

State Responsibility to Protecting Crypto Assets Customers

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ABSTRACT. Cryptocurrency regulation presents a unique and monumental challenge for policymakers. Many countries have threatened to impose complete bans on the use and trading of cryptocurrencies. This study aims to describe the responsibility of the State in protecting crypto asset customer in Indonesia. The normative juridical research method with data sources including primary data and secondary data is used as an analytical tool. The results of the study show that in order to protect crypto asset customer in Indonesia, the government refers to the Commodity Futures Trading Law No. 10 of 2011 which can provide legal protection for investors. Hedging of commodity futures contracts is carried out under the direct supervision of the Commodity Futures Trading Regulatory Agency (BAPPEBTI).

KEYWORDS. Cryptocurrency, Crypto Asset, Customer, Regulation, State Responsibility

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Introduction

Investors, entrepreneurs, regulators and the general public are constantly paying attention to cryptocurrencies. Significant price movements, the assertion that the cryptocurrency market is a bubble with no underlying value, and concerns about regulatory and legal scrutiny have sparked a lot of public discussion recently regarding cryptocurrencies. Increased restrictions or even total bans have been proposed in response to these concerns. The debate further highlights whether cryptocurrencies should be classified as commodities, money, or something else; potential development of cryptocurrency derivatives and credit contracts in cryptocurrencies; use of initial coin offerings using cryptocurrency technology to fund startup initiatives; and issuance of digital currency by central banks using cryptocurrency technology.²

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² Giancarlo Giudici, Alistair Milne, dan Dmitri Vinogradov, "Cryptocurrencies: market analysis and perspectives," *Journal of Industrial and Business Economics* (Springer International Publishing, Maret 17, 2020), <http://link.springer.com/10.1007/s40812-019-00138-6>.

Cryptocurrency regulation presents a unique and monumental challenge for policymakers. Many countries have threatened to impose complete bans on the use and trading of cryptocurrencies, but few have yet to introduce such regulations. In late 2017 and early 2018 the widespread threat of regulatory intervention by countries such as South Korea and China was widely attributed to a substantial decline in Bitcoin's value. In January 2018, South Korea's Financial Services Commission introduced measures to prohibit anonymous trading on domestic exchanges, while foreigners and minors will be completely banned from trading through cryptocurrency accounts.³

As the word cryptocurrency, and other terminology using 'coin', the 'wallet' in the original whitepaper proposing the supporting technology for Bitcoin all suggest, the original developer consciously sought to develop a digital transfer mechanism that deals with the direct transfer of physical cash used for payment or other financial assets such as precious metals and bearer bonds that are like cash also change hands through physical transfers.⁴

One of the payment tools in the form of virtual currency that has developed recently is Bitcoin. The existence of the Bitcoin digital currency in Indonesia itself has attracted a lot of attention, giving rise to pros and cons from all parties. Bank Indonesia as the currency regulator appealed through a press release issued by Bank Indonesia on the Internet on January 13, 2018. This press release contains information regarding Bank Indonesia's confirmation that virtual currencies, including Bitcoin, are not recognized as legal tender, so they are prohibited from being used as a means of payment in Indonesia. This makes ownership of virtual currency very risky and full of speculation, because there is no responsible institution, no official manager, and no underlying asset to support the price of virtual currency, the transaction value is very volatile, so it is very vulnerable to risk. The existence of this digital currency is also easy to use as a means of money laundering, money laundering and terrorism financing.⁵

³ Shaen Corbet et al., "Cryptocurrencies as a financial asset: A systematic analysis," *International Review of Financial Analysis* 62 (Maret 2019): 182–199, <https://linkinghub.elsevier.com/retrieve/pii/S1057521918305271>.

⁴ Giudici, Milne, dan Vinogradov, "Cryptocurrencies: market analysis and perspectives."

⁵ Anak Agung Ngurah Dwi Juniadi dan I Ketut Markeling, "Perlindungan Hukum Kegiatan Investasi Menggunakan Virtual Currency di Indonesia," *Kertha Semaya* 4, no. 3 (2018): 1–15, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/44077>.

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Referring to the study conducted by Chang⁶, the biggest problem with crypto asset management in Indonesia is not a misleading definition, but the lack of a clear keynote in national policies on how to specifically regulate the cryptocurrency market and legally protect changing parties. A series of Indonesian policies towards cryptocurrencies so far seem skeptical whether the cryptocurrency ecosystem can contribute to national financial stability and healthy economic growth. First, BI Regulation Number 19/12/PBI/2017 which prohibits fintech companies from processing payment transactions using virtual currencies attacks the entire virtual currency ecosystem in Indonesia. Following this ban, Indonesian bitcoin payment platforms including Toko Bitcoin and Bitpay were voluntarily shut down in October 2017 and other extant virtual currency exchanges such as ArtaBit, Luno and Indodax are gripped by desperation with fears the government is taking more aggressive steps to remove exits. from the entire virtual currency industry in Indonesia.

Based on the urgency and relevance of the problems described previously, this study aims to describe the responsibility of the state in protecting Indonesian crypto asset customers. Crypto asset customers according to Commodity Futures Trading Regulatory Agency (BAPPEBTI) Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Crypto Asset Market (Crypto Asset) on the Futures Exchange are parties who use the services of Crypto Asset Traders to buy or sell Crypto Assets traded on the Crypto Asset Physical Market.

Method

This research will be studied using normative juridical research methods with data sources including primary data and secondary data obtained from the results of a literature review related to the legality of cryptocurrencies in Indonesia.⁷ Normative law has important implications for the appropriate type of argument. That a principle is adopted by a court does

⁶ Soonpeel Edgar Chang, "Legal Status of Cryptocurrency in Indonesia and Legal Analysis of the Business Activities in Terms of Cryptocurrency," *Brawijaya Law Journal* 6, no. 1 (2019): 76–93.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revi. (Jakarta: KENCANA, 2016).

not mean that it is justifiable.⁸ Secondary data were obtained from national journals and international journals published from 2017 to 2021.

Literature Review

First, an article entitled Regulation of the Crypto-Economy: Managing Risks, Challenges, and Regulatory Uncertainty in the Journal of Risk and Financial Management.⁹ Distributed ledger technology, otherwise known as blockchain, is gaining traction globally. Blockchain offers a secure validation mechanism and decentralized mass collaboration. Cryptocurrencies are leveraging this technology as a new asset class for investors around the world. Cryptocurrencies are being used by companies to raise capital through initial coin offerings (ICOs). The influx of substantially unregulated capital into the transactional and transnational industries has aroused interest not only from investors, but also national securities and monetary regulatory bodies. In this paper, researchers review the Security and Exchange Commission's initial statement and subsequent statements on ICOs to illustrate the potential problems with applying the older legal framework to an ever-evolving ecosystem. Recognizing the inadequacy of enforcement within the existing regulatory framework, we discussed the importance of crypto asset class regulation and internal collaboration between government agencies and developers in the formation of an ecosystem that integrates investor protection and investment.

Second, the article written by Hughes¹⁰ entitled "Cryptocurrency Regulations And Enforcement In The U.S." published in the Western State Law Review. This study reveals that decentralized Cryptocurrency is a new type of technology that can be used in several applications, such as transferring money, recording data, and investing. Unlike most investable businesses, decentralized cryptocurrencies do not have a special legal entity that is responsible for consumer protection. The virtual and decentralized

⁸ Michael D Bayles, *Principles of Law "A Normative Analysis,"* Poznań School of Legal Theory, 1987.

⁹ Douglas J. Cumming, Sofia Johan, dan Anshum Pant, "Regulation of the Crypto-Economy: Managing Risks, Challenges, and Regulatory Uncertainty," *Journal of Risk and Financial Management* 12, no. 3 (2019): 126.

¹⁰ Scott D Hughes, "Cryptocurrency Regulations and Enforcement in the U.S.," *Western State Law Review* 45 (2017): 1–28.

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nature of this technology makes the application of traditional legal frameworks untenable. In addition, the absence of a specific legal entity makes enforcement of the new legal framework weak. For these two reasons, the current regulatory status of decentralized cryptocurrencies, or digital currencies, is enigmatic. This article contributes to the increasingly important discussion of the patchwork of US laws relating to virtual currencies and blockchain technology. The main contribution of this article is to provide a systematic literature review of proposed and approved government, agency, task force guide releases and bills relating to virtual currencies. In addition, various definitions of virtual currency provided by local, state, and federal government agencies are also elaborated in this study. In-depth reviews of enforcement actions taken are documented for the following agencies: Commodity Futures Trading Commission, Financial Crimes Enforcement Network, Stock Exchange Commission, Department of Justice, Internal Revenue Service, and Federal Trade Commission. The current legal status is analyzed in five states that have pioneered the path to regulating Bitcoin and other virtual currencies. These states include New York, California, Washington State, Florida, Hawaii, and Arizona. A difficult challenge for lawmakers is to draft laws that stimulate innovation while protecting consumer welfare and satisfaction.

Third, the article in IFAC Papers Online entitled "Digital Currencies and Community Empowerment in Austria: Gesell's Concept of Effective Demand as a Basis for Local Digital Currencies".¹¹ Research shows that the overall acceptance of cryptocurrencies is not affected by government support. Participants are ready to use circle coins for daily payments. Local economic support is the single most significant attribute explaining the increased acceptance of circle coins. Information will be considered important if the aspired goal is to stabilize our monetary system by increasing its diversity. According to the findings, complementary local cryptocurrencies based on Gesell's concept of effective demand may have the potential to counter the negative impact on local communities of an efficiency-driven global economy. Nonetheless, further research is needed to facilitate actual implementation. This article also offers theoretical but practical solutions to recurring economic crises using existing digital

¹¹ F. Janisch dan L. Stapleton, "Digital Currencies and Community Empowerment in Austria: Gesell's Concept of Effective Demand as a Basis for Local Digital Currencies," *IFAC-PapersOnLine* 54, no. 13 (2021): 698–703.

technologies and explores the possible acceptance of the proposed technology by certain societies. Researchers have not provided an in-depth treatment of the immense complexity of the general economic system and, in particular, the volatile cryptocurrency market. More developed theory is needed to control and balance the issuance and withdrawal of coins in the cryptocurrency ecosystem. This research shows that the overall acceptance of cryptocurrencies is not affected by government support. Participants are ready to use circle coins for daily payments. Local economic support is the single most significant attribute explaining the increase in circular coin acceptance.

Fourth, a research study entitled "Legal Protection for Bitcoin Investors in Indonesia: To Move Beyond The Current Exchange System" in the *Journal of Law and Development*.¹² Bitcoin attracts investors from all over the world because it provides an attractive option for today's monetary system. It is a virtual currency that has the potential to replace existing currencies as it provides a new payment concept called mutual consent without relying on trust or decentralization of any bank. Bitcoin as a currency has been adopted in many countries/regions, although the response has been very cautious. This article will use normative-judicial and critical methods to examine issues related to Bitcoin in the context of the applicable law in Indonesia (Law No. 11 concerning Information and Electronic Transactions of 2008). So far, similar laws have been enacted by California, the European Union, and Singapore to address the cryptocurrency issue. This paper is intended to explain Bitcoin, why Bitcoin became a currency, and what the legal framework for Bitcoin investors in Indonesia looks like. Based on the spread of Bitcoin and the dark side of the Bitcoin case that shapes the government's attitude towards Bitcoin in the United States, this paper can introduce proper regulations to protect Bitcoin investors in Indonesia, I will explain.

Fifth, the article written by Guidici et al with the title "Cryptocurrencies: market analysis and perspectives" in the *Journal of Industrial and Business Economics*. The article in this special issue focuses on the emerging phenomenon of cryptocurrencies. Cryptocurrencies are digital financial assets, whose ownership and transfer of ownership is

¹² Mariske Myeke Tampi, "Legal Protection for Bitcoin Investors in Indonesia: To Move Beyond the Current Exchange System," *Jurnal Hukum & Pembangunan* 47, no. 1 (2017): 83.

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guaranteed by cryptographic decentralized technology. The rising value of cryptocurrencies in the market and their growing popularity worldwide opens up a number of challenges and concerns for business and industrial economies. Using the lens of neoclassical and behavioral theory, this introductory article examines the main trends in academic research related to cryptocurrencies and highlights the contributions of selected works to the literature. Particular emphasis is on socio-economic issues, violations and sustainability. We argue that cryptocurrencies can perform several useful functions and add economic value, but there are reasons to support market regulation. While this would go against the original libertarian rationale behind cryptocurrencies, it appears to be a necessary step to improve social welfare.¹³

Cryptocurrency Legality in Indonesia

Bitcoin which is part of the crypto asset as a medium of exchange, was born in the aftermath of the subprime mortgage crisis in 2008 out of consumer frustration with government control of fiat currencies and the dependence of financial institutions to process payments. Bitcoin operates on a decentralized database that records every transaction on a series of blocks called a blockchain. Blockchain is like a digital bookkeeping system and has been at the core of many other cryptocurrencies such as Litecoin and dash. Blockchain technology allows transactions to take place in an untrustworthy environment without third party verification or oversight, and is independent of jurisdictional sovereignty. The ownership of the cryptocurrency unit is verified using cryptography and both parties must agree to the exchange. Cryptocurrency is a subset of virtual currency which is a substitute for legal tender. Virtual currency can be a medium for exchange, account, or store of value.¹⁴ Here are the 10 countries with the most cryptocurrency holdings:

¹³ Giudici, Milne, dan Vinogradov, "Cryptocurrencies: market analysis and perspectives."

¹⁴ Brianne Smith, "The Life-Cycle and Character of Crypto-Assets: A Framework for Regulation and Investor Protection," *Journal of Accounting and Finance*, 2019.

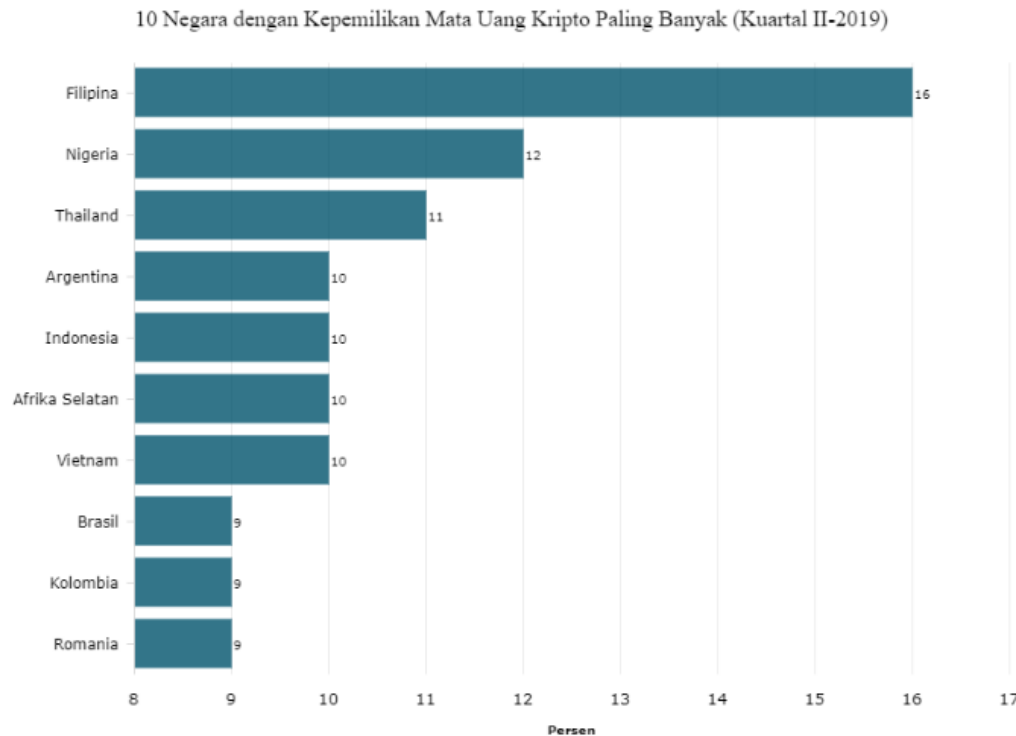


FIGURE 1. 10 Countries with the Most Cryptocurrency Ownership¹⁵

According to a GlobalWebIndex report¹⁶, around 10% of internet users in Indonesia own cryptocurrencies. Indonesia was ranked fifth in the world in the second quarter of 2019. Based on the survey results, the Philippines has the highest ownership percentage, which is 16%, Nigeria is in second place with 12%, Thailand is in third place with 11%, and Argentina is in third place with 10%. The ownership percentage in these countries is significantly higher than the global average of just 7%.

It is undeniable that the development of investment activities in Indonesia is influenced by many factors, one of which is an important factor in the laws and regulations that investors need as a general agreement. The only difference lies in the media that participated in the development of the agreement. The internet sale and purchase agreement is inseparable from the basic concept of the agreement regulated in Article 1313 of the Civil Code. Transactions must meet the legal requirements of the agreement. Because the principles adopted by the Civil Code can be said to be universal transaction

¹⁵ Andrea Lidwina, "10% Orang Indonesia Punya Mata Uang Kripto," *Databoks*, last modified 2019, diakses Desember 1, 2021, <https://databoks.katadata.co.id/datapublish/2019/11/28/10-orang-indonesia-punya-mata-uang-kripto>.

¹⁶ *Ibid.*

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principles. When there is an agreement on the price of goods or services traded and the price of goods or services, the purchase of the Bitcoin virtual currency model is carried out as an investment medium before the agreement.

Many people in Indonesia are becoming more aware of cryptocurrencies. Other potentials are still being explored, but this is one of the blockchain representations whose impact can be seen directly by the public. Interest in cryptocurrencies as an investment grew significantly only after the Bitcoin exchange rate skyrocketed. Exactly one year ago WannaCry wreaked havoc on the digital world. The attacker demanded a ransom in Bitcoin for the release of WannaCry-affected PCs. Bitcoin price skyrocketed immediately. On the other hand, non-Bitcoin cryptocurrencies (alt-coins) continue to emerge, with the aim of closing the Bitcoin gap or providing new mining and transaction methods. Launched on the CoinMarketCap site, there are 1568 types of cryptocurrencies in the World. This number is still being monitored and continues to grow, along with the continued existence of ICOs (Initial Coin Offerings) carried out in various countries, including Indonesia. Not all cryptocurrencies are popular, if you look at the highest market cap in March 2021, there are ten cryptocurrencies.¹⁷

The bitcoin virtual currency investment model which is classified as a commodity such as gold, the Commodity Futures Trading Law No. 10 of 2011 can also provide legal protection for investors. Hedging of commodity futures contracts is carried out under the direct supervision of the BAPPEBTI. Article 4 paragraph (1) 15 and also explained in the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001 concerning the Organizational Structure of the Ministry of Industry and Trade Article 1112, namely BAPPEBTI has the task of carrying out daily guidance, regulation and supervision. commodity futures trading day.

Each cryptocurrency has unique features, which present unique challenges for regulators. One of the main legal difficulties with regulating cryptocurrencies is that they are intangible. The intangible aspects of virtual currencies present challenges to due process and good jurisprudence. If the cryptocurrency is assumed to be stored on physical servers around the world, and if a court can pinpoint the bitcoin to a specific physical location, then the existing rules of civil procedure apply. However, the distributed data structure of blockchain technology makes determining the specific location of a particular piece of data impossible. Besides, there is no such thing as

¹⁷ M Widyastuti dan Y B Hermanto, "Cryptocurrency Analysis of Indonesian Market Education Facilities," *International Journal of Economics, Bussiness and Accounting Research (IJEBAR)* 2021, no. 2 (2021): 534-546, <https://jurnal.stie-aas.ac.id/index.php/IJEBAR/article/view/2321>.

"bitcoin". Even digitally, bitcoin doesn't exist as a coin with its unique attributes and tracking number. Instead, each "bitcoin" represents a sequence of signatures generated by a cryptographic private key controlled by the bitcoin user. The revolutionary nature of technology is the main reason why it cannot easily fit into the existing legal framework.¹⁸

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According to Hollstein¹⁹ it is important to study the impact of the introduction of derivatives trading on return predictability, Holstein found that the introduction of futures decreases the predictability of returns in most of the largest markets. However, it also increases predictability for other markets, suggesting that there are two main forces at play namely the increase in market efficiency after the introduction of derivatives, but price discovery shifted from the spot market to the derivatives market. The introduction of derivative markets generally increases volatility in commodity markets. Furthermore, Holstein also reveals that returns and volatility are in many cases more predictable after the start of the financial crisis. This means that commodity returns, particularly volatility, are more predictable in an expansion than in a recession.

Before discussing the responsibility of the State in protecting cryptocurrency traders and investors in Indonesia, it is necessary to know that cryptocurrency is an advancement in financial technology that allows it to replace paper money in future financial transactions, according to the technology provided. In the future, it is hoped that the government will study cryptocurrency technology more deeply so that the policies issued do not prohibit and protect the Indonesian market at the same time.²⁰ In terms of regulation, one of the main factors influencing cryptocurrency prices is the sharp drop in Bitcoin price of nearly 50% in early 2018 which is widely attributed to government actions in South Korea and China.²¹

In general, there are several challenges for the government as regulator in protecting crypto assets, including: First, most cryptocurrencies

¹⁸ Hughes, "Cryptocurrency Regulations and Enforcement in the U.S."

¹⁹ Fabian Hollstein et al., "Predictability in commodity markets: Evidence from more than a century," *Journal of Commodity Markets*, no. November 2020 (2021): 100171.

²⁰ Widyastuti dan Hermanto, "Cryptocurrency Analysis of Indonesian Market Education Facilities."

²¹ Corbet et al., "Cryptocurrencies as a financial asset: A systematic analysis."

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have a decentralized structure that is not limited to one legal jurisdiction. While legislators can make consumers and businesses in certain geographic locations subject to regulation, the fact is that decentralized blockchains are difficult to regulate. Therefore, the laws and regulations must specifically state who is bound by the policy. Second, legislation should aim to be technology neutral. For example, the New York Bitlicense laws are unusual in that Bitlicense does not regulate certain business models but regulates the use of certain technologies. Legislation targeting certain cryptocurrencies can lead to the success or death of a particular cryptocurrency regardless of the particular advantage of that cryptocurrency in the market. Third, the objectives of the legislation must be clearly and transparently formulated for market participants. To reduce compliance costs, governments can provide recommended guidelines for consumers and businesses that are subject to the new law.²²

With regard to crypto asset regulation in Indonesia, Law Number 11 of 2008 concerning Electronic Information and Transactions has stipulated "electronic information" and "electronic transactions". According to the definition of electronic information in Article 1 paragraph 1 of this Law: "Electronic information is a cluster or collection of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed so that they have meaning or can be understood by people who are qualified to understand them."

Therefore, crypto asset is included in electronic data which is not limited by the definition of electronic information. Parts of bitcoin transactions such as blockchain, hashes, public keys and private keys can be listed as tokens and access codes that have been processed for meaning or can be understood by people who are qualified to understand them. Article 5 paragraph 1 of this Law states that electronic information and/or electronic documents and/or their printouts are legal evidence.²³

Meanwhile, BAPPEBTI hopes that investors who invest in the crypto asset virtual currency model can provide security guarantees, benefits and legal certainty regarding the use of the crypto asset virtual currency model in Indonesia. In terms of income, if virtual currency is managed in accordance with clear and clear legal rules, it will provide benefits for countries where virtual currency circulates in Indonesia, namely the

²² Hughes, "Cryptocurrency Regulations and Enforcement in the U.S."

²³ Tampi, "Legal Protection for Bitcoin Investors in Indonesia: To Move Beyond the Current Exchange System."

circulation of paper money in Indonesia will be reduced. Crypto asset as a means of payment in Indonesian trade transactions cannot be recognized for its validity, but there is an exception in Article 21 paragraph 2 of the Currency Law, namely that in certain transactions the use of Rupiah is not mandatory. This is in accordance with the provisions of Article 21 paragraph 2 of Law Number 7 of 2011 concerning Currency.

Referring to research conducted by Chang²⁴, if virtual currency is lost or damaged, or is not properly transacted (i.e., fraud, cybercrime, wrong transaction, negligent management, etc.), the size of the damage creates great legal uncertainty and the victim must rely on the terms and conditions. Because virtual currencies are not securities as described later, victims of fraud, cybercrime, wrongful transactions, or negligent management cannot be covered under securities regulations to recover arbitration. In order to claim the maximum compensation, the plaintiff must be able to put forward the relevant rules, theories and cases according to the Second Book of the Civil Code that the value of his personal property must be measured by (i) the market value at the time of loss; (ii) historical value; or (iii) which is higher than (i) or (ii). To this end, the plaintiff can argue for both breach of contract and breach of contract.

On the other hand, virtual currency exchange business actors must be able to submit a defense that applies according to Book Two of the Civil Code because many are faced with demands for recovery of losses due to transaction errors or measurement delays. In some cases, courts may award damages that go beyond strict compensation measures. Examples of non-compensated damages include nominal damages, aggravated damages, restitution damages and profit calculations. In Indonesia, most of it is handed over to judges on the principle of *ex aquo et bono*.²⁵ If the value of the subject matter becomes an issue in litigation in Indonesia, generally it is necessary to assess the public or the relevant authorities to measure its value. Nonetheless, at this point, one cannot determine the most appropriate institution for virtual currency valuation.

Conclusion

Cryptocurrency is a subset of virtual currency which is a substitute for legal tender. Virtual currency can be a medium for exchange, account, or

²⁴ Chang, "Legal Status of Cryptocurrency in Indonesia and Legal Analysis of the Business Activities in Terms of Cryptocurrency."

²⁵ *Ibid.*

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store of value. Around 10% of internet users in Indonesia own cryptocurrencies and Indonesia is ranked fifth in the world in the second quarter of 2019. In order to protect cryptocurrency traders and investors on Indonesian crypto asset platforms, the government refers to the Commodity Futures Trading Law No. 10 of 2011 which can provide legal protection for investors. Hedging of commodity futures contracts is carried out under the direct supervision of the Commodity Futures Trading Regulatory Agency (BAPPEBTI). Although crypto asset as a means of payment in trade transactions cannot be recognized as valid in Indonesia, there is an exception in Article 21 paragraph 2 of Law Number 7 of 2011 concerning Currency, namely that in certain transactions the use of Rupiah is not mandatory. Thus, if virtual currency is managed in accordance with clear and clear legal rules, it will provide benefits for countries where virtual currency circulates in Indonesia, namely the circulation of paper money in Indonesia will be reduced.

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