) as well as profits that will be obtained in the future (Immaterial). Therefore, if there is a party to a crypto transaction on a futures exchange that is known in the agreement to contain elements of fraud, then the party who feels aggrieved can make an attempt to cancel (voidable), and not cancel by itself (null and void) so that the legal consequence of a defect of will in a crypto asset transaction is that the agreement can be canceled (vernietigbaar).

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