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Legal Certainty of the Use of Cryptocurrency as An Investment Instrument in Companies in Indonesia

Christofel Adam Sitorus¹, Muthia Sakti².

¹Fakultas Hukum Universitas Pembangunan Nasional “Veteran” Jakarta, Jakarta, Indonesia, 2110611257@mahasiswa.upnvj.ac.id.

²Fakultas Hukum Universitas Pembangunan Nasional “Veteran” Jakarta, Jakarta, Indonesia, muthiasakti@upnvj.ac.id.

Corresponding Author: 2110611257@mahasiswa.upnvj.ac.id¹

Abstract: This study examines the legal certainty of using cryptocurrency as an investment instrument in companies in Indonesia. Although cryptocurrency is not recognized as a legal means of payment, it has been acknowledged as a tradable commodity in futures exchanges. This research utilizes a normative legal approach to analyze existing regulations, challenges encountered, and legal protections available for investors. The findings indicate that despite significant profit potential, investors still face high risks due to price volatility, insufficient legal protections, and cybersecurity threats. It is crucial for the government to formulate more comprehensive and supportive regulations to protect investors and prevent misuse and illegal practices. Additionally, an extensive educational program is needed to enhance public understanding of the risks and benefits of investing in cryptocurrency. With adequate regulation and improved public awareness, cryptocurrency is expected to contribute positively to Indonesia's digital economic growth. This study aims to contribute to the development of policies and regulations related to cryptocurrency in Indonesia and to encourage greater public participation in this investment ecosystem.

Keyword: Cryptocurrency, Investment, Legal Certainty, Regulation, Investor Protection.

INTRODUCTION

The development and advancement of information technology has provided many influences and changes in daily life. Information technology, which is growing rapidly every day, has a significant impact on several sectors in people's lives (L. Y. Siregar & Nasution, 2020). In the modern era, many public activities have shifted from physical meetings to the digital world due to technological developments and the industrial revolution 4.0, which has an impact on increasing people's needs. The development of technology, information, and industry directly drives economic growth in Indonesia, where many people are looking for passive income to adjust to the rapid pace of the economy. Since the beginning of the COVID-19 pandemic, Indonesia's economic industry has experienced fluctuations, which has motivated more people

to seek income online, one of which is through trade or investment aimed at making profits in a short period of time. In the world of investment and capital markets, the development of information technology has brought a significant impact on investment and capital markets, allowing faster and easier access for investors to make transactions, analyze data, and obtain market information in real-time.

In addition, technologies such as trading algorithms and digital platforms are also improving market efficiency, expanding investor participation, and creating new opportunities for innovation in investment products. In investments and capital markets that have always been dominated by stocks, bonds, property, gold, and so on, cryptocurrencies have emerged as an attractive investment alternative in the capital markets, offering greater freedom and flexibility for investors. As such, cryptocurrencies have become an integral part of the modern investment ecosystem, expanding investment options for investors (Yuniarti & Litriani, 2017). Cryptocurrency is a form of digital money or an asset that can be owned individually. The need for digital money and the push to maintain anonymity in online transactions drove the rise of cryptocurrencies. Cryptocurrency was first introduced by David Chaum, a doctor in computer science and business administration from the University of California, USA. In the 1980s, Chaum designed a highly secure algorithm that allowed the implementation of encryption in electronic money transactions. (Geiregat, 2018) mentions that the experiments that led to the development of cryptocurrencies were started by scientists and activists who were concerned about individual privacy and freedom. Satoshi Nakamoto's account created Bitcoin, the first cryptocurrency (Inci & Lagasse, 2019). Unlike conventional currencies, cryptocurrencies are not regulated by central banks.

However, a decentralized system with computing power is used by users to verify and process Bitcoin transactions (Bintarto, 2022). To achieve decentralization, Nakamoto uses a peer-to-peer system where each participant runs software on their computer that allows them to issue transactions to other network participants and determine what types of transactions are allowed. The software allows participants to spend only balances that they can cryptographically verify. The global financial market has undergone a significant transformation with the presence of cryptocurrencies such as bitcoin as a new asset class. This development is not only happening in developed countries, but also in Indonesia, which has shown impressive growth in the crypto asset industry.

The use of Bitcoin as an investment instrument in Indonesia has experienced significant growth in recent years. Bitcoin, as a form of cryptocurrency, offers an attractive investment alternative for the public. Despite its increasing popularity, legal certainty regarding its use is still a matter of debate among academics and legal practitioners. The Commodity Futures Trading Supervisory Agency (BAPPEBTI) has recognized cryptocurrencies as a commodity that can be traded on futures exchanges through BAPPEBTI Regulation No. 5 of 2019 and BAPPEBTI Regulation No. 11 of 2022, with data showing that the number of cryptocurrency investors in Indonesia increased from 4 million in 2020 to more than 17 million in 2023 (E. S. Siregar et al., 2024). However, Bank Indonesia (BI) emphasized that Bitcoin is not a legal tender in Indonesia, in accordance with Law No. 7 of 2011 concerning Currency which only recognizes the Rupiah as a means of payment. Therefore, while Bitcoin can be used as an investment instrument, its use as a medium of exchange remains illegal.

Companies or investors in Indonesia are now starting to use Bitcoin and other cryptocurrencies as a means of payment, even though Bank Indonesia officially considers them as commodities and not legal tender. This shows a shift in the way companies transact, although it is still within the strict regulatory limits that set the rupiah as the only recognized currency for domestic transactions. The existence of a regulation aims to protect the public from high investment risks and very sharp fluctuations in the value of Bitcoin (Melia, 2023). In addition, the use of Bitcoin also faces security risks and potential misuse, such as illegal activities such as money

laundering and terrorism financing due to the anonymous and decentralized nature of cryptocurrencies.

This study aims to analyze the legal certainty of the use of Bitcoin as an investment instrument in companies in Indonesia, review existing regulations, challenges faced, and provide recommendations to increase legal certainty in the use of cryptocurrencies such as Bitcoin as an investment tool. It is important to understand that while cryptocurrencies offer great profit potential, the risks and legal uncertainties that come with them must be carefully considered by investors. This research is expected to contribute to the development of policies and regulations related to cryptocurrencies in Indonesia as well as provide insights for stakeholders in making better investment decisions.

METHOD

In this study, the author applies the Normative Law Research Method (Judicial Law). Peter Mahmud Marzuki in his book explains that normative legal research is a process that aims to identify legal rules and legal principles, as well as to answer legal issues. This research is carried out to produce new arguments, theories, or concepts that function as a prescription (assessment) for the problems faced (Marzuki, 2011). This method focuses on an in-depth analysis of applicable regulations, government policies, and legal interpretations related to cryptocurrency regulation in Indonesia. With this approach, researchers can explore and understand how the existing legal framework affects the regulation and form of protection for digital asset investors in a national context.

The data sources used in this study include official regulatory documents such as Bappebti Regulation No. 5 of 2019 and Regulation of the Minister of Trade No. 99 of 2018, which specifically regulates cryptocurrency trading in Indonesia. In addition, government policies related to cryptocurrencies are also an important part of the data source. The research is not only limited to domestic regulations, but also includes other relevant legal documents to provide a more comprehensive picture of regulation and investor protection.

Data collection is carried out through a variety of comprehensive methods to gain an in-depth understanding of cryptocurrency regulation. First, the analysis of documents is carried out by examining in detail government regulatory and policy documents, which aims to understand the legal framework that exists in Indonesia. In addition, literature studies are also conducted by researching cryptocurrency regulations in other countries as comparative material. Through this approach, it is hoped that Indonesia's position in the global context can be evaluated and conclusions can be drawn regarding the effectiveness of the regulations implemented, thereby providing broader insight into the challenges and opportunities in cryptocurrency regulation in the country.

In writing this research, the approach used in this study is the statute approach, which is a method that focuses on the study and analysis of existing and applicable legal regulations and understanding the content and substance of these regulations (Anjani & Santoso, 2018). To collect legal materials, this research is carried out through a literature study, namely by examining literature sources relevant to the research, which will then be analyzed to find solutions to existing problems.

RESULTS AND DISCUSSION

Legal Status of Cryptocurrency as an Investment Instrument in Indonesia.

Cryptocurrency, which is often seen as an innovation in the financial world, has attracted widespread attention as an investment instrument in Indonesia. However, the legal position of cryptocurrencies in the Indonesian legal system is still a matter of debate, hence the importance of understanding how cryptocurrencies are regulated and viewed within the existing legal framework.

a. Overview of Cryptocurrencies in the Indonesian Legal System.

Cryptocurrencies in Indonesia are not recognized as legal tender. According to Law No. 7 of 2011 concerning Currency, only the Rupiah can be used as a legal tender in the territory of the Unitary State of the Republic of Indonesia (NKRI) (Hasani et al., 2022). Bank Indonesia also emphasized that digital currencies such as Bitcoin and others are not eligible to be considered as money or electronic money, so their use is limited to certain transactions and cannot be used for official payments. Nonetheless, cryptocurrencies can be traded as commodities. This is regulated in Law No. 10 of 2011 on Commodity Futures Trading, which classifies cryptocurrencies as tradable assets on futures exchanges. The Regulation of the Commodity Futures Trading Supervisory Agency (Bappebti) also provides guidelines regarding crypto asset trading, including technical provisions and dispute resolution mechanisms.

Cryptocurrencies are considered legitimate investment instruments, although they are not without risk. Legal protection for investors is regulated through various laws, including the Consumer Protection Law and the Electronic Information and Transaction Law (ITE). This includes the obligation of service providers to provide clear and correct information to consumers. However, challenges remain. The level of people's financial literacy towards cryptocurrencies is still low, and there are concerns about potential abuses such as money laundering. Therefore, while there are opportunities to use cryptocurrencies as an investment instrument, it is important for governments to formulate clearer and more comprehensive regulations to provide legal certainty for investors.

b. Cryptocurrency Regulation in Indonesia.

Cryptocurrency regulation in Indonesia has made significant progress in recent years, as public interest in these digital assets increases. Clear and thorough regulation is needed to provide legal certainty to investors and business actors in the cryptocurrency sector. Although cryptocurrencies are not recognized as legal tender in Indonesia, these assets can be traded as commodities. This is regulated in Law No. 10 of 2011 concerning Commodity Futures Trading, which provides a legal basis for trading crypto assets on the futures exchange. The Commodity Futures Trading Supervisory Agency (Bappebti) has the responsibility to supervise and regulate crypto asset trading activities, including the issuance of relevant regulations.

Some of the important regulations issued by Bappebti include:

1) Bappebti Regulation No. 5 Years 2019

Regulating the technical provisions for the implementation of the physical market of crypto assets on the futures exchange.

2) Bappebti Regulation No. 11 Years 2022

Updating guidelines for conducting physical market trading of crypto assets, including the establishment of a list of crypto assets that are legal to trade.

3) Bappebti Circular Letter No. 64/BAPPEBTI/SE/04/2024

Emphasizing the implementation of physical market trading of crypto assets and providing clarity for business actors who have obtained permits from Bappebti.

Starting in January 2025, supervision of cryptocurrencies will be transferred from Bappebti to the Financial Services Authority (OJK) based on the Law on the Development and Strengthening of the Financial Sector (P2SK Law). It aims to create a more integrated and secure financial ecosystem, with an activity-based approach to support innovation and protect consumers (Saputra & Sulistiyono, 2024). OJK will implement OJK Regulation Number 3 of 2024 concerning the Implementation of Financial Sector Technology Innovation (ITSK), which includes regulations regarding digital financial assets such as cryptocurrencies. This is an important step in ensuring that cryptocurrency-related regulations can adapt quickly to technological developments and market dynamics.

c. **Legal Status of Cryptocurrency as an Investment Asset.**

Cryptocurrencies, while not recognized as legal tender, have gained recognition as an investment asset. This is based on several existing regulations, especially in the legal framework of futures trading. Law No. 10 of 2011 on Commodity Futures Trading provides the legal basis for trading crypto assets, allowing investors to trade cryptocurrencies on registered futures exchanges (Wardoyo & Hapsari, 2023). Bappebti has established that cryptocurrencies can be traded as commodities, thus allowing individuals and companies to take advantage of the potential profits from these fluctuations in the value of digital assets. Thus, the legal status of cryptocurrencies as an investment asset provides an opportunity for investors to diversify their portfolios. As for the Investment Asset Criteria, cryptocurrencies must meet several criteria in order to be considered a viable asset for trading. These criteria include:

1) **Liquidity**

Cryptocurrencies must have an adequate level of liquidity to allow for fast and efficient transactions in the market.

2) **Transparency.**

Information regarding the value and price movements of cryptocurrencies should be publicly available and accessible to all parties.

3) **Regulation.**

The existence of clear and firm regulations from relevant authorities, such as Bappebti and OJK, provides legal certainty for investors.

4) **Security.**

The system used for cryptocurrency transactions must be safe from the risk of theft or fraud.

Implications of Cryptocurrency Position for Investors in Indonesia

a. **Risks and Challenges for Cryptocurrency Investors in Indonesia**

The use of cryptocurrencies as an investment tool in Indonesia presents various implications for investors. While there is considerable potential for profit, investors should also be aware of the various risks and challenges that need to be considered. This research aims to analyze the risks and challenges faced by cryptocurrency investors in Indonesia.

1) **Price Volatility**

One of the main risks faced by cryptocurrency investors is the extremely high price volatility. The value of cryptocurrencies can fluctuate drastically in a short period of time, which can result in huge losses for investors. For example, the price of Bitcoin and other crypto assets often experiences sharp spikes and declines, so investors must be prepared for this uncertainty.

2) **Lack of Legal Protection**

Although regulations regarding cryptocurrencies have begun to be implemented, legal protection for investors is still relatively weak. Many investors do not fully understand their rights in cryptocurrency transactions, and in case of fraud or disputes, the legal settlement process can be complicated. Uncertainty about the responsibilities of service providers also adds to the risk for investors.

3) **Cyber Security and Risk**

Investments in cryptocurrencies rely heavily on digital technology, which makes them vulnerable to cyberattacks. Cases of theft of digital assets through hacking exchanges or digital wallets are common, so investors must be careful in choosing a trading platform and keeping their personal information safe. This insecurity poses a major challenge for investors in protecting their assets.

4) **Changing Regulations.**

Regulations related to cryptocurrencies in Indonesia are still in the development stage and can change at any time. This uncertainty creates challenges for investors seeking to comply with

applicable regulations. Policy changes or the introduction of new regulations can affect how investments are made and the potential profits that can be made.

5) Low Financial Literacy Level.

The level of financial literacy of the Indonesian people towards cryptocurrencies is still low. Many new investors do not understand the basic concepts of investing in digital assets, including how the crypto market works, risk analysis, and investment strategies. This lack of understanding can lead to poor investment decisions and increase the risk of loss.

6) Scams and Ponzi Schemes.

Amidst the popularity of cryptocurrencies, the rise of scams and Ponzi schemes has also become a serious challenge for investors. There are many cases where individuals or groups offer investments with the promise of high profits without a clear basis. Investors need to be vigilant and do due diligence before investing to avoid losses due to fraud (Huda & Hambali, 2020).

b. Legal Protection for Cryptocurrency Investors .

Legal protection for cryptocurrency investors in Indonesia is still in the development stage. There are several important aspects that need to be considered so that legal protection becomes effective and provides optimal security for investors.

1) Inadequate Regulation.

Although there are several regulations governing cryptocurrency trading, such as Bappebti Regulation No. 5 of 2019, there are still gaps in legal protection for investors. This regulation focuses more on the implementation of the physical market for crypto assets, but does not specifically regulate the rights and obligations of investors.

2) Legal Standing of Cryptocurrency.

Cryptocurrencies are not recognized as legal tender in Indonesia according to Law No. 7 of 2011 concerning Currency. However, it can be treated as an investment instrument in accordance with Law No. 10 of 2011 concerning Commodity Futures Trading. This creates ambiguity regarding the legal status of cryptocurrencies and can influence investment decisions.

3) Consumer Protection.

The Consumer Protection Act provides a legal basis to protect investors from fraud and adverse business practices. Investors have the right to get clear and correct information about the investment products they choose. However, the implementation of this protection is often hit by a lack of transparency from cryptocurrency service providers.

4) Dispute Resolution.

In the event of a dispute, settlement can be made through deliberation or through the Commodity Futures Trading Arbitration Board (BAKTI). However, many investors are unaware of this option or find it difficult to access the legal route.

5) Investment Risk.

Investors should be aware that cryptocurrency investments carry a high level of risk due to extreme price volatility and potential scams. Therefore, education about investment risks is very important to prevent financial losses.

c. Potential and Prospects for Cryptocurrency Investment in the Future.

Cryptocurrency investment in Indonesia has great potential, although it must face regulatory challenges and market risks. An analysis of the potential and prospects of cryptocurrency investment can be done by considering various relevant aspects.

d. Potential Cryptocurrency Investment

1) Rapid Market Growth.

Cryptocurrencies have experienced tremendous growth in recent years. Many investors see great opportunities in these digital assets, especially with the increasing adoption of blockchain technology and the digitalization of the economy.

2) Portfolio Diversification.

Cryptocurrencies offer an alternative for investors to diversify their portfolios. In the context of investing, diversification can help reduce risk by spreading investments across a variety of assets, including cryptocurrencies that are not directly correlated with the traditional stock market.

3) Technological Innovation.

The blockchain technology that underlies cryptocurrencies continues to evolve, providing new opportunities for innovation in various sectors, including finance, logistics, and public services. This creates the potential for investment in blockchain-based projects that can provide high returns.

4) Increased Institutional Interest.

In recent years, more and more large financial institutions have started investing in cryptocurrencies. This shows that the cryptocurrency market is increasingly considered a legitimate and reliable asset class (Setiawan, 2020).

e. Cryptocurrency Investment Prospects

1) Increased Regulation.

With the increasing attention from governments and regulatory authorities on cryptocurrencies, there are hopes that regulation will become clearer and support the growth of the market. Good regulation can provide legal certainty for investors and increase public trust in cryptocurrencies.

2) Adoption by the Community.

More and more people are starting to understand and use cryptocurrencies in their daily transactions. With easy access through trading platforms and digital wallets, this adoption is expected to continue to increase.

3) Investor Education.

Increased awareness of the importance of education regarding cryptocurrency investment can help reduce the risk of losses due to fraud or improper investment decisions. Education programs from the government or financial institutions can strengthen people's understanding of how to invest wisely.

4) Better Financial Infrastructure.

The development of financial infrastructure that supports cryptocurrency transactions, such as officially listed crypto exchanges and blockchain-based payment systems, will increase investor confidence and facilitate access to the market.

CONCLUSION

Based on the analysis conducted, it was concluded that cryptocurrencies have significant potential as an investment instrument in Indonesia, although they still face complex regulatory challenges and legal uncertainty. Cryptocurrencies are recognized as commodities that can be traded on futures exchanges, but not as legal tender in accordance with the provisions of Bank Indonesia and Law No. 7 of 2011 concerning Currency. This recognition opens up opportunities for investors, but it also requires a deep understanding of the high risks that come with it, such as price volatility, data security, and fraud risk.

Existing regulations, including Bappebti Regulation No. 5 of 2019 and No. 11 of 2022, as well as the plan to transfer supervision to the Financial Services Authority (OJK) in 2025, reflect the government's efforts to provide legal certainty for market participants. However, there are still gaps in legal protection for individual investors, especially regarding consumer protection, cybersecurity, and dispute resolution. The low level of financial literacy in society and the high level of security risks are also factors that need to be considered by investors.

To optimize the potential of cryptocurrencies as a safe investment asset, the Indonesian government needs to continue to strengthen existing regulations by designing a more

comprehensive legal framework that is responsive to technological developments. Public education about cryptocurrencies is also very important to improve financial literacy and risk understanding. With these measures, it is hoped that the cryptocurrency market in Indonesia can grow stably, provide benefits for investors, and support the growth of the digital economy in the country.

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