

LEGAL PROTECTION OF TRADERS IN DIGITAL ASSET INVESTMENT THROUGH PRIVATE DIGITAL CURRENCY IN INDONESIA

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Abstract

This study examines the government's response to protect traders engaged in digital asset transactions in Indonesia and analyzes the legal protection available to traders in case of disputes with exchanges. The research employs a normative legal method that investigates relevant rules, norms, and doctrines. The findings indicate that the government has implemented preventive legal protection measures through the Commodity Futures Supervisor, as stipulated in the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001, which outlines the organizational structure of the Ministry of Industry and Trade, specifically Article 1112. Furthermore, traders have access to repressive legal remedies, such as filing a lawsuit under Article 1365 of the Civil Code for the recovery of their rights (compensation) and initiating a default suit according to Article 1243 of the Civil Code in the district court situated in the trader's jurisdiction. Additionally, non-litigation settlements serve as an alternative option available to traders.

Keywords: Legal Protection, Trader, Virtual Currency Investment

1. INTRODUCTION

Indonesia is currently experiencing the era of Industry 4.0, characterized by significant technological advancements that have a profound impact on various aspects of people's lives (Apdillah et al., 2022). This era has brought about substantial changes in the economic, cultural, and social domains, necessitating the development of human resources to keep up with the rapid pace of technological innovation (Suhariyanto, 2012). In the era of Industry 4.0, technological progress is accelerating, resulting in the creation of numerous inventions by experts to enhance the quality of life (Fotouhi & Sorooshian, 2020; Tran, 2021). One notable example is the evolution of e-commerce transactions, which have expanded beyond the provision of goods and services to include the transfer of ownership of digital assets.

Today, individuals seeking to engage in digital platforms have turned to virtual currencies, which are regarded as a business model by certain individuals in Indonesia. Virtual currency serves as an instrument or strategy for clients to engage in trading or financial transactions by exchanging the value of the Indonesian rupiah for virtual currency, with the expectation of significant fluctuations in value. With the shift from traditional monetary exchange to the digital era, numerous promising business opportunities have emerged for everyone, with non-cash instruments such as digital installments and cryptocurrencies gaining popularity. This implies that non-paper-based money or advancements protected by cryptographic technology, known as digital currency, are increasingly replacing traditional cash-based financial instruments (Suratman, 2010).

Cryptocurrency refers to a digital payment system used by clients to conduct commercial or speculative transactions with dealers, functioning as a standard form of currency (Стойка, 2021). The system employs a monetary standard established through complex cryptography, making it nearly impossible to engage in money counterfeiting. This digital monetary standard utilizes cryptographic methods to govern each new currency and verify whether a transaction is authorized or not. Cryptocurrency is not only considered as digital money or cash but can also be utilized for payments or as a source of income since it can be traded as a commodity within an electronic framework, with its financial value determined by relevant entities or parties (Kurnia & Sumadi, 2013).

In digital asset transactions, typically, two parties are involved: the buyer (referred to as the trader) and the Exchanger. The Exchanger is a platform or provider of digital asset trading services or Private Digital Currency, acting as a business entity. In this context, "the trader is considered the client of the product or the potential profit, while the Exchanger serves as the provider of the service offered for use by the client, in line with the provisions described in Law Number 8 of 1997 concerning Consumer Protection, Article 1 numbers 1 and 3."

In Indonesia, there exist certain regulations governing the legal relationships among groups engaged in trading digital assets on electronic platforms. However, concerns regarding trust in the information provided by brokers remain unresolved. Therefore, it is crucial to be aware of the legal framework applicable to the management of virtual currencies and to ascertain the validity and legal status of digital asset ownership. It is imperative to establish a legal basis that can protect and provide appropriate regulations to safeguard associations, especially traders, from potential harm in the future.

Based on the presented background information, the author is motivated to conduct research on the legal protection provided to traders engaging in digital asset transactions through Private Digital Currency in Indonesia. The research aims to explore the form of legal protection granted to traders and is titled "Legal Protection of Traders in Digital Asset Investment Through Private Digital Currency in Indonesia." This paper is an original contribution that has not been previously published. Two previous journals, namely (Azis et al., 2021), which discusses the legal protection of digital currency investment from the perspective of investment law in Indonesia, and (Juniadi & Markeling, 2016), which explores the position of virtual currency in investment activities and the legal protection for investors who invest with virtual currency in Indonesia, serve as references for this article.

The primary objective of this research is to gain a comprehensive understanding of the response from the government and stakeholders towards the protection of traders involved in digital asset transactions in Indonesia. Furthermore, the research aims to provide clarity on the available legal protection for traders in case of disputes with the Exchanger.

2. RESEARCH METHODS

The research employed normative legal research method, commonly utilized to analyze clearly formulated and unambiguous norms within laws and regulations. The aim of this research is to identify potential conflicts between norms and determine if there are any legal acts that require regulation but have not been addressed yet (Johnny, 2006). The author adopted a statute approach in writing this journal article, which involved

examining relevant laws, regulations, and legal doctrines pertaining to the issues discussed in this research.

3. RESULTS AND DISCUSSION

3.1. Government Function in Ensuring Legal Protection for Traders in Digital Asset Investment

Investment protection is an important tool for the state to fulfill its obligation to maintain the equality and welfare of its population, as it provides security and legal certainty for investors and traders. The welfare and equality of its citizens are crucial responsibilities of the state, principles that are recognized and enshrined in the 1945 Constitution of the Republic of Indonesia (Apsari & Rudy, 2014). One way in which the government can fulfill this duty is by providing investment protection. In the field of economics and finance, investment refers to activities undertaken to generate profits from physical and non-physical assets.

Investment encompasses various types of activities, primarily related to two forms of assets: real assets and financial assets (Dharmakusuma, 2018). Real assets include tangible resources such as property, land, precious metals, and the like. On the other hand, financial assets do not have a physical structure but can be converted into monetary form through processes like securities, stocks, and shared assets (Suryadipa & Purwanto, n.d.). With the advancement of technology, investing in financial assets has become increasingly accessible, especially through investment platforms like Binance, Crypto store, Indodax, Pintu, and others that can be easily accessed via mobile devices.

In the context of investment in Indonesia, regulations play a crucial role in promoting investment activities (Nandayani & Marwanto, 2020). Traders and investors require legal certainty to confidently and fairly allocate their resources to virtual assets or monetary standards in Indonesia (Azis et al., 2021). Therefore, it is essential to establish a foundation of legal certainty that provides regulations and anticipatory measures (Sapoan & Hamdani, 2018). As legal expert Philipus M. Hadjon explains, preventive legal protection allows legal subjects to express their opinions or objections before a final decision is made (Philipus & Djatmiati, 2005). The purpose of this protection is to prevent disputes and encourage the government to exercise caution when making discretionary decisions.

To ensure a safe and orderly environment for investors and traders, the Indonesian government has implemented regulations governing virtual currency investments. This is stipulated in Law No.10 of 2011 on Commodity Futures Trading, which aims to prevent fraud and illegal practices in virtual currency investment. The direct supervision of virtual currency investments is carried out by the Commodity Futures Trading Supervisory Agency (BAPPEBTI), responsible for providing daily guidance, regulation, and supervision of commodity futures trading activities in accordance with Article 4, paragraph 1, and the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001, Article 1112. As a stakeholder, BAPPEBTI bears the responsibility of ensuring security, benefits, and legal certainty in the utilization of private digital currencies in Indonesia.

To achieve balanced protection for buyers and traders, regulations pertaining to investment activities are necessary. It is essential to establish standards that embody the principles of benefit, fairness, balance, security, safety, and legal certainty. These

standards must be applied to virtual monetary investments in Indonesia and adhered to by traders and investors. Furthermore, to maintain investment security, a legal insurance holder is required as a basis for security regulated by public authorities through BAPPEBTI. In this regard, Article 2 of the GCPL guarantees that any guarantee provided to the buyer must comply with legal security measures. Personal advances can be utilized as a means of resource speculation in digital investments, provided that they meet the standards set forth by regulations.

3.2. Alternative Dispute Resolution in Digital Asset Transactions

Obtaining legal protection is crucial for every individual, particularly in upholding the principle of equality before the law. This principle asserts that everyone must be treated equally under the law without exception, as affirmed in Article 27, paragraph (1) of the 1945 Constitution. Legal remedies serve as a means to safeguard individual rights and ensure compliance with applicable regulations. In the context of digital asset transactions, traders who engage in such transactions through electronic contracts with exchangers are afforded special protection. This protection is regulated by Article 1, number 17 of the ITE Law, which defines an electronic contract as an agreement made through an electronic system, essentially similar to a conventional agreement, with the only difference being the medium used. However, the trading process also involves the concept of a fundamental agreement, as stated in Article 1313 of the Civil Code. In the purchase of digital assets, such as virtual currency, the agreement between the parties is encompassed within a contractual agreement. According to the provisions of Article 1338 of the Civil Code, a legally binding agreement must meet the legal conditions stipulated in Article 1320 of the Civil Code and cannot be unilaterally canceled without the consent of both parties. However, if it is later proven that the agreement violates the provisions of Article 1320 of the Civil Code, then the agreement can be legally nullified. Therefore, legal protection in digital asset transactions can be obtained through electronic contracts and the fulfillment of legal requirements in accordance with applicable legal provisions.

In the event of an accident or problem arising in a digital asset transaction between a trader and an exchanger, it is closely tied to the agreement that has been established, creating a legal relationship between the two parties. As an organization specializing in digital currencies, an exchanger has an obligation to be accountable and reliable in the event of a default, as stated in Article 7 of the GCPL. However, if the problem is deemed imaginary by the exchanger, traders can initiate legal action based on Article 1365 of the Civil Code, which stipulates that any unlawful act causing harm to another person must be compensated by the wrongdoer. Therefore, traders have the right to sue the exchanger if they feel aggrieved in digital asset transactions.

To address any legal issues that may arise, traders can file a tort claim with the court in their place of residence. However, if there is a contractual relationship between the exchanger and the trader, as described earlier, the trader can file a default claim to seek reimbursement of fees, damages, and interest in accordance with Article 1243 of the Civil Code. Moreover, there are alternative out-of-court dispute resolution options available, such as arbitration, consultation, negotiation, mediation, conciliation, and expert opinion, which traders can pursue. These alternatives are intended to ensure legal certainty and protect traders. In this context, the law not only focuses on compensation or sanctions against the exchanger but also on the protection and empowerment of merchants, as well as raising awareness among service providers or exchangers. Therefore, the utilization of

alternative dispute resolution can be a more effective and efficient solution for resolving potential problems.

4. CONCLUSION

Preventive legal protection, particularly for investors and traders in virtual currency investment, takes the form of supervision by BAPPEBTI, which is directly overseen by the Commodity Futures Supervisor. This supervision is in accordance with "Article 4, paragraph 1, as 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." BAPPEBTI's responsibilities include providing guidance, regulation, and day-to-day supervision of commodity futures trading activities. With the presence of BAPPEBTI as a stakeholder, it is expected to offer security guarantees, benefits, and legal certainty regarding the use of private digital currency in Indonesia.

An available legal remedy that traders can pursue, assuming they seek to recover their losses, is to file an unlawful act claim (*onrechtmatige daad*) under Article 1365 of the Civil Code with the regional court in the trader's place of residence. Additionally, traders can also invoke the rights granted to them as indicated in the provisions regarding computerized asset speculation. They can file a default claim to seek reimbursement of costs, losses, and interest for non-fulfillment of agreements under Article 1243 of the Civil Code. However, it is important to note that this claim for unlawful act should be filed after exhausting legal actions against fraudulent acts or consider settlement through non-prosecution, which is an alternative option that can be pursued by traders.

As a suggestion, the government should exercise its authority concerning virtual currency in Indonesia by formalizing regulations or establishing sustainable regulations that align with the dynamic developments in the field of virtual currency. This is in response to the significant interest shown by the Indonesian people who use virtual currency as an investment.

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