

Law of Bitcoin Investment

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Abstract

This research aimed to understand the Bitcoin investment mechanism and the legal expert opinion towards it. The research used empirical juridical method with sociological juridical approach. The results shown the investment mechanism divided into mining and trading activity. The legal expert opines, in Islamic views, mining is allowed to do because there were two *akad* forms did and has no element of *maysîr* on it, also, Bitcoin trading is allowed to do while compatible with sharia principal. Whereas in positive law views, these two activities cannot be shaded by the existing regulation, such as Civil Code, The Currencies Law, Electronic Information and Transaction Law, and Bank of Indonesia Regulation. Although it can be associated with these regulations, the Bitcoin investment still need to regulate in specific role, so it gives the legal certainty to society.

Keywords: Bitcoin, Business Law, Cryptocurrency, Investment

Abstrak

Penelitian ini bertujuan untuk mengetahui mekanisme investasi yang dilakukan serta pandangan pakar hukum terhadap fenomena tersebut. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan yuridis sosiologis. Hasil penelitian ini menunjukkan bahwa mekanisme investasi Bitcoin yang dilakukan dapat berupa *mining*, dan *trading*. Pakar hukum berpendapat bahwa, dalam perspektif Islam, aktivitas *mining* boleh untuk dilakukan karena terdapat dua akad yang berbeda selama prosesnya serta tidak mengandung unsur *maysîr*, dan *trading* Bitcoin boleh untuk dilakukan selama tidak bertentangan dengan prinsip syariah. Sedangkan secara hukum positif, kedua aktivitas tersebut belum bisa dinaungi oleh regulasi yang ada, seperti KUH Perdata, Undang-Undang Mata Uang, Undang-Undang ITE, serta Peraturan Bank Indonesia. Meskipun terdapat unsur-unsur yang berkaitan dengan regulasi tersebut, investasi Bitcoin perlu diatur secara tertulis dalam peraturan khusus yang berbeda, sehingga akan memberikan kepastian hukum terhadap masyarakat.

Kata Kunci: Bitcoin, *Cryptocurrency*, Hukum Bisnis, Investasi

Introduction

The development is a basic human trait for living with a better life. Become better mean something has progress and renewal in a broader sense. The progress can be interpreted as a new innovation that been thought out and found, so, capable to facilitate human needs in fulfilling their life. The form of the human development includes all aspects of life. One of the most quick and significant is a social economy which known as *mu'âmalah* in Islamic law. *Mu'âmalah* is an activity that regulates things related to human life ways to fulfill the daily life needs in relation of property rotation.¹ The development, in particular for *mu'âmalah*, is an impact of human wants to facilitate their life for being better and easier. The manner of its development makes every matter and business of human life in *mu'âmalah* becomes better and easier.

The development is a good thing in Islamic views. Because, it is a needed thing to people and has a strong relationship to the social environment. So, while in allowable corridor and does not be in contradiction to the evidences (does not have an argumentation to prohibitive it), it can be done, agree with the basic concept of *fiqh mu'âmalah* which reads:²

الأصلُ في المعاملاتِ الإباحةُ إلا أن يدلُّ دليلٌ على تحريمِها.

“basically, all forms of mu'âmalah can be done unless there is evidence again outlaw”

In its development, modern technology plays a major role in boosting *mu'âmalah* concept into a new form. One of its development forms is more practical method in communication and information between seller or product provider (goods/services) and buyer or product user in present day. This innovation known as electronic commerce (e-commerce). The e-commerce itself being developed during the technology development, so it made one specific innovation in payment method which can be done digitally now day.

Basically, the digital payment method is using electronic money (e-money), which means the money is used in internet transactions by electronic means. Typically, these transactions involve the use of computer networks (such as the internet and digital price storage systems).³ However, in the rapid technology development, electronic money innovation is creating a virtual currency automatically. In contrast to electronic money passed and promulgated by the authorized institutions (in this case is Bank of Indonesia as the central bank of the country and

¹ Hendi Suhendi, *Fiqh Muamalah*, Ed. 1 (Jakarta: Rajawali Pers, 2010), 3.

² Fatwa of National Sharia Board (DSN-MUI) Number: 10/DSN-MUI/IV/2000 about Wakalah.

³ “Uang Elektronik,” https://id.wikipedia.org/wiki/Uang_elektronik, accessed on January 17, 2018.

the financial institutions which are recognized and given permission by BI),⁴ virtual currency created by private companies which are not included in the authorized financial institution, used and accepted among the members of a specific virtual community as an alternative payment tool.⁵ In addition, the virtual currency earning by way of mining, trading, and reward.⁶ Bitcoin is the most influential and has the highest fluctuation value than other virtual currencies in the world. So, Bitcoin is very popular to be used as an alternative payment tool and becomes an alternative medium of investment, from the beginning until now day.

In terminology, Bitcoin is a virtual currency that was created based on a set of cryptographic code which is formed in such a way so that the device can be stored in a computer and has been transferable such as electronic mail and being able to use as a means of payment. Bitcoin method to be used as means of payment is with P2P (peer to peer) networks, which means any unit of bitcoin can be transmitted from person-to-person directly using the internet network which is protected by the system by means of Bitcoin platform or the third party.⁷ The basic program of Bitcoin is cryptography code concept, so the system of Bitcoin program automatically gives the strong protection against external attack as like as viruses, hacker attack, and others.

Qua a virtual currency, the first usability of Bitcoin as medium of exchange as well as common money is in specific community, most of it in dark web community or internet user who did the illegal transaction trough dark network (such as drugs and illegal weapons trading, and others). Accordingly, in the beginning of Bitcoin known as an illegal transaction payment.⁸ But, along with its development, Bitcoin becomes a medium of virtual investment alternative.

In investment side, Bitcoin has demanded by people caused by the high of fluctuation value of it. Based on the official site of Indodax.com (a corporation who facilitate Bitcoin trading and exchanged in Indonesia), Bitcoin fluctuation value on March 2018 reach 110 to 130 million rupiah for 1 BTC (BTC is a unit of currency in Bitcoin),⁹ even though it has been decreased on April in 94 to 105 million rupiah for 1 BTC.¹⁰ The system of Bitcoin investment uses trading

⁴ Chapter 5 Article 2 Regulation of Bank of Indonesia Number 11/12/PBI/2009 about Electronic Money.

⁵ "Virtual Currency," https://en.wikipedia.org/wiki/Virtual_currency, accessed on April 9, 2018.

⁶ Chapter 34 (a), Regulation of Bank of Indonesia Number 18/40/PBI/2016 The Execution of Payment Transaction Process.

⁷ "Bitcoin," <https://id.wikipedia.org/wiki/Bitcoin>, accessed on March 14, 2018.

⁸ Dimaz Ankaa Wijaya dan Oscar Darmawan, *Blockchain: Dari Bitcoin Untuk Dunia*, (Jakarta: Jasakom Publisher, 2017), 32.

⁹ <https://indodax.com/>, accessed on March 14 and 19, 2018.

¹⁰ <https://indodax.com/>, accessed on April 18, 2018.

system with mobile application which similar with trading of foreign currency. But virtual currency has difference concept with legitimate currency of country.

Based on Forex Indonesia official website, the most conspicuous things of the high Bitcoin value are minimum of volume and dissemination of it. Clearly, the action of trader to supply and demand will be very affected to the price of Bitcoin.¹¹ The minimum volume and dissemination of Bitcoin also strengthened by official statement on Bitcoin Indonesia Official site (now Indodax.com) that quantity of Bitcoin creation only 21 million Bitcoin.¹² Moreover, the other factors which influence the value of Bitcoin regulation and policy towards cryptocurrency, specially Bitcoin in many countries. If one country regulates to prohibit Bitcoin completely, then Bitcoin user will be diminished and will decrease supply and demand automatically, and trading activity will be decreased. So, it will be diminished to the value.

These two facts above become main factors that make Bitcoin utilizing as exchange tool and alternative medium of investment is highly interested by many people, as well as individual or corporation. Even though, the determination of explicit rules towards Bitcoin, especially for medium of investment in Indonesia still does not clear. This thing surely will impact to law protection to Bitcoin users and legality towards it become unclear.

On February 6, 2014, Bank of Indonesia as central bank of Indonesia published press announcement Number 16/6Dkom explained that Bitcoin and any other virtual currency is not a legitimate currency or payment tool in Indonesia, and society has to be careful towards it, and every risks related to ownership and utilizing of it been responsible to owner and user itself,¹³ also supported by Section 34 of Bank of Indonesia Regulation Number 18/40/PBI/2016 on The Execution of Payment Transaction Process (*Penyelenggaraan Pemrosesan Transaksi Pembayaran*) about utilizing treatment of virtual currency and the explanation of the risk and the absence of legitimation of it. This statement supports the provision of Law Number 7 Year 2011 of Currency that virtual currency utilizing (including Bitcoin) as a payment tool in

¹¹ "Faktor-Faktor Yang Mempengaruhi Harga Bitcoin," <http://forexindonesia.org/Bitcoin/faktor-faktor-yang-mempengaruhi-harga-bitcoin.html>, accessed on April 11, 2018.

¹² "Apakah Jumlah Bitcoin Terbatas?," <https://help.Bitcoin.co.id/apakah-jumlah-bitcoin-itu-terbatas/>, accessed on April 11, 2018.

¹³ Peter Jacobs, "Pernyataan Bank Indonesia Terkait Bitcoin dan Virtual Currency Lainnya," (Press Releases of Bank of Indonesia on February 6, 2014), http://www.bi.go.id/id/ruang-media/siaran-pers/Pages/SP_160614.aspx, accessed on January 22, 2018.

electronic transaction is invalid considered, because the only avowed currency as a legitimate payment tool in Indonesia is Rupiah.¹⁴

The polemic of its policy also did happen in several country of the world. There are many countries which did forbid Bitcoin (as like as New York, United States), there was treat it as a taxable property by Internal Revenue Service (IRS or the tax institution in United States), in fact there was recognize it as a currency (as like as Japan).¹⁵

Indonesian Ulema Council (in Bahasa Indonesia: *Majelis Ulama Indonesia* – MUI) also does not publish fatwa about Bitcoin. Both of the MUI or the Government has still not found a suitable legal against the existence of it. The absence of regulation also gives the confusion of understanding in society, does Bitcoin investment/trading include to investment in currency market or not. Clearly, it is become an unsolved social problem and create a vacuum of norm and vague of norm towards Bitcoin. Therefore, this research aimed to understand the Bitcoin investment mechanism in society and the legal expert opinion towards its phenomenon.

The related research in Bitcoin is not the first to do, especially pertaining to the legality of bitcoin in positive law or Islamic law. Several researches had been done before specially in the case of Bitcoin. In this subject, the author finds few things that did not researched before by the researcher, so the author explain it down below. Clearly, this research is an original without any duplication on it.

There are some previous researches about Bitcoin. First, the research written by Aby Haryono on 2014 titled “*Analisis Bitcoin Menurut Peraturan Perundang-Undangan Di Indonesia*” explains about the legality of Bitcoin as means of payment based on existing legislation, such as Law Number 11 Year 2008 about Information and Electronic Transaction (Law of ITE), Law Number 7 Year 2011 about Currencies, and Law Number 8 Year 1999 about The Protection of Consumers, as well as the related theories of payment and material.

Second, the research written by Nur Lailatus Sholihah on 2014 titled “*Tinjauan Fiqh Muamalah Terhadap Uang Digital Bitcoin Dengan Studi Pada DSN-MUI dan Perusahaan Artabit*” describes *fiqh mu’âmalah* review against digital money of Bitcoin and DSN-MUI’s review towards the operational money exchange process based on Bitcoin in the perspective of *sharf* contract through study at the *artabit* company.

¹⁴ Anastasya Lilin Yuliana, Herry Prasetyi, “Gemerincing Bitcoin,” *Kontan Mingguan*, (February 10 – 16, 2014), 13.

¹⁵ Dimaz dan Oscar, *Blockchain*, 119 - 120.

Third, the research written by Muhammad Imam on 2015 titled “*Transaksi Jual Beli dengan Bitcoin Dalam Perspektif Hukum Islam*” describes the legality of Bitcoin as payment tools based on the perspective of Islamic law.

All of research are examining and discussing about Bitcoin objectively in general and more to the position of Bitcoin as good of trading with the current exist regulations even in positive law (includes the fatwa of MUI) and Islamic law. Whereas the author examines, analyzes and discusses to the practices Bitcoin utilizing as medium of investment particularly in society and the legal expert opinions towards it.

Research Method

This research is empirical juridical research. This type of empirical juridical research according to Soerjono Soekanto (in the book of *Metode Penelitian Hukum* written by Prof. Dr. H. Zainuddin Ali, M.A.) is a scientific activity based on methods, systematics, and particular thoughts in order to study in depth and analyze a specific legal symptom that exist in the community.¹⁶ The object of this research is about the investment mechanism of Bitcoin which growth in society.

The research uses a socio legal approach, because the review research based on empirical views.¹⁷ This type and approach of research is used to look at the legal aspects in social interaction within the community and served as an identifying and clarifying support the findings of non-legal materials for the purposes of research and legal writing.¹⁸ The sociological juridical approach in the research focused upon juridical legal symptoms that exist in society, so using the observation techniques to a specific legal symptom that appear within the community,¹⁹ which the mechanism of Bitcoin investment as an object in this research.

In order to work this research, author took a place on The State Islamic University of Maulana Malik Ibrahim of Malang for the opinion of respondents towards Bitcoin phenomenon, and some society’s behavior in internet world as the users.

The research is used several methods of data collection or legal material, they are interviews, the study of documentation and observations. Study of documentation in this research refers to the legislation related to the object of research such as the regulation of e-money, virtual currency, and investment law, as well as books, research and other documentations related to

¹⁶ Zainuddin Ali, *Metode Penelitian Hukum*, Ed. 1, (Cet. Ke-8; Jakarta: Sinar Grafika, 2016), 18.

¹⁷ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Cet. Ke-1; Bandung: CV. Mandar Maju, 2008), 127.

¹⁸ Zainuddin, *Metodologi Penelitian*.

¹⁹ Burhan Ashshofa, *Metode Penelitian Hukum*, (Cet. Ke-4; Jakarta: PT Rineka Cipta, 2014), 20-21.

it. The interview will be executed only to a particular person, which in this part was planned to four of legal academics (conventional and Islamic) in State Islamic University, Maulana Malik Ibrahim of Malang. The respondent is determined by purposive technique. The type of interview using a combination between the planned interview and not planned interview, namely an interview conducted with formulating a specific list of questions (has been compiled previously), but also enabling to make a new form of a question outside of question formulations list to come to the surface, which is a part of interview developments. Therefore, from the form of the question, this interview is open interview with special question to demand respondents to give answers in an idea of thinking based on the scholarly and perception of the respondent.²⁰ The observation did against legal and social symptoms that exist within the community, which mean the related regulation and the mechanism of the phenomenon.

Data analysis technique in this research is analysis descriptive. It is data explanation by descriptive sentence in a paragraph. The activities did by author in data analysis are editing, classifying, verifying, analyzing, and concluding. Editing is a review activity towards the data from observation, interviews, or study of documentation related to the object of research. After that, the reviewed data is classified to the object of research. In this case, the object of research is the opinion of legal expert towards law of Bitcoin investment. Then, the author did the data verify, means chose the used data in this research, so that the data is suitable with the research. Next is data analyzing based on the data and object of research. The analyzing process did by explaining in descriptive the result of observations, interviews, and study of documentation then analyzed it based on legal standing related to the object of research. The presentation of data analysis is arranged in systematically and regularly in order to easy to understand and easy to interpreted in.²¹

Result and Discussions

Bitcoin Investment Mechanism in Society

Basically, Bitcoin is a system. Definitively, it is an unitary system consisting of components or elements are linked together to facilitate the flow of information, material or energy to accomplish a goal.²² According to the opinion of some experts inferred that the system is a

²⁰ Amiruddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Ed. 1, (Jakarta: PT RajaGrafindo Persada, 2006), 84-86.

²¹ Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: PT Rajagrafindo Persada, 2010), 125.

²² Zakky, "Pengertian Sistem Menurut Para Ahli dan Secara Umum," <https://www.zonareferensi.com/pengertian-sistem/>, accessed on September 11, 2018.

collection of sections or sub systems made a unity and are designed to achieve a goal.²³ So, as a system, an integrated system is Bitcoin with separate components that work each, to then integrate run Bitcoin system intact.

As a form of virtual currency, Bitcoin is claimed to be used as an alternative means of payment as well as electronic money. In addition, because it has a function similar to electronic money even in general money, Bitcoin also be sent directly from the first person to the second person uses the concept of p2p networks (peer to peer). Unlike the centralized system of money in General (including electronic money), transaction system using p2p network on virtual currencies (particularly the Bitcoin) enables the delivery directly to the recipient without any centralized networks is applied to the banking system.²⁴

In 2009, the program named Bitcoin developed by anonymous named Satoshi Nakamoto at the first time, which next year is only used for commerce transaction through a dark chain synonymous with illegal transactions in the dark web community. However, subsequent developments become wider and more open to the community, so it used as an alternative investment and a common payment method.

Investment activity is expected to maintain the value of the invested capital even give profit for him. The invested capital (in Bitcoin case) of the user is money, equipment, and also the expertise of personal. It caused that Bitcoin is a cryptocurrency resulted from the information technology development acquired by ways of mining and trading. Thus, the mechanism of the investment community that exists in the Bitcoin is generally in the form of mining and trading.

Mining process is a process to get Bitcoin intact (system/program). Mining process did by internet network through the mining sites of the Bitcoin. If seen at a glance, the process looks like an activity that can be done by anyone. However, as explained earlier, the activity of mining involves activities that are so complex as well as a network of internet capable. The involvement of the programming language and the concept of the cryptographic program is very difficult, even for an understanding of information technology and programming though. Deep understanding about cryptography and network world internet is an understanding that is not owned by any person, and it takes time and cost that does little to learn it. In addition, in order to support a powerful system and internet network capable of necessary hardware equipment

²³ <http://elib.unikom.ac.id/download.php?id=252404>, accessed on September 11, 2018.

²⁴ "Bitcoin," <https://en.wikipedia.org/wiki/Bitcoin>, accessed on September 12, 2018.

(hardware) also qualified. While the technology to get the hardware to support the cost of course does little anyway.

The complexity of mining described can be summed up as a special ability with high cost skills. If drawn into the concept of investing, a special ability or skill as well as costs incurred in order to support the activity of mining is a capital released by miner (miners)²⁵ to expect the benefit in the form of Bitcoin. So, this activity can be said as part of the investment activity.

The Foundation of the Bitcoin be encrypted cryptographic system, then any bookkeeping done virtually using a block system in the internet network, known as Blockchain. If defined in a simple, blockchain is an extensive network that records all activity of cryptocurrency (which also uses the block scheme), transparent (can be accessed by anyone who is in the network) and encrypted (protected by a series of safety codes) so that it is not easy to be burglarized.²⁶ Blockchain shows all data transactions that have occurred in the network of Bitcoin, which can be accessed by anyone through a site like blockchain.info to monitor what goes on in the Bitcoin blockchain.²⁷ This uniqueness which give the security of encryption system causes the value of Bitcoin so high to be bought and sold in real currencies. So, it makes the Bitcoin trading becomes interested for many people. Bitcoin trading scheme is more to money exchange which does not much different with Forex trading, but it still has the difference against the determination of prices. Because Bitcoin is not a currency of any country.

Interestingly, the value of Bitcoin against physical currencies, particularly the Rupiah, very high. If the monitor the price movement of Bitcoin on the official website of the Bitcoin exchanger in Indonesia (indodax.com) from March to September, experiencing a very large price fluctuation. In March 2018 climbed 110 million dollars to 130 million rupiah per 1 BTC (BTC is a unit of currency in the Bitcoin),²⁸ in April the value down on the range of numbers 94 million to 105 million per 1 BTC.²⁹ In fact, in June the value of Bitcoin fluctuations have experienced deterioration to reach 85 million to 90 million rupiah or us dollar per \$6.000 range 1 BTC.³⁰ Whereas at the beginning of September, the value of the fluctuation back to 94 million figure strengthened rupiah per 1 BTC.³¹ However, the peak value of Bitcoin happened in

²⁵ Miner is a term to mention the person who did bitcoin mining activity to get Bitcoin. (Nubika, *BITCOIN*, 91.)

²⁶ Dimaz dan Oscar, *Blockchain*, 19.

²⁷ "Apa Yang Dimaksud Dengan Blockchain?," <https://help.bitcoin.co.id/apa-yang-dimaksud-dengan-blockchain/>, accessed on April 20, 2018.

²⁸ <https://indodax.com/>, accessed on March 14 and 19, 2018.

²⁹ <https://indodax.com/>, accessed on April 18, 2018.

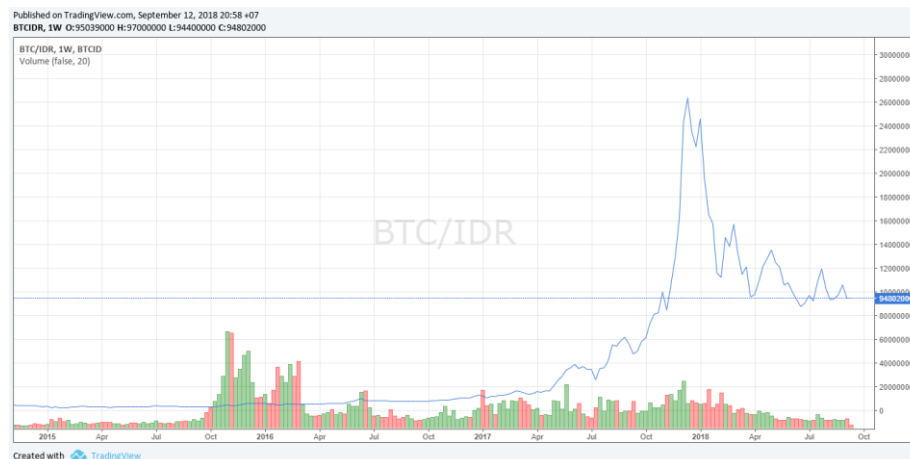
³⁰ <https://indodax.com/>, accessed on June 26, 2018.

³¹ <https://indodax.com/>, accessed on September 12, 2018.

December to January 2017 2018 that number range of 220 million to 260 million Rupiahs per 1 BTC. Price fluctuations that so great a major factor the magnitude of the community towards enthusiasm Bitcoin Trading and make the Bitcoin as virtual currency number one in the world.

The profit obtained from the investment of Bitcoin through mining be the selling price of the Bitcoin has been mined. Because, despite the huge funds require mining and with the expertise of cryptography and the internet, but all the capital is only issued once in a while only. That is, the capital is only issued upon the existence of damage or the need to update the hardware to support the process of mining, and not every do the mining. So, on a one-time capital expenditure to get the qualified hardware can support many times the process of mining, although the process of mining requires time. While the profit obtained through trading price difference is obtained at the time of purchase (supply or demand) then for resale (demand or offer).

Picture 1: The Graph of Value of Bitcoin Fluctuations Against Rupiah on 2015-2018



Source: TradingView.com

The Opinion of Legal Academician Expert Towards Bitcoin Investment

The opinion of legal academician expert towards Bitcoin investment is concluded into four main points, i.e. the positioning of Bitcoin, the form of Bitcoin investment, the protection of the law towards users, and the Bitcoin potential and the solution in future.

First, the respondent (the positive law) argues that in the legality of Bitcoin is something that is not yet clear, and do not have a position, and yet there are provisions that govern. He cannot be equated with currencies in General. Because, the main currency is the currency of a country and have a value exchange rate against foreign currencies. So, it is necessary to create a new rule that specifically set about Bitcoin.

Trading Bitcoin is one of its most recently in digital commerce. If the element in trading Bitcoin outlined, then basically trading Bitcoin is a trade with objects that are traded is Bitcoin. In the perspective of positive law, the activity of trading in General has been covered in BW. However, Bitcoin as transaction object makes such activity should be regulated in particular. If based on the media used, LAW of ITE does look could overshadow the event. Because, Bitcoin basically is an electronic document that contains electronic information that can be transferable through an electronic transaction, and electronic documents have been provided for in the LAW of ITE.³²

As described in the LAW, an Electronic Document is any electronic information are made, forwarded, transmitted, received, or stored in the form of analog, digital, optical, electromagnetic, or the like, which can be views, shown, and/or heard through a computer or electronic systems, including but not limited to text, sound, pictures, maps, drafts, photos or the like, letters, marks, numbers, access codes, symbols or perforations which have meaning or meaning or can be understood by people who are able to understand it.³³ While the Bitcoin is a digital program, which consists of a series of cryptographic code that can be understood by people who are able to understand it and can be made, forwarded, transmitted, received and stored in electronic devices. However, regardless of the form of the Bitcoin digitally, the nature and functions of the Bitcoin is thus more similar to the nature and functions of money. Because, program creation of the Bitcoin is designed to function as a digital money.

When viewed objectively, Bitcoin is a thing that is very new, so it cannot be categorized as a currency or a commodity. According to one of the respondents, a currency can be accepted as currency when he was the official currency of a country that has a value exchange rate against foreign currencies (Forex) and based on the ownership of gold and socio-political conditions countries, per capita income of its population, as well as other factors.³⁴ As explained on the concept of currency trading (foreign exchange), a system of exchange rates against currencies offered on the stock exchange specifically embraced the floating pure (clean floating), which is the currency exchange rate will determined by demand and supply in accordance with the

³² Chapter 1 Law Number 19 Year 2016 of The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

³³ Chapter 1 verse (4) Law Number 19 Year 2016 of The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

³⁴ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018).

market mechanism³⁵ However, the ups and downs of demand and the supply is affected by various factors, neither of which has occurred or which was made with an estimate of the market participants. These factors include fundamental factors (political and economic factors), technical factors, market sentiment/psychological, potential factors.³⁶

compared with Bitcoin, there are similarities between Bitcoin currency and the state currency (conventional) on the concept of the movement of exchange rates. The value fluctuations of Bitcoin are so high and volume factors affected by the spread of the Bitcoin slightly, as well as factors different Bitcoin legality in various countries. If a country's regulations set to ban Bitcoin in full, then the user (users) would be reduced and Bitcoin will cause a reduction in supply and demand automatically, as well as trading activity will also be reduced. Thus, the actions of traders to do supply (request/purchase) and demand (supply/sales) will affect the price of Bitcoin itself.³⁷

While in Islamic point of view, Bitcoin is shaped virtual currency if seen in the function (in society) can be likened to the currency. Because, on one of the practices is Bitcoin can be used as a means of Exchange, it's just that he shaped the electronics. According to one respondent, Bitcoin can generally be seen to three principles; (1) Bitcoin is a kind of new technology within the mechanism of the transfer of money and can be said to be similar to the financial technology; (2) Bitcoin has in common with gold money; (3) Bitcoin as a facility that uses the internet.³⁸

When it comes to elements of objectivity Bitcoin in trading, there is a requirement that must be met in order for Bitcoin received in *shara'*, i.e. Holy (not impure), can provide benefits according to *shara'*, not associated or hung with other things (ex: If My father was gone, then I'm selling this bike), there is limited time (ex.: I am selling this bike for a year), can be delivered with quick or slow, proprietary, and are known both in terms of quantity, measure, size, weight, or other item properties.³⁹ Then, in terms of transactions, trading or better known as selling in Islam must be in accordance with *syara'*. That is, there are no elements that make such transactions become *haram*, whether legally valid but become illegal or unauthorized by law. One of them relates to the contract object must be in accordance with *syara'*, as described

³⁵ Wiene Sandyawati, *VALUTA ASING; Jurus Ampuh Dalam Memenuhi Kebutuhan Dana Jangka Pendek Investor*, Ed. 1, (Cet. I; Yogyakarta: Graha Ilmu, 2011), 26.

³⁶ Sandyawati, *VALUTA ASING*, 26-27.

³⁷ "Faktor-Faktor Yang Mempengaruhi Harga Bitcoin", <http://forexindonesia.org/Bitcoin/faktor-faktor-yang-mempengaruhi-harga-Bitcoin.html>, accessed on April 11, 2018.

³⁸ Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

³⁹ Suhendi, *Fiqh Muamalah*, 72-73.

previously. Other elements are related to the transaction itself. That is, a transaction or contract being performed should not contain elements of usury, *gharah*, *dzalim*, even *maysir*.

Second, with two such activity, investment Bitcoin can be said as a new investment activity and has not been provided for in legislation. Because, in trading Bitcoin, though trading activity in general has been there and has been regulated in the legislation, but the nature of the Bitcoin as new trading objects makes the activity needs to be more specific. As with any investment shares in companies that later gave birth to the Investment Law. Similarly, with the activity of mining Bitcoin. In practice, mining activities which require sophisticated computers and devices supported by the ability of Engineering Informatics and networks that are capable of making it as a new activity for a profit.

Technically, the trading mechanism of the Bitcoin specifically have similarities and differences with foreign currency. Both of virtual currency (including Bitcoin) or conventional currency have indicators of value or unit price which one influence on movement activities request/purchase (supply) and supply/sales (demand) in the market against the currency. But in practice, the factors that affect the movement of the supply and demand in each currency (cryptocurrency and accounting currency) is different. On a conventional currency, factors that influence is the factors relating to the existence and balance of the country in terms of economic, political, social, and psychological factors as well as market makers and factors indicative estimates of the market movement. These factors will then affect the financial and monetary policy, to finally become the factors that affect a country's macroeconomic development.⁴⁰

Whereas trade in Bitcoin, as explained earlier, the factors that most affect is the volume and the spread of the Bitcoin. However, the factors that affect the price of the Bitcoin refer to volume and spread of the Bitcoin, trader speculation, and the scams involving Bitcoin.⁴¹

In Islamic perspective, experts argue that the investment should basically Bitcoin to do. Because, fundamentally, all forms related to the activity to be performed shall *mu'âmalah*, including Bitcoin. Investment in Islam then shouldn't be when there are elements that affect, either from the nutritional elements (in the sense of the object of the contract) or process (the mechanism of transaction/*akad*). In this case, Bitcoin is a substance whereas investment (contract, as well as the tenets and terms) is the process.⁴²

⁴⁰ Sandyawati, *VALUTA ASING*, 26-27.

⁴¹ "Faktor-Faktor yang Mempengaruhi Harga Bitcoin," <http://forexindonesia.org/bitcoin/faktor-faktor-yang-mempengaruhi-harga-bitcoin.html>, accessed on October 13, 2018.

⁴² Fakhrudin, *The Interviews*, (Lowokwaru, May 21, 2018); Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

However, the activities of a trading in society is more towards speculation activities. That is, the public is more concerned with high value trading Bitcoin. This will then bring the items prohibited by legislation so that the Mufti of Egypt, Dr. Shawki Allam, issued a fatwa prohibition of Bitcoin on port of *Dar al-Ifta* fatwas. The essence of the fatwa explained that the prohibition against the trading activity of the Bitcoin so closely to practice speculation rates are very high. In addition, the circulation as well as the existence of an institution not controlled by the authorities so that the potential to endanger the country's economic system, disrupt financial systems and security center, as well as risks posed is very high.⁴³

Third, the trading activity is one of contract activity. If considered Bitcoin just like conventional currency, then he has absolutely no umbrella law. In fact, BI appealed through a press release that Bitcoin is not considered a valid currency and is prohibited for use as a means of Exchange.⁴⁴ But, even so, BI as a whole will not prohibit the existence of Bitcoin. The prohibition applies only if the Bitcoin is used as a tool of Exchange and addressed either to the people or to the provider of the facility.⁴⁵ So this gives a clear legal uncertainty would be the presence of the Bitcoin.

However, if the Bitcoin is seen as a commodity trade where he is regarded as a transaction object, then it can be said as a buying and selling generally, only in the form and make use of digital media. As articulated by one respondent, base of trading is buying and selling. While selling fundamentally have been regulated in the civil code, either by KUH subject, object, and transactions made. While the newness which is the transaction object in digital/electronic regulation has been made, then the new laws on information and electronic transactions.⁴⁶

Physically, Bitcoin is similar to electronic documents as explained in law of ITE.⁴⁷ Base of this, Bitcoin is a program in a computer system with a database of numbers and letters that form the mechanisms of a cryptographic system.⁴⁸ Thus, we can say that Bitcoin trading is a trading

⁴³ Fatwa of Dar al-Ifta Number: 4205 Date: 28/12/2017 about *Tadâwulu 'umlati al-bîtkuwîn wa al-ta'âmulu bihâ* (<http://www.dar-alifta.org/ar/ViewFatwa.aspx?sec=fatwa&ID=14139>, accessed on November 1, 2018); "Dar Al-Ifta Mesir Haramkan Penggunaan Bitcoin," <https://m.hidayatullah.com/berita/internasional/read/2018/01/03/132082/dar-al-ifta-mesir-haramkan-penggunaan-bitcoin.html>, accessed on November 1, 2018.

⁴⁴ Peter Jacobs, "Pernyataan Bank Indonesia Terkait Bitcoin dan Virtual Currency Lainnya," (Press Releases of Bank of Indonesia on February 6, 2014), http://www.bi.go.id/id/ruang-media/siaran-pers/Pages/SP_160614.aspx, accessed on January 22, 2018.

⁴⁵ Chapter 34, The Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction Process.

⁴⁶ Burhanuddin Susamto, *The Interviews*, (Lowokwaru, May 21, 2018).

⁴⁷ Chapter 1 verse (4) Law Number 19 Year 2016 about The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

⁴⁸ Nubika, *Bitcoin*, 82; "Bitcoin", <https://id.wikipedia.org/wiki/Bitcoin>, accessed on March 14, 2018.

activity Bitcoin digitally. If so, then just trade Bitcoin can be shaded by UU ITE. As long as such regulations may overshadow all activities of transaction, are able to protect the existing rights and obligations, then regulation can be cover it.

Existing rights and obligations in trading in the portal <https://indodax.com/>, Bitcoin provides a link that directs to the terms and conditions if you use the services of Indodax.com.⁴⁹ Based on the portal, the Indodax.com requires the user to enter a true identity so that rights and obligations can be protected by Indodax.com. If the user accepts and run in accordance with the terms and conditions that have been set, then the user is automatically agreed with the service provider, which means the contract has occurred between the user and the provider of the service (Indodax.com) for further using Bitcoin trading platform Indodax.com. According to one of the respondents, it is a standard contract has been created by one of the parties and approved by the other party to then run and fulfill the rights and obligations agreed upon.⁵⁰

Fourth, the efficiency on Bitcoin program gives very significant benefit in people's lives, especially the utilization of virtual realm and information technology in modern economy. If based on the primacy of Bitcoin now, there are several factors will make the biggest potential of it in the future economy, including; (1) The potential of Bitcoin as medium of payment/exchange in perspective of the existence of usability. Bitcoin potentially to be used as a means of Exchange because of the ease on Bitcoin program. The utilization of the technological aspect gives advantages in the form of easy access by utilizing the portable technology and internet network. The advantages of it makes the modern society as a cashless society. Its mean, any form of future economic transactions involving payment method will be done digitally. Therefore, the world market will become one market with a digital currency of the world in transaction activity;⁵¹ (2) based on the aspects of legality, the existence of the Bitcoin is currently still the pros and cons. That is, there are some countries that legalized and there are some other countries that do not legalize Bitcoin as means of Exchange. Thus, the potential of the Bitcoin became a legitimate digital currency and applies appropriate conventional money (as a means of Exchange) still has yet to be realized. However, it is by no means impossible to be realized. Experts argue that all matters related to the economy (*mu'âmalah*) will definitely undergo development, including the concept of money itself.

⁴⁹ “Ketentuan dan Persyaratan Indodax.com,” <https://help.indodax.com/ketentuan-dan-persyaratan-indodaxcom/>, accessed on October 31, 2018.

⁵⁰ Burhanuddin Susamto, *The Interviews*, (Lowokwaru, May 21, 2018).

⁵¹ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018); Burhanuddin Susamto, *The Interviews*, (Lowokwaru, May 21, 2018).

Government efforts in response to a State policy against the existence of the Bitcoin will greatly affect the readiness of the social society; (3) based on the function and the uniqueness of the offer, the system cryptocurrency on the program entitles a Bitcoin very much, to create the privatization of the ownership of the Bitcoin. This is certainly a big potential to be used as a means of/media money laundering, tax evasion, a transfer of wealth in order to fund the results of corruption is not detected, even potentially to financing against terrorist crimes. Although there has been a privately held company that is legally operated as trading facilities and infrastructure providers Bitcoin, however, ease Bitcoin in shipping Bitcoin p2p system can still be done in private, even credentials cannot be detected on the network blockchain. Because, recorded only the movement of the Bitcoin transactions, while the identity of the transaction can be hidden.⁵²

However, such potential should not be offset by the Government's policy in addressing Bitcoin. Because, until now, the status of the Bitcoin is still floating. Thus, the potential can only be maximized with the certainty of the law by the State. As expressed by the respondents, legal certainty is a solution in addressing the legal vacuum.⁵³ So, created order and justice in society, which is the purpose of the law.⁵⁴

To provide legal certainty, the design or the discovery of new rules (construction law) is not an easy thing. However, if simplified, in the context of the Bitcoin investment, one respondent suggested that the initial steps that can be taken is to how to make fatwas in advance. Because Indonesia is the country with the religion of Islam as a religion of the majority, then the certainty of investment phenomenon Bitcoin laden with speculation should be given a fatwa in advance, whether the activity is Bitcoin investment bring *masalah* or *syubhat*. In addition to views through conformity with Islamic law, another element that can be used as a reference source is foreign policy, especially Islamic countries, in addressing the phenomenon of Bitcoin.⁵⁵ So, in designing new positive law relating to content will adjust Bitcoin fatwa.

In addition, other respondents added that the fatwa is basically making can be done if there are incoming reports from the public relating to the existing problems. Of the report then DSN MUI will conduct plenary to deliberate on the capacity of such activities. Then having obtained

⁵² Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018); "Bitcoin," <https://en.wikipedia.org/wiki/Bitcoin>, accessed on November 1, 2018.

⁵³ Burhanuddin Susanto, *The Interviews*, (Lowokwaru, November 6, 2018)

⁵⁴ Muhammad Bakri, *Pengantar Hukum Indonesia (Sistem Hukum Indonesia Pada Era Reformasi)*, Cet. Kedua, (Malang: UB Press, 2013), 1-10.

⁵⁵ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018)

the agreement of then will be issued in the form of a written fatwa.⁵⁶ So, already published a fatwa which was one of the sources of law for the construction of the law.

Conclusion

The facilitate as well as the high value became the main attraction of the community to plunge into Bitcoin investment. In practice, the mechanism of investment (in the form of mining) by investing funds to get the capable equipment to do Bitcoin mining and trading through portal or website up to mobile application based on internet connection provided by third parties. In order to support it, the communities had been developing on social media platforms such as Facebook.

Addressing to the problem, the experts gave responses that the position of Bitcoin is generally as cryptographic-based digital currency in positive law cannot be equated with the conventional currency. The development of investment activity of Bitcoin cannot be shaded by the existing regulation so it got a rise out of vacuum of law. While in principle the Islamic jurisprudence, the investment activity is prohibited if existed an element of speculation. So, with the great potential, Bitcoin need to give specific rules so there is no vacuum of law.

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⁵⁶ Fakhruddin, *The Interviews*, (Lowokwaru, November 27, 2018).

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