

CHAPTER III
ANALYSIS OF THE LEGALITY CRYPTOCURRENCY AS A
COMMODITY ACCORDING TO INDONESIAN LEGAL SYTEM AND
COMPARISON BETWEEN INDONESIA AND SINGAPORE TOWARDS
CRYPTOCURRENCY

A. The legality of cryptocurrency as commodity

In Indonesian law, there is no clear definition of commodities, except those specifically traded in commodity futures. However, because basically a commodity is an object, it can also see the material law that applies in Indonesia.

Commodity is something tangible that is relatively easy to trade, can be physically handed over, can be stored for a certain period of time and can be exchanged with other products of the same type, which can usually be bought or sold by investors through a futures exchange.

More generally, commodities are products that are traded, including foreign exchange, financial instruments and indices.

In the view of experts with reference to the Indonesian Civil Code, the elements of the object are⁸⁰ :

- a) Can be controlled by humans.

Mastered in this case both physical possession and property rights, physical mastery (bezit) is the mastery of an object physically over an

⁸⁰ Mahendea Adhi Purwanta, Op. Cit

object regulated in article 529-559 of the Civil Code, what is meant by bezit is a state of birth, in which a person controls an object as if it were his own, which by law is protected, by not questioning the ownership rights of the object that is actually in whom. Whereas the possession of objects with property rights (eigendom) is the control of objects on the basis of written rights.

b) Can be touched or not

An object can be either tangible or intangible. Intangible objects are objects that can be seen and felt like land while intangible objects that cannot be seen or felt like rights.

c) Can be valued with money or at least valuable to him.

One object must be valued with money or at least valuable to its owner.

d) Is a unit and is independent

An object must stand alone means that the object is not a single entity from other objects so that the object is unique and independent.

Based on these elements, it can be concluded that Cryptocurrency is a commodity according to Indonesian law, because Cryptocurrency can be controlled by humans and stored in a Bitcoin wallet, it can be valued with money and valuable, and stands alone. In fact, based on the definition above Cryptocurrency considered as a commodity because it tends to be easily traded through the stock exchange, and the price tends to be uniform throughout the world.

According to Law No.32/1997 concerning Commodity Futures Trading, futures trading is anything related to commodity buying and selling with subsequent delivery based on Futures Contracts and Opinions on Futures Contracts. Futures trading is carried out at the Futures Exchange, hereinafter referred to as the Exchange, which trades Futures contracts of various commodities. The place where a futures contract is traded is also called a futures market. Thus in the Exchange there will be many futures markets in accordance with the number of commodities traded. On the exchange, buyers and sellers meet with each other and make transactions to buy / sell a number of commodities for delivery later on according to the contents / specifications of the contract.⁸¹

The price of commodities formed at the Exchange takes place transparently where the price will reflect the actual strength of supply and demand. Transactions at the Exchange are carried out by Exchange Members, which consist of Futures Brokers and Futures Traders, either by shouting (open outcry) or electronically (automated / electric trading system). Furthermore, the prices incurred are recorded according to the month of delivery of each Futures Contract and widely announced to the public.⁸²

⁸¹ Badan Pengawas Perdagangan Berjangka Komoditi(BAPPEBTI), 2012, *Sekilas Tentang Perdagangan Berjangka Komoditi*. Source: [http://bappebti.go.id/brosur leaflet/detail/126](http://bappebti.go.id/brosur_leaflet/detail/126) Accessed at January 23, 2019

⁸² *Ibid*

Commodities that are subject to Futures Contracts traded at the Exchange are agricultural, forestry, mining, upstream industries and services. Each commodity whose contract is traded on the Exchange, the specifications are clearly defined, which involves the amount, quality and time of delivery, so that users / Exchange users can easily make transactions. Thus an active and liquid market will be realized.

Nowadays the example of Futures contracts traded can be divided into 3 types, they are:

a. Forex (Foreign Exchange)

Trading forex (foreign exchange) or better known with the term "Forex", it is trading in the US dollar against almost all other world currencies. Forex trading is a global trade and is followed by international / foreign exchange banks, multinational companies. Any government and individuals with an interest in the value of assets.

b. Stodex (Stock Index)

Stock index or stock index is a derivative product(derivative) of superior and liquid stocks on the main board of trading stock. A stock index is a market indicator that looks for the average change in part or all of the common stock prices registered and transacted on the stock market in general. The stock index is basically an index that functions as an indicator of changes in the average price of all or a number of selected blue chip stocks that are listed and traded on certain stock

exchanges and is a general indicator of the relatively best changes in stock prices on the stock exchange.

c. Bullion (Gold)

The chemical symbol of gold is Au (Aurum) derived from Latin which means "glowing dawn". Aurora is the "Goddess of Dawn" in Roman culture. Clearly, this is related to gold yellow or orange; one of two metals that are not white or silver (the other is copper).

Gold and copper were the first metals found by humans around 5000 BC. Coupled with silver, these three metals are found in metal structures in the earth's layers. Gold is still dug in metal in more than 60 countries around the world. Because gold is still mixed with metals and other mixtures in small amounts, gold refining still needs to be done⁸³

ii. Cryptocurrency as Commodity in Indonesia

Indonesia is a legal country where law is the main commander in law enforcement in this country. Dynamism or legal modernization is interpreted as a point of convergence between Law and Information Technology.⁸⁴ This convergence between law and information technology comes from a social change in accordance with the needs of society. Technology is made and if it can be done so that it can help

⁸³ Pantas Lamban Batu, *op.cit*, p.38; Trainer & Complain Devision, *op.cit*, p.18.

⁸⁴ H.M. Arsyad Sanusi, 2011, *Hukum dan Teknologi Informasi*, Edisi Revisi, SASRAWARNA Printing, Jakarta, p.69

make it easier for all activities carried out by humans.⁸⁵ According to Utrecht, the state of material law (state of welfare law) is a modern or modern law state rechtsstaats.⁸⁶ One thing that distinguishes modern rechtsstaats from a type of formal legal state is from a goal that the rule of law wants to aim at.⁸⁷

In this case, Bitcoin is still an interesting debate, which is related to its legality as a legal payment instrument. Bitcoin itself is a consensus network that allows for a new payment system and which can be entirely digital or can be interpreted as an electronic currency where bitcoin here uses an open to peer network system or users between users.⁸⁸

In addition, based on the Law number 7 Year 2011 concerning Currency, in which the currency law stipulates that currency money that disbursed by Bank Indonesia as the competent authority as the rupiah, which is included in the laws of Bank Indonesia also stated that the rupiah is the legal currency circulating in the Republic of Indonesia.

⁸⁵ Hikmahanto Junawa, 2002, Hukum Ekonomi dan Hukum Internasional, Lentera Hati, Depok, p.23

⁸⁶ Hotma P. Sibuea, 2010, Asas Negara Hukum, Peraturan Kebijakan, dan Asas-Asas Umum Pemerintahan yang Baik, Penerbit Erlangga, Jakarta, p.56

⁸⁷ *Ibid*

⁸⁸ Wikky Ananda Rinaldi dan Mokhammad Khoirul Huda, Bitcoin Sebagai Alat Pembayaran Online Dalam Perdagangan Internasional, Perspektif Hukum Vol. 16 No. 1, Surabaya, 2016, p. 123

Talking about a bitcoin ownership is very clear in Declaration No. 18/6 / DKom and Bank Indonesia Regulation No. 18/40 / PBI / 2016 concerning the Implementation of Payment Transaction Processing in Article 34 has clearly stated that a Payment System Service Provider is prohibited from processing payment transactions using a virtual currency. If a legal entity or Payment System Service Provider violates this matter, it will be subject to a sanction stipulated in Article 35 Percentage of Laws. 18/40 / PBI / 2016 requires the Implementation of Payment Transaction Processing, namely in the form of:

- a. Warning
- b. Fine
- c. Partial termination; and / or
- d. Revocation of license as a System Services Provider Payment

But we can know that regulations are issued by Bank Indonesia is only addressed to Payment System Service Providers or to legal entity. This means that regulations regarding restrictions and sanctions on the use of virtual currency do not regulate to individuals.

Based on press release No. 16/6 / Dkom concerning Bank Indonesia Statement on bitcoin and other virtual currencies, Bank Indonesia states that Bitcoin is not a legal currency or payment instrument and all risks related to ownership and use are not the responsibility of Bank Indonesia.

From the press release, we can know that there is still no doubt that the use of bitcoin that is used individually even Bank Indonesia also states that representatives from the government or the state do not will be responsible if anything happens but it is the personal responsibility of bitcoin users in Indonesia. So it can be concluded that based on the applicable laws and regulations there is no prohibition on the use of bitcoin in Indonesia individually.

As a bitcoin market place in Indonesia, PT. Bitcoin Indonesia is a company where to buy and sell bitcoin. Oscar Darmawan, CEO of Bitcoin Indonesia stated⁸⁹ bitcoin is a digital asset. The function of digital assets here is as digital gold or as a digital asset that has a value, for example in Japan, bitcoin is now declared as a currency under the VSA (Vinancial Service Agency).⁹⁰ Oscar Darmawan stressed that every bitcoin buying and selling transaction still uses the local currency, namely Rupiah for Indonesia. As a comparison example if someone wants to top-up a Microsoft account where someone wants to buy a game in Microsoft where it is important to use the bit coin and still use local currencies such as US Dollars, Rupiah, and others. Therefore bitcoin here is only used more as a protocol or supporting payments that use conventional money. As for advice from Oscar

⁸⁹ “CEO Bitcoin Indonesia Oscar Darmawan: Uang Tanpa Kewarganegaraan Adalah Masa Depan” < <https://beritagar.id/artikel/bincang/>>, accessed on December 10, 2019

⁹⁰ *Ibid*

Darmawan, if Indonesia fully supports the use of bitcoin in Indonesia, the government can have advantages in monitoring:⁹¹

- a. Anyone who uses bitcoin in Indonesia
- b. Anyone who transacts
- c. Know the direction of a transaction done legally

Therefore bitcoin in Indonesia is not a currency but rather a supporting protocol for conventional currencies as well as electronic money which in the purchase or sale still uses the local currency.

Aside from being a supporting protocol, bitcoin can also be considered a digital asset that is equated with digital gold or data that has value.

The definition of digital assets in Indonesia is governed by electronic documents or digital assets based on Article 1 paragraph (4) of Law No. 11 of 2008 concerning Electronic Information and Transactions explains that:

"Electronic Documents are any Electronic Information that is available, it is printed, it is received, it is stored or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed and / or heard through computers or electronic systems, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols, or perforations that can be understood meaning or meaning by people who can afford it. "

⁹¹ *Ibid*

However in recent situation Indonesia has regulated the use of cryptocurrency as commodity. This matters was asserted by the rules issued by Badan Pengawas Perdagangan Jangka Komoditi which govern about policy regarding Cryptocurrency.

According to Ministerial of trade decree number 99 of 2018 concerning general policy on the implementation of crypto asset futures trading⁹² informed that cryptocurrency is defined as a commodity that can be used as the subject of a futures contract traded on a futures exchange. Based on that point Indonesia has legalize the use of cryptocurrency as commodity.

As we know in Regulation No. 99 of 2018 concerning general policy on the implementation of crypto asset futures trading is not completely clear about the mechanism of using cryptocurrency in Indonesia. But after Bappebti released a new regulation which is regulation no. 3 of 2019 and regulation no. 5 of 2019.

According to Bappebti regulation no. 3 of 2019 about commodities that can be subject to futures contracts, sharia derivative contracts, and other derivative contracts traded on the futures exchange mentioned that cryptocurrency is one of the object that included which can be traded on the futures exchange.⁹³ But more specifically the regulation about cryptocurrency is in bappebti regulation no. 5 of 2019 about

⁹² Peraturan Menteri Perdagangan Republik Indonesia nomor 99 tahun 2018 (PerMen Perdagangan No.99/2018) about general policy on the implementation of crypto asset futures trading.

⁹³ Peraturan Bappebti No. 3 of 2019 about commodities that can be subject to futures contract

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

In this regulation mentioned that to implement the provisions as regulated in Minister of Trade Regulation No. 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures and Regulations of the Commodity Futures Trading Regulatory Agency Number 2 of 2019 concerning Operation of Commodity Physical Markets on the Futures Exchange, it is necessary to regulate the technical provisions the physical market of crypto assets on the Futures Exchange.⁹⁴

B. Legality Cryptocurrency in Singapore

The existence of bitcoin does not only occur in Indonesia but also occurs in Singapore. In Singapore bitcoin is widely used by local people as a means of payment in buy-sell transactions or from exchanging with other cash. However, ownership of bitcoin is not prohibited by the government, as well as transaction activities that use bitcoin and how to obtain bitcoin by mining is allowed by the Singapore government to do.

The Singapore Government has previously emphasized that virtual money is not a legal payment instrument because it is not in accordance with security set in the Securities and Futures Act

⁹⁴ Bappebti Regulation No.5 of 2019 about about technical provisions for the implementation of the physical market of crypto assets on a futures exchange.

applicable in the country. But sees an increasingly advanced economic condition that is affected by this virtual payment instrument, March 2014 The Monetary Authority of Singapore (MAS) issues a regulation to regulate bitcoin in Singapore to avoid criminal acts which are feared to occur because of the use of virtual money, such as money laundering or terrorism activities. Bitcoin exchanges in Singapore have not yet needed an operating permit, only so far the authorities have only reminded users of the risks to be gained from conducting this bitcoin transaction and have stated that virtual payment instruments will be considered as service providers who will be charged GST Goods and Services Tax.⁹⁵

Singapore is one of the first countries to provide guidance on how to treat Bitcoin. The Monetary Authority of Singapore requires exchangers to verify the identity of their customers and report any suspicious transactions to the authorities. This provision is to anticipate the risk of using Bitcoin for money laundering or terrorism. Specifically, Singapore also provides guidance on tax treatment.

Income earned by entrepreneurs from buying and selling Bitcoin is taxed on profits. Likewise with employers who accept.⁹⁶

The regulation on taxation of bitcoin in Singapore has been implemented since the beginning of 2014 in the official website of the

⁹⁵ MAS cautions against investment in cryptocurrencies, <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-cautions-against-investments-in-cryptocurrencies.aspx> (accessed on February 9, 2019)

⁹⁶ Nurfia Oktaviani Syamsiah, Kajian atas cryptocurrencies sebagai alat pembayaran, 2017

government www.iras.gov.sg stating that "*Businesses that choose to accept virtual currencies such as Bitcoins for their remuneration or revenue are subject to normal income tax rules . They will be taxed on income from or received in Singapore. Tax deductions will be allowed, where permissible, under our tax laws.*" From the statement above, it can be seen that any form of sale that receives virtual money such as bitcoin as a means of payment will be taxed on income earned or obtained in Singapore regulated by law Singapore tax⁹⁷

All physical goods supplied via the Internet and carried out in Singapore are subject to GST or a transaction tax of 7% for the profits of the goods. So, if we buy a bitcoin for \$ 100 it will be taxed at 7% and must pay \$ 107 after tax.

In Commodity Trading Act Chapter 48A act 17 of 1992 in Singapore they are not put cryptocurrencies as an object of commodity different with Indonesia regulation which put cryptocurrencies as an object of commodity. Singapore government put cryptocurrencies as an investment instrument.

The Singapore Government has given recognition to bitcoin, which directly affects the existence of legal protection obtained by bitcoin users and bitcoin exchange service companies in Singapore. In line with that, the Singapore government can also control bitcoin users

⁹⁷ Inland Revenue authority of Singapore, Income tax treatment of Virtual currencies <http://www.iras.gov.sg/irashome/Business/Companies/Working-out-Corporate-Income-Taxes/Specific-topics/Income-Tax-Treatment-of-virtual-currencies/> accessed on February 9, 2019

and can minimize all risks that might occur outside the bitcoin protocol.

The control carried out by the Singapore government is certainly a form of the Singapore government's responsibility towards its citizens for all threats that might occur due to technological developments in the current era of globalization.

The monetary Authority of Singapore advises the public to act with extreme caution and understand the significant risk they take on if they choose to invest in cryptocurrency, they also concerned that members of the public may be attracted to invest in cryptocurrency, such as bitcoin, due to the recent escalation in their prices.⁹⁸

Apart from that all in practice the Singapore government is always open with the new technology. The government allow the practice of bitcoin to continue without any restrictions even though there are no rules governing it.

There is no regulatory safeguard for investments in cryptocurrencies. As in most jurisdictions, MAS does not regulated cryptocurrencies. Nor do MAS regulations extend to the safety and soundness of cryptocurrency intermediaries or the proper processing of cryptocurrency transactions.⁹⁹

⁹⁸ MAS (Monetary Authority of Singapore) <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-cautions-againts-investment-in-cryptocurrencies.aspx> accessed on February 9, 2019

⁹⁹ Ibid

As a commodity, Cryptocurrencies has all the necessary conditions so that a commodity can be traded in futures or futures trading. Cryptocurrency are homogeneous or uniform, not perishable, can be easily classified standardly because all Cryptocurrency are the same and have the same use, and the quality is not different.¹⁰⁰

Within Singapore's legal framework, cryptocurrency can be said to be in accordance with the legal conception of commodities.¹⁰¹ The regulations governing the sale or purchase of commodities in Singapore, regulating the commodity very broadly.

Furthermore, although limited, the bitcoins circulating are very large in number, and can even be said to be infinite because they can be divided into smaller hashes or calculation units.¹⁰²

Besides being large in number, the demand for Bitcoin fluctuates in an uncertain pattern. In addition, the Bitcoin market is not closed, and there is no single entity that controls both the amount of supply or supply and the demand for Bitcoin. Conceptually, there is nothing that prohibits bitcoins from being traded or exchanged in futures contracts.

Two parties that agree can easily contract for the sale of a number of bitcoins at a price determined at the time the agreement takes place,

¹⁰⁰ Nikolay Gertchev, The Money-ness of Bitcoin, <http://thestateweekly.com/the-money-ness-of-bitcoins/> accessed on February 9, 2019

¹⁰¹ Commodity Trading Act (Chapter 48A), 1992, Singapore Commodity Trading Act

¹⁰² Timothy B. Lee, Here's why volatility isn't a big problem for Bitcoin, <http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/09/heres-why-volatility-isnt-big-problem-for-bitcoin/>

but with actual submission (peer-to-peer transfers) will only be carried out in the future.

However, although bitcoins seem to fit the commodity definition according to the Commodity Exchange Act, it can be said that it is still unclear in what categories Bitcoin can be classified.¹⁰³ The Commodity Exchange Act distinguishes commodities into 3 categories, namely:¹⁰⁴

a. Agricultural Commodity

Agricultural commodity are staple crops and animals produced or raised on farms or plantations. Most agricultural commodities such as grains, livestock and dairy provide a source of food for people and animals across the globe.

b. Excluded Commodity

An excluded commodity is a commodity that is not susceptible to measures of influence or manipulation. Excluded commodities include most financial products and any relevant event associated with the commodity that is outside the control of any interested party.

Excluded commodities can also include intangible assets.

c. Exempt Commodity

An exempt commodity is any exchange traded commodity other than those classified as an excluded commodity nor an agricultural commodity. Transactions in an exempt commodity may only take

¹⁰³ Houman B. Shadap, *Regulating Bitcoin and Blockchain derivatives*, 2014

¹⁰⁴ Ibid

place between eligible contract participants or commercial entities, and cannot usually be executed on a trading facility.

Therefore, Bitcoin can easily be classified into one of these categories, namely the Exempt Commodity.¹⁰⁵

This categorization certainly can be said to make sense especially when considering the similarity of economic position of bitcoins with precious metals. Both bitcoins and precious metals both have a limited amount of inventory or supply, it is possible holding of transfers from one party to another, and is a capital goods. Furthermore, the Commodity Futures Trading Commission (CTFC) has classified commodities as intangible as Exempt Commodity, with the following conditions: *"if ownership of the commodity can be conveyed in some manner and the commodity can be consumed."*

In the context of bitcoins, these requirements are certainly interesting to discuss further. Even though it is still a debate, bitcoins can be said to be consumed, namely by being traded or exchanged for other goods or services. In the end, classifying Bitcoin as an Exempt Commodity will be appropriate or consistent with the guidelines released by the Internal Revenue Service (IRS) and the Financial Crimes Enforcement Network (FinCEN) where Bitcoin is declared not as a currency or financial instrument such as securities or asset backed securities.¹⁰⁶

¹⁰⁵ Ibid

¹⁰⁶ Ibid

Different like in Indonesia, Singapore itself can be said to be a commodity. Although there is a prohibition on using Bitcoin as a payment method, the PRC community is not prohibited from owning and trading Bitcoin as a commodity for the purpose of gaining profit.

The differentiation between Indonesia and Singapore of using cryptocurrency:

| No | Indonesia | Singapore |
|----|---|--|
| 1. | Indonesia clearly categorize cryptocurrency and all the derivatives of cryptocurrency as object of commodity through Bappebti. | Singapore does not clearly mentioned that cryptocurrency as a commodity but government of Singapore Recognize cryptocurrency and allowed the used of cryptocurrency. |
| 2. | Cryptocurrency in Indonesia is a commodity and can be traded on futures exchange. This is clearly mentioned in Bappebti Regulation No.5 of 2019 | Bitcoin market is not closed, and there is no single entity that controls both the amount of supply or supply and the demand for Bitcoin. Conceptually, there is nothing that prohibits bitcoins from being traded or exchanged in futures contracts |