

# Legality of Cryptocurrency in Indonesia

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## Abstract

The existence of cryptocurrency has attracted controversies world wide. Many people, including Indonesian, had benefit from cryptocurrency, meanwhile there were also more people suffered lost from “investment” in cryptocurrency. The aim of this research was to make clear the legal status of cryptocurrency in Indonesia. This research was a normative legal research. It conducted literature review to obtain the required data. Data obtained and used in this research were secondary data, which consisted of primary, secondary and tertiary legal documents. Data obtained from literature review were analysed using normative comparative method with qualitative approach. The result proved that as currency, the existence of cryptocurrency for payment was legally prohibited. The involvement of Indonesian citizen in the “investment” in form of cryptocurrency can be treated as against public policy even though the issuance of such cryptocurrency was subject to foreign applicable laws.

**Keywords:** Financial Technology, Blockchain, Cryptocurrency

## 1. Introduction

The tremendous development in technology has somehow influenced many other aspects of human life. One among them was the rapid development of financial engineering using financial technology abbreviated as fintech. Under current stage, fintech involved in many segments of financial activities. However in short they can be roughly divided into four segments. Those were financing segment, asset management, payment and other. As payment, cryptocurrency was known the “alternative” payment currency involving blockchain (Dorfleitner, Hornuf, Schmitt and Weber, 2017) (Pejkovska, 2018) (DTCC, 2017) (Board of Governors of The Federal Reserve System, 2016).

In short, cryptocurrency as the result of technology advancement in finance was created to become “currency” in the form of digital asset, which can be used as payment or exchange in virtual world (Okhuuse, 2017). Cryptocurrency can also be seen as a system that uses cryptography to allow transfer and exchange of digital currency in a distributed and decentralized manner (Dourado and Brito, 2014). Cryptocurrency is a peer to peer network, which at the same time can become a distributed public database (such as in blockchain) an internet protocol or a digital asset. From those points of view, cryptocurrency can be treated as digital assets, medium of exchange, payment rail and other non-monetary uses (Everette et. al, 2017).

The first cryptocurrency, bitcoin, was introduced in 2008 by Satoshi Nakamoto (Nakamoto, 2008) (Gupta, Lauppe and Ravishankar, 2017) (Dubey and Team, 2017). After Bitcoin, there were many others cryptocurrencies introduced. Some of them were Ethereum (D’Alfonso, 2016), Ripple, NEM and Litecoin (Dubey and Team, 2017). Bitcoin as of 15 August

2017 had its market capitalisation of \$64,36 billion (Sequant Capital, 2017). Bitcoin was first introduced by Nakamoto as a peer to peer electronic system of payment (Nakamoto, 2008). It then developed into blockchain that kept all the transaction data in a public ledger which handle all the users' data anonymously (Dubey and Team, 2017). Different from bitcoin, ethereum, besides it can function as a method of payment, it can also run applications. It can create smart contract that can be selfly enforced and excuted. User can define specific conditions which when there were fulfilled, user will be paid automatically by the system (D'Alfonso, 2016) (Sequant Capital, 2017).

The purpose of this research was to explore and find out the legality of cryptocurrency in Indonesia.

## **2. Literature Review**

As mentioned before, cryptocurrency can take forms of method of payment, distributed database (the big data) and digital asset. Result of research found that cryptocurrency was never legally acknowledged in each single country in the world as official currency for payment. Gibraltar was the only country that allowed cyrptocurrency as distributed ledger technology and coin as digital asset, meanwhile many other countries only acknowledged cryptocurrency as digital asset, that can be bartered or used as "payment" in form of exchanging goods (Law Library of Congress-a, 2018 ). Some countries allowed the issuance of cryptocurrency in form of coin, in the form of Initial Coin Offering (ICO), that legally made cryptocurrency as digital asset, that can be purchased and sold and sometime used in payment by means of barter or exchange. As digital asset, cryptocurrency can also become investment products such as bitcoin. China, Macau and Pakistan were countries that prohibited the ICO process (Law Library of Congress-b, 2018).

Algeria, Bolivia, Monaco, Nepal, Pakistan dan Vietnam were some countries that totally banned any and all activities that invlolved cryptocurrency. Meanwhile Bangladesh, Thailand, Iran, Lithuania, Lesotho, China and Colombia did not directly prohibit their citizen to invest in cryptocurrency but prohibiting their financial institutions from facilitating any kind of transaction that involved cryptocurrency. There were much more countries that did not provide any specific regulations with respect to or in relation to cryptocurrency. There were no clear provision in those countries as whether they prohibited or acknowledged the legality of cryptocurrency (Law Library of Congress-b, 2018).

## **3. Research Methodology**

Data used in this research was secondary data, that were were collected through literature review. Literature review was conducted through electronic machine "google scholars" using keywords of "financial technology". "fintech", "cryptocurrency", "blockchain" and "bitcoin". Data obtained were analysed using qualitatvive method. Analyses were made to understand the concept of cryptocurrency and its legal status in Indonesia according to Indonesian prevailing rules and legislation.

#### 4. Results And Discussion

Research found that in year 2016 Indonesian Financial Authority Service (OJK) has issued regulation on fintech. The regulation was OJK Regulation No.77/POJK.01/2016 regarding Money Lending Service based on Information Technology. The regulation does not provide any provision on cryptocurrency. Just recently, on 16 August 2018, OJK issued Regulation No.13/POJK.02/2018 regarding Digital Financial Innovation in Financial Service Sector. The Regulation mainly regulates the operation of digital financial innovation, that can only be licensed following the successful trials over the regulatory sandbox trial model.

In 2017, Bank Indonesia (BI) has also issued BI Regulation No.19/12/PBI/2017 regarding Financial Technology Operation. Based in the Regulation it was very clear that no virtual currency is allowed for payment, eventhough the used of blockchain system is not prohibited. All payment, including payment using financial technology must use Rupiah as the only legitimate currency in Indonesia. To allowed an organization to conduct financial technology, the organization must pass the regulatory sandbox trial model. Only those who can pass the trials can operate using financial technology.

As mentioned in BI Regulation No.19/12/PBI/2017, with respect to the legitimate currency, Indonesia had promulgated Law No.7 Year 2011 regarding Currency. The law, subject to specific provisions in the law, only acknowledged Rupiah as the national currency applicable as payment currency in Indonesia. Based on Law No.1 Year 1946 regarding Criminal Regulation, there were five articles, from article 9 to article 13 that prohibit the used of other form of instruments, besides the legal currency for payment. This meant that cryptocurrency cannot be used as legal currency for payment.

As for barter and exchange medium, there was no clear regulations. To be able to be used for barter, cryptocurrency must be treated as asset, the “digital” asset. Therefore the answer as whether cryptocurrency can be used for barter or exchange and therefore can be used as investment underlying products, was subject to the acknowledgement of cryptocurrency as asset. According to Indonesian Civil Code, with the concept that the law of property is a closed system, whereby “something” can only be declared or legally recognised or acknowledged as an “asset”, including digital asset, only and if only it is regulated or recognised in a specific legislation (Widjaja, 2005). Accordingly, since there was a clear regulation issued by BI, that totally prohibit the issuance of cryptocurrency for payment, it somehow made cryptocurrency cannot be legally treated as digital asset. This also meant that any investment agreement that involving cyrptocurrency entered by Indonesian citizen was obviously against public policy even though the existance of the cryptocurrency was subject to foreign applicable laws. That was why BI, OJK and Majelis Ulama Indonesia warned Indonesian people to be carefull with Bitcoin investment (<https://finance.detik.com/>, 2018). Even BI has clearly prohibited the sale and purchase of bitcoin (<https://www.cnnindonesia.com/>, (2018). However in 2019, *Badan Pengawas Perdagangan Berjangka Komiditi* (Commodity Futures Trading Supervisory Board) has issued its BAPPEBTI Regulation No.5 Year 2019 regarding Technical Provision on the Organization of Physical Market of Crypto Asset in Futures Exchange, which allow the trading of crypto asset subject to the fulfilment of the requirements under the Regulation.

## 5. Conclusion

The research proved that the issuance of cryptocurrency was prohibited under Indonesian laws and regulations. Cryptocurrency was never recognised as a currency, neither as “digital” asset. Investment related to cryptocurrency was against public policy and cannot be enforced in any court in Indonesia.

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