

# Legal Protection for Bitcoin Users in Criminal Acts of Fraud in Indonesia

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**Abstract.** This paper discusses legal protection in criminal law for bitcoin users in Indonesia. Bitcoin has not been specifically regulated in Indonesian laws and regulations; even the Indonesian government has made a clear statement regarding the illegitimacy of bitcoin. Bitcoin fraud raises new issues related to legal protection for its users in Indonesia. The research method used is normative legal research, with the statute approach and case approach. This study uses secondary legal data. The results of the study indicate that bitcoin does not have a positive legal arrangement in Indonesia. Even so, bitcoin can be a legitimate payment instrument in Indonesia with several conditions being fulfilled, such as not easily damaged, good quality, cannot be faked, easy to carry, and has a stable value. Whereas in terms of legal protection for users of bitcoin in Indonesia based on Article 28D of the Constitution of the Republic of Indonesia in 1945. Although bitcoin is not explicitly stated in Law Number 11 of 2008 concerning Information and Electronic Transactions, this law can be used as its legal basis, because bitcoin is included in the form of electronic transactions. The Criminal Code can be a threat to the perpetrators of bitcoin fraud.

**Keywords:** Legal Protection; Bitcoin Fraud

## 1 Introduction

The progress of information and communication technology (IPTEK) has an impact on social change in society both in the fields of political, economic, legal and cultural life. One of the results of the progress of science and technology is globalization. Globalization as is known as the process of entering the world scope. In other words, the information and communication traffic in the era of globalization does not have a significant limit so that currently, all the world community can easily access science and technology. The progress of science and technology gave birth to innovations in the field of finance, such as the emergence of Virtual Currency like the existence of an online bitcoin payment system. Bitcoin is not currently the only form of digital money in the world. There are 1.500 (one thousand five hundred) other forms of digital money, but bitcoin is the first and most popular digital money. Here's a comparison of bitcoin with five other popular digital money:

**Table 1.** Comparison Bitcoin with Other Popular Digital Money

No.	Name	Market Cap	Price	Volume
1.	Bitcoin	\$93.193.804.600	\$5.285,01	\$17.408.166.061
2.	Ethereum	\$19.164.550.112	\$181,54	\$8.737.216.810

3.	<u>XRP</u>	\$15.142.887.172	\$0.362758	\$1.470.493.201
4.	<u>Litecoin</u>	\$5.678.130.416	\$92,71	\$3.272.979.994
5.	EOS	\$5.019.684.117	\$5,54	\$2.955.707.289

Bitcoin is not only different but is relatively superior to other digital money. The table above shows a significant comparison; it seems the popularity of bitcoin ranks first compared to other digital money. It can be seen from market capitalization, price and volume, which shows that bitcoin dominates more than other digital money. The development of bitcoin is also seen in the increase in exchange rates. It can be seen in the diagram below:



The Bitcoin exchange rate in 2013 was only 91 US Dollars (US \$), in 2014 it moved up by 829% to the US \$ 846 per one bitcoin. In 2015, although its value decreased 68.8% to the position of US \$ 265 per unit, the value of bitcoin rise again at the beginning of 2016 until December 2017, the exchange rate was recorded at the US \$ 19.000 per one bitcoin. But from 2018 to 2019 the value of Bitcoin continues to decline and increase, starting from the US \$ 5.000 to the US \$ 3.000. Even so, the existence of bitcoin has been maintained and remains the first position in the most popular digital currency. The data shows that bitcoin has grown and accepted.

In 2017 there are at least 68 countries that legalized bitcoin; where 15 countries were opposed, and 19 countries still did not respond to bitcoin. In Indonesia, the regulation of the currency is regulated in Law No. 7 of 2011 concerning Currency, related to bitcoin, which has not been specifically regulated in Indonesian legislation. In the press release of the Ministry of Finance of the Republic of Indonesia Number 3/KLI/2018, the ban on transactions using virtual currencies is based on two laws and regulations above. Bank Indonesia, as the central bank in Indonesia, made a clear statement that bitcoin is not a legitimate payment instrument in Indonesia. But on the other hand, bitcoin users in Indonesia have reached more than 1.14 million investors and more than 66,000 users, which means that the intensity of the Indonesian community towards the emergence and use of this digital currency is quite high.

The amount of use of bitcoin in Indonesia has the potential to cause misuse of bitcoin itself, one of the cases occurred in the Bangka Belitung Islands, where hundreds of people

experienced bitcoin fraud. Although there are no concrete regulations governing bitcoin, based on Article 28D of the UUD 1945 that every citizen has the right to legal certainty and protection so that in the case of bitcoin fraud cases that harm Indonesian citizens, then in terms of this country must provide legal protection for victims. Then the law is directed to be progressive and responsive in facing the challenges of technological globalization. The absence of regulations governing bitcoin, but on the one hand, there is a case of bitcoin fraud, this raises a new issue related to legal protection for citizens who are victims of bitcoin fraud.

## **2 Methods**

The research method used is normative legal research, with the statute approach and case approach. This study uses secondary legal data, that is legislation relating to issues, namely the Criminal Code (KUHP), Currency Law, and ITE Law, and the writing of other relevant legal researchers. The legal theory used is progressive legal theory and responsive legal theory.

## **3 Results and Discussion**

Technological and economic developments support the change in the new payment system, digital money. Beginning with a payment system using precious metals such as gold and silver, then turning into paper assets such as checks and paper money. Furthermore, experiencing a change in digital money. Digital Currency/electronic money is money used in internet transactions by electronic means. This transaction involves the use of computer networks (such as the internet and digital price storage systems), using cryptographic security and settlement technology through distributed ledgers without any regulating authority. In this case, bitcoin is one type of digital currency without regulating authority, and there is no official legal regulation regarding the use of bitcoin, including in Indonesia.

### **3.1 Bitcoin According to Indonesian Law**

Bitcoin was first introduced by Satoshi Nakamoto (a pseudonym) who was the creator in 2009. Nakamoto began uploading the bitcoin problem in a paper published in 2008 via a mailing list to explain cryptography. According to Nakamoto, bitcoin is an online payment system from peer-to-peer electronic cash that is sent directly from one party to another without going through a financial institution. It can also be said that bitcoin is a virtual currency that has been designed for payments that are anonymous and made independently without government or bank interference. In certain payment situations, bitcoin can bring advantages over traditional payment methods. These benefits include lower costs, speed of payment, and more. However, its use can also be riskier because bitcoin is not directly regulated by positive law in Indonesia.

Currently, bitcoin has entered Indonesia and is often used as a payment tool in cyberspace. Bitcoin has also become part of transactions of the needs of the people in Indonesia. Indonesian legislation governing currency is Currency Law. But regarding bitcoin, the Currency Law does not yet regulate it. In this law, bitcoin is not explicitly mentioned as a payment instrument in Indonesia. We can see the legal currency in Indonesia in Article 2 of the Currency Law which states that the Indonesian currency is a rupiah, which consists of banknotes and coins, and is symbolized as "Rp.".

Whereas those who have the authority to print and make currencies are central banks, namely Bank Indonesia. Bank Indonesia established Bank Indonesia Regulation Number 17/3/PBI/2015, which requires the use of the rupiah as a legal payment instrument. It can be seen in Article 2 Indonesian Bank Regulations (PBI) concerning the Obligation to Use the Rupiah Currency, which states that the use of the rupiah currency is only carried out in the territory of Indonesia. While related to bitcoin, Bank Indonesia made a firm statement that: "Bitcoin and other virtual currencies are not legal currencies or payment instruments in Indonesia. People are encouraged to be careful of bitcoin and other virtual currencies. All risks related to ownership/use of Bitcoin are borne by the owner/user of Bitcoin and other virtual currencies".

The statement is then legalized in Article 34 of PBI Number 18/40/PBI/2016 concerning the Implementation of Transaction Processing, which regulates the prohibition of processing payment transactions using the virtual currency. While related to fund transfers, Indonesian law has regulated it in Article 69 of Act No.3 of 2011 concerning Funds Transfer:

1. Non-Bank business entities that carry out the activities of conducting Fund Transfers must be Indonesian legal entities and obtain permission from Bank Indonesia.
2. The terms and procedures for licensing of Fund Transfer Providers as referred to in paragraph (1) are regulated in a Bank Indonesia Regulation.

Based on this article, it can be said that bitcoin can be legalized. Namely, the Indonesian bitcoin exchanger named "bitcoin.co.id". But "bitcoin.co.id" must obtain permission through approval from Bank Indonesia first. Furthermore, arrangements relating to permits to carry out fund transfers are regulated in Article 79 paragraph (1) of the Fund Transfer Act. This article states that anyone who carries out the activities of administering funds without permission can be sentenced to a maximum of 3 (three) years imprisonment or a maximum fine of Rp. 3.000.000.000,00,- (three billion rupiah). "Bitcoin.co.id" as a bitcoin exchanger place is not subject to this article because of an appeal from Bank Indonesia No: 16/6/Dkom is considered a "green light" by Oscar Darmawan CEO of Bitcoin Indonesia.

Also, bitcoin cannot be likened to a non-cash form, which Indonesia acknowledges. It is because transactions using bitcoin continue to occur even though there is a statement from the Governor of Bank Indonesia stating that bitcoin is illegal, and the law cannot allow uncertainty in the use of bitcoin to continue. It is as stipulated in PBI Number 17/3/PBI/2015 Article 3 paragraph (1) and (3), which states that: "obligation to use rupiah in each transaction applies to cash transactions and non-cash transactions. Non-cash transactions include transactions that use non-cash payment instruments and mechanisms".

Based on the explanation above, it can be said that bitcoin does not have legalization in Indonesia. But that does not mean that bitcoin cannot be a legitimate payment instrument that can be legalized by Indonesia. The terms of an object can be made into money, or a medium of exchange is as follows:

1. generally accepted or acceptability;
2. has a high value or guaranteed existence by the ruling government;
3. durable and not easily destroyed (durability);
4. has a quality that tends to be the same (uniformity);
5. the number can meet the needs of the community and is not easily scarred;
6. it is portable or easy to carry and easy to share without reducing the value of the object; and
7. having values that tend to be stable from time to time (stability).

Bitcoin can be a legal payment tool in Indonesia because it fulfils most of the terms of an object can be said to be a means of payment, i.e.:

1. not easily broken;
2. has a quality that tends to be the same;
3. Cannot be forged;
4. Easy to carry; and
5. has a stable value.

Based on the list, it can be seen that the constraints of bitcoin as a legal payment instrument are legal guarantees by the government and are generally accepted. So that bitcoin is hampered by the absence of government regulations, and no law protects bitcoin users so that if something happens to users like losing bitcoin, users cannot hold the government accountable. Therefore, the existence of bitcoin is not generally accepted. It is inversely proportional to neighboring Indonesia, namely Singapore. Singapore has a regulation regarding bitcoin and has acknowledged the existence of bitcoin in their country by taxing the use of bitcoin.

Researcher opines that court has rightly observed the problem of caste system in India and its solution. Only love among the community can achieve the goal of unity and integrity of our Constitutional goal. Court has very rightly observed that such marriages should be encouraged by giving proper support and incentives. Since ages, the Indian social system is governed on the basis of caste. According to the old scripts such as Manusmriti, work was divided amongst the people in Indian ancient society on the basis of caste, in which some of the communities were treated as lower caste because of the nature of the work distributed to them under the social arrangement.

However, the system proved fatal in due course and resulted in the gross violation of human rights of backward caste. After independence, the Constitution of India, in 1950 provided special provisions in favor of backward category in educational institutions and public employment. In absence of clarity and definite criteria of deciding a caste as a backward category, various communities and caste claiming to be backward in nature started demanding reservations and benefits. From time to time, Government of India included these castes in schedule caste list and declared reservations by suitable amendments in the respective laws.

Recently, in India, there is a great demand by the open category for removal of reservation on the basis of caste in the educational field in order to save merit. This scenario has created a new division of society into the open category and reserved category. Certain unpleasant incidences are alarming these days. And it is very clear that even after 72 years of Independence, the Indian legal system has failed to solve the issue of casteism in India. With the everyday development on technological front, the whole world is fast becoming a global village in true sense of the term. With the advent of internet technology which has now permeated in our day to day life, the process of intermingling of people at international level has started long back. India cannot afford to remain aloof from this global phenomenon.

If at all India desires development along with international community, then what is happening at global level i.e. intermingling of people of various countries, races, cultures, creed etc. must also affect what should happen at country level for development. In other words, love begets love. The people of India who belong to different castes and cultures are necessarily required to forget their differences and become united. The importance of unity and integrity as well as secularism is specifically incorporated in the preamble of our Constitution. Intercaste and interrelation marriages can be one of the most effective tool to eradicate these differences.

### **3.2 Bitcoin According to Indonesian Law**

Bitcoin in Indonesia has experienced a fairly rapid development, this is based on the statement of one of the head companies of the Indonesian provider of exchange, purchase, shipping and receipt services, which states that there are around 200.000 (two hundred thousand) bitcoin users in Indonesia with the total transaction is around Rp. 4.000.000.000,- (four billion rupiah) per day in Indonesia. Along with the development of bitcoin in Indonesia which is increasing every day, but on the one hand, this development is not accompanied by arrangements that regulate the use and legal protection of bitcoin users in Indonesia, in other words, there is no consumer protection.

As already mentioned, there are no legal regulations related to bitcoin in Indonesia, so the Indonesian government does not provide legal protection related to all risks that may be experienced by bitcoin users in Indonesia. But on the other hand, there are several cases related to bitcoin fraud that were reported to the Indonesian Police. One such case is the alleged BTC Panda internet transaction fraud using a bitcoin payment instrument that was reported to the Metro Jaya Regional Police. The victim of this case is Sandy Budiman with a loss of Rp. 700.000.000,- (seven hundred million rupiahs), with two people, reported being Fredy Wirajaya and Herman Makmur. In this case, it is reported that Article 378 of the Indonesian KUHP (KUHP) and Article 372 of the KUHP or Article 28 paragraph (1) of the ITE Law is reported. This case has been reported since September 2016, but until January 2019, there was no development and had not found a bright spot even though more than 2 (two) years of this case were reported.

Other losses due to bitcoin investment by BTC Panda are also experienced by hundreds of residents in the Bangka Belitung Islands. This case was reported to the Metro Jaya Regional Police Headquarters in several TBL/3388/VII/ 2016/PMJ/DIT Reskrimsus. Then the case was delegated to the Ditreskrim Polda Bangka Belitung. In the report, the value of material losses is Rp. 480.000.000- (four hundred eighty million rupiahs). Based on some of these cases, it can be seen that the loss due to bitcoin fraud is not a small amount. Losses resulting from the misuse of bitcoin not only threaten individuals but can also threaten state security. According to Indonesia's National Risk Assessment (NRA), bitcoin has become one of the means that threatens the crime of money laundering and payment for various crime transactions such as narcotics, funding of terrorism, black markets and theft. It is further shown that there is a need for strict rules regarding bitcoin in a country because if it is misused, bitcoin can pose a threat to state authority.

There is no legal basis regarding bitcoin itself; of course, this will be a new problem. When a society progresses, it is the responsibility of the state to take a role in establishing a regulation in the context of legal protection. In Indonesia itself, this is confirmed in Article 28D of the UUD 1945 that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Thus the state must protect its citizens who experience legal problems, including in this case citizens who are harmed due to bitcoin fraud. Thus, the law in Indonesia is required to be responsive in accepting problems that arise at any time, must also be progressive in upholding and providing legal protection for victims of crime in this case bitcoin fraud.

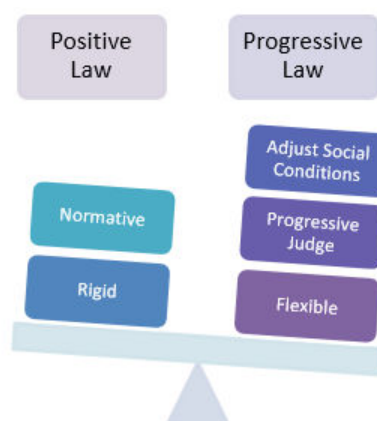
Regarding the regulation of bitcoin in Indonesia, the ITE Law has imposed "electronic information" and "electronic transactions". According to Article 1 paragraph (1) of the ITE

Law, Electronic Information is one or a set of electronic data, including but not limited to writing, voice, images, maps, designs, photos, electronic data interchange (EDI), telegram electronic mail, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them. The definition of electronic information does not limit Bitcoin, that has electronic data. It is because part of a bitcoin transaction such as a blockchain, hash, public key, and private key can be included as a sign and certain people can understand access code that has been processed as meaning or that. Article 5 paragraph (1) of the ITE Law states that electronic information and electronic documents and printed results are legal evidence. Also, by the definition of electronic transactions that have been implemented in Article 1 paragraph (2) of the ITE Law states that Electronic Transactions are legal actions carried out using Computers, Computer networks, and other electronic media. Thus, the ITE Law can be used as a legal basis for bitcoin fraud.

Bitcoin that has not been regulated so that in some articles it can be associated with cybercrime which has been regulated by the ITE Law. Thus is responsiveness, according to Philippe Nonet, good law must recognize the public's desire to achieve substantive justice. The criminal acts related to bitcoin contained in the ITE Law are as follows:

1. Hacking can be subject to Article 30 in conjunction with Article 46 of the ITE Law;
2. Cracking may be subject to article 32 in conjunction with Article 58 of the ITE Law;
3. Spoofing may be subject to Article 35 jo Article 51 of the ITE Law; and
4. Sniffing may be subject to Article 31 in conjunction with Article 47 of the ITE Law.

The bitcoin fraud is also included in actions that are prohibited according to the ITE Law, which can be subject to Article 28 paragraph (1) of the ITE Law which states that "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions". According to progressive legal theory, law enforcement is not merely a sterile vacuum; the law must look at other perspectives to achieve justice. Based on the researcher's hypothesis, progressive law is described in the following demonstration:



**Fig 1.** Demonstration of Progressive Legal Theory

Borrowing the theory, the articles above can be imposed even though bitcoin has not been legalized and has not been regulated. Similar to the time before the ITE Law was made, cybercrime used the KUHP so that internet users still felt protected. The ITE Law is a lex specialist from the KUHP, which is the same criminal offence, but the packaging is different

because of the crime stipulated in the technology-based ITE Law. Whereas according to the KUHP, fraud is regulated in Article 372 of the KUHP concerning Evasion and Article 378 concerning Fraud.

#### 4 Conclusion and Suggestions

From the discussion above, it can be concluded that bitcoin does not have written legal arrangements in the law in Indonesia. Nonetheless, bitcoin can be a legitimate payment instrument in Indonesia with the fulfilment of several terms of payment tools owned by bitcoin such as, not easily damaged, having the same quality that cannot be falsified, easy to carry, and has a stable value. Whereas in terms of legal protection for Bitcoin users in Indonesia based on Article 28D of the UUD 1945. Although bitcoin is not explicitly mentioned in ITE Law, this law can be used as a basis for bitcoin law, because bitcoin is included in the form of electronic transactions. Also, the KUHP can be a threat to the perpetrators of bitcoin fraud.

It is hoped that the Indonesian government will immediately take firm action regarding the use of bitcoin as a payment instrument in Indonesia. A firm decision is needed in the form of a permit or a ban on the use of bitcoin. If the government allows bitcoin transactions in Indonesia, it is necessary to have clear regulations to regulate the use of bitcoin and a firm threat to bitcoin criminals. So that bitcoin has a clear position and the people who use it get legal protection. But if bitcoin still does not have a clear arrangement, it is necessary to have a strict ban on people using bitcoin. It is related to the readiness of law enforcement officers and to protect the public if there are fraud and embezzlement of bitcoin.

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