
Guaranteed Investor Protection in the Middle of Digital Money Regulation in Indonesia

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Abstract

This paper tries to reveal the development of legal protection for cryptocurrencies in Indonesia and their impact on cryptocurrency users in Indonesia. In order to answer the problems raised, this writing is done through a normative juridical approach. The presence of cryptocurrencies that reap the pros and cons as a result of the lack of certainty of legal protection from the government or authorized institutions such as Bank Indonesia for investors involved in digital money investments. Indonesia is a state of law, meaning that all regulations must be able to provide legal certainty to the community so as to avoid a legal vacuum. From the rapid development of cryptocurrencies,

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INTRODUCTION

Today's crypto money or digital money is increasing in circulation, such as bitcoin, ethereum, dogecoin, and ripple. The development of digital money is very massive, like an arrow that shoots fast. Digital money was first traded in 2010 where the value of bitcoin was around 0.08 US dollars, but in 2021 its value skyrocketed to reach 68,000 US dollars.

By the end of 2021, the market capitalization value is predicted to reach US\$ 3 trillion or around Rp. 42,000 trillion (exchange rate of Rp. 14,000/US dollar). This amount is very spectacular for the development of an asset whose flight hours are around 10 years, when compared to other assets.

In the midst of the value of digital money which has fluctuated quite high over the past year, this has not caused investor interest to decrease in hunting and selling digital money, but instead investors who trade for investment purposes continue to increase. Economic and financial experts face various obstacles in finding the right answer to provide a justification that can be accepted by various parties.

During a pandemic that is sweeping the world, investment becomes a concern. People are aware of investment as an option to generate additional income from dividend distribution. Digital money as an investment reference is increasingly trusted because its high value is due to its increasing circulation, although it has its own risks because the digital world is risky. Digital money begins with the discovery of gold. Then the results of the gold exchanged are in the form of

conventional money with a currency that is linear with the country where the cryptocurrency is exchanged.

Cryptocurrency mining results are used as an investment tool, and can even be used for commercial transactions such as games, social media, and other forms of applications. To date, 1500 types of cryptocurrencies have been recorded. The rapid development of digital money makes financial services and global payment systems vibrate, because digital money is different from printed paper currency.

Crypto is referred to as an investment facility known as a crypto asset, according to legal provisions in Indonesia. Based on article 1 number 7 of the Commodity Futures Trading Regulatory Agency Regulation No. 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange, it is explained "Crypto assets are intangible commodities in the form of digital assets, using cryptography, peer to peer networks, and ledgers. distributed, in order to regulate the production of new units, verify transactions, and secure transactions without the intervention of certain parties. Crypto assets have been accommodated by several regulations, including Minister of Home Affairs Regulation No. 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading (crypto assets).

In addition, regulations regarding the implementation of trading crypto assets on futures exchanges as well as technical provisions are regulated in Commodity Futures Trading Supervisory Agency Regulation No. 2 of 2019 concerning the Implementation of Commodity Physical Markets on Futures Exchanges and specifically regulated in Commodity Futures Trading Supervisory Agency Regulation No. 5 of 2019.

Previous research that specifically discusses the protection of crypto investors with the title "Legal Protection of Digital Currency Investments" in its substance explains that investors can obtain protection for losses caused by cybercrime actions or losses incurred in a civil manner, namely acts against the law, although it has not been explained in its mechanism of action or proceedings (procedural law) in order to resolve the above legal issues. While this study discusses protection based on special regulations that regulate crypto such as Minister of Home Affairs Regulation No. 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading (crypto assets); Commodity Futures Trading Supervisory Agency Regulation No. 2 of 2019 concerning the Implementation of the Physical Commodity Market on the Futures Exchange;

The legal certainty expected by the legislature in reality actually results in legal uncertainty. Although cryptocurrencies have been regulated to avoid nullen norms (the absence of regulations), these efforts have resulted in vague norms (rule confusion). This phenomenon is caused by the implementation of the crypto market which is accommodated by the physical market according to the CoFTRA No. 2 of 2019 and the CoFTRA No. 5 of 2019, while the regulation that is the reference for the consideration of the two rules above is Law No. 10 of 2011. This from a conceptual point of view is a mistake because the market physical assets do not include futures commodity mark

FORMULATION OF THE PROBLEM

Based on the description of the background above, there is one crucial problem, namely what is the form of legal protection for cryptocurrency investors according to regulations in Indonesia? This is important because legal protection for investors is still lacking and very limited in the context of the applicable legal regulations in the Republic of Indonesia.

RESEARCH METHODS

In order to answer the problems raised, the writing will use a normative juridical approach with a critical study of library materials and relevant legal archives. This writing will be carried out in several steps, namely library searches using legislation such as the Consumer Protection Law, the Information and Electronic Transactions Law, the Law on Commodity Futures Trading, Perbapeteti, and the Criminal Code, then proceed with the data search stage through the website and supporting literature. .

DISCUSSION RESULT

Forms of legal protection for cryptocurrency investors according to regulations in Indonesia

Investment includes a commitment to current sources of funds with the result of getting a profit in the future. With regard to trading via electronic, digital money circulation is considered a business trend that can be used as an investment facility by its users by exchanging rupiah currency into virtual currency by taking advantage of fluctuation speculation. With legal protection, it is expected to guarantee legal certainty, so that there is legal protection for related parties in carrying out legal actions.

Investment growth in Indonesia is influenced by various factors such as the legal regulations required by investors. Based on Duncan H. Meldrum's study, there are 7 factors, namely the ease of doing business, no discrimination against foreign investors; balanced treatment of foreign and domestic investors; permission transparency; immigration policy; complaint mechanism to the government; and the government is responsive to complaints submitted.

The bitcoin virtual currency investment model, like a gold commodity, has been regulated in Law No. 10 of 2011 concerning Commodity Futures Trading which is expected to provide legal protection to investors. The protection of commodity futures trading is supervised by the Commodity Futures Trading Supervisory Agency in article 4 (1) and is explained in the Decree of the Minister of Industry and Trade No: 86/Mpp/Kep/3/2001 concerning the Organizational Structure of the Ministry of Industry and Trade which in article 1112 is explained as follows :

"BAPPEBTI has the task of carrying out the guidance, regulation, and day-to-day supervision of commodity futures trading activities".

In Indonesia, a trade law is currently enacted which is considered to be in accordance with trade developments. The regulation of the law aims to increase national economic growth, with the scope of local trade, trade between countries, border trade, standardization, trade via electronic, trade protection and security, empowerment of cooperatives and micro, small and medium enterprises, export development, international trade cooperation, trade information system and government authority in the field of trade, national trade committee, supervision, and investigation.

The government has made trade regulations via digital with the enactment of the trade law. The government makes rules to produce conduciveness in Indonesia. In the trade law, there are provisions for legal treatment for operators who do business via electronic means.

Transaction activities in national payments are related to payment instruments, where the payment system is under the authority of Bank Indonesia. The national payment system by BI aims

to maintain rupiah stability as mandated by Law No. 23/1999 on Bank Indonesia. The payment system in general seeks to encourage the national economy and increase economic activity with conducive business conditions and increase foreign power as well as the perspective of the national economy so that other investors are attracted to Indonesia.

The payment system is understood as a step of transferring money from one party to another due to economic transactions, so that it can be associated with payment instruments such as checks, bilyet giro, money orders, electronic funds transfers, ATMs, debits, credits, and e-money or bitcoins.

Electronic money offers speed across countries and a rapid level of anonymity makes electronic money chosen as the payment of choice for certain communities. Cryptocurrency is intended to replace conventional money in transactions. Basically, money functions as a medium of exchange, namely with money people can exchange it for the goods/services needed.

According to Article 1 point 1 of the Currency Act explains the following:

"Currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as rupiah".

From the definition as mentioned above, it can be seen if something is said to be money when it is legalized or adopted by a legitimate government. These conditions are cumulative, so that if certain conditions are not met, then an object cannot be used as money, electronic money does not meet the conditions, can be standardized, has a stable value and sufficient amount so that bitcoin clearly cannot be said to be money. Legally, the government prohibits the use of virtual currency as a type of payment instrument. However, the government has not yet issued clear regulations regarding the buying and selling of virtual currencies among the Indonesian people.

The government is still conducting studies on bitcoin and other cryptocurrency products. Bitcoin participated in obtaining a response from Bank Indonesia in article 27 letter a of Bank Indonesia Regulation Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing stating "The implementation of Payment System Services in addition to complying with Bank Indonesia regulations is also required to comply with statutory provisions, among others provisions governing the 'obligation to use rupiah for payment transactions conducted within the territory of the Unitary State of the Republic of Indonesia'".

The above was later confirmed by Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Operators which prohibits all financial technology providers from carrying out payment system activities using virtual currency, one of which is bitcoin. The development of bitcoin must be of concern to the government because it is accompanied by risks and aspects of the threat of abuse. Moreover, the bitcoin concept uses a decentralized authority transaction system without being supervised by a third party who verifies using a digital signature at the time of the transaction or is called a peer to peer system, without being monitored by the state or legislation.

Bank Indonesia has assessed that digital currencies are vulnerable to money laundering practices because transactions without going through a legitimate institution. This proves that there is a legal risk of all transactions and the use of digital currency. Therefore, consumers have the potential to experience losses and do not get guaranteed legal protection, for example the

protection and supervision of the OJK and the Deposit Insurance Corporation because the money does not have a physical form. On the other hand, BI is currently unable to provide certainty regarding the use of digital currency. However, it is not impossible that the use of digital currency will be increasingly known to the public.

Currently, at least it is known that Go-pay, OVO, and other digital money such as LinkAja are a synergy of SOEs as competitors in the digital payment industry. This illustrates the phenomenon that digital money has slowly become known to the public, but is not yet familiar so that the position of digital money is now triggering various negative reactions to perceptions as legal tender according to regulations.

From this, it can be understood that in Indonesia there are still minimal regulations that fully regulate matters relating to virtual currencies. The Indonesian government currently only provides statements to the public regarding virtual currencies. From the point of view of legal certainty theory, there is a legal vacuum regarding virtual currencies in Indonesia. The public is not aware of the guidelines on what orders need to be carried out or prohibitions that must be observed on virtual currencies. This causes uncertainty and the lack of legal protection provided by the government to the public and the legal position of virtual currencies in Indonesia is still biased.

Whereas in the course of crypto assets there are potential risks, such as money laundering practices in the world which have soared up to 30% and even reached hundreds of trillions of rupiah. Money laundering is defined as the process of disguising the origin of illegally acquired money. This is done by sending it to a legal business. Since 2017, its value has almost crossed 33 billion US Dollars. The nominal comes from cryptonative crimes, such as sales on the black market or ransomware attacks and the profits are in crypto instead of fiat currency. Chainanalysis is not surprised by this increase in activity, as it is linear with the growth in legitimate and illegal crypto activity.

Money laundering occurs because of the combination of confidentiality and high protection offered to bitcoin users so that criminals are attracted. The focus of money laundering includes legal tax avoidance, the costs and impacts of international criminal activity, terror financing, the risk of official corruption, and the national economy. To prevent the various risks above, the only thing that countries can do is only to establish a more uniform standard definition of law globally. Command control techniques are needed to control the direct regulation that is presented. Direct regulation refers to the regulatory stage that focuses directly on the regulation of the industry itself as a separate activity.

In the cryptocurrency ecosystem, it appears that some cryptocurrency externalities stick out when they come into contact with the real world. The risk that has been discussed previously is a real form of interaction between virtual and real systems. The interaction as above is often carried out by criminals who have high flying hours, therefore regulations are expected to minimize risk by focusing on intermediaries who facilitate interactions between the crypto currency market and the real economy. This regulation can be understood as a form of indirect regulation, because it refers to partners as third parties, when bitcoin will be exchanged into legal currency in certain countries.

From the development of various crimes above, of the approximately US 8.6 billion acts of money laundering, it was detected that a percentage of 17% was used for decentralized financial

applications according to the company. This activity also increased from 2020, which was 2%. These activities refer to sectors that have facilities for crypto-currency financial transactions other than traditional banks. The traditional increase in value received comes from illicit addresses seen in mining pools, high-risk exchanges and mixers. Mixers usually mix crypto funds that are likely to be identified or compromised with others. This was done to hide the original source of the money.

When it is necessary to investigate money laundering, the main strategy is to follow the money. Considering that the details of all bitcoin transactions are distributed to all account holders in a master report, analysis of transaction flows and values against the time of the crime should make it possible to find out the pseudonyms of the bitcoin users involved and their transaction history. A possible obstacle is associating a pseudonym with someone, given the decentralized nature of bitcoin making it complicated. Bitcoin and virtual currencies are still widely used for crime, but they have not yet been fully detected on the criminal justice radar. It is then the obligation of law enforcement agencies to ensure that the risks are widely understood and prevented.

In 2021, released from the financial product comparison site finder.com stated that cryptocurrency transactions in European, Asian, and American countries increased by 881%. Based on data, the lowest adoption rates for cryptocurrencies are the UK and the United States, which are 8% and 9%, respectively. Then with high numbers in various Asian countries such as the Philippines 28%, Malaysia 29%, and in Indonesia and India 30% of respondents stated that they had bought crypto. In Indonesia, CoFTRA recorded that the number of crypto asset customers touched 7.5 million people at the end of 2021. This number has almost doubled compared to 2020 with 4 million people. The transaction value in Indonesia has grown to around IDR 478.5 trillion until July 2021. This value has increased compared to 2020, which was IDR 65 trillion.

Judging from the various phenomena above, currently there are many special regulations such as the CoFTRA regulations which still only regulate guidelines related to virtual money, while the general regulations actually regulate protection but are not complete and many are not in accordance with the times. The general regulation is for example Law No. 8 of 1999 concerning Consumer Protection which in article 19 paragraph (1) explains "business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to goods or services produced or traded". This law has now been included in the National Legislation Program by the House of Representatives of the Republic of Indonesia, and has been proposed since 17 December 2019 by the Indonesian House of Representatives, the Government, the DPD to be updated, but until now the new Draft Law on Amendment to Law No. 8 of 1999 concerning Consumer Protection has not been ratified because the preparation and discussion has not been completed. This of course has an impact on the legal protection of cryptocurrency users.

In addition to the Consumer Protection Law above, there is also the Electronic Information and Transaction Law which seeks to provide protection in article 9 which explains that "every business actor who offers electronic products must provide complete and correct information relating to contract terms, manufacturers, and products offered".

Then for protection based on other provisions it is also stated in the Criminal Code, specifically article 378 which stipulates that "anyone with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by deceit, or a series of lies, moves

other people to to hand over something to him or to give him a debt or write off a debt, he is threatened with a debt with a maximum imprisonment of four years.

Based on the discussion above, it can be understood that direct legal protection for cryptocurrency investors has not yet received attention, because the various special provisions that exist have not fully regulated the protection process as well as legal action (legal procedures). However, if based on general regulations such as the Consumer Protection Law, the ITE Law, the Criminal Code has tried to regulate the protection and legal action, even though it is still very limited and not in accordance with the times.

But in the old Consumer Protection Act, it was actually explained that cryptocurrency actors (investors) could get compensation during the transaction. However, the overall legal protection for investors is still minimal and adequate additions are needed because the law is still manual or traditionalist oriented so it cannot judge the various risks of using digital money, because digital money itself does not exist. The law above still has many shortcomings that need to be addressed and needs to be added and must be prioritized by the DPR so that it can be ratified and implemented immediately, considering that the value of cryptocurrency continues to increase, but its protection is in the opposite direction and still refers to the old Consumer Protection Act.

CONCLUSION

Legal protection for cryptocurrency investors in particular has not received specific attention, because the various special provisions that exist have not fully regulated the protection process as well as legal action. However, if based on general regulations such as the Consumer Protection Law, the ITE Law, the Criminal Code has tried to regulate the protection and legal action, even though it is still limited. Actually, the old Consumer Protection Law has tried to provide protection to users, but it is not in accordance with the times so that it is currently included in the National Legislation Program by the DPR RI, but the discussion has not been completed so that it has an impact on investor protection.

SUGGESTION

Of the various existing laws, it would be better if all the laws governing the cryptocurrency, especially the Consumer Protection Law which has been included in the national legislation program since 2019 were immediately discussed or could be included in the discussion of the Omnibus Law so that In the midst of the rapid development of digital money, investors as users can continue to invest safely and receive adequate legal protection.