

CRYPTOCURRENCIES' EXISTENCE BASED ON INDONESIAN LAW

By:

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I. Opening

The phenomenon of financial transactions by using cryptocurrencies has occurred around the world. Previously cryptocurrencies only performed as a part of trading instruments. Nowadays, famous brands started to approve cryptocurrencies as part of their payment method, among others the branded bags Gucci, as stated on the official website of BBC on May 6th 2022. Estimated started in 2009, cryptocurrencies are now growing up and become an easier and affordable payment transaction for citizens. This could be concluded as the fresh innovation on the global fintech industry.

Cryptocurrencies were born not by the specific central government, nor regulated by the specific regulation. This then became the debate among banks, institutions and governments around the world. The debates among them are concerning the legality of cryptocurrencies as payment instruments and the uniformity of the definition of cryptocurrencies itself. One of the aims of debates is to protect citizens' rights if there are any criminals against them because of this cryptocurrencies transaction, and also to avoid financial crimes such as money laundering.

However, more than 6000 varieties of cryptocurrencies exist although it is not listed in any formal or legal international directory it has become the standard payment mechanism. One of the considerations is because by using cryptocurrencies, it is a straightforward transaction and they do not need currency conversion. This fact will be the challenge for the conventional payment method by using state currency. The use of cryptocurrencies is indicated because there is still a lack of regulation. Thus it is important for citizens to understand the legal effects and risk of using cryptocurrencies as their financial transaction instrument.

II. Cryptocurrencies

Milutnovic (2018) stated that there is a digital currency that is not controlled by any central government or bank to maintain it, which is called cryptocurrency. It controls the amount of stocks and is made through a robust encryption process (Luu et al. 2016). Unlike conventional payments that exist in physical form, cryptocurrency does not. In other words, cryptocurrencies is a currency that nowadays exists in a digital form, has been used as a trading instrument and payment instrument, but with lack of regulations since it does not belong to a specific state or institution.

As reported on the official website of forbes on December 6th 2017 namely “*A Short History of Bitcoin And Cryptocurrency Everyone Should Read*”, it all started in 2008 with the discussion on cryptography initiated by Mr. Nakamoto. Bitcoin as part of cryptocurrencies itself began in 2009 in a form of software and available for public and mining. Continuing to the next year, bitcoin started increasing in value for the first time, as a person finally decided to sell their 10,000 bitcoin for two pizzas. Bitcoin has experienced crashes on the price, become the target for criminals and experienced the missing coins which would be worth 4.4 billion USD. However in 2017, bitcoin reached USD 10,000 and continues to grow. It is clear that citizens’ money is now flowing to the bitcoin and cryptocoin ecosystem. This method and technology of cryptocurrencies has given an innovation and revolution to the fintech industry.

There are many reasons for people that use cryptocurrencies as the payment method other than just for currency trading investment. The idealism and philosophy idea is because the citizens started to think that bitcoin is a way to separate money from their state and it is a great idea (Feuer, Alan. 2013). Citizens agree with the spirit of bitcoin that was born from paranoid fantasies of government power that makes them want social and governmental control out of their money (Buble, 2018.). The economic and strategic reason is because crypto asset technologies potentially become a tool for faster and affordable transactions between countries (IMF, 2021). This is because by using cryptocurrencies as the payment instrument which has no relation to the government and their regulation, the transaction will be free from tax, free from institutional / bank fee, and does not need currency exchange rate.

The method of using cryptocurrencies that makes them a chosen payment instrument by citizens. This is because the transfer method of cryptocurrencies is similar by sending and receiving emails. Kim T (2015) explains that the transaction fees of cryptocurrencies are lower than the conventional currencies. Evenmore nowadays

there are many virtual currencies, not just bitcoin. This brings competitive transaction fees and becomes the advantage for the citizens as users of cryptocurrency.

III. Cryptocurrencies as the Payment Instrument Based On Indonesian Law

In Indonesia, the institution that regulates cryptocurrencies is Commodity Futures Trading Regulatory Agency (Badan Pengawas Perdagangan Berjangka Komoditi / Bappebti). As informed on the official site of CNBC Indonesia dated January 23rd, 2022, there are 229 legal cryptocurrencies to be traded in Indonesia. This is as stipulated in the Bappebti Regulation number 7 of 2020 concerning Determination of the List of Crypto Assets that can be Traded in the Indonesian Crypto Asset Physical Market. This regulation is anticipated to be the legal certainty and protection for citizens' transactions by using physical crypto assets in Indonesia.

In relation to the payment instrument in Indonesia, bitcoin or cryptocurrencies are illegal to be used for the transaction in the legal jurisdiction of Republic Indonesia up to this moment. This is because the Bank of Indonesia as the central bank of the Indonesian Government has regulated the legal payment instrument in Indonesia only by using Indonesian currency which is Rupiah. This regulation is also in line with the Indonesian Law number 7 of 2011 concerning Currency, which stated that currency is the produced money of the Republic of Indonesia namely Rupiah.

The legal impact of using cryptocurrencies for the transaction in Indonesia is there will be a punishment that will be imposed on the perpetrators. The punishments are warning, temporary suspension of part or all of the activities including the implementation of cooperation; and/or revocation of license as payment service provider. This is as regulated on the Regulation of Bank of Indonesia number 23/6/PBI/2021 concerning *Payment Service Provider*. Meanwhile, every person or company that is not using Rupiah for any kind of financial transaction in Indonesia, will be imposed by maximum 1 (one) year of prison punishment and maximum penalty of 200 million Rupiah. This is stipulated in the article 33 par (1) Indonesian Law number 7 of 2011 concerning Currency.

IV. Closing Statement

Although it is legal in Indonesia, cryptocurrencies' existence in Indonesia in a form of bitcoin is only for trading commodities, not as a payment instrument. Bitcoin and other cryptocurrencies are illegal as the payment instrument as stated on the Indonesian Law number 7 of 2011 concerning Currency. The perpetrators or users of cryptocurrencies as payment instruments will be imposed by many forms of punishment as regulated by Indonesian Law. This situation is quite different with some outlets in other countries which have accepted cryptocurrencies as their payment instrument.

However, for the companies that are willing to provide a service in matters of bitcoin or crypto trading, kindly always obey the regulation of Bappebti. It is important to fulfill all of Bappebti's requirements in order to make everything legal. By having a strong legal standing, the trader should not be worried about the punishment.

For the citizens or companies that are eager to use cryptocurrencies as their payment instruments, it is suggested not to execute it now until there is another Indonesian regulation that authorizes this transaction. It is important to consider the punishment that will be borne by the perpetrators before making the payment by using cryptocurrencies. It is not a wise decision by taking the reason for an affordable and easy procedure as the consideration to use cryptocurrencies as payment instruments for transactions in Indonesia.

The crucial matter goes to the Indonesian Government. It is important to consider establishing the innovative method for digital payment that fulfills the needs of citizens which are affordable, not much fees and/or tax, and in an easy procedure, for example by issuing central bank digital currencies. Otherwise, the Indonesian Government needs to enforce the global standards of cryptocurrencies and improve their competence in monitoring the crypto ecosystem.

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