

CHAPTER I

INTRODUCTION

1.1 Background

With the growth of technology and human civilization, the function of money has evolved. The modern general use of money encompasses 1) unit of account, 2) store of value, 3) medium of exchange, and 4) standard of deferred payments.¹ Fiat money, or commonly known as paper and coin money, is the type of money we regularly use in transactions since it's legally acknowledged by the government and is used in almost any setting by the government and the people (legal tender).² As stated in Article 1 of Law No. 7 of 2011 regarding Currency, the only legally acknowledged form of fiat money in Indonesia is Rupiah and it's governed by the central bank of Indonesia or Bank Indonesia.³ Additionally, some countries have the same fiat money, such as France, Italy, and Germany which uses Euro. Besides fiat money, money has become a form of commodity as well.⁴ Unlike fiat money, commodity money can be anything that the society deems to have

¹ Ahmad Mujahidin, *Ekonomi Islam*, (Jakarta: PT Raja Grafindo Persada, 2007), p. 45-46

² Mishkin, Frederic S, *Ekonomi Uang, Perbankan, dan Pasar Keuangan*, (Jakarta: Salemba Empat, 2008), p. 49-50

³ Article 1 of Law No. 7 of 2011 regarding Currency:

1. Currency shall be money of which issued by the Unitary State of the Republic of Indonesia of which hereinafter referred to as Rupiah.
2. Money shall be the legal payment instrument.
3. Bank Indonesia shall be the central bank of the Republic of Indonesia as set forth in the Constitution of the State of the Republic of Indonesia Year 1945.

Pasal 1 Undang-Undang No. 7 tahun 2011 tentang Mata Uang:

1. Mata Uang adalah uang yang dikeluarkan oleh Negara Kesatuan Republik Indonesia yang selanjutnya disebut Rupiah.
2. Uang adalah alat pembayaran yang sah.
3. Bank Indonesia adalah bank sentral Republik Indonesia sebagaimana dimaksud dalam Undang-Undang Dasar Republik Indonesia Tahun 1945.

⁴ Indra Darmawan, *Pengantar Uang dan Perbankan*, (Jakarta: PT Rineka Cipta, 1992), p.13

value,⁵ although it's imperative to remember that not everything can become commodity money. For an item to be deemed as commodity money, it must meet three criterias which are scarcity, durability, and high value.⁶ Due to this, common commodity money includes gold and silver because they fit the three criterias—they're scarce, hard to produce and find, and also quite durable so their value is high. As of now, due to the rapid growth of globalization, we're introduced to a new type of commodity money: cryptocurrency. Unlike the common commodity money, cryptocurrency is digital and it uses a peer-to-peer system that is open sourced.⁷ Cryptocurrencies come in many forms: Bitcoin, Dogecoin, Ethereum to name a few and they can be used to purchase other cryptocurrencies or non-fungible tokens from inside or outside of the country. The cryptocurrency that will be focused in this research is Bitcoin.

Subsequently, cryptocurrency plays a role in the current state of the global economy and Indonesia's economy. While the currency that people are familiar with is centralized, such as fiat currencies, cryptocurrency is a decentralized digital currency. This new form of decentralized currency counters the continuous growth of a centralized system which was already deemed as being extremely powerful.⁸ To understand why it's considered as extremely powerful we must look into the key

⁵ Khoirul Umam, "Konsep Uang Islam: Antara Uang Komoditas atau Uang Fiat", Faculty of Islamic Economics and Management UNIDA Gontor: Islamic Economics Journal, Vol. 2, No. 1, July 2016, p. 95

⁶ Septi Wulan Sari, "Perkembangan dan Pemikiran Uang dari Masa ke Masa", An-Nisbah: Jurnal Ekonomi Syariah, Vol. 3, No. 1, October 2016, p. 44-45

⁷ Dwikky Ananda Rinaldi and Mokhamad Khoirul Huda, "Bitcoin Sebagai Alat Pembayaran Online dalam Perdagangan Internasional", Perspektif Hukum, Vol. 16, No. 1, May 2016, p. 123

⁸ Paul Vigna and Michael Casey, *The Age of Cryptocurrency: How Bitcoin and the Blockchain Are Challenging the Global Economic Order*, (New York: St. Martin's Press, 2015), p. 14

difference between centralized currency and decentralized currency which lies within how commercial transactions are regulated. The commercial transaction of centralized currency, as its name, is regulated in a centralized location such as a bank where if any issue arises, the central authority will resolve it. In contrast, the commercial transaction of decentralized currency is independent of any centralized authority and instead managed by the community surrounding it. Each cryptocurrency works through a blockchain, which is a distributed ledger technology that serves as a public financial transaction base.⁹ Thus, cryptocurrency becomes the preferred way to do transactions because of its two main advantages: privacy and convenience.¹⁰ With a centralized system, banks hold the most power over businesses and commercial transactions between people. While it does keep things organized, it also becomes overbearing. People could not do business with each other without banks which gives relatively less freedom to perform business and forces people to deal with banks whether they want to since all authority lies on the bank.¹¹

Per Article 1 of Law No. 7 of 2011 regarding Currency, only Rupiah is acknowledged as fiat money.¹² Additionally, Rupiah as fiat money is further

⁹ CoinMetro Blog - Crypto Exchange News, "Digital Currency vs. Cryptocurrency – What's the Difference?". coinmetro.com/blog/digital-currency-vs-cryptocurrency-whats-the-difference/ accessed 30 January 2022.

¹⁰ Matthew Kien-Meng, "Coining Bitcoin's Legal-Bits: Examining The Regulatory Framework For Bitcoin And Virtual Currencies", Harvard Journal of Law & Technology, Vol. 27, Spring 2014, p. 593

¹¹ Paul Vigna and Michael Casey, *The Age of Cryptocurrency: How Bitcoin and the Blockchain Are Challenging the Global Economic Order*, (New York: St. Martin's Press, 2015), p.14

¹² Article 1 No. 1 of Law No. 7 of 2011 regarding Currency:

1. Currency shall be money of which issued by the Unitary State of the Republic of Indonesia of which hereinafter referred to as Rupiah.

Pasal 1 angka 1-3 Undang-Undang No. 7 tahun 2011 tentang Mata Uang:

emphasized in Article 21 paragraph 1 of Law No. 7 of 2011 regarding Currency.¹³ Subsequently, cryptocurrency's legal standing and how it is traded is regulated under another legal organ, namely Commodity Futures Trading Regulatory Agency (CoFTRA) or *Badan Pengawas Perdagangan Berjangka Komoditi* (Bappebti). The trade of crypto assets, Bitcoin included, is regulated under the Commodity Futures Trading Regulatory Agency regulation No. 5 of 2019 regarding the Technicality of the Procedures of Physical Market of Crypto Assets in Futures Exchange (*Ketentuan Teknis Penyelenggaraan Pasar Fisik Aset Kripto di Bursa Berjangka*) which implies that crypto assets can be used as a medium to invest. However, before Bitcoin can be traded, it must fulfill these criterias (in accordance with the law):

1. is based on Distributed Ledger Technology (DLT);
2. is a form of utility crypto or Crypto Backed Asset;
3. the market cap is within the top 500 coinmarketcap for utility crypto;
4. included in one of the largest crypto asset (*bursa*) transaction in the world;

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1. *Mata Uang adalah uang yang dikeluarkan oleh Negara Kesatuan Republik Indonesia yang selanjutnya disebut Rupiah.*

¹³ Article 21 paragraph 1 of Law No. 7 of 2011 regarding Currency:

- (1) Rupiah shall be used in:
 - a. each transaction whose objective is for the payment purpose;
 - b. settlement of the other obligation of which have to be settled using money;
 - c. and/or other transactions

of which are performed in the Territory of the Unitary State of the Republic of Indonesia.

Pasal 21 ayat 1 Undang-Undang No. 7 tahun 2011 tentang Mata Uang:

(1) Rupiah wajib digunakan dalam:

- a. *setiap transaksi yang mempunyai tujuan pembayaran;*
- b. *penyelesaian kewajiban lainnya yang harus dipenuhi dengan uang; dan/atau*
- c. *transaksi keuangan lainnya*

yang dilakukan di Wilayah Negara Kesatuan Republik Indonesia.

5. has an economic benefit, such as tax, improve the information industry and the quality of human resources in digital talent; and
6. have conducted risk assessment, including the risk of money laundering and terrorism funds along with the proliferation of weapons of mass destruction.

Despite the regulation of Bitcoin, financial crimes, specifically money laundering, can still occur. In the context of money laundering, the combination of anonymity, accessibility, and strict privacy because of the peer-to-peer and open source system is ideal for people to launder money.

The general definition of money laundering is the conversion process of illicit money that was gained from a crime. In order to make the illicit money appear legitimate, it is then combined with licit money, thus making the legitimate and illegitimate money indistinguishable.¹⁴ To ensure that the gains from money laundering is profitable, it is often carried out solely for lifestyle expenditure. Therefore, laundering money is usually supported by money mules, offshore accounts, luxury products, or a mixture of these things.¹⁵ When one considers the process of laundering money, it doesn't seem impossible to claim that cryptocurrency, like Bitcoin, can play a part to ease the process. Bitcoin is one of the examples of a crypto asset that has been exploited for its anonymity, privacy,

¹⁴ Korejo, M.S., *et. al*, "The Concept of Money Laundering: A Quest for Legal Definition", *Journal of Money Laundering Control*, Vol. 24, No. 4, 2021, p. 726

¹⁵ Rolf van Wegberg, *et. al*, "Bitcoin Money Laundering: Mixed Results? An Explorative Study on Money Laundering of Cybercrime Proceeds Using Bitcoin", *Journal of Financial Crime*, Vol. 25, No. 2, 2018, p. 421

irreversibility, and decentralized system.¹⁶ Particularly, in the current era of technology, Bitcoins are used in two types of cybercrimes:¹⁷

1. Cyber enabled crime, which are crimes that are done through the computer and the Internet; and
2. Cyber assisted crime, which are criminal behaviors that are assisted by computers and the Internet, and then enables people to commit crimes. (illegal trading of dangerous substances)

In the money laundering process, Bitcoin becomes a gateway for criminals to commit illicit activities because of the lack of anti-money laundering (AML) or Know Your Customer (KYC) regulations in wallet providers and online crypto exchanges.¹⁸ Criminals can obscure the original source of funds by moving the Bitcoins from an address that was gained through illegal means to a new address, which is then cashed out to fiat currency.¹⁹ Criminals will mix the illegal Bitcoins with other users' Bitcoins, thus jumbling the connections between individuals' addresses. Through this, it becomes impossible to detect the source and destination addresses of the illegal Bitcoins. Consequently, criminals can cash out the illegal

¹⁶ N.H. Siahaan, Alfa N., Mawar S., and Putri R., "Risiko Pencucian Uang dalam Bitcoin". https://www.ppatk.go.id/siaran_pers/read/957/risiko-pencucian-uang-dalam-bitcoin.html, accessed 18 February 2022.

¹⁷ Rolf van Wegberg, *et. al*, "Bitcoin Money Laundering: Mixed Results? An Explorative Study on Money Laundering of Cybercrime Proceeds Using Bitcoin", *Journal of Financial Crime*, Vol. 25, No. 2, 2018, p. 420

¹⁸ Dr. Nick Oberheiden, "Crypto Laundering: Bitcoin + Money Laundering". <https://www.natlawreview.com/article/crypto-laundering-bitcoin-money-laundering>, accessed 19 February 2022.

¹⁹ Tom Robinson, *et. al*, "Bitcoin Laundering: An Analysis of Illicit Flows into Digital Currency Services", *Center on Sanctions and Illicit Finance*, p. 3

Bitcoins to fiat currency without having to worry about their identity being exposed.²⁰

In the past few years there have been a few cases where Bitcoins were used as an alternative method of money laundering, such as the Lichtenstein and Morgan case. Ilya Lichtenstein and Heather Morgan, a married couple who resided in the US, were arrested on February 8th 2022 by the US Justice Department for the alleged conspiracy to launder stolen \$4.5 billion worth of Bitcoins.²¹ The Bitcoins the couple possessed were allegedly stolen from a hack of the cryptocurrency exchange Bitfinex in 2016.²² As stated in official court documents, there were more than 2,000 unauthorized transactions during the hack of Bitfinex in 2016.²³ Due to the unauthorized transactions, the stolen Bitcoins were placed into Lichtenstein's cryptocurrency wallet. Hence, over the past five years, the couple have used multiple cryptocurrency wallets and exchanges to receive and store the illegal funds to avoid being detected by the authorities.²⁴

To investigate the allegedly stolen Bitcoins, the court authorized search warrants to special agents to search online accounts controlled by the couple. As a result, the special agents gained access to a file which contains private keys to

²⁰ Dr. Nick Oberheiden, "Crypto Laundering: Bitcoin + Money Laundering". <https://www.natlawreview.com/article/crypto-laundering-bitcoin-money-laundering>, accessed 19 February 2022.

²¹ Nover, Scott. "Meet Heather Morgan and Ilya Lichtenstein, the Couple Arrested for Crypto Laundering." *Quartz*, Quartz, <https://qz.com/2124700/heather-morgan-ilya-lichtenstein-arrested-for-crypto-laundering/>, accessed 14 September 2022.

²² *Ibid.*

²³ "Two Arrested for Alleged Conspiracy to Launder \$4.5 Billion in Stolen Cryptocurrency." The United States Department of Justice, 8 Feb. 2022, <https://www.justice.gov/opa/pr/two-arrested-alleged-conspiracy-launder-45-billion-stolen-cryptocurrency>, accessed 14 September 2022.

²⁴ *Ibid.*

access the cryptocurrency wallets that directly received the illegal funds.²⁵ As of now, the special agents have seized the stolen Bitcoins that are worth more than \$3.6 billion.²⁶ In the lawsuit following the arrest of Lichtenstein and Morgan, the couple was charged with the conspiracy to launder the proceeds of the hack, not for the hack of Bitfinex itself.²⁷ According to the US Law, the charge placed onto the couple can lead up to a maximum sentence of 20 years in prison.²⁸ Furthermore, the conspiracy to defraud the US carries an additional maximum sentence of five years in prison.²⁹ Even though Lichtenstein and Morgan were eventually caught by the

²⁵ Ibid.

²⁶ Nover, Scott. "Meet Heather Morgan and Ilya Lichtenstein, the Couple Arrested for Crypto Laundering." *Quartz*, Quartz, <https://qz.com/2124700/heather-morgan-ilya-lichtenstein-arrested-for-crypto-laundering/>, accessed 14 September 2022.

²⁷ "Two Arrested for Alleged Conspiracy to Launder \$4.5 Billion in Stolen Cryptocurrency." The United States Department of Justice, 8 Feb. 2022, <https://www.justice.gov/opa/pr/two-arrested-alleged-conspiracy-launder-45-billion-stolen-cryptocurrency>, accessed 14 September 2022.

²⁸ 18 U.S. Code § 1956 - Laundering of monetary instruments:

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S. Code 1956 - Pencucian instrumen moneter:

(h) Setiap orang yang bersekongkol untuk melakukan pelanggaran apa pun yang ditentukan dalam bagian ini atau bagian 1957 akan dikenakan hukuman yang sama seperti yang ditentukan untuk pelanggaran yang menjadi objek persekongkolan.

²⁹ 18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S. Code 371 - Permufakatan jahat untuk melakukan pelanggaran atau untuk menipu Amerika Serikat:

Jika dua orang atau lebih bermufakat jahat untuk melakukan pelanggaran terhadap Amerika Serikat, atau untuk menipu Amerika Serikat, atau agennya dengan cara apa pun atau untuk tujuan apa pun, dan satu atau lebih dari orang tersebut melakukan tindakan apa pun untuk mempengaruhi objek permufakatan jahat, masing-masing akan didenda berdasarkan gelar ini dan/atau dipenjara tidak lebih dari lima tahun.

Akan tetapi, jika tindak pidana yang menjadi sasaran permufakatan jahat itu hanya merupakan pelanggaran ringan, hukuman untuk permufakatan jahat itu tidak boleh melebihi hukuman maksimum yang diberikan untuk pelanggaran tersebut.

law enforcements, due to the nature of cryptocurrency (encrypted and easily moved from one cryptocurrency wallet to another), the process of tracing the illegally obtained funds was significantly harder.

With these in mind, it raises several questions—First, does the trading of cryptocurrency can be considered as money laundering under Indonesian Criminal Law, specifically, under Law No. 8 of 2010 regarding the Countermeasure and Eradication of Money Laundering? Second, can Law No. 8 of 2010 regarding the Countermeasure and Eradication of Money Laundering be used as a legal basis for money laundering done through cryptocurrency? And lastly, are the positive laws surrounding the issue of money laundering effective to punish those who commit the criminal act through cryptocurrency?

These questions are important to ask due to how easy it is for people to participate in Bitcoin trading in the current state of the world, so it is wise to always have sufficient understanding of the risks that comes with investing, especially currencies that have only been recently regulated. Even though it is undeniable that Bitcoin has become an easier method to do online transactions, which can be supported by the fact of a growing user base with over 295 million crypto users globally as of December 29th 2021,³⁰ the risk of it becoming a medium to carry out cybercrime by exploiting its features is more than present.

³⁰ CryptoSlate, “There could be 1 billion global crypto users by the end of 2022, and more than half will own Bitcoin” <https://cryptoslate.com/there-could-be-1-billion-global-crypto-users-by-the-end-of-2022-and-more-than-half-will-own-bitcoin/>, accessed 19 February 2022.



Chart showing the month-on-month growth of global crypto owners in 2021 (Source: Crypto.com)

Additionally, according to data published by databoks, an economic and business statistics data portal that is a part of Katadata, a research and online media company since 2012, 34% of all crypto users in Indonesia are Bitcoin users as of December 2021 which makes Bitcoin as one of the most popular cryptocurrency in Indonesia. Therefore, given the total of cryptocurrency users in Indonesia, the potential of the alternative modus operandi using cryptocurrency also exist and not merely a theory.

1.2 Formulation of Issues

Based on the background of the problem that has been elaborated above, the formulation of the issue is:

1. How does Indonesian Money Laundering Law tackle the use of cryptocurrency as an alternative modus operandi for money laundering?
2. What are the preventive measures Indonesian Money Laundering Law can do to face the alternative modus operandi for money laundering using cryptocurrency?

1.3 Objective of Research

Based on the background and formulation of the problem, the purpose of this research is to:

1. Have a further understanding on the impact of cryptocurrency that is used as an alternative modus operandi for money laundering in Indonesia and Indonesian Money Laundering Law.

1.4 Benefits of Research

Based on the formulation of the problem and scope of research, the benefits of this research is to:

1.4.1 Theoretical Benefit

Contribute and suggest theoretically to the discussion surrounding cryptocurrency and how it links to money laundering in Indonesia.

1.4.2 Practical Benefit

Provide a further understanding of the legal knowledge to the parties who wish to participate in investing or trading cryptocurrency since there are tangible risks present in the area, especially considering how it is relatively new and have only been recently governed by Indonesian Law.

1.5 Systematics of Writing

This research is divided into five chapters and several sub-chapters which consists of the following:

CHAPTER I: INTRODUCTION

This chapter will begin the research thesis by elaborating the background of the lack of regulation on money laundering using cryptocurrency in Indonesia along with the formulation of issues of the topic. Afterwards, the author will lay out the objective, benefits of research, and systematics of writing.

CHAPTER II: LITERATURE REVIEW

This chapter encompasses the framework the author will follow based on the research variables relating to the issue before expanding the legal issue further. These variables consist of Indonesian regulations surrounding cryptocurrencies, Commodity Futures Trading Regulatory Agency (CoFTRA) or *Badan Pengawas Perdagangan Berjangka Komoditi* (Bappebti), and money laundering.

CHAPTER III: RESEARCH METHOD

This chapter will discuss the method that is used to describe the facts or circumstances related to the legal issue of this research. This research explains the type of research, the approach to the research, sources of law, and methods of data analysis.

CHAPTER IV: ANALYSIS AND DISCUSSION

This chapter will discuss the legal issue in this research more in-depth through normative analysis, which is then followed by the results of the discussion.

CHAPTER V: CONCLUSION AND SUGGESTION

This chapter contains the conclusion and suggestion based on the research. The conclusion comes from the in-depth analysis of the research whereas the suggestion

comes in the form of the author's opinion regarding the legal issue discussed in this research with the goal to hopefully give a solution to the legal issue.

