



Conceptualization of Future Cryptocurrency Laws in Indonesia and Ukraine

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Abstract. The presence of cryptocurrencies is basically an alternative model for providing decentralized money and payment. They provide a payment system model that no longer has to rely on third parties such as banks or governments to ensure that the payer can deliver the agreed-upon funds. In contrast, cryptocurrency systems inspire trust in decentralized, uninterrupted computer programs, which theoretically cannot deceive their users. The focus of the study in this research is related to the regulation of cryptocurrencies, especially Bitcoin, in Indonesia and Ukraine. Using Bitcoin in Indonesia and Ukraine to pay for goods or services is illegal. In this study, the method used is a normative legal research method. This method analyzes how the legal system reacts to a new problem that has not been regulated by legislation or systemic and comprehensive precedents, in this case, cryptocurrency. The normative legal research method is based on the post-positivism paradigm. Research results, in general, find that cryptocurrency is the antithesis of capital money. First, cryptocurrencies are neutralized by third parties being removed from the global system of economic actors. Second, as a medium of exchange, cryptocurrencies oppose fiat money. Despite the lack of material situation (use-value), the issuance of cryptocurrencies is not controlled by fractional reserve lending, thereby ultimately reducing the fundamental requirements of negative excess of capitalism to continue to grow.

Keywords: Cryptocurrency Law, Bitcoin, Policy, Ideology, Indonesia, Ukraine



Abstrak. *Kehadiran mata uang kripto pada dasarnya merupakan model alternatif untuk menyediakan uang dan pembayaran yang terdesentralisasi. Mereka menyediakan model sistem pembayaran yang tidak lagi bergantung pada pihak ketiga seperti bank atau pemerintah untuk memastikan bahwa pembayar dapat mengirimkan dana yang telah disepakati. Sebaliknya, sistem mata uang kripto menginspirasi kepercayaan pada program komputer terdesentralisasi dan tidak terputus, yang secara teoritis tidak dapat menipu penggunanya. Fokus kajian dalam penelitian ini terkait dengan regulasi mata uang kripto y khususnya Bitcoin di Indonesia dan Ukraina. Saat ini, penggunaan Bitcoin di Indonesia dan Ukraina untuk membayar barang atau jasa dianggap ilegal. Dalam penelitian ini metode yang digunakan adalah metode penelitian hukum normatif, metode ini digunakan untuk menganalisis bagaimana sistem hukum bereaksi terhadap suatu masalah baru yang belum diatur oleh peraturan perundang-undangan atau preseden yang sistemik dan komprehensif, dalam hal ini mata uang kripto. Metode penelitian hukum normatif didasarkan pada paradigma post-positivisme. Hasil riset secara umum menemukan bahwa mata uang kripto adalah antitesis dari kapital uang. Pertama, bahwa cryptocurrency dinetralkan oleh pihak ketiga yang dikeluarkan dari sistem global pelaku ekonomi. Kedua, sebagai alat tukar, mata uang kripto menentang uang fiat. Terlepas dari kurangnya situasi material (nilai guna), penerbitan mata uang kripto tidak dikendalikan oleh peminjaman cadangan fraksional, sehingga pada akhirnya mengurangi persyaratan mendasar kapitalisme untuk terus tumbuh.*

Kata kunci: *Hukum Mata Uang Kripto, Bitcoin, Kebijakan, Ideologi, Indonesia, Ukraina*

1. Introduction

As the basis of the state, Pancasila is a spiritual principle commonly referred to as the basis of state philosophy (*philosophische grondslag*). In its position as the basis of the state, Pancasila is a source of values and norms in every aspect of state administration, including as a source of fundamental norms (*grundnorm*). Consequently, all laws and regulations, along with the elaboration of laws and regulations, must be based on the values contained in Pancasila.¹ Furthermore, the values in Pancasila are enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia, which is the basic norm of the state, giving breath to the body of the 1945 Constitution of the Republic of Indonesia and the laws and regulations under it.

The idea of legal reform in Indonesia aims to form a national law that is not solely for reform (*ansich*), but legal reform with a progressive character of reform policy which is a concretization of the value system prevailing in society. The aspired state is the compatibility between the law and the value system. Consequently, changes to the value system must be followed by legal reforms or vice versa.² It is in line with the conception of the welfare state, which wants protection for the community and the values in the middle to provide welfare for the people.³ Changes in society should be followed by changes in the law so that the law can provide guarantees and certainty when a condition occurs where the community asks for justice. Legal order will have to be based on a certain scale of values that are not formulated with absolute formulas but with due regard to the interests of the people who change according to changing times, circumstances, and national beliefs.

The movement of the legal reform process that limits the discussion to the renewal of positive norms of legislation proves the strong character of legal positivism in legal development in Indonesia and Ukraine today. The nature of

¹ Kaelan, *Pendidikan Pancasila*, Paradigma, Yogyakarta, 2014.

² Satjipto Rahardjo, *Hukum Progresif sebagai Dasar Pembangunan Ilmu Hukum*, in Ahmad Gunawan dan Mu'ammarr Ramadhan, ed., *Menggagas Hukum Progresif Indonesia*. Kerjasama Pustaka Pelajar, IAIN Walisongo dan Program Doktor Ilmu Hukum UNDIP, 2006

³ Laws cannot exist, and therefore cannot be studied in a vacuum. This sentence was quoted by Alan Hunt in explaining the thought of the sociological jurisprudence in his book. Hunt, Alan. *Explorations in Law and Society Toward Constitutive Theory of Law*. Routledge, New York, 1993.

legal positivism has become a determinant for the future of legal reform, as well as making the law isolated from the social dimension in Indonesian and Ukrainian society. Moreover, when the function of legislation as the initial door for legal reform, it often puts forward political conflicts of interest through the pretext of legislative procedures rather than reflecting a substantial dialectic.

Law influences social institutions, meaning there is a direct relationship between law and social changes.⁴ However, in a society that has a certain level of culture and social structure, the law can be left behind when the law is faced with a dynamic situation where legal developments do not follow social changes.⁵ No matter how the law has been viewed and approached with the science of law, another discipline is needed, namely sociology which tries to examine it from a different angle, as stated by Rahardjo: except for its normative appearance, the law also has another side, which is the fact that it appears. What is meant by Satjipto Rahardjo by looking at the reality here is not the reality in the form of articles of law but how the law is implemented in daily life. The consideration is about trespassing boundaries of legal regulations and observing the practice of law as applied by society.⁶

Law, accepted and implemented by many countries today, generally falls into modern law.⁷ Meanwhile, most of the laws in developing countries consist of traditional and modern laws. These countries generally inherit a pluralistic legal system, where traditional law applies alongside modern law.⁸ Modern law in both Indonesia and Ukraine has the main characteristics in written form, applies to all regions of the country, and is an instrument that is consciously used to realize the political decisions of its people. The character of modern law is explicitly attached to the legal system originating from mainland Europe which Indonesia inherited after its national independence in 1945. Modern law was also applied in the Ukrainian legal system.

Like other developing countries, Indonesia and Ukraine have led to modernization which is expected to be a bridge that leads two nations to a

⁴ Soerjono Soekanto. *Pokok-Pokok Sosiologi Hukum*, Grafindo Persada, Jakarta, 1990.

⁵ Soerjono Soekanto. *Fungsi Hukum dan Perubahan Sosial*, PT Citra Aditya Bakti, Bandung, 1991.

⁶ Khairuddin Khairuddin. *Sosiologi Hukum*, Sinar Grafika, Jakarta, 1991.

⁷ Satjipto Rahardjo. *Hukum dalam Perspektif Perkembangan*, dalam Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2000.

⁸ Satjipto Rahardjo. *Hukum dan Masyarakat*, Angkasa, Bandung, 1981.

prosperous and modern state. This commitment to modernization impacts reforms in all fields, one of which is e-commerce activities. The development of e-commerce has encouraged the development of payment instruments, from what were originally cash-based instruments to a new type of payment instrument known as non-cash-based instruments. These non-cash-based instruments have grown rapidly, both paper-based and non-paper-based (paperless economy). One of the payment tools that has been developed recently is virtual money.⁹

The focus of the study in this research is related to the regulation of cryptocurrencies, especially bitcoin in Indonesia and Ukraine. Currently, the use of Bitcoin in Indonesia and Ukraine to pay for goods or services is illegal.¹⁰ Illegal actions, in this case, have several meanings. The first is that these actions do not get legal protection.¹¹ The second is that these actions cannot benefit the community's economy positively. In fact, the development of the use of Bitcoin is increasing. If the state does not regulate, even though its development is growing rapidly, then what is done by the state is like a country that shuts itself off from the world of international trade. As if protecting the people in their country from foreign influences, but the effect could be even worse for the people in the future. While legal development in Indonesia should use Pancasila as its paradigm, regardless of whether the law is a determinant of politics or otherwise subordinated to politics, the legal development in Ukraine needs to consider its socio-political conditions, constitution, and legal system. Legal materials or products can change and be changed according to the times and changes in society because the law is not in a vacuum, but the law must still be based on Pancasila.¹² In this case, Bitcoin in Indonesia and Ukraine needs to be emphasized in the reconstruction of

⁹ Axel Yohandi, Nanik Trihastuti, and Darminto Hartono. "Implikasi yuridis penggunaan mata uang virtual bitcoin sebagai alat pembayaran dalam transaksi komersial (studi komparasi antara Indonesia-Singapura)." *Diponegoro Law Journal* 6, no. 2 (2017), p. 2.; Razzaq, Raafi Ghania. "Legalitas Mata Uang Virtual Dalam Perspektif Hukum Indonesia." *Lontar Merah* 1, no. 2 (2018): 108-122.; Saputra, Endra. "Dampak Cryptocurrency Terhadap Perekonomian Indonesia." In *Seminar Nasional Royal (SENAR)*, vol. 1, no. 1, pp. 491-496. 2018.

¹⁰ Taras Bachynskyy, and Roman Radeiko. "Legal regulations of blockchain and cryptocurrency in Ukraine." *Hungarian Journal of Legal Studies* 60, no. 1 (2019), p. 3.

¹¹ Valeriia Dyntu, and Oleh Dykyi. "Cryptocurrency in the system of money laundering." *Baltic Journal of Economic Studies* 4, no. 5 (2018), p. 78; Mykola Inshyn, Leonid Mohilevskyi, and Oleksii Drozd. "The issue of cryptocurrency legal regulation in Ukraine and all over the world: a comparative analysis." *Baltic Journal of Economic Studies* 4, no. 1 (2018), p. 169.

¹² Mahfud M. D., *Membangun Politik Hukum dan Menegakkan Konstitusi*. LP3ES, Jakarta, 1998.

cryptocurrency law. The focus of the bitcoin cryptocurrency regulation is expected to be an arrangement that is able to contribute to improving people's welfare in Indonesia and Ukraine.¹³

2. Research Method

In this study, the method used is a normative legal research method; this method is used to analyze how the legal system reacts to a new problem that has not been regulated by legislation or systemic and comprehensive precedents, in this case, cryptocurrency. The normative legal research method is based on the post-positivism paradigm. This combination of frameworks and methods has important consequences for studying the legal concept of cryptocurrency regulation. These consequences are in the ontological aspect. Ontologically, the research focuses on Indonesian legal norms based on Pancasila values. The legal consideration is also applied in the context of cryptocurrency regulation in Ukraine.¹⁴

3. Result and Discussion

Virtual money is a type of money created for or from virtual activities by members of a virtual community in a virtual community.¹⁵ Virtual money has several characteristics contained in traditional money: a measure of value, a store of value, and a medium of exchange.¹⁶ However, virtual money differs from traditional money and electronic money, especially in terms of where it is spent and how it is made.¹⁷

¹³ Yuliia Chornous, Serhii Denysenko, Vasyl Hrudnytskyi, Olha Turkot, and Oleksandr Sikorskyi. "Legal regulation of cryptocurrency turnover in Ukraine and the EU." *Journal of Legal, Ethical and Regulatory Issues* 22 (2019), p. 3.

¹⁴ Soejono Soekanto. *Metode penelitian hukum*. Jakarta : Raja Grafindo, 2003.; Asikin, Zainal. *Pengantar metode penelitian hukum*. Jakarta : Raja Grafindo, 2016..

¹⁵ Jingzhi Guo, and Angelina Chow. "Virtual money systems: a phenomenal analysis." In *2008 10th IEEE Conference on E-Commerce Technology and the Fifth IEEE Conference on Enterprise Computing, E-Commerce and E-Services*, pp. 267-272. IEEE, 2008.

¹⁶ Glyn Davies. *A History of Money: From Ancient Times to the Present Day*, University of Wales Press, Cardiff , 2002.

¹⁷ Jingzhi Gu, and Angelina Chow, *Loc. Cit.*

For any medium of exchange, whether virtual money such as cryptocurrency issued by a computer program or a traditional medium of exchange issued by the government, it must earn the trust of the people who use it. The presence of cryptocurrencies is basically an alternative model for that trust. They provide a payment system model that no longer has to rely on third parties such as banks or governments to ensure that the payer can deliver the agreed-upon funds. In contrast, cryptocurrency systems inspire trust in decentralized, uninterrupted computer programs, which theoretically cannot deceive their users. However, none of these things can cause the development of cryptocurrencies to stop. They also have to win the public's trust if they are to exist and be relevant.¹⁸

Cryptocurrency is a digital medium of exchange based on cryptographic technology that regulates the generation, verification, and transactions between two or more parties. Transactions involving cryptocurrencies are usually recorded in an open and distributed public digital ledger (e.g., blockchain).¹⁹ In contrast, traditional fiat/medium of exchange payment networks (e.g., the euro) require intermediaries (e.g., central banks) to carry out these activities.²⁰

There are many virtual exchange schemes, and as such, it is not easy to classify. One possibility is to focus on their interactions with real money and the real economy. This occurs through two channels: a) monetary flows through the exchange of means of exchange, and b) real flows in terms of the possibility of buying real goods and services. Taking this as a basis, virtual money can be divided into three types:²¹

1. Closed virtual currency schemes

These schemes have little to do with the real economy and are sometimes called “in-game only” schemes. Users usually pay a subscription fee and then earn virtual money based on their online performance. Virtual currency can only be spent by purchasing virtual goods and services offered within virtual communities, and at least, in theory, cannot be traded outside of virtual communities.

¹⁸ Paul Vigna, and Michael J. Casey, *The Age of Cryptocurrency*, St. Martin's Press, New York, 2015.

¹⁹ European Central Bank, *Virtual Currency Schemes*, Frankfurt am Main, Frankfurt, 2012.

²⁰ Erol Kazan, Chee-Wee Tan, and Eric T. K. Lim, *Value Creation in Cryptocurrency Networks: Towards a Taxonomy of Digital Business Models for Bitcoin Companies*, PACIS, 2015.

²¹ European Central Bank, *Op. Cit.*, hlm. 13-16.

2. Virtual currency schemes with unidirectional flow

Virtual currency can be purchased directly using real currency at a certain exchange rate but cannot be exchanged back to the original currency. Conversion conditions are set by the schema owner. These type two schemes allow the medium of exchange to be used to purchase virtual goods and services, but some may also allow their medium of exchange to be used to purchase real goods and services.

3. Virtual currency schemes with bidirectional flow

Users can buy and sell virtual money according to the exchange rate with their medium of exchange. Virtual currencies are similar to other convertibles in terms of their interoperability with the real world. This scheme allows the purchase of virtual goods and services as well as real goods and services.

In many jurisdictions, cryptocurrency is, by nature, a controversial issue and tends to be viewed negatively by state authorities and law enforcement. It is due to the nature and principles of cryptocurrencies that reject central authority intervention in terms of transaction regulation (decentralization) and privacy (anonymity). Meanwhile, from a state perspective, the nature and principles of cryptocurrencies that go beyond state sovereignty can be misused to fund actions that can endanger national and state security. So, it can be concluded that the main theme of the controversy regarding cryptocurrencies is the conflicting priority between security (security) and private freedom (liberty).²²

The good name of cryptocurrencies has started tarnishing due to scandals that have damaged public trust in cryptocurrencies, especially bitcoin. These scandals vary, such as financing unlawful acts (money laundering, financing of terrorism, and payment instruments in illegal markets selling narcotics, murder services, and other illegal goods), break-ins or hacking, Ponzi scams, and others. Cryptocurrency, which was originally believed to be a revolutionary innovation in financial technology, has tarnished its prestige due to irresponsible and unethical use.

²² Joshua Baron, Angela O'Mahony, David Manheim, and Cynthia Dion-Schwarz. *National security implications of virtual currency: Examining the potential for non-state actor deployment*. RAND Corporation-NDRI Santa Monica United States, 2015.; Todd Jacquez. "Cryptocurrency the new money laundering problem for banking, law enforcement, and the legal system." PhD diss., Utica College, 2016.

Cryptocurrency is a controversial issue in Indonesia and Ukraine. The Indonesian and Ukrainian governments are still developing a completely legal and regulatory system regarding cryptocurrencies, such as applicable law. For the time being, cryptocurrency regulation relies on instructions, decisions, and regulations issued by non-legislative institutions whose scope is still limited. There is a need to reform the legal rules issued by state authorities regarding cryptocurrencies chronologically and descending in the statutory hierarchy.

The increasing awareness of the Indonesian and Ukrainian people towards technological developments has led to an era of economic transformation that was originally a cash-based economy to become a digital-based economy. Indonesia's position marks it as the second-largest e-commerce market in the world.²³ Thus, Indonesia is basically a country that is friendly to the development of economic and financial technology. But this treatment does not apply to cryptocurrencies.

The cryptocurrency controversy has prompted the country's financial authorities to take a skeptical and defensive stance toward its use in Indonesia and Ukraine. Specifically, in 2014, Bank Indonesia officially stated that Bitcoin and other virtual currencies were not recognized as legal currency or means of payment in Indonesia. Bank Indonesia bases this stance on Article 1 point 1 and Article 11 point 3 of Law No. 7 of 2011 concerning money in conjunction with Act No. 6 of 2009 concerning Bank Indonesia. Based on the legal reference above, cryptocurrency can not and should not be used as a currency or legal tender because; 1) not based on rupiah currency, and 2) not issued by Bank Indonesia. Other state authority institutions, such as the Ministry of Finance and the Financial Services Authority, made statements that strengthened Bank Indonesia and the public to be careful in investing or transactions involving cryptocurrencies. Eventually, these regulatory bodies will issue regulations to confirm the legal status of bitcoin and other virtual currencies.

Politics has an important role in cryptocurrencies and vice versa, but this depends on the political map in a particular country. Cryptocurrencies have a very influential political role in the formation of policies in a country related to economic law reform. However, this reform is somewhat of a dilemma due to the nature of cryptocurrencies which tend to be anarchic (rejecting central authority), unstable, and highly speculative. Basically, the existence of cryptocurrencies carries a political message, namely the superiority of individual rights to property that

²³*Loc. cit*

transcends state sovereignty politically, economically, and militarily. The political element of cryptocurrency can trigger different reactions in each country depending on the ideology or political system adopted. Cryptocurrencies are generally rejected in regime-controlled countries with centralized or even authoritarian governments. Countries that adhere to a liberal economy and the highest recognition of individual property rights tend to include cryptocurrencies. But globally, cryptocurrency is still a controversial economic entity, so the political support of countries for it is not significant and tends to be sporadic.

The development of the legal framework to regulate cryptocurrencies is uneven in different parts of the world. On the other hand, some countries are skeptical and tend to limit the use of cryptocurrencies for fear of disruptive threats to their economy. These countries are typical of collectivist ideologies with centralized economic and government systems. Meanwhile, in the context of international law, there is no legally binding convention regarding the practice of cryptocurrencies.²⁴

In Indonesia, The Commodity Futures Trading Authority (CoFTRA) regulations have opened the door to new opportunities for the advancement of cryptocurrency trading by opening up the physical market for crypto assets futures. However, these regulations do not necessarily become the legal basis for the full legalization of cryptocurrencies as CoFTRA only regulates the trading of cryptocurrencies as commodity futures subject to the physical market of crypto assets futures with certain mechanisms and conditions that have been described. On the other hand, using cryptocurrencies outside the physical market for crypto assets is still considered illegal because it refers to BI regulations (18/40/PBI/2016, 19/12/PBI/2017, and 20/06/PBI/2018).

4. Conclusion

Cryptocurrencies will continue to show their existence in the future, both in a positive position, seen as money or from a negative position, seen as the antithesis of fiat currency. Based on the results of the analysis, it is found that cryptocurrency is no different from money, and its presence is a form of capital accumulation directed to virtual spaces. The results of the study found that cryptocurrency is the

²⁴ Jan Lansky. "Possible state approaches to cryptocurrencies." *Journal of Systems integration* 9, no. 1 (2018): 19.

antithesis of capital money and is still considered illegal in use by the Indonesian and Ukrainian governments. However, the law needs to be reformed to accommodate the increasing demand and need for cryptocurrencies. Cryptocurrencies have a competitive advantage as they are neutralized by third parties being removed from the global system of economic actors.

Moreover, as a medium of exchange, cryptocurrencies oppose fiat money. Despite the lack of material situation (use-value), the issuance of cryptocurrencies is not controlled by fractional reserve lending, thereby ultimately reducing the fundamental requirements of capitalism to continue to grow, such as the expansion of the perpetual credit system until the system explodes. For some, cryptocurrencies provide efficient ways for the taxpayer to avoid tax as this system has not been regulated in many developing countries such as Indonesia and Ukraine. However, the position of cryptocurrency as an object of law is still a hotly debated issue as an asset or money. This issue is also closely related to laws such as taxes in many jurisdictions.

Furthermore, cryptocurrencies limit credit swelling from their protocols because they remove debt bondage from the economic system, which runs counter to the contemporary world financial system with the capitalist system and making of the indebted man. The ideology of cryptocurrency, which is horizontal and equalizes power flows as anti-centralism that has been represented by banking. The open-source protocol on bitcoin is democratic, in contrast to the monetary policy under a (vertical) central bank autocracy. The issuance of cryptocurrencies is highly transparent, and the code and nodes are controlled with no hidden agendas or conflicting interests. The existence of cryptocurrencies presents challenges to the national legal system in Indonesia and Ukraine alike. As the basis for law reform, there are needs to consider legal issues that arise from regulating financial practices, law enforcement against financial crimes, as well as consumer and investor protection. Considering these issues can be beneficial for regulating specific issues related to cryptocurrency as it has unique characteristics which is beneficial for economic and legal interests, such as anonymity as the main factor in data protection. Cryptocurrency also enables borderless transactions, and decentralization is a determining factor to ease transactions as the digital world's main feature today.

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