

LEGAL GAPS IN VIRTUAL CURRENCY INVESTOR PROTECTION IN INDONESIA

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Abstract. This study examines the legal gaps governing cryptocurrency investment in Indonesia, identifying issues that arise due to unclear regulations, including potential fraud and risks for investors. By referring to Law No. 7 of 2011, PBI No. 18/40/PBI/2016, and Bappebti Regulation No. 5 of 2019, this article shows how the existence of contradictions in regulations can cause confusion among investors, especially for those who do not have a deep understanding of the legal aspects of investment. In addition, this article recommends various efforts that can be made to improve legal protection for investors, including strengthening regulations through special laws, education and training for investors, and collaboration between the government and related parties. The results of this study are expected to provide insight for policymakers and investors regarding the importance of clear regulations and better protection in virtual currency investment

Keywords: legal gap; investor protection; virtual currency investment

I. INTRODUCTION

Rapid economic development and technological and industrial progress have produced various types of goods and services that provide consumers with many choices. Every country, including Indonesia, seeks to improve the welfare and prosperity of its people in various ways. [1] These efforts are noted in the opening of the Constitution of the Republic of Indonesia which states that the state's goal is to protect the entire Indonesian nation, advance general welfare, improve the nation's life, and participate in creating world order based on justice and peace. [2] The idea of realizing a just and prosperous society is the main goal in the philosophy of the nation and state in Indonesia.

Investment is one of the important elements in economic growth because it can encourage the development of economic activities as a whole. Investment or capital investment must be integrated into the national economy to increase sustainable development, strengthen national technological capabilities, and realize community welfare. [3] The Indonesian government has regulated aspects of investment through regulations such as Law No. 1 of 1967 concerning Foreign Investment and Law No. 6 of 1968 concerning Domestic Investment, which was later refined by Law No. 25 of 2007 concerning Investment, to create a highly competitive economic system. Investment is one of the important steps in developing wealth and achieving long-term financial stability. [4] In this modern era, technological developments have brought significant changes in the way people invest, with the emergence of various digital

investment instruments, including virtual currency. Investors now have easy access to invest online with just a few clicks on their devices, without go through complicated traditional processes.. [5]

In line with the rapid advancement of science and technology (IPTEK) today, investments can now be made through digital platforms, known as virtual currency. [6] In this form of digital investment, investors are given significant convenience thanks to advanced technology, so they do not have to face difficulties in choosing assets to invest in. Simply by accessing the website, the investment process can be done faster and more efficiently. [7] In order to propel the nation forward and keep pace with rapid technological advancements, the agility, and acumen of both the government and society are crucial. This will foster a more secure investment environment, safeguarding individuals from falling prey to fraudulent activities.

Within the realm of virtual currency, there exists a variety of digital currencies or cryptocurrencies that serve as mediums of exchange for online transactions. Notable examples of these cryptocurrencies include Bitcoin, Dogecoin, and Ethereum, all of which are underpinned by blockchain technology. [8] Unlike conventional money, cryptocurrency does not have a physical form but rather consists of a series of codes stored in a digital network. Although it offers many conveniences, investing in cryptocurrency also has its challenges. [9] One of the major drawbacks of virtual currency investments is the inability of investors to monitor, track, and duplicate their digital assets. This poses a high risk, especially for those new to the world of digital investment, as

the lack of transparency and oversight can lead to significant financial losses.

Cryptocurrency was first introduced in 1980 by David Chaum, a computer scientist and mathematician who developed an algorithm that became the basis for websites encryption and the transfer of virtual currencies that we know today. The discovery became an early milestone in the world of digital currencies, and in 1990, Chaum launched DigiCash, which was the first digital currency. Although DigiCash did not succeed in developing, this innovation remains an important reference for the evolution of digital currencies in the future. The development of cryptocurrency began to show significant momentum in 2008. In that year, an author under the pseudonym Satoshi Nakamoto published a book titled "Bitcoin: A Peer-to-Peer Electronic Cash System." In this work, Nakamoto explained the cryptographic concepts that are the backbone of the Bitcoin system, as well as how digital currencies can function as a means of payment directly without intermediaries. A year after the publication of his book, Nakamoto launched Bitcoin, which became the first successful cryptocurrency and created a stir in the global financial markets. [10]

Bitcoin was not only a pioneer in the cryptocurrency world, but also triggered the emergence of various other digital currencies that utilize blockchain technology. The success of Bitcoin brought greater attention to the potential of digital currencies, and in a short time, many new projects were developed to create alternative investments. Cryptocurrencies have now become an integral part of the digital economy, providing opportunities for investors to engage in a dynamic market, but also presenting challenges and risks that need to be well understood by market players. In this context, the importance of regulation and legal protection for investors becomes increasingly clear, given the volatile nature and complexity of the ever-evolving cryptocurrency world. After the birth of Bitcoin, which was supported by the cryptography community, many other developers began to create new cryptocurrencies. Public support for cryptocurrencies increased rapidly, as seen from the price spike in 2010. This condition encouraged many investors to mine cryptocurrencies, given the limited amount available. [11] However, in recent times, the price of virtual currency has decreased, especially in Indonesia, due to government regulations and inadequate legal protection. Cryptocurrency is also not recognized as a legal tender because it is considered to have no real value and is contrary to applicable laws and regulations.

Cryptocurrency is considered contrary to Law No. 7 of 2011 concerning Currency, which stipulates that the only legal currency in the Republic of Indonesia (NKRI) is the Rupiah, and has a function for transactions carried out within the territory of the NKRI. [12] The prohibition on the use of cryptocurrency is also emphasized in Bank Indonesia Regulation (PBI) Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing, which states that cryptocurrency is not recognized as a legal means of payment. In addition, PBI Number 19/12/PBI also explains that cryptocurrency cannot be used in financial technology as

an official transaction tool. However, amidst strict regulations, there is a legal basis that allows cryptocurrency trading in Indonesia. This is stated in the Regulation of the Commodity Futures Trading Supervisory Agency (Bappebti) No. 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets. This regulation provides space for cryptocurrency trading, although it remains within the framework regulated by law. With these two sides of the regulation—the prohibition on the use of cryptocurrency as a means of payment and permission for trading—there is a significant legal vacuum in the protection of investors in the virtual currency market.

The legal vacuum in the context of virtual currency investment in Indonesia arises due to the dualism of conflicting regulations, where cryptocurrency is not recognized as a legal means of payment based on Law No. 7 of 2011 and relevant PBI, but at the same time allowed to be traded in accordance with Bappebti Regulation No. 5 of 2019. This ambiguity creates a situation where investors do not have adequate legal protection, leaving them vulnerable to the risk of fraud and loss of investment without strong legal guarantees. As a result, the potential for growth and development of virtual currency investment in Indonesia is hampered, and the market becomes less attractive to investors.

The significance of this research is rooted in the imperative to recognize and rectify the current legal loopholes in safeguarding investors in the virtual currency market. Given the increasing number of individuals delving into cryptocurrency investments, a profound comprehension of the existing regulations and the rights and responsibilities of investors is imperative. This research is anticipated to offer valuable insights for policymakers and other stakeholders in formulating more comprehensive and equitable regulations, thereby fostering enhanced public confidence in digital investments and shielding investors from unwarranted risks. Consequently, this will foster a more robust and sustainable digital economic growth in Indonesia.

II. RESEARCH METHODS

The research method used in this study is the normative legal method, which focuses on the analysis of existing legal norms and their application. [13] in the context of legal protection for investors in the virtual currency market. The legislative approach is used to explore and understand the regulations governing cryptocurrency in Indonesia, including Law No. 7 of 2011 and several relevant Bank Indonesia Regulations and Bappebti Regulations. Meanwhile, a conceptual approach is taken to explore the understanding of legal concepts related to digital investment and cryptocurrency. In this study, secondary data will be the main source, including primary legal materials such as laws, secondary materials such as journals and articles, and tertiary materials such as legal encyclopedias and official documents.

Data collection techniques are carried out through observation, interviews with experts in law and investment, and documentary studies to obtain comprehensive information. The data analysis technique applied is deductive

logic, where researchers will draw conclusions based on information obtained from various sources. This method is very relevant to the title of the study, "Legal Vacuum in the Protection of Virtual Currency Investors in Indonesia," because it can identify and analyse legal aspects that need to be strengthened to provide better protection for investors. Thus, this study is expected to provide constructive recommendations for the development of more effective and responsive legal policies to the dynamics of the cryptocurrency market in Indonesia.

III. RESULT AND DISCUSSION

Legal Vacuum and Its Impact on Investor Protection in the Virtual Currency Market in Indonesia

Investment is defined as capital investment in a company or project to make a profit. This concept also includes the sacrifice of a certain amount of money or assets that are expected to generate profits in the future. Additionally, investment also serves to reduce inflation risk and encourage tax savings. There are two common types of investment, namely Real Assets, which include tangible assets such as property and vehicles, and Financial Assets, which take the form of claims documents. There are two possible outcomes in investing: profit or loss, depending on the amount of risk taken.

Investment can be divided into two main categories: direct investment and indirect investment. Direct investment involves capital investment where investors are actively involved in business management, and directly responsible for the business results. Meanwhile, indirect investment involves the purchase of securities, which are usually short-term investments. In today's digital era, investments can also be made virtually through the purchase of cryptocurrencies, such as Bitcoin and Dogecoin. Securities proof of investment ownership, have certain conditions and can be transferred. Several parties are involved in the issuance of securities, including the issuer as the debtor, the first holder as the creditor, and the involved party responsible for the settlement of obligations to the creditor.

Currently, investment in virtual currencies is not regulated by laws that recognize and allow their use as legal tender. Although virtual currencies, including cryptocurrencies such as Bitcoin and Ethereum, are becoming increasingly popular, the existence of a clear legal framework to regulate these transactions remains a challenge. As the use and demand for virtual currencies increase, Bank Indonesia, as the financial regulator in Indonesia, feels the need to issue regulations that can provide guidance in these transactions. In this regard, Bank Indonesia responded by issuing Bank Indonesia Regulation (PBI) No. 18/40/PBI/2016 and PBI No. 19/12/PBI/2017. These policies were enacted as proactive steps to manage and oversee the payment system in Indonesia, as well as to protect the public from the risks that may arise from the use of virtual currencies. Although these regulations aim to create legal clarity and certainty, many parties feel that there is still a legal vacuum regarding the legal status of virtual currencies as a means of payment. This legal vacuum raises

several issues, especially regarding protection for investors and consumers. Without official recognition of virtual currencies, users are at high risk of fraud and financial losses, as there is no legal protection they can rely on if problems arise. Furthermore, the legal uncertainty regarding virtual currencies can also hinder the growth of the industry and innovation in the field of financial technology in Indonesia.

The role of Bank Indonesia in regulating payment transactions related to virtual currencies is explained in Bank Indonesia Regulation (PBI) No. 18/40/PBI/2016. In this regulation, there are several provisions that prohibit Payment System Service Providers from performing certain actions, including processing payment transactions using virtual currencies, misusing data and information related to payment transactions, and holding or managing money that can be used outside the scope of the payment system service provider. This prohibition aims to maintain the integrity and security of the payment system in Indonesia.

The definition of virtual currency is also outlined in Article 34 of PBI No. 18/40/PBI/2016, which states that virtual currency is digital money issued by parties other than the monetary authority. This digital money is obtained through various methods such as mining, purchasing, or transfers (rewards). Examples of virtual currencies include Bitcoin, Dogecoin, and Litecoin, whereas electronic money is not included in this category. With this definition, Bank Indonesia seeks to affirm that virtual currency does not have recognized status as legal tender in Indonesia. To ensure transaction security and smoothness, Bank Indonesia has set several important points that must be adhered to by Payment System Service Providers. These points include the implementation of risk management, consumer protection, transaction security aspects, and the requirement to use the Rupiah in every transaction. In addition, domestic payment transactions are expected to improve quality and expand the use of cashless transactions.

Based on the explanation above, virtual currency is not allowed in the transaction process in Indonesia. This is due to concerns from the Central Bank regarding four important aspects. First, virtual currency lacks clear regulation, thus potentially causing legal uncertainty. Second, transactions using virtual currencies are usually conducted on a peer-to-peer basis, meaning that no third party is formally involved. Third, the identities of transaction actors are often obscured, making it difficult to monitor and enforce the law. Fourth, the anonymous nature of these transactions opens up opportunities for the use of virtual currencies in illegal activities, such as money laundering or terrorism financing. All of these factors are strong reasons for Bank Indonesia to prohibit the use of virtual currencies in official payment transactions in the country.

Regulation of cryptocurrency in Indonesia consists of several complementary but challenging regulations in their application. One important legal basis is Law No. 7 of 2011 concerning Currency. In this law, it is regulated that the legal currency in Indonesia is the Rupiah, which explicitly states that cryptocurrency is not recognized as legal tender. Thus, all transactions using cryptocurrency are considered illegal,

creating uncertainty for cryptocurrency investors and users in Indonesia.

There is Bank Indonesia Regulation (PBI) No. 18/40/PBI/2016 which regulates the Provision of Payment Transaction Processing. In this regulation, Bank Indonesia emphasizes the prohibition of the use of cryptocurrency in the payment system and prohibits Payment System Service Providers from processing transactions involving virtual currency. This PBI underlines Bank Indonesia's concerns about security risks and potential illegal activities that may arise with the use of cryptocurrency, which essentially functions as a medium of exchange in an unstandardized market.

On the other hand, there is Commodity Futures Trading Regulatory Agency (Bappebti) Regulation No. 5 of 2019 which regulates technical provisions for the organization of the physical market for crypto assets. This regulation provides a foundation for cryptocurrency trading on futures exchanges but is still outside the context of a payment instrument. With regulations from Bappebti, cryptocurrency is recognized as a tradable commodity, but not as a currency. The ambiguity between the role of cryptocurrency as a commodity and a means of payment creates a legal vacuum, where cryptocurrency investors and users do not have clear legal certainty regarding their rights and obligations.

These conflicting regulatory aspects result in uncertainty in the cryptocurrency market. On one hand, Law No. 7 of 2011 and PBI No. 18/40/PBI/2016 emphasize that cryptocurrency cannot be used as legal tender. On the other hand, Bappebti Regulation No. 5 of 2019 recognizes the existence of cryptocurrency trading as a commodity. This situation creates confusion for market participants and investors and could hinder the growth of innovation and blockchain technology development in Indonesia. This legal vacuum shows the need for harmonization between the existing regulations to provide clarity and protection for all parties involved in cryptocurrency transactions.

The legal vacuum related to cryptocurrency in Indonesia has a significant impact on investor protection. Regulatory uncertainty makes investors vulnerable to fraud because, without a clear legal framework, irresponsible individuals or entities can take advantage of this situation to engage in illegal practices. Fraud cases involving cryptocurrency investments, such as Ponzi schemes or fraudulent investments, are on the rise due to the difficulty of enforcing the law against violations that occur. In addition, investors risk losing their investments entirely, because if there is bankruptcy or fraud by the trading platform, there is no protection mechanism they can rely on to recover lost funds.

In addition, this regulatory uncertainty contributes to the decline in investor confidence in the cryptocurrency market. When investors feel that the legal system is unable to protect their rights, their willingness to invest in digital assets will decrease. This decline in confidence can result in reduced participation in the market, hindering the growth of the cryptocurrency ecosystem, and lowering the potential for innovation that can be generated by blockchain technology.

As a result, the cryptocurrency market becomes less attractive to investors, both domestic and foreign, which could have long-term effects on the development of the digital financial industry in Indonesia.

Obstacles Faced by Investors in Investing in Virtual Currency in Indonesia and Efforts That Can Be Made to Improve Legal Protection for Investors

In terms of virtual currency investment in Indonesia, there are several obstacles faced by investors, mainly due to the legal vacuum that still surrounds this sector. Uncertainty in regulation creates a vulnerable risk to environment, where investors feel unprotected and tend to hesitate to invest. In addition, the lack of clarity regarding the legal status of cryptocurrency makes many laypeople reluctant to enter this investment world. This is exacerbated by rampant fraud and non-transparent investment practices, which often take advantage of the public's lack of understanding of cryptocurrency. Therefore, it is important to identify and understand these various obstacles, so that efforts to improve legal protection for investors can be carried out more effectively.

Regulatory uncertainty is one of the main obstacles for investors in investing in virtual currency in Indonesia. Although there are several regulations issued by Bank Indonesia and Bappebti, there are still many legal vacuums that make investors feel unsafe. Existing regulations tend to be inconsistent and do not sufficiently regulate important aspects of cryptocurrency investment, such as protection against fraud and legal certainty in transactions. The ambiguity creates fear among investors, especially those who are new to the market, so they hesitate to invest. Lack of education and financial literacy is also a significant barrier. Many people are still unfamiliar with cryptocurrency, blockchain technology, and the risks associated with this investment. Without a good understanding, investors can potentially get caught up in bad investment decisions or even become victims of fraud. Minimal education about how the cryptocurrency market works and safe investment strategies make many individuals reluctant to get involved in virtual currency investments, even though there is a promising profit potential.

The risk of cryptocurrency-based fraud and scams is making things worse for investors. With so many platforms offering investments in cryptocurrencies, many unscrupulous people take advantage of the ignorance of novice investors to commit fraud. Fraud cases targeting new investors often involve offers of unrealistic profits, as well as platforms that are not officially registered. The impact of this fraud not only results in financial losses for investors but also reduces public trust in cryptocurrency as a legitimate investment option. Limited access to valid information is also a major issue. Many investors have difficulty obtaining accurate and reliable information about trading platforms and digital assets. With the rise of fake news and misleading information, investors are often confused about choosing the right platform to invest in. Without a clear and transparent source of information, investors tend to make decisions based on invalid information, which can lead to huge losses. Market volatility is a challenge

that cannot be ignored. Extreme cryptocurrency price fluctuations can occur in a short period, leaving investors feeling stressed and confused. This volatility affects investment decisions and often triggers impulsive actions, such as selling assets in a panic. Investors who are not prepared for volatile market conditions can suffer significant losses, which ultimately makes them hesitant to invest further in virtual currency.

Virtual currency investment in Indonesia is increasingly in demand, especially among the younger generation who see it as a current trend. However, the public's lack of understanding of existing legal regulations makes them vulnerable to fraud. To reduce this risk, it is important for investors to comprehend the legal aspects that govern investment in virtual currency. According to Duncan H. Meldrum states that there are several factors to be considered, including transparency, agreement between related parties, and the role of the government in resolving problems arising from the community. The articles in the Civil Code also provide a legal framework for virtual currency transactions, emphasizing the importance of agreement, competence, object of agreement, and lawful cause in every transaction.

In addition, legal supervision and protection regulated by Bappebti and related laws are also important in ensuring investment security. Although virtual currency is not recognized as a legal means of payment, investment in trade is still permitted. However, the legal vacuum and conflicting regulations create uncertainty for investors. Incidents such as the SQUID case, where the project founder fled with investor funds, show the high risks faced. Therefore, the need for clear regulations and strong legal protection is crucial to maintain investor security in transactions in the virtual currency world.

To enhance legal safeguards for investors in the cryptocurrency sector, the initial step is to reinforce regulations. This involves the establishment of specific laws to govern cryptocurrency operations and transactions, while concurrently creating a legal framework that fosters industry growth while safeguarding investor interests. Strengthened regulations will mitigate uncertainty and the risk of fraud that often concerns investors, providing a sturdy foundation for law enforcement. Moreover, heightened supervision by relevant authorities, such as Bappebti, is imperative to ensure adherence to existing regulations.

In tandem with bolstering regulations, prioritizing education and training for investors is essential to enhance financial literacy and comprehension of the risks associated with cryptocurrencies. Well-crafted educational programs can empower investors to make more informed decisions. Additionally, the development of an information platform that offers accurate and current data on virtual currencies, accessible to the public, is crucial. Collaboration between the government, financial institutions, and industry stakeholders is also vital in establishing a secure and transparent ecosystem, where all parties play a role in upholding market integrity and shielding investors from potential fraud.

IV. CONCLUSIONS

The absence of clear regulations surrounding cryptocurrency investment in Indonesia reveals the inadequacy of current measures in safeguarding investors. The lack of defined guidelines governing the use and trade of virtual currencies poses significant risks, such as fraud and confusion among investors, particularly those unfamiliar with the market. Furthermore, the conflicting regulations permitting cryptocurrency trading while prohibiting its use as legal tender only add to the uncertainty, creating a legal vacuum that could be exploited by irresponsible parties, ultimately harming law-abiding investors. Addressing this issue requires several concerted efforts. Primarily, the establishment of a clear and comprehensive special law on cryptocurrency is crucial to bolster regulations. Additionally, educating investors about the risks associated with this form of investment through financial literacy programs is essential. Moreover, the development of an information platform providing accurate and current data on virtual currencies is pivotal to enhancing transparency. Lastly, fostering collaboration among the government, financial institutions, and industry stakeholders is imperative in creating a secure and trustworthy ecosystem, instilling a sense of protection and confidence among cryptocurrency investors.

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