



CRYPTO ASSET TRENDS IN INDONESIA: NEW CHALLENGES TO INDONESIAN REGULATIONS

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Abstract

Cryptocurrency started its boom in Indonesia in 2013 and ever since, its popularity has been soared in the community, especially among younger generations. Most enthusiasts agree that it is a captivating investment instrument due to its high return in the past years. The covid-19 pandemic strike, which led to the series of lockdowns, played a major role in echoing the digital asset's popularity. The rapid growth of the asset's adoption invites questions of regulatory necessity and the role of related regulators. This writing addresses those questions and, in the end, this paper finds that the regulators need to identify the economic problems arising with the existence of the crypto assets and regulate sufficiently to ensure the innovation is not halted due to overregulation. This writing uses a juridical-normative research method with a case approach. Regulations made by the Government as the regulator are needed in order to realize protection, legal certainty and harmony in regulating investment activities and payments with cryptocurrency.

Keywords : *Cryptocurrency, regulation, regulators*

I. Introduction

A. Background

Since centuries ago, money has been an extraordinary and influential invention for human life. Money has a long history and has also experienced enormous progress since it was first discovered. The existence of money makes transactions easy and replaces the role of barter. ¹In contemporary times like today, with the increasing era of globalization in the economic sector, it has resulted in the need for easy, fast and secure transactions. Along with the development of technology and science, transactions are currently developing, which previously used money now using virtual currency or *cryptocurrency*. Using virtual money for transactions does not require a third party (*peer to peer*) such as a bank. Transactions are carried out quickly, are not hindered by space and time, are cheaper, and are relatively more

¹ Yuniar Farida, et. Al, "Analisis Performa Mata Uang Virtual (Cryptocurrency) Menggunakan Preference Ranking Organization Method For Enrichment Evaluation (Promethee)", *Rekayasa*, Volume 14, Nomor 1, (Maret 2021): 1-9



secure in confidentiality. *Cryptocurrencies* are virtual currencies that are not regulated, and are usually controlled and issued by their users.²

Wijaya said *cryptocurrency* first appeared in 2009 which was discovered by someone who claimed to be named Satoshi Nakamoto. Syamsiah said that *cryptocurrency* or virtual currency is a currency system that is the same as standard currency which allows its use to make virtual payments for business transactions without any service fees but has official authority. According to Bhiantara, *cryptocurrency is a blockchain* -based technology that is often used as virtual currency. This virtual currency has the same function as conventional currency. Where conventional money is visible, virtual currency is invisible and uses a *hash* -bound data *block system* as its validation. *Blockchain* technology in virtual currency is a protector of all transaction activities that exist in virtual currency. *Blockchain* is computer software that contains a *data base* and functions like a ledger in world accounting with a system that is connected to all computer networks and virtual currency users around the world *peer to peer* following a consensus protocol.

Virtual currency or *cryptocurrency* has the advantage that transactions do not require a third party (*peer to peer*) such as a bank. This means that transactions with virtual currencies are designed so that buyers and sellers transact directly. Cryptographic transaction practices that have a function for security so that there is no potential for counterfeiting and duplicating. Transactions are carried out quickly, are not hindered by space and time, are cheaper, and are relatively more secure in confidentiality. Virtual currencies are relatively unaffected by inflation and unaffected by changes in government. The value of this virtual currency is like gold in general. Exchange rate fluctuations in virtual currencies depend on user requests and are also influenced by the acceptance or rejection of a country. This means that if the amount of virtual currency is small while the demand is large, then the value of the virtual currency increases, and vice versa. But there are drawbacks to using virtual currency such as there is no underlying asset, it is not supervised by a responsible authority, and there is no owner's identity so it has the potential to be used for crime. There are risks to *cryptocurrency* if it is used as an investment instrument. *Cryptocurrency* does have a high *return* or profit rate, but that doesn't

² Asep Zaenal Ausop”, “Teknologi Cryptocurrency Bitcoin Untuk Investasi Dan Transaksi Bisnis Menurut Syariat Islam”, *Jurnal Sosioteknologi*, Volume 17, Nomor 1, (April 2018), 74-92.

mean that high *returns* don't come with risks. *Cryptocurrencies* have extreme volatility. What this means is that the increase or decrease in the value of virtual currency moves very quickly. *Cryptocurrency* also has no *underlying* asset that underlies the value of the virtual currency.

The presence of *cryptocurrency* has become a global phenomenon such as the United States and Japan, it is inevitable that this virtual currency will exist. Several countries such as Russia, Bolivia, and Iceland reject the presence of this virtual currency as a transaction. Unlike Japan, Singapore, the United States and the United Kingdom, these countries allow the presence of virtual currency as transactions or investments. But this phenomenon in Indonesia still has pros and cons from the aspect of legality and regulation of its use. The agency that oversees this virtual currency is the Commodity Futures Trading Supervisory Agency (Bappebti). CoFTRA continues to study and analyze and issue several regulations regarding virtual currency assets. According to the *Global Web Index* , Indonesia ranks fifth in the world's *cryptocurrency users* with 10% of the number of internet users in Indonesia. The factor that causes the large number of virtual currency users in Indonesia is that Indonesia is entering an era of demographic bonuses. The demographic bonus is evidenced by the large number of productive people (born 1981-2000) in Indonesia. Communities included in the birth rate can be directly involved in technology-based creative industries.

The number of virtual currency users or investors in Indonesia has also increased due to the *Covid-19 Pandemic* . The presence of *Covid-19* in December 2019, which is thought to have originated in China and spread throughout the world, especially Indonesia, has had an extraordinary impact on various aspects and human activities. The first case in Indonesia occurred in March 2020 and caused massive panic in society and had an impact especially in the fields of finance, investment and the economy. With the establishment of the *Covid-19 outbreak* as a pandemic, it has a negative impact, especially in the economic sector. Declining sales, many companies experiencing financial crises and going out of business, rising unemployment, and changing consumer behavior have made a shift in the global economy. This drastic shift is having repercussions in businesses and economies around the world and

affecting equity and alternative investments such as virtual currency or *cryptocurrency markets*.³

The pandemic provided its own blessings for virtual currencies or *cryptocurrencies with an increasing number of cryptocurrency investors*. With the *Covid-19 Pandemic* being experienced by the whole world, especially Indonesia, people are starting to realize the importance of investing and taking the initiative to invest with virtual currency or *cryptocurrency*. The main reason for the increase in virtual currency investors is that virtual currencies or *cryptocurrencies* have a *safe-haven role* and the fluctuations in value are determined by *supply* and *demand*. Another reason is that during the *Covid-19 Pandemic* the value of the Composite Stock Index (IHSG) on the Indonesia Stock Exchange (IDX) fell and was unstable, so that capital market investors turned to investing their money in virtual currency. CoFTRA recorded that the number of virtual currency or *cryptocurrency investors* in February 2021 reached 4.2 million investors. A new step by the public to invest in virtual currency or *cryptocurrency* to seek new sources of income through internet technology.

With so much public interest in investing through crypto currency or *cryptocurrency instruments*, it is not accompanied by binding regulations and regulates investment activities through *cryptocurrency* and there is no harmony and legal uncertainty. There is disharmony and legal uncertainty and it is still implicit in the regulations governing the existence and permissibility of virtual currency or *cryptocurrency* circulating in Indonesia. The Ministry of Trade through the Commodity Futures Trading Monitoring Agency (Bappebti) continues to prepare regulations and issue them to ensure the legality and safety of using virtual currency or *cryptocurrency*. CoFTRA continues to study and analyze and issue several regulations regarding virtual currency assets. In contrast to the Financial Services Authority (OJK) which prohibits transaction or investment activities with virtual currency or *cryptocurrency* in Indonesia. That way *cryptocurrency* transaction activities in Indonesia do not yet have major regulations or regulations. In line with OJK, Bank Indonesia (BI) in 2014 stated that virtual currency is not legal as a means of payment. For investment activities with virtual currencies, the Government through Bank Indonesia prohibits investment activities with virtual currencies

³ Darmayanti, Novi, Titik, dan Fitrah, "Dampak Covid-19 Terhadap Perubahan Harga dan Return Saham", *Ekuitas : Jurnal Ekonomi dan Keuangan*, 4 (2020).

so that the public does not get too far involved or involved in transactions or investments. The same argument was made by Mrs. Sri Mulyani as the Minister of Finance. Sri Mulyani said that *cryptocurrency* has no legal basis as a transaction tool or investment instrument.

However, legal uncertainty regarding the existence and permissibility of circulating virtual currency in Indonesia does not mean it is deadlocked. With so many users of this virtual currency, it is only appropriate for the regulator or the Government of Indonesia to guide the users in good money management and protection from consumer activities. More than that, the Government immediately made policies so that virtual currency users would not be trapped in the wrong decisions they made in investing. In addition, a regulation is needed regarding whether or not this virtual currency is allowed to be used for transactions or investment instruments. These regulations must be considered in considering the advantages and disadvantages of virtual currency circulation, in order to carry out the mandate of the Indonesian Constitution, namely Article 28D and Article 28 G of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). The government has a role as a regulator (policy holder), dynamist (movers), and facilitator in carrying out state affairs. The government's role as a regulator is to determine and prepare directions for creating a balance in the implementation of development (issuing regulations in the framework of the effectiveness and orderly administration of development).

With so many users and the absence of a legal umbrella, the Government as the regulator must immediately take a stand in view of this phenomenon. One of the roles of the regulator or the Government in the circulation of virtual currency in Indonesia is to become a forum for ensuring clean transactions in the trading process using virtual currency. The Indonesian government as the regulator must hurry quickly in terms of preparing regulations or rules to regulate the existence of virtual currency or *cryptocurrency*. Because existing regulations are not perfect and are still implicitly regulated. In addition, in Indonesia there have been many users and entrepreneurs, such as in Bali, accepting Bitcoin payments and increasing virtual currency or *cryptocurrency investors* during the *Covid-19 Pandemic*. The consequences of this phenomenon resulted in the emergence of unlawful acts based on existing rules. The result is that there is a potential for crime in the use of virtual currency and threatens national security.



B. Problem Formulation

Based on the explanation on the background above, the problems that are discussed in writing this journal are

1. What are the current regulations regarding crypto assets in Indonesia?
2. What is the role of regulators in supporting the development of crypto asset innovation in Indonesia?

C. Research Methods

This legal writing uses an analytical method with a normative juridical approach by focusing on problem formulation and hypotheses through sampling, measuring variables, and collecting related data and at the end of writing a conclusion will be explained. Furthermore, the research approach used is a legal approach which is carried out by researching the law and analyzing regulatory provisions related to virtual currency or *cryptocurrency* and explaining the role of the government as a regulator in dealing with the phenomenon of the existence of virtual currency or *cryptocurrency* and increasing virtual currency or cryptocurrency investors. *during the Covid-19* Pandemic in Indonesia. The writing of this law also uses an approach with descriptive qualitative research methods and in-depth data analysis. The sources used in this paper consist of primary and secondary. Primary sources are obtained from laws and regulations and other types of regulations such as Bank Indonesia Regulations, Financial Services Authority Regulations, and Ministry of Finance Press Releases. For secondary sources obtained from books, journals, and sources from the internet.

II. DISCUSSION

A. *Cryptocurrency Trends in Indonesia and the Increase in the Number of Investors during the Covid-19 Pandemic*

The world has entered an era of disruption or commonly known as the industrial revolution 4.0, where various aspects of human life synergize with technological developments. Technological progress in contemporary times has been extraordinary and covers various fields such as economics. An example of the economic aspect in its development

in synergy with technological aspects is the presence of virtual currency or *cryptocurrency* . Using virtual money for transactions does not require a third party (*peer to peer*) such as a bank. Transactions are carried out quickly, are not hindered by space and time, are cheaper, and are relatively more secure in confidentiality. This development phenomenon must also be accompanied by developments in the legal aspect. The development of the legal aspect is by making a regulation by the regulator in addressing this phenomenon and providing legal protection in terms of technology. In addition, there must also be adjustments from the law enforcement system. Wijaya said *cryptocurrency* first appeared in 2009 which was discovered by someone who claimed to be named Satoshi Nakamoto by introducing Bitcoin. Several countries such as Russia, Bolivia, and Iceland reject the presence of this virtual currency as a transaction. Unlike Japan, Singapore, the United States and the United Kingdom, these countries allow the presence of virtual currency as transactions or investments. *Cryptocurrency* can be used as an investment instrument because *cryptocurrency* can also be seen as a trading commodity whose profits are obtained through the difference between the selling price and the buying price. The number of virtual currencies must of course be based on the foresight of investors in determining investment choices. So investors need an appropriate method to accommodate these criteria.

CoFTRA has recorded an official *market exchange based on Indonesian law*. Bappebti made a record because of the high number of users of virtual currency in Indonesia and prepared regulations for the entry into force of virtual currency in Indonesia. CoFTRA has recorded on the official Bappebti website, namely *bappebti.go.id* , as of January 10, 2021, there have been 13 *market exchanges* that have been registered with Bappebti, including:

No	MarketExchange	Company
1	Indodax	PT. Indodax National Indonesia
2	Tokocrypto	PT. Indonesian Crypto Blessing
3	Upbit	PT. Upbit Exchange Indonesia
4	Triv	PT. The Three Main Cores
5	Door	PT. Anywhere Door
6	Zipmex	PT. Zipmex Exchange Indonesia
7	Taste	PT. Prima Crypto Exchange

8	Luno	PT. Luna Indonesia Ltd
9	my account	PT. My account is Dotcom Indonesia
10	Indonesia Digital Exchange	PT. Indonesia Digital Exchange
11	my coins	PT. Create Digital Coins
12	Bitocto	PT. Trinity Investama Blessing
13	Plutonext	PT. Plutonext Digital Assets

Source: Secondary Data of Bappepti

The presence of *cryptocurrency* has become a global phenomenon such as the United States and Japan, it is inevitable that this virtual currency will exist. But this phenomenon in Indonesia still has pros and cons from the aspect of legality and regulation of its use. The agency that oversees this virtual currency is the Commodity Futures Trading Regulatory Agency (Bappepti). CoFTRA continues to study and analyze and issue several regulations regarding virtual currency assets. *The Global Web Index* notes that Indonesia ranks fifth in the world for *cryptocurrency users* with 10% of the number of internet users in Indonesia. The factor that makes this happen is that Indonesia is entering a phase of the demographic bonus era. The demographic bonus will reach its peak in 2025-2030. Rudiwantoro explained that with this demographic bonus, Indonesia's population will be dominated by productive age groups, who are vulnerable to births in 1981-2000. Records prove that in 2016 Indonesia had a population with a birth vulnerability of 1981-2000 of 40% of Indonesia's total population. This generation is easily involved directly with the technology-based creative industry. Based on high knowledge of financial technology products.⁴

Other data shows that Indonesian people make virtual currencies such as Bitcoin as investment instruments, where the data shows that there are around 1.14 million investors. This figure proves the relatively high intensity of the existence of Bitcoin as an investment instrument. In 2018 Bank Indonesia recorded and identified as many as 44 traders or entrepreneurs in Bali who had made transactions using virtual currencies such as Bitcoin. Types of businesses that enforce transactions with virtual currency such as cafes, hotels, vehicle

⁴ Nurul Huda, et.al, "Risiko dan Tingkat Keuntungan Investasi Cryptocurrency", *Jurnal Manajemen dan Bisnis: Performa*, Volume 17, Nomor 1 (Maret 2020), 72-84.

rentals, and tour packages. This phenomenon is caused by social phenomena influenced by foreign cultures, which in fact are used to transacting with virtual currencies.

Apart from Indonesia experiencing a demographic bonus era as a factor for the large number of virtual currency or *cryptocurrency investors*, the non-natural disaster of the *Covid-19 pandemic* also contributed to an increase in virtual currency investors. The occurrence of non-natural disasters The *Covid-19 pandemic* had an impact, namely stock exchanges around the world experienced extraordinary volatility. Experiencing extraordinary volatility results in the value of the stock performance of various companies. Stock price indices on various exchange floors around the world simultaneously decreased. The decline in indices around the world, especially Indonesia, was due to the reflection of investors' fears about the uncertainty of the world economy during the *Covid-19 Pandemic*. Investors simultaneously sell their shares to liquidate in order to prevent bigger losses. This condition occurred in Indonesia in trading on the Indonesia Stock Exchange (IDX), which experienced a decline. In addition, the economic recession caused by the economic crisis, namely the slowdown in economic performance resulting in a negative lift for two quarters a year. Economic growth in the second quarter of 2020 in Indonesia experienced a recession or was in the negative zone, namely -5.32%.

Before the impact of the *Covid-19 Pandemic* was felt in Indonesia, the Composite Stock Price Index (IHSG) on December 30 2019 noted that the JCI was showing good performance with a level of 6,299. The effects of the *Covid-19 Pandemic* have been felt in Indonesia at the beginning of 2020, having had the impact of a decline in the stock index in Indonesia. So that the JCI decreased to a level of 5,452 at the close of 28 February 2020. The decline continued to occur in the JCI when the Government of Indonesia announced the first case of *Covid-19* on 2 March 2020, the JCI fell to a level of 5,361 and continued to fall until it touched 3,937 on 23 March 2020. On April 28, 2020 Inarno Djajadi as Main Director of the IDX said that the JCI decreased by 26.43% to 4,635 and decreased market capitalization by 26.35% to 6,300 trillion, there was also a decrease in daily transactions of 1.49% to 462 thousand times. Inarno mentioned again that a significant decline that occurred in trading on the stock exchange also occurred earlier, namely March 2020 after the Government announced the first case of a positive patient for *Covid-19*. The Indonesia Stock Exchange (IDX) noted a significant decline in capital market activity on April 19-23 2021. The average daily transaction value of shares is

only IDR 8.65 trillion, down 11.3% from the previous week. The average transaction volume decreased by 5.95% to 14.765 billion shares. Meanwhile, the average daily transaction frequency also decreased by 12.44% to 897,876 transactions. The decline, according to the Director of Trade and Management of IDX Exchange Members Laksono W. Widodo, was due to the existence of other investment instruments, namely virtual currency or *cryptocurrency*. Widodo's concern was based on a decrease in capital market investors and an increase in virtual currency or *cryptocurrency investors*.⁵

CoFTRA recorded that the number of virtual currency or *cryptocurrency investors* in February 2021 reached 4.2 million investors. Another note produced by the IDX is that the number of capital market investors is 4.5 million investors. In this way, the number of virtual currency investors has almost exceeded that of capital market investors in Indonesia. According to the Chairperson of the Indonesian Crypto Asset Traders Association (Aspakrindo) Teguh Kurniawan, data on the number of virtual currency or *cryptocurrency investors* is not entirely accurate. Teguh estimates that there will be 10 million crypto asset investors by the end of 2021 and in the next four years it could reach 26 million people. The dominant generation as virtual currency or *cryptocurrency investors* is the age group of 25-34 years. Teguh continued his explanation that Indonesia's very large population, which is 3.5% of the world's population, provides the potential for the realization of 270 million digital wallets that can be accessed through financial services. Sidharta Utama as the Head of CoFTRA said, with high public interest in investing in virtual currency or *cryptocurrency instruments*, the price of virtual currencies such as *Bitcoin* soared. The price of one bitcoin in early 2020 was recorded at US\$ 8,440 then at the end of 2020 it increased to US\$ 29,000, and in mid-February 2021 the price rose to US\$ 48,149.

The instability in the value of the JCI in the midst of an uncertain economy has forced investors to switch to other instruments that are more stable and have a *safe haven role*. The existence of the *Covid-19* Pandemic has had a good effect on virtual currency or *cryptocurrency*, namely the price of virtual currencies such as *Bitcoin* has increased significantly. Increases can occur in virtual currencies or *cryptocurrencies* because virtual

⁵ Safrezi Fitra, "Uang Kripto Mulai Jadi Pilihan Investor, Mengancam Pasar Modal?", <https://katadata.co.id/safrezifitra/indepth/6087ff2550b39/uang-kripto-mulai-jadi-pilihan-investor-mengancam-pasar-modal>, diakses 24 Desember 2021.

currencies are not affected by the decline in the world economy and government policies. Rise or fall in the value of virtual currency caused by *Supply* and *Demand* . The *Covid-19* pandemic was used as a vessel as a natural laboratory to research and study how far virtual currency or *cryptocurrency* as a hedging instrument or *safe-haven* is stable and consistent. Virtual currency or *cryptocurrency* which has a useful hedging role to deal with the global economic recession due to the *Covid-19 Pandemic* . Proven success in the United States virtual currencies such as *Bitcoin* and *Ethereum* as a stock hedge. Especially in developing countries such as Indonesia, Malaysia, Nigeria and South Africa, it is agreed that investment with virtual currency instruments or *cryptocurrencies* is an alternative investment. It is mentioned as an alternative investment due to the average reversal process in the net pairwise volatility *spillover* between virtual currencies such as Bitcoin and the stock market. Thus, the role of the regulator is needed to make regulations that can be applied to the Indonesian *cryptocurrency market* .

However, is the high number of users of virtual currency in Indonesia accompanied by regulations governing the existence of virtual currency, legal or illegal? As previously explained, existing regulations are still implicitly regulated regarding the existence of virtual currencies. The consequence if it is still regulated implicitly is that there is still an abstraction of clarity or certainty regarding the protection and supervision of the use of virtual currencies in terms of transactions and investments, thus causing several real consequences for the Indonesian state. Regarding the explanation of the consequences and the role of regulators in creating regulations to address the phenomenon of the existence of virtual currency or *cryptocurrency* in Indonesia, this will be explained in the following discussion.

B. Regulatory Reaction to the Phenomenon of *Cryptocurrency Trends* in Indonesia

Technological advances have an impact on all aspects and in particular the financial sector is affected by technological advances with *new creations* such as banking transactions in the process of transferring money from one bank to another. This phenomenon has been responded to by the Government as the regulator by establishing regulations. The Ministry of Trade through Bappepti has collected data regarding the provisions for *cryptocurrency assets* that are eligible to be traded on the Indonesian Crypto Asset Physical Market through regulations, namely Bappepti Regulation Number 7 of 2020 concerning Determination of Lists

of Crypto Assets that can be Traded on the Physical Crypto Asset Market (Bappepti Regulation No 7 of 2020). The number of tradable crypto assets is 229 crypto assets such as BTC, USDC, LBC, LTC, and others. In contrast to Indonesia, the United States has legalized virtual currency. *Crypto Securities Exchange (CSX)* is a *blockchain* -based stock exchange in the United States. The exchange has been registered with the United States Securities or *Securities and Exchange Commission (SEC)*. While in Indonesia the existence of virtual currencies has been explained above, that virtual currencies that may be used that have been recorded by Bappepti and officially have certification status, namely the *Indonesian Crypto-Asset Exchange Monitoring System* or the Indonesian Crypto Asset Exchange Monitoring System by *Digital Future Exchange Indonesia (DFX)*. Apart from providing guaranteed legal status and security, DFX also provides education for investors.

In contrast to the OJK which prohibits transaction or investment activities with virtual currency or *cryptocurrency* in Indonesia. That way *cryptocurrency* transaction activities in Indonesia do not yet have major regulations or regulations. OJK prohibits transactions or investments with virtual currency because there is no legality from Bank Indonesia (BI). Ardela said, there are three factors that virtual currency is banned in Indonesia, namely:

1. It is not yet known about the basic value or basic function of a virtual currency, in contrast to other instruments that have a basic value or function.
2. The difficulty of matching virtual currency with national currency, as the Currency Law confirms that only Rupiah may be legal tender in Indonesia.
3. There is no *underlying* or collateral underlying virtual currency, in contrast to other investment instruments or products.

All transaction activities within the territory of Indonesia must use the currency that has been stipulated by law, namely Rupiah. Some of the legal foundations regarding this matter are:

1. Law Number 7 of 2011 concerning Currency;
2. Law of the Republic of Indonesia Number 6 of 2009 concerning Bank Indonesia;
3. Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Implementation of Financial Technology;



4. Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing;
5. Press Release of the Ministry of Finance of the Republic of Indonesia Number 3/KLI/2018.⁶

Law Number 23 of 1999 concerning Bank Indonesia states that only valid Rupiah money may be circulated and rotated in Indonesia. Followed by Law Number 7 of 2011 concerning Currency, it has been stipulated that only the Rupiah is the official currency in Indonesia. Regarding the clarity or certainty of the position of virtual currency in Indonesia, it has not been regulated more deeply in laws and regulations. However, in a press release from the Ministry of Finance of the Republic of Indonesia Number 3/KLI/2018, it emphasized that this virtual currency was not valid in Indonesia based on the law above. Article 34 of Bank Indonesia Regulation Number 18/40/PBI/2016 states "Payment System Service Providers are prohibited from: a. processing payment transactions using *virtual currency* , and the explanation is: "What is meant by " *virtual currency* " is digital money held by parties other than monetary authorities obtained by means of *mining* , purchasing, and transfers of gifts such as *Bitcoin* , *BlackCoin* , *Dash* , *Dogecoin* , *Litecoin* , *Namecoin* , *Nxt* , *Peercoin* , *Primecoin* , *Ripple* , and *Ven*. Not included in the definition of *virtual currency* is electronic money. In addition, the prohibition on the use of virtual currencies is emphasized in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. The rules regarding only the Rupiah as a legal currency circulating in Indonesia are explained in Bank Indonesia Regulation Number 17/3/PBI/2015 concerning currency, it is explained that to be a currency that can be accepted in the general public must have a stable value or *value* in its use.

The existence of *cryptocurrency* in Indonesia as a transaction tool cannot be carried out. Conventional currencies or those that have been commonly used since their enactment have been integrated with Bank Indonesia so that their circulation and circulation are still directly supervised by Bank Indonesia. While using virtual currency as a transaction tool is so risky because its circulation is invisible because it is not centralized or in this case virtual currency

⁶ Raafi Ghania Razaq, "Legalitas Mata Uang Virtual dalam Perspektif Hukum Indonesia", *Jurnal Lontar Merah*, Volume 1, Nomor 2 (2018), 108-121.

uses a *peer to peer system*. Bank Indonesia is one of the institutions that has monetary authority in the payment system using money so that Bank Indonesia can decide what means of payment apply in Indonesia. In Law Number 7 of 2011 concerning Currency Article 11 explains that Bank Indonesia is the only institution authorized to issue, circulate and/or withdraw and withdraw rupiah.⁷ Virtual currencies such as Bitcoin and other types are an outpouring of technological developments in today's contemporary times. With the combination of technological and financial developments emerging a virtual currency like Bitcoin, adjustments are needed to the effects that occur from the existence of virtual currencies. To respond to the presence of virtual currency, a clear regulation is needed which is well known in Indonesia. There is no definite regulation and it is still implicitly regulated to address the existence of virtual currency. If the Government as a regulator has not moved to prepare regulations for the existence of virtual currency, it means that as a regulator the Government is relinquishing its responsibility in terms of the obligation to provide protection to the public or users of virtual currency in Indonesia.

The first implication if there is no regulation regarding virtual currency as a means of payment and investment is the recognition of the position of virtual currency. Position is an essential part of money, so if the position is not recognized, how can this virtual currency be used. The status of virtual currency is still in *the gray area* causing only a few *e-commerce companies* to enforce it, such as NameCheap, gopulsa.id, and UangKuno.net. The second is that the Government will have difficulty as a supervisor in overseeing the use of virtual currency or *cryptocurrency*. If you want it to be easy in terms of monitoring the use of virtual currency, the government must cooperate with companies that provide virtual currency. It has been implemented in various countries such as Finland, Canada, and Germany. The country has taken a stance by accepting the position of virtual currency as legal tender. Regulators in Germany have categorized virtual currencies like Bitcoin as units of accounting. The recognition of the existence of virtual currency indicates that the regulator has manifested a progressive legal attitude towards the phenomenon of the existence of virtual currency that occurs in society. There will be a symbiosis of mutualism between countries that make regulations and recognize the position of virtual currencies and companies that enforce virtual

⁷ Dwicaksana, Haruli dan Pujjiono, "Akibat Hukum yang Ditimbulkan Mengenai Cryptocurrency Sebagai Alat Pembayaran di Indonesia", *Jurnal Privat Law*, Volume 8, Nomor 2 (2020), 187-193.



currencies as legal tender. The symbiosis that is formed is that the state gets revenue by imposing taxes on every transaction with virtual currency.

The issuance of a position statement by Bank Indonesia in press release Number 16/6/Dkom with the title "Bank Indonesia Statement Regarding Bitcoin and Other *Virtual Currency* " which basically states that virtual currency is not legal tender in Indonesia. That way all the risks associated with using virtual currency are borne by the user himself. Indicates the irresponsibility of the Government and not carrying out the mandate of the Constitution in Article 28 D of the 1945 Constitution of the Republic of Indonesia. The press release is contrary to the principle of international law, namely " *responsibility to protect principle* ". The meaning of this principle is that state sovereignty has implications for state accountability, and the main responsibility of the state is to protect each of its citizens. If it is related to legal certainty, the absence of legal certainty in regulations regarding the existence of virtual currency or *cryptocurrency* will pose a threat in the form of inharmonious existing and applicable regulations, furthermore this will have a systemic impact on the legal system in Indonesia.

On the other hand, CoFTRA has also issued several regulations related to *cryptocurrencies* in Indonesia, including:

1. CoFTRA Regulation No. 2 of 2019 concerning Implementation of the Commodity Physical Market on the Futures Exchange.
2. CoFTRA Regulation No. 3 of 2019 concerning Commodities that can be the Subject of Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts Traded on Futures Exchanges.
3. CoFTRA Regulation No. 4 of 2019 concerning Technical Provisions for Organizing the Digital Gold Physical Market on the Futures Exchange.
4. CoFTRA Regulation No. 5 of 2019 concerning Technical Provisions for Organizing the Physical Crypto Asset Market on the Futures Exchange.

Basically, these four regulations are forms of cryptocurrency recognition in Indonesia. However, this recognition is not a currency, but recognition as an asset. The recognized assets are also limited to the list issued in CoFTRA Regulation No. 3 of 2019.

C. The Role of Regulators in Enforcing Reactive Laws on *Cryptocurrency Trends* in Indonesia

The state is an institution or organization which is a system that regulates the relationships established by and between humans themselves. The state becomes a vessel for achieving common goals and the most important goals and a place for human shelter in carrying out their activities. Indonesia as a sovereign country has an obligation to protect every citizen. The state as a regulator has a supervisory role and provides legal protection for every citizen. Remembering the mandate of Article 28 D of the 1945 Constitution of the Republic of Indonesia that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. A sovereign country certainly has territory, government, people, and is recognized by other countries. A sovereign state certainly has power held by the government. There is a culture of power and encourages the government to design the best possible government (*good governance*) in the context of carrying out its functions such as making regulations, carrying out development, empowering, and maximizing services (public services and *private services*). In the economic culture, it motivates the government to provide breadth to groups of funders who have an obligation to empower the community through controlled capital. In social culture as the subject and object served, it encourages the government to provide the best possible service to the community and gives every citizen the right to supervise the government. That way sovereignty is upheld for the sake of *check and realization balances* .

The government has a role as a regulator (policy holder), dynamist (movers), and facilitator in carrying out state affairs. The government's role as a regulator is to determine and prepare directions for creating a balance in the implementation of development (issuing regulations in the framework of the effectiveness and orderly administration of development). The regulations that are created can serve as a basic reference which is then translated by the community as an instrument to regulate every activity in society. Rasyid explained that the functions of the government in general are regulatory, service, empowerment and development functions. The regulatory function, commonly known as the regulatory function, in all its forms is intended as an effort to create the right conditions so that they become conducive to the continuity of community activities, as well as the realization of good social order in various people's lives. To carry out this function, a power is needed as the only institution that has the

right to arrange regulations for people's lives in a country. The role of the government as a regulator in more detail is as follows:

1. The role of the government makes and establishes policies.
2. The role of the government to facilitate.
3. The role of government in solving a problem.⁸

In the economic aspect, a regulation is needed by a body that has authority with the aim of creating guarantees for the benefits derived from economic activities. Government intervention is needed with the intention of providing meaningful protection to economic activities such as transactions, investment, exports and imports. Protection that is a focus such as maintaining balance for minority groups without capital without destroying too much the comfort of capital holders, setting standards for the value of goods in general, providing security guarantees, including maintaining compliance of each individual with regulations that have been set together are important to maintain sustainability market. The role of government in the economy is explained by Mike Moffat in his article entitled "*The Government's Role in Economy (2017)*", its role is to prevent market failures due to suboptimal market needs, control and prevent environmental damage, and encourage healthy or natural competition. . In addition, according to Keynes, one of the roles of the government is to suppress products that are harmful to the social and environment through tax policies.

If the government does not carry out its regulatory function, it will create open opportunities for the majority group, for example, those who have special privileges will act as the government itself. Regulation of the economic system is aimed at creating balance and minimizing the potential for the emergence of dominant economic groups, exploitation and monopolies. When regulations exist, the regulator or the Government is obliged to implement the regulations that have been made to ensure market continuity. The government as a regulator also has a major role to play in maintaining security and providing protection for any party from groups that cause harm to the market system. As a sovereign and democratic country, Indonesia through the Government must carry out the mandate that has been explained in

⁸ Musa, "Optimalisasi Peran Pemerintah dalam Pemberdayaan Masyarakat: Sebuah Tawaran dalam Mengentaskan Kemiskinan", *Jurnal Dakwah dan Pengembangan Sosial Kemanusiaan*, Volume 8, Nomor 1 (2017), 107-125.



Article 28 of the 1945 Constitution of the Republic of Indonesia. Regarding the phenomenon of virtual currency as a result of technological developments in transactions, Article 28 C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia 1945 has ordered that the Government guarantee that people can use existing technology to advance the nation.

In order for technological developments to comply with the rules or norms that exist in Indonesia, the Government as a regulator must have a firm stance in order to create legal certainty in addressing the phenomenon of virtual currency or *cryptocurrency*. Article 28 D of the 1945 Constitution of the Republic of Indonesia has mandated this, the article reads " *Every person has the right to recognition, security, protection and legal certainty and equal treatment before the law* ". Until now Indonesia through the regulator has not taken a stand regarding the phenomenon of virtual currency or *cryptocurrency* and its protection regulations. Countries such as the United States, Finland, and Germany have made sure that virtual currencies are allowed. Meanwhile, countries such as Russia, China, and Vietnam have taken a stand against the use of virtual currency or *cryptocurrency*. Indonesia should be able to follow the example of that country in terms of providing legal certainty whether or not the use of *cryptocurrency* is allowed. If laws or other regulations are not immediately enacted regarding virtual currency in terms of permissibility or not and protection, then the Government of Indonesia will fight what has also been mandated in Article 28 G of the 1945 Constitution of the Republic of Indonesia paragraph (1) that the State of Indonesia is obliged to provide protection for every its citizens.

III. CLOSING

A. Conclusion

Cryptocurrency is one proof of the results of the economic aspect synergizing with technological aspects and becoming a trend in society. There are various factors that *cryptocurrency* can trend in Indonesia so that many investors invest through virtual currency instruments or *cryptocurrencies*. The factors include Indonesia experiencing a demographic bonus era, the interaction of local residents with foreign tourists on the island of Bali so that the use of virtual currency is common, and there is a non-natural disaster, namely the *Covid-19 Pandemic*. Given the trend of virtual currency in Indonesian society because its value is

determined by demand and supply, so it is not affected by economic inflation, economic recession and the economic crisis that occurred during the *Covid-19 Pandemic* . This phenomenon raises questions regarding the existence of current regulations and how the role of regulators responds to this innovation. Basically, current regulations recognize *cryptocurrencies* as digital assets, but not as currency. Regulators are also challenged to formulate regulations that can optimize the development of *cryptocurrencies* for society and promote their development, but ensure that these developments do not increase the risk of endangering society in a multidimensional aspect.

B. Suggestion

When the government wants to carry out the regulatory function, there should be some economic considerations before deciding that regulation is needed. Forms of risk management to avoid adverse effects of law need to be carried out through the provision of regulatory impact assessments or other forms of assessment need to be carried out. Regulations are made to increase efficiency, not the other way around.

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