

CHAPTER I

INTRODUCTION

1.1 Background

It cannot be denied that the evolution of technological advancement has been vastly increasing right upon our very eyes. The industrial world has been changing to a new era of digitalization due to the rise of digital technology. As we know, conventional transactions prior to the Era of Disruption are still using conventional currencies, for example money or ATM. However, we are entering an era which is very closely related to the term digitalization that is using modern technology. Computers as a means of modern technology are considered as "disruptive", or can be interpreted as something capable of creating new market opportunities. There are many advantages and disadvantages of using technology, not only for transactions but also for doing other things that are also related to everyday life. Transactions through online media are very beneficial for buyers and sellers because they can simplify and speed up the transaction process. When making transactions on the digital market, of course there is a payment process. This payment process is not carried out conventionally but online or what is often referred to as "Cashless". Therefore, the demand for media transactions via the internet or online is very necessary to facilitate the transaction actors. One of the payment media offered to the world community is Cryptocurrency. Cryptocurrency is a digital currency that uses a complicated

encryption system. So far, there are several forms of cryptocurrency itself, including Ethereum, Bitcoin, Feathercoin, Dogecoin, Litecoin, etc.¹

Nevertheless, Bitcoin is the most popular digital currency among the public. Bitcoin is a virtual currency or an electronic cash that can be used in a digital market across the globe. Bitcoin first appeared in 2009 by an individual called Satoshi Nakamoto.² In November 2019, there were more than 18 million Bitcoins that traded with a total market value of around US\$ 146 billion. Since then, around 68% of Cryptocurrency around the world is in the type of Bitcoin. It gained popularity a few years back due to the benefits for international transactions in the digital market. Bitcoin acts as a “Virtual Cash” that not only can be used for transactions, but can also be used in the means of investment. Bitcoin has become popular because Bitcoin gives a new color to the digital era because it is considered to be easy to use, the cost in transactions are fairly cheap, and the value can go up and down drastically in any time making it a promising investment medium and is often referred to as *Digital Gold*. Bitcoin itself is a unique media for transactions because there are no laws or regulations governing Bitcoin. In addition, there is no government agency or bank that controls the entry of Bitcoin into the Indonesian market. In this development, the economic aspect of things is adapting to the evolution of technology. One of the developments in the aspect of economy is the emergence of Cryptocurrency, or

¹ "10 Important Cryptocurrencies Other Than Bitcoin - Investopedia." Accessed December 7, 2021. <https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/>.

² "Bitcoin Definition - Investopedia." Accessed December 7, 2021. <https://www.investopedia.com/terms/b/bitcoin.asp>.

specifically Bitcoin. The knowledge of Bitcoin has been rapidly spread throughout the world due to it being the most popular currency among all Cryptocurrencies. The era which is called the Era of Disruption certainly disrupted people around the world with the invention of Bitcoin. Since the emergence of Bitcoin, Indonesia has been highly influential to the economic trends in the society. Not a few people followed the developments of Bitcoin in Indonesia. During the years when Bitcoin is evolving rapidly, it gains a high interest from Indonesia due to it having a big expansion and the Bitcoin itself already having its own marketplace. Until the end of 2017 alone, Bitcoin users had increased by 1,200 percent. To date, the Bitcoin exchange rate from year to year continues to rise. Currently, one Bitcoin is equivalent to Rp.754.9 million.³

Bitcoin works in a unique way different from other means of transactions. Bitcoin itself works with the process called mining. Bitcoin mining refers to the process of digitally adding transaction records to the blockchain, which is a publicly distributed ledger holding the history of every Bitcoin transaction. Mining is a record-keeping process executed through sophisticated computing power. Each Bitcoin miner around the world contributes to a decentralized peer-to-peer network to ensure the payment network is trustworthy and secure.⁴ In order to own a Bitcoin, we have to know the details and the mechanics in which we can own one. Sending Bitcoin to

³ "Why Isn't Bitcoin A Transaction Tool In Indonesia? - VOI.id." Accessed December 7, 2021. <https://voi.id/en/technology/33872/why-isnt-bitcoin-a-transaction-tool-in-indonesia>.

⁴ "Bitcoin Mining - Overview, Benefits, and Requirements - Corporate" Accessed December 7, 2021. <https://corporatefinanceinstitute.com/resources/knowledge/other/bitcoin-mining/>.

the buyer requires having access to the public and private keys associated with the amount of Bitcoin that is being purchased. In fact, when someone owns a Bitcoin, it actually means that the person has access to a key - pair consist of:

1. a public key to which some amount bitcoin was previously sent
2. the corresponding unique private key which authorizes the Bitcoin previously sent to the above pub-key to be sent elsewhere⁵

Public keys contain random numbers and letters which are similar to an email address or a personal username that is open to the public. In order for a person to send Bitcoins to our account, they have to know our public keys and enter it in the process of sending. On the other hand, private keys act like a password to our email or other accounts and are meant to be confidential. All transactions will then be registered on the Bitcoin network with the Bitcoin address as the transaction input. Certainly, a sophisticated technology such as Bitcoin or other Cryptocurrency needs close supervision by a government agency or a bank in order to track and monitor all the activities in the digital market that uses Bitcoin. Of course, Bitcoin activities are being controlled by a platform in which it contains all the data of transactions that are being made using Cryptography. The transactions of Bitcoin are public and can be found on the digital ledger known as the Blockchain. Blockchain is a technology used

⁵ "How do Bitcoin transactions work?." Accessed December 7, 2021. <https://www.bitcoin.com/get-started/how-bitcoin-transactions-work/>.

as a digital data storage system that is connected through cryptography.⁶ The use of Blockchain technology is synonymous to the use of Bitcoin and other Cryptocurrency. In simpler words the Blockchain starts when a block or a network stores new data. Since the Blockchain technology is decentralized, there is no single authority that has full control of the technology, rather it is split into each computer that has special software installed. The Blockchain is the same as Bitcoin and other Cryptocurrency since it is decentralized and no authority is in control of the technology. In financial terms, a Blockchain acts as a “digital cash book” that can be accessed by anyone, anytime, without the need for approval from financial institutions such as banks.⁷ As a result, it would create transparency and

However, the implementation of Bitcoin in Indonesia has not been closely regulated. In early 2018, the government began to take steps in order to accommodate the development of Bitcoin in Indonesia. Bank Indonesia (BI) as the financial regulator in Indonesia considers cryptocurrency to be illegal and not to be recognized. BI states that Bitcoin is not a legal currency or payment instrument in Indonesia based on Law Number 7 of 2011 concerning Currency. Back on November 6 2014, BI as the controller of the monetary system in Indonesia issued a warning that Bitcoin cannot be used as a means of payment in Indonesia. On January 23 2018, during the

⁶ "Apa Itu Bitcoin dan Bagaimana Cara Kerjanya? - Finansial Bisnis.com." Accessed December 12, 2021. <https://finansial.bisnis.com/read/20210415/55/1381454/apa-itu-bitcoin-dan-bagaimana-cara-kerjanya>.

⁷ "Apa Itu Blockchain? Inilah Pengertian & Cara Kerjanya - Qwords." Accessed December 7, 2021. <https://qwords.com/blog/apa-itu-blockchain/>.

press conference of the Financial System Stability Committee (Komite Stabilitas Sistem Keuangan), Minister of Finance (Menteri Keuangan) Sri Mulyani Indrawati stated that Bitcoin is considered to be illegal and it is banned for the use of transactions and investments. In addition, Sri Mulyani has stated that the use of Bitcoin can potentially harm the financial system stability. Aside from the Minister of Finance, other members of the Financial System Stability Committee (KSSK) which includes the Chairman of the Financial Services Authority Committee Board, the Chairperson of the Committee for the Deposit Insurance Corporation, and the Governor of BI, all have agreed to ban the use of Bitcoin as a means of transaction and investment.⁸ However, BI also stated that all the risk and harm that may cause the users of Bitcoin is not the responsibility of the government and other related institutions. From the statement above, it can be seen that the statement is against the 1945 Constitution specifically Article 28 D (1) which stated that “*setiap orang berhak atas pengakuan, jaminan, perlindungan dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum*”. This shows the vagueness and grey area in the issue of the uses of Bitcoin and its negative effects.

The government also voices their concern on this matter. They strictly ban and prohibit the use of Bitcoin as a means of payment as this would violate the the 1945 Constitution of the Republic of Indonesia in Article 23 (b) which stated that “*Rupiah*

⁸ "Menkeu: Bitcoin Bukan Alat Pembayaran Dan Berisiko Tinggi." Accessed December 7, 2021. <https://www.kemenkeu.go.id/publikasi/berita/menkeu-bitcoin-bukan-alat-pembayaran-dan-berisiko-tinggi/>.

sebagai Mata Uang Negara Kesatuan Republik Indonesia sesungguhnya telah diterima dan digunakan sejak kemerdekaan". Since Bitcoin has no formal laws and regulations as well as a regulatory authority, Bitcoin can potentially be misused for other illegal activities such as illegal transactions, money laundering, and terrorist financing.⁹ There it emphasized that all transactions carried out in the territory of the Republic of Indonesia must use the rupiah currency. In a book written by the Indonesian National Risk Assessment (NRA) Team on Terrorism Funding Crime (Assessment of Indonesia's Risk Against Terrorism Financing Crimes in 2015), Bitcoin is considered to be a New Payment Method (NPM) in the form of a virtual currency that has not yet received a formal laws and regulation which is often linked to transactions resulting to a criminal act.¹⁰ As stated above, this raises concerns on the potential of Bitcoin to be the main funding tool for an act or a group connected to terrorism. According to Article 34 (a) of the Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing¹¹, stated that virtual currency is a form of digital money issued by parties other than the monetary authority which is obtained by mining, purchasing, or transferring rewards, including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. If we look at the definition of money in Article 1

⁹ "Legalitas Bitcoin Menurut Hukum Indonesia - Klinik Hukumonline." Accessed December 7, 2021. <https://www.hukumonline.com/klinik/detail/ulasan/lt5a1e13e9c9fc4/legalitas-ibitcoin-i-menurut-hukum-indonesia/>.

¹⁰ 2015. *Assessment of Indonesia's Risk Against Terrorism Financing Crimes*.

¹¹ Lembaran Negara Republik Indonesia Tahun 2016 Nomor 216, Tambahan Lembaran Negara Republik Indonesia Nomor 5945.

number 2 of Law Number 7 Year 2011 concerning Currency, it states that what is meant by a legal instrument of payment which is cash is a legal means of payment. Even through Bank Indonesia Regulation Number 18 of 2016 concerning Implementation of Payment Transaction Processing (BI Regulation 18/2016), Payment System Service Providers are prohibited from processing payment transactions using digital currency. Therefore, the currency that is legal to use is the one that the Republic of Indonesia has issued formally, which is Rupiah.

The risk in involving Bitcoin and other Cryptocurrencies is considered to be very high, especially when everything will be conducted online that everyone could manipulate it at any time. Digital currencies are speculative in nature, which leads to price volatility, security issues, and market manipulation. This regulatory risk is concerning not for Indonesia but all other countries. Investing money into Bitcoin is a bit of a risk considering its positives as well. Bitcoins can be a “rival” towards the government currency and may be used for black market transactions, money laundering, illegal activities, or tax evasion and terrorist funding as stated above. As a result, governments may seek to regulate, restrict, or ban the use and sale of Bitcoins as the Indonesian government has stated above. Aside from the regulatory risk, there are other risks such as security risk that involves consumer protection in which the government has to look at. In legalizing a digital currency, the authorities have to see not only from the benefits side of it but also it has to consider the protection and risk towards the consumer. There is a lot of cyber crime that happens in regards to finance

or transactions in the online market. In the case of Bitcoin, it will be more dangerous and more fragile towards criminal acts since the world of Bitcoin is open to absolutely everybody and without any clear laws and regulations that can support it. Furthermore, Bitcoin is relatively new since it was introduced back in 2009. Therefore, there isn't much knowledge especially to the general public as to how Bitcoin works and operates. There are many obstacles in legalizing Bitcoin and other Cryptocurrencies and need no rush in doing so because the most important thing is to make it safe and reliable for the general public and also for the country as a whole.

There is a case most recently that is regarding the fraud of Bitcoin by a foreigner which is held hostage in Indonesia. The Directorate of Special Criminal Investigation (Ditreskrimsus) of Polda Metro Jaya arrested a fugitive from the FBI and Interpol in a case of Bitcoin investment fraud. Russ Albert Medlin , a foreign national from the United States, has been a fugitive in a run and is on the FBI red notice since 2016. Based on information received by Ditreskrimsus Polda Metro Jaya from the FBI, Russ Albert Medlin is suspected to have committed fraud with the modus of Bitcoin investment. Russ managed to receive up to US \$ 722 million US dollars, With an exchange rate of Rp. 14,000 per dollar alone, that value reaches around Rp. 10.1 trillion.¹² That is a very big amount of money that someone can have

¹² "Polisi tangkap buronan FBI atas penipuan investasi Bitcoin lebih" Accessed December 7, 2021. <https://nasional.kontan.co.id/news/polisi-tangkap-buronan-fbi-atas-penipuan-investasi-bitcoin-lebih-dari-rp-10-triliun>.

resulting from a fraud. This case shows that considering the high value of Bitcoin, there will also be a high risk in investing in Bitcoin.

However, Bitcoin is not entirely banned in Indonesia. Currently, the condition of Bitcoin in Indonesia has not behaved like a conventional currency, where the price of Bitcoin has been fluctuating, causing a price uncertainty. After conducting a study for four months about Bitcoin and other Crypto assets, the Commodity Futures Trading Supervisory Agency (Badan Pengawas Perdagangan Berjangka Komoditi) stated that all cryptocurrency including Bitcoin is to be considered as a commodity subject that can be traded on the futures trading exchange. Responding to this, The CEO of Indonesia's largest Bitcoin marketplace, Indodax, Oscar Darmawan agreed with the decision of Bappebti. Oscar stated that it is necessary to know that Indodax views Bitcoin and other cryptos as commodities for the general public of Indonesia.¹³ This means that Bitcoin and crypto assets can be owned, stored and then sold when the price is high, just like an investment asset. As stated above, currently in Indonesia, the government only allows Bitcoin to be used as an investment tool in futures exchange trading, not as a means of payment. The only payment instrument that is legally used in Indonesia is the rupiah currency. The regulations regarding Bitcoin as a commodity have also come a long way. Since the enactment of the Regulation of the Commodity Futures Trading Supervisory Agency (Bappebti)

¹³ "Di Indonesia, Bitcoin adalah Komoditas untuk Investasi, Bukan Alat" Accessed December 7, 2021. <https://goodmoney.id/di-indonesia-bitcoin-adalah-komoditas-untuk-investasi-bukan-alat-pembayaran/>.

Number 5 of 2019 concerning Technical Implementation of the Crypto Asset Commodity Market, there haven't been a concrete explanation as to what differentiates Bitcoin as a commodity and Bitcoin as a currency. In fact, there are a lot of investors and Bitcoin observer's stating that even though there are already regulations regarding Bitcoin and other Crypto assets in Indonesia, there is still a lack of concrete explanation regarding Bitcoin as a commodity. In terms of legalization of Bitcoin as a commodity in Indonesia, we can safely say that the regulations are accommodating the entry of Bitcoin into Indonesia. In the statement made by Bappebti, they are still working on other supporting regulations that are essential to the legalization of Bitcoin as a commodity or other Crypto asset. In working on those future and upcoming regulations, Bappebti has stated that the involvement of other institutions or parties is imminent. In the future, Bappebti will create other regulations involving various ministries and institutions, such as Bank Indonesia (BI) and the Financial Services Authority (OJK).¹⁴ Another concern that will be raised in the upcoming plan of adding several regulations to support the current regulations is in regards to the tax matters which will be regulated by the Indonesian Directorate General of Taxes according to the request of business actors. Essentially, the rules set by the government in regards to Bitcoin commodities are aimed to protect investment users in order to avoid fraudulent and illegal investment products that will harm the general public. Furthermore, this regulation will hope to further assist the

¹⁴ "Bappebti Tetapkan Cryptocurrency Masuk Kategori Komoditi" Accessed December 7, 2021. <https://dailysocial.id/post/bappebti-cryptocurrency-komoditi-perdagangan-berjangka>.

development of the Cryptocurrency business and bring it to a better direction. In addition, to establish Bitcoin as a commodity, the Indonesian government will also make further regulations in the future to regulate the application of this business technically. Despite the positives, the legalization of Bitcoin as a commodity in Indonesia has also created an important issue that needs to be raised, which is the legal protection towards the investors and the owner of Bitcoin. The enactment of the regulations to legalize Bitcoin as a commodity is aimed to attract primarily foreign investors to enter the Indonesian market. Institute for Development of Economics and Finance (Indef) economist Bhima Yudhistira Adinegara predicts that the decision of the Commodity Futures Supervisory Agency (Bappebti) to trade cryptocurrency on the futures exchange will increase the number of foreign and domestic investors entering the Indonesian market. Moreover, Bhima also stated that the steps taken by the Bappebti could be the start of the development of Cryptocurrency technology or virtual currency in Indonesia.¹⁵

Soon enough, the demand of cryptocurrency and activities related to crypto would be increasing not only from foreign countries, but also from Indonesia. With a situation where the millennial generation and young people are very much dependent on the online world, it is undeniable that the trend of using crypto will grow rapidly.

¹⁵ "Cryptocurrency resmi jadi komoditas di Indonesia - EKRUT." Accessed December 7, 2021. <https://www.ekrut.com/media/cryptocurrency-resmi-jadi-komoditas-di-indonesia>.

From the facts I stated above, it is clear that there is an urgency to protect the traders, investors, and other consumers who are involved in cryptocurrency activities from any illegal act and damages that may occur.

As a result of that urgency, the Author is writing a legal research paper titled "Legal Analysis on the Legal Protection Towards the Use of Cryptocurrency in Indonesia," in which the Author will analyze the existing laws in Indonesia to determine whether or not they already satisfy that urgency.

1.2 Formulation of Issues

In relation to the topic that is being discussed above, the author will discuss about the following issues, namely:

1. How do the current laws and regulations regarding cryptocurrency activities regulate companies and exchange members in the activities of crypto assets in Indonesia?
2. How are the regulations implemented provide legal protection?

1.3 Research Purposes

The author's purposes in writing this thesis is to address the formulation of issues that is stipulated above, namely:

1. To address how the existing laws regulate companies and exchange members in the activities of crypto asset trading and investment in Indonesia.
2. To address whether or not the existing regulations by Bappepti can provide consumer protection towards the investors.

1.4 Research Benefits

1.4.1 Theoretical Benefits

In this thesis, the author aims to provide a full understanding and insights in regards to Bitcoin as a form of crypto asset for investment and trading activities in Indonesia. The main focus of the author is to look and analyze the topic of cryptocurrency as a form of asset that is tradeable for traders in regards to the existing laws and regulations standpoint, especially the regulations of Bappepti. Furthermore, the author hopes to provide a theoretical result of the research and analysis regarding the legality of Bitcoin as a means of crypto assets trading between traders in Indonesia. In addition, legal protection that is given by the trading company towards the traders is also a glaring issue in the introduction of Bitcoin as an instrument of trading and as a crypto asset in Indonesia. The author will provide the knowledge of how Bitcoin can affect the issue of legal protection in Indonesia especially in regards to the traders who hold and carry out trading activity involving Bitcoin and other crypto assets. At the end of this thesis, the author's aim is to address all the issues that are being raised from the topic of this thesis.

1.4.2 Practical Benefits

In this thesis, the author aims to give inputs and to provide the solution for future issues. The author hopes that this thesis can provide the input and benefits in regards to addressing the legality of Bitcoin as a commodity and as a crypto asset in Indonesia and also to compare the laws and regulations to several countries. Furthermore, the author aims to provide assistance to further improve the issue of legal protection in regards to transactions using cryptocurrency, especially Bitcoin, specifically pursuing the Regulation of Bappebti. The result of this research and analysis is in hopes to give knowledge and understanding to further reiterate the importance of legal protection of cryptocurrency traders and owners to the general public, authorities, government officials , bank officials, and other related agencies. Lastly, this thesis hopes to provide assistance and knowledge to the general public who wants to enter the world of Bitcoin and Crypto assets in order for them to prevent any further issues or violations that they can foresee in their future activities.

1.5 Systematic of Writing

This thesis consists of five (5) chapters that are aimed to provide a clear understanding towards the issue of this thesis.

CHAPTER 1: INTRODUCTION

This chapter is aimed to provide the reader an introduction towards the issue that is being raised in the thesis. It will later be divided into five

(5) parts, namely Background, Formulation of Issue, Research Purposes, Research Benefits, and Systematic of Writing

CHAPTER 2: LITERATURE REVIEW

In this chapter, the author will provide an explanation in the form of two sub - chapters or two parts which will cover how Bappepti regulates companies and exchange members in the activities of crypto asset trading in Indonesia. Secondly, the author will discuss whether or not the existing regulations by Bappepti can provide consumer protection towards the investors.

CHAPTER 3: RESEARCH METHODOLOGY

This chapter will provide an understanding on how the author conducted the research, obtaining the facts and data necessary, and the techniques the author uses to analyze the topic of the thesis. In addition, this chapter will also discuss the methods that the author uses to discuss and address the issues of this thesis.

CHAPTER 4: ANALYSIS

In this chapter, the author will provide a detailed discussion in regards to the formulation of issues as well as providing a solution that is best to solve the issue that is being raised in this thesis. Furthermore, this

chapter consists of two sub - chapters. The first sub - chapter will analyze how Bappepti regulates companies and exchange members in the activities of crypto asset trading in Indonesia. The second sub - chapter will analyze whether or not the existing regulations by Bappepti can provide consumer protection towards the investors.

CHAPTER 5: CONCLUSION AND RECOMMENDATION

In the last and final chapter, the author will provide a conclusion towards the analysis that is made in Chapter IV to address all the issues that are being raised in the thesis. In addition, the author will provide a suggestion and recommendation in regards to the issues which may help and be beneficial towards the use of Bitcoin and other Crypto assets, and how Bitcoin can further develop in the years to come.