

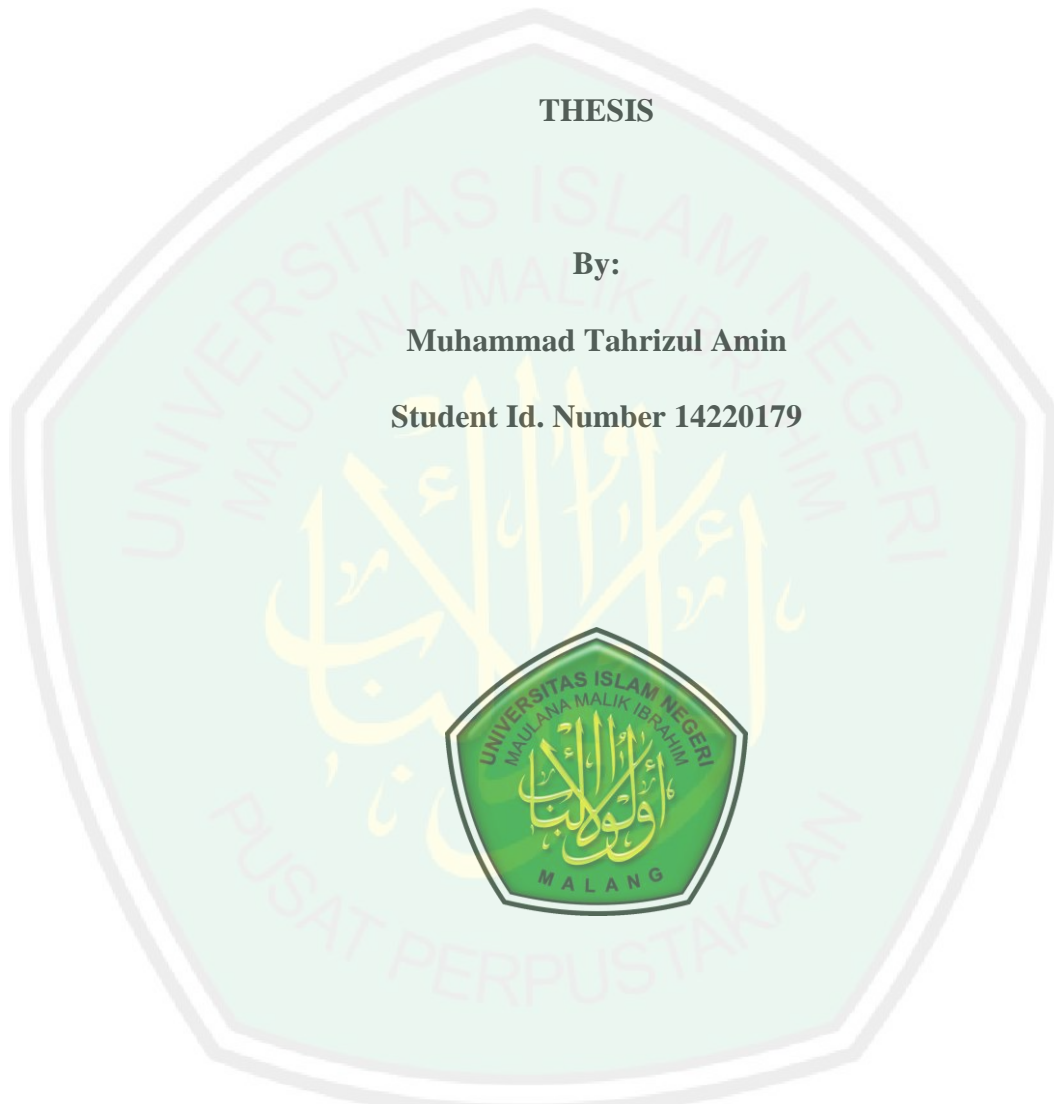
LAW OF BITCOIN INVESTMENT
(STUDY OF LEGAL EXPERT OPINION)

THESIS

By:

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ISLAMIC BUSINESS LAW DEPARTMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATES ISLAMIC UNIVERSITY OF MALANG

2018

**LAW OF BITCOIN INVESTMENT
(STUDY OF LEGAL EXPERT OPINION)**

THESIS

Presented to

Sharia Faculty of State Islamic University of Maulana Malik Ibrahim, Malang
in Partial Fulfillment of the Requirements
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By:

Muhammad Tahrizul Amin



ISLAMIC BUSINESS LAW DEPARTMENT

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MAULANA MALIK IBRAHIM

STATES ISLAMIC UNIVERSITY OF MALANG

2018

STATEMENT OF THE AUTENTIFICITY

In the name Allah,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

LAW OF BITCOIN INVESTMENT (STUDY OF LEGAL EXPERT OPINION)

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 13th of December 2018

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LAW OF BITCOIN INVESTMENT (STUDY OF LEGAL EXPERT OPINION)

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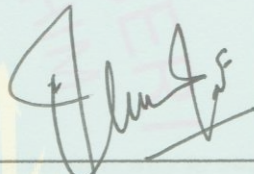
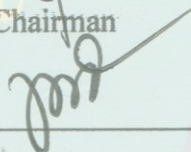

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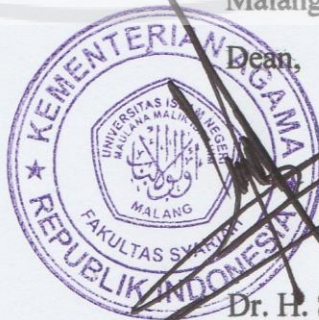
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MOTTO

فَبِأَيِّ آلَاءِ رَبِّكُمَا تُكَذِّبَانِ

“So, which of the favors of your Lord would you deny?” (Q.S. Al-Rahmân: 13)

“Do what you love, and love what you do.”

- Ray Bradbury –

*“Our greatest weakness lies in giving up. The most certain way to succeed is
always to try just one more time.”*

- Thomas A. Edison -

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All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Law of Bitcoin (Study of Legal Expert Opinion)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. *Amîn*.

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3. Dr. Fakhruddin, M.H.I., as the head of Islamic Business Law Department, Sharia Faculty, State Islamic University, Maulana Malik Ibrahim of Malang.
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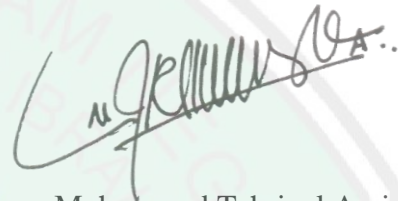
5. Dra. Jundiani, S.H., M.Hum., as the thesis supervisor. The author expresses his gratitude for the guidance and directional motivation given in the course of completing this thesis. May Allah (swt) shower him and his family with His blessings.
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Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim Malang, it will benefit all readers and the author himself. Realizing the fact that

error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 13th of December 2018

Author,



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TRANSLITERATION GUIDANCE

A. General

The transliteration guidance used by Sharia Faculty, The State Islamic University, Maulana Malik Ibrahim of Malang is *EYD (Ejaan Yang Disempurnakan)*. This usage based on Joint Decree (*SKB/Surat Keputusan Bersama*) Minister of Religious and Minister of Education and Cultural of Republic of Indonesia, dated January 22, 1998, Number 158/1987 and 0543. b/U/1987, as printed on A Guide Arabic Transliteration, INIS Fellow 1992.

B. Consonants

Arabic	Latin	Arabic	Latin
ا	Does not symbolized	ض	dl
ب	b	ط	th
ت	t	ظ	dh
ث	ts	ع	‘ (facing up coma)
ج	j	غ	gh
ح	h	ف	f
خ	kh	ق	q
د	d	ك	k
ذ	dz	ل	l
ر	r	م	m
ز	z	ن	n

س	s	و	w
ش	sy	هـ	h
ص	sh	ي	y

Hamzah (ء) which is usually represented by *alif*, when located on the beginning of word, the transliteration follows the vocal and does not symbolized. However, when located on the middle or on the end of word, its symbolized by facing up coma (’), opposite to coma (‘) of the symbolize of “ع”.

C. Vocal, Length, and Diftong

Every written of Arabic text in Latin form, vocal of *fathah* written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas every length vowel of it written by:

Elongated (a) vowel	= â	example	قَالَ	becomes	<i>qâla</i>
Elongated (i) vowel	= î	example	قِيلَ	becomes	<i>qîla</i>
Elongated (u) vowel	= û	example	دُونُ	becomes	<i>dûna</i>

Specially for *ya’ nisbat* pronunciations, it cannot be replaced by “î”, but still written by “iy” in order to presenting *ya’ nisbat* at the end, also for *diftong* sound, *wawu* and *ya’* after *fathah* written by “aw” and “ay”. Look at to the examples:

<i>Diftong</i>	(aw)	= و	example	قَوْلُ	becomes	<i>qawlun</i>
----------------	------	-----	---------	--------	---------	---------------

Diftong (ay) = اَی example خَیْر becomes *khayrun*

D. *Ta' marbûthah* (ة)

Ta' marbûthah transliterated to "t" if located on the middle of word, but if transliterated to "h" if located on the end of word, for example الرسالة للمدرسة becomes *alrisâlat li al-mudarrisah*, or transliterated to "t" which continued with the next sentence if located on the middle of words which constitutes *mudlaf* and *mudlaf ilayh*, for example في رحمة الله becomes *fî rahmatillâh*.

E. Auxiliary Verb and *Lafdh al-Jalâlah*

Auxiliary verb "al" (ال) written with lowercase character, unless located on the beginning of sentence, while "al" in *lafadh jalâlah* which located on the middle of two words or being or become *idhafah* is eliminated. Look at to the examples:

1. Al-Imâm al-Bukhâriy says ...
2. Al-Bukhâriy in *muqaddimah* of his book explains ...
3. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâh 'azza wa jalla.*

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ABSTRAK

Muhammad Tahrizul Amin, 14220179, 2018. *Hukum Investasi Bitcoin (Studi Pendapat Pakar)*. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dra. Jundiani, S.H., M.Hum.

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

Bitcoin merupakan salah satu mata uang digital yang berbasis program kriptografi dengan harga tertinggi hingga tahun 2018 sehingga menjadi salah satu aset digital untuk berinvestasi dan menjadi salah satu sarana investasi paling populer di masyarakat. Namun, fenomena tersebut masih menjadi polemik karena tidak dinaungi oleh payung hukum yang jelas. Penelitian ini bertujuan untuk mengetahui mekanisme investasi Bitcoin yang dilakukan serta pandangan pakar hukum terhadap fenomena tersebut.

Penelitian ini menggunakan metode yuridis empiris, dengan pendekatan yuridis sosiologis. Analisis yang digunakan bersifat deskriptif dan disimpulkan secara induktif yaitu dengan menguraikan kasus yang bersifat khusus dan disimpulkan secara umum.

Hasil penelitian yang diperoleh adalah mekanisme investasi Bitcoin yang dilakukan dapat berupa *mining*, dan *trading*. Dalam perspektif Islam, pakar hukum berpendapat bahwa aktivitas *mining* boleh untuk dilakukan karena terdapat dua akad yang berbeda selama melakukan prosesnya, dan tidak mengandung unsur *maysîr*. Sedangkan, *trading* Bitcoin boleh untuk dilakukan selama tidak bertentangan dengan prinsip syariah. Secara hukum positif, kedua aktivitas tersebut belum memiliki payung hukum yang jelas. Meskipun dapat dikaitkan dengan beberapa peraturan, seperti KUH Perdata, Undang-Undang Mata Uang, Undang-Undang ITE, serta Peraturan Bank Indonesia, investasi Bitcoin perlu untuk diatur secara tertulis dalam peraturan khusus yang berbeda, baik dalam bentuk peraturan perundang-undangan ataupun fatwa. Sehingga akan memberikan kepastian hukum terhadap masyarakat. Dengan adanya penelitian ini diharapkan dapat memberikan masukan pada pemerintah untuk menyikapi kekosongan hukum Bitcoin.

ABSTRACT

Muhammad Tahrizul Amin, 14220179, 2018. *Law of Bitcoin Investment (Study of Legal Expert Opinion)*. Thesis, Islamic Business Law Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim, Malang. Supervisor: Dra. Jundiani, S.H., M.Hum.

Keywords: Bitcoin, Business Law, Cryptocurrency, Investment

Bitcoin is one of digital currencies by cryptography as the basic system with the highest price in digital marketplace until 2018, so it becomes one of digital asset used to invest and becomes one of the most popular investment tools in society. But this phenomenon still become polemic because it has no explicit regulations yet. So, this research objectives are to know the mechanism of Bitcoin investment in society and the legal expert opinion towards it.

This research used empirical juridical method with sociological juridical approach. The analytical method is descriptive and concluded in inductive way that explained the result from specific to general.

This research results are the Bitcoin investment mechanism in society divided into mining and trading activity. In Islamic views, the legal expert opines that mining activity is allowed to do because there are two kinds of *akad* did in it and has no element of *maysir* at all. Whereas, if does not be incompatible with sharia principal, Bitcoin trading is allowed to do. In positive law views, these two types of investment activity still had no explicit regulation yet. Although it can to be associated with some regulations such as Civil Code, The Currency Law, Electronic Information and Transaction Law, and Bank of Indonesia Regulation, it still need to regulate explicitly and written in specific role, either in regulation or fatwa forms, so it gives the legal certainty to society. Hopefully, this research provides the suggestion to government to law the vacuum of norm of Bitcoin.

مخلص البحث

محمد تحريز الأمين، 14220179، 2018. حكم استثمار بتكوين (دراسة رأي الخبراء). البحث، قسم الحكم الاقتصادي الإسلامي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرفة: جنديباني الماجستير.

الكلمات الرئيسية: الاستثمار، بتكوين، حكم التجارة، عملة مشفرة

بتكوين هي عملة رقمية تعتمد على برامج التشفير بأعلى الأسعار حتى عام 2018 بحيث تصبح واحدة من الأصول الرقمية للاستثمار. في تطوره الحاضر، أصبحت بتكوين إحدى الأصول الرقمية ومن أكثر أدوات الاستثمار شعبية في المجتمع. ومع ذلك، لا تزال هذه الظاهرة جددًا لأنها لم يتم تظليلها بموجب القانون الواضح. يهدف هذا البحث إلى تحديد آلية استثمار بتكوين ووجهات نظر الخبراء القانونيين أو المؤهل فيها حول الظاهرة.

استخدم هذا البحث طريقة قانونية تجريبية، مع نهج قانوني اجتماعي. التحليل المستخدم هو وصف وصفي استنتاجي، أي من خلال وصف حالات محددة ومختومة بشكل عام.

نتائج البحث التي تم الحصول عليها هي آلية استثمار بتكوين التي يمكن القيام بها في شكل التعدين والتجارة. في منظور إسلامي، يجادل الخبراء القانونيون بأن أنشطة التعدين يمكن تنفيذها لأن هناك عقدين مختلفين خلال العملية، ولا تحتوي على عناصر ميسر. في هذه الأثناء، قد يتم تنفيذ تداول البتكوين طالما إذا كان لا يتعارض مع مبادئ الشريعة. ومن الناحية القانونية، فإن النشاطين ليس لهما مظلة قانونية واضحة. على الرغم من أنه يمكن ربطه بالعديد من اللوائح، مثل القانون المدني، وقانون العملة، قانون المعاملات والتجارة الإلكترونية، ولوائح بنك أندونيسيا، فإن استثمارات بتكوين يجب أن يتم تنظيمها كتابة في أنظمة خاصة مختلفة، إما في شكل تشريع أو فتوى. حتى توفر اليقين القانوني للمجتمع. بوجود هذا البحث، من المتوقع أن تقدم تدخلات للحكومة للتعامل مع الفراغ حكم بتكوين.



CHAPTER I INTRODUCTION

A. Background of Problem

The development is a basic human trait for living with a better life. Being 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 of facilitating human needs in fulfilling his life.

The form of the human development includes all aspects of life. One of the most quick and significant in it 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

الْأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلُّ دَلِيلٌ عَلَى تَحْرِيمِهَا.

“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. One of its development forms in present is more practical method in communication and information

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

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

between seller or product provider (goods/services) and buyer or product user. For example, buying and selling behavior in modern society can be done via the digital market with the use of the internet connection (virtual world) which is the basic concept of a transaction conducted between a person with others using the modern media. Based on the contemporary concept of *mu'âmalah*, it can be done as long as does not be incompatible with classical concept of *mu'âmalah*. This innovation known as electronic commerce (e-commerce).

Along with the e-commerce development, many of the latest innovations that emerged and grew rapidly in the field of communications technology, particularly in digital technology, has a major role in the development of modern society behavior especially in e-commerce. The development of smartphones and the increasingly sophisticated of internet provides is giving a wide range of easy access. Emergence of the wide variety of innovations ranging from the digital market (online shop), digital delivery service, to the financial technology based on instant application which can be operated with a smartphone can be done easily whenever and wherever located, so that the development of e-commerce is felt greatly facilitates and provides a new opportunity to improve the quality of life, either as a consumer or as a manufacturer and seller of the product.

In terms of the developments mentioned above, there is a new innovation in e-commerce, namely digital money or electronic money (e-

money). Electronic money is money that 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 In this modern era, the digital media used by people as a place to conduct a transaction, so that electronic money is a new discovery that gives quick access for doing payment transactions.

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 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.

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

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.

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.

If we look to the usability, in the book of “*Blockchain: Dari Bitcoin Untuk Dunia*” written by Dimaz Ankaa Wijaya and Oscar Darmawan mentioned that the beginning of Bitcoin creation, its program used for illegal trading transaction, because the first user comes from 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.

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), p. 32.

Bitcoin development from an exchange tool to be an investment medium is a new innovation and being developing now day. Bitcoin utilizing by many people as an investment media does not fade the trading transaction with Bitcoin possibility out. It caused by the easy system and the high security on it which make a consideration of part of people.

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 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

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

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

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

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, in 2016, Bank of Indonesia treats utilizing of virtual currency in Section 34 of Bank of Indonesia Regulation Number

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.

18/40/PBI/2016 on The Execution of Payment Transaction Process (*Penyelenggaraan Pemrosesan Transaksi Pembayaran*) which the main role is to rule industry of financial technology, that The Service Provider of Payment System (*Penyelenggara Jasa Sistem Pembayaran/PJPS*) is forbidden to process the payment transaction which uses virtual currency.¹⁴ The detailed explanation of the statement above is explained in Questions and Answers document of it that Bank of Indonesia does not prohibit virtual currency utilizing, but does prohibit the official PJPS to process payment transaction with virtual currency utilizing. Because, virtual currency is not a legitimate payment tool in Indonesia and Bank of Indonesia does not responsible for the risk of its utilizing in society.¹⁵

The statement of Bank of Indonesia supports the provision of Law Number 7 Year 2011 of Currency that virtual currency utilizing (including Bitcoin) as a payment tool in electronic transaction is invalid considered, because the only avowed currency as a legitimate payment tool in Indonesia is Rupiah.¹⁶ Clearly, virtual currency utilizing (included Bitcoin) is nor allowed. Although, the arrangement of Bitcoin as investment medium still unclear. Because, it has not been explained in detail about the arrangement mechanism of Bitcoin investment in Indonesia. In the other, the government also did not forbid towards virtual currency utilizing

¹⁴ Chapter 34 Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction Process.

¹⁵ “Mengapa BI Peringatkan Seluruh Pihak Akan Risiko *Virtual Currency*,” FAQ Press Releases of Bank of Indonesia Number 20/4/DKom about Virtual Currency.

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

absolutely, in summary, it makes the legitimate of virtual currency is unknown.

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 The State of 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).¹⁷

Moreover, Indonesian Ulema Council (in Bahasa Indonesia: *Majelis Ulama Indonesia – MUI*) also does not publish fatwa about Bitcoin. MUI mentions that Bitcoin as a medium of investment is forbidden to do on a national electronic newspaper. In contrast, if Bitcoin as a medium of exchange, it is be permitted to use.¹⁸ So, this thing is being contradictive to the statement of Bank of Indonesia. But, in addition, the statement of MUI is not in fatwa form, so it still did not say as a role yet.

Apart from that, both of the MUI or the Government has still not found a suitable legal against the existence of the Bitcoin. Although some parties have already issued the prohibition (in the form of a press release, or the regulations) against the use of the Bitcoin as Exchange in particular, and investing in General, Government and other relevant authorities accept the existence of new forms of in a digital world that has a great potential in

¹⁷ Dimaz dan Oscar, *Blockchain*, p. 119 - 120.

¹⁸ “11 Poin MUI tentang Bitcoin yang Diharamkan Sebagai Investasi,” <https://kumparan.com/@kumparannews/11-poin-mui-tentang-Bitcoin-yang-diharamkan-sebagai-investasi>, accessed on April 13, 2018.

the field of Economics. Especially in the realm of digital assets used as investment instruments. However, the vagueness of the Bitcoin and other virtual currency regulation gives a very large impact especially to users. Because, the impact of its vagueness will give the vagueness of legal protection which should be obtained to users. Moreover, considering to the high value of Bitcoin, it will greatly impact for the people who conduct transactions, in particular investment using Bitcoin, and indirectly also will have an impact to the economy of country.

Besides, 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, the author thinks need to research a juridical research about Law of Bitcoin Investment with the study of legal expert opinions.

B. Scope and Limitation

The research is limited to mechanism of Bitcoin investment and the legitimate with de study of legal expert (academician) opinion, i.e. Law (conventional and sharia) lecturer of The State Islamic University of Maulana Malik Ibrahim of Malang, therefore, the objective of the research is limited to the comparison of their opinions.

C. Statement of Problem

1. How does the mechanism of Bitcoin investment in society?
2. How does the legal expert (academician) opinions towards it?

D. Objective of Research

1. To understand the mechanism of Bitcoin investment in society.
2. To compare the legal expert (academician) opinions towards it.

E. Significance of Research

Based on the explanation of research objectives above, this research could give significance in practical and theoretical.

1. Practical Significances

This research could give the knowledge and open the society's mind about the mechanism and systematical of Bitcoin, even in legality in positive law or in Islamic law specially in its utilizing as a medium of investment. Moreover, this research could give the understanding of Bitcoin investment system and the impact of it to society.

2. Theoretical Significances

This research also could give the knowledge and understanding in theoretical to composer in particular and academicians in general (even as lecturer or students) about Bitcoin as new thing as a medium of investment in electronic industrial sector, so

it appears a new knowledge in investment sector and the role of it in positive law.

F. Operational Definition

1. Law of investment is the totality of law norm that regulate relationship between investor and capital receiver, the labor sectors which available for investment, and regulate the procedure and conditions in investing in a state.¹⁹
2. Bitcoin is a virtual currency and a digital asset which the transaction could be work without need any credit cards or central bank help. Bitcoin designed in such a way to facilitate the user in trading transaction faster, simpler, and more efficient by using internet network.²⁰
3. Expert is someone who reputed as a trusted source on specific technique or ability to evaluate and decide things correctly, carefully, or in a fair agree with the arrangement and status by his peer or the public in a specific sector. In general, an expert is someone who have the knowledge or capacious ability in specific field of study. The experts requested to give an advice in their competent sector, but they do not always agree in absorption of study. Trough coaching, education, profession, publication, or experience, an expert believed

¹⁹ Utsman Ali, "Pengertian Hukum Investasi Menurut Pakar," <http://www.pengertianpakar.com/2015/03/pengertian-hukum-investasi-menurut-pakar.html>, accessed on April 20, 2018.

²⁰ "Apa Itu Bitcoin," <https://help.bitcoin.co.id/apa-itu-bitcoin/>, accessed on April 20, 2018.

had specific knowledge in his sector above people's averages, where other people could officially (and legitimately) rely on their opinion.²¹

G. Discussion Structure

As a field research, the writing of this research is divided into five chapters, they are:

1. Chapter I: Introduction

This chapter describes explanations and basic understanding of an examined of legal issues. Description of the explanations and basic understanding over these problems based on the theories which related to the problems, even in social terms or law terms that sourced from books, journals, research, and other sources. The description outlined in several points, including the background of problem, scope and limitation, problem statements, research objectives, the benefits of research, operational definition, and discussion structures.

2. Chapter II: Review of Related Literature

This chapter explains about conceptual framework of the research. It is the related concepts to the objective of research directly and indirectly, from books, journals and scientific articles, news articles, and from other sources that related to this chapter. Also, in this chapter is described about several previous research related to this

²¹ "Pakar," <https://id.wikipedia.org/wiki/Pakar>, accessed on April 20, 2018.

research, in order to inform that this research is original and not from a duplication from previous research.

3. Chapter III: Research Method

This chapter describes about the research method used in this research. The explanation of it include location of research, research type and research approach, and data source, data collecting technique, and data analysis technique of this research.

4. Chapter IV: Findings and Discussion

This chapter explains about the findings of research in field data results, and the analytical of it. The explanation is described in several points.

5. Chapter V: Closing

This chapter describes about the conclusion of the research. The conclusions are the result of analysis described in chapter iv shortly, and it is the answer of problem statements mentioned on the first chapter. Moreover, in this chapter also written about suggestions to the reader about object of the research.



CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

Research related to 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.

1. Analisis Bitcoin Menurut Peraturan Perundang-Undangan Di Indonesia

The research, written by Aby Haryono on 2014 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.

The equation of this research with the author's research is a discussion of the legality of bitcoin in ITE Law, the currency Law, consumer protection Law. The difference is located on the object of formal and material of the research. Aby Haryono more researched against the legality of bitcoin as a tool of Exchange based on Law No. 11/2008 of Information and Electronic Transactions, Law No. 7/2011 of Currency, Law No. 8/1999 on the Protection of Consumers, while the writer more focuses upon the legality and the settings in bitcoin investment based on the opinions of experts.

2. Tinjauan Fiqh Muamalah Terhadap Uang Digital Bitcoin Dengan Studi Pada DSN-MUI dan Perusahaan Artabit

The research, written by Nur Lailatus Sholihah on 2014 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.

The equation of this research with the author's research is a discussion of opinion against the operational process of money exchange based on bitcoin. The difference is located on the object of formal and material of the research. Nur Lailatus Sholihah more researching *fiqh mu'âmalah* review against bitcoin and views the DSN-MUI-based money exchange operations against bitcoin, while the writer more focuses upon the legality and the settings in bitcoin investment based on the opinions of experts.

3. Transaksi Jual Beli dengan Bitcoin Dalam Perspektif Hukum Islam

The research, written by Muhammad Imam on 2015 describes the legality of Bitcoin as payment tools based on the perspective of Islamic law.

The equation of this research with the author's research is a discussion of the legality of bitcoin in Islamic law. The difference is

located on the object of formal and material of the research. Muhammad Imam Sabirin more researched against the legality of bitcoin as payment tools based on the perspective of Islamic law in General, whereas the author focuses more upon the legality as well as the settings in the bitcoin investment based on the opinion of the economic and legal experts (conventional and sharia).

Table 1. Short Describe of Previous Research

Name/ Year	Title	Object of Material	Object of Formal
Aby Haryono, 2014.	Analisis Bitcoin Menurut Peraturan Perundang-Undangan Di Indonesia.	Bitcoin Legality as an exchange tool.	Law No. 11 of the year 2008 about Information and Electronic Transaction (Law of ITE), Law No. 7 of the year 2011 about Currencies, and Law No. 8 of the year 1999 about The Protection of Consumers, as well as the related theories of payment and material.
Nur Lailatus Sholihah, 2014.	Tinjauan Fiqh Muamalah Terhadap Uang Digital Bitcoin Dengan Studi Pada DSN-MUI dan Perusahaan Artabit.	Bitcoin and money exchange operations based on bitcoin.	Review of <i>Fiqh Muamalah</i> and DSN-MUI.

Muhammad Imam Sabirin, 2015.	Transaksi Jual Beli dengan Bitcoin Dalam Perspektif Hukum Islam.	Bitcoin Legality as a payment tool.	The Perspective of Islamic Law in General.
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B. Conceptual Framework

1. Law of Investment in Indonesia

a. Definition

The investment is an outstanding term in business activity.

Basically, there are two terms of investment in Bahasa Indonesia.

They are *Investasi* and *Penanaman Modal*, with the same meaning but differentiation of usage. *Investasi* is a known term used in business sector, and *penanaman modal* is used in regulation and legislation. But, sometimes this two of term is interchangeable usage.²² The investment (*investasi*) has the generality of meaning, because it includes two kinds of investment, i.e. direct investment and indirect investment.²³

In terminology, the investment (noun) is an invest activity of capital or effort in corporation or in project to obtain the profit.²⁴ Whereas in epistemology, the investment (*investasi* or *penanaman modal*) is an activity did by natural person or juridical

²² Ida Bagus Rachmadi Supancana, *Kerangka Hukum & Kebijakan Investasi Langsung di Indonesia*, (Jakarta: Ghalia Indonesia, 2006), p. 1.

²³ Dhaniswara K. Harjono, *Hukum Penanaman Modal, Tinjauan terhadap Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal*, (Jakarta: Raja Grafindo Persada, 2007), p. 10.

²⁴ “KBBI Daring”, <https://kbbi.kemdikbud.go.id/entri/Investasi>, accessed on March 19, 2018.

person in increasing/upgrading or defending efforts on its capital value in cash money, equipment, plants, proprietary intellectual property, skills, and other assets.²⁵

Law is the compilation of regulations made by authority to regulate the order of society life as a purpose characterized by order and forbid things and have a enforce characteristic by giving the punishment to who break it.²⁶ Whereas, in accordance to Salim HS and Budi Sutrisno, law of investment is the totality of norm of law that rule the relationship between investors and capital receiver, the labor sectors which available for investment, and regulate the procedure and conditions in investing in a state.²⁷

b. Investment Types and Forms

There are two types of investment in general, i.e. direct investment (long term investment) and indirect investment (short term investment).

Law Number 5, 2007 of Investment (*Undang – Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal/UUPM*) mentioned about the meaning of investment is limited on direct investment (long term investment). As mentioned in the

²⁵ Ana Rokhmatussa'dyah, Suratman, *Hukum Investasi dan Pasar Modal*, Cet. I, (Jakarta: Sinar Grafika, 2009), p. 3.

²⁶ R. Soeroso, *Pengantar Ilmu Hukum*, Ed. 1, Cet. 13, (Jakarta: Sinar Grafika, 2013), p. 38.

²⁷ Utsman Ali, "Pengertian Hukum Investasi Menurut Pakar", <http://www.pengertianpakar.com/2015/03/pengertian-hukum-investasi-menurut-pakar.html>, accessed on April 20, 2018.

regulation, the investment activity is permitted for local individuals or foreign individuals. Sometimes, the direct investment is related to involvement of capital owner in capital management activity.²⁸

The direct investment did by founding of joint venture company with local partner, making a joint operation scheme without forming the new corporation, converting the loan into majority enclosing in local corporation, extending technical and management assistance, giving the license, and others.²⁹

The second type is indirect investment (short-term investment). The activities in this type of investment are all transactional activity in capital market and monetary market. Generally, the stocks and/or currencies selling and buying did in the short time (relatively), suspended by the fluctuation value of stocks and/or currencies. Consequently, the activity of indirect investment known as a short-term investment.³⁰

c. Investment in Islamic Law

As explained above, investment is an activity of capitals expend to receive the profit of it in future, in order to increase or defend the capital value. In conventional investment system, the

²⁸ Ana, Suratman, *Hukum Investasi*, p. 4.

²⁹ Ana, Suratman, *Hukum Investasi*, p. 5.

³⁰ Ana, Suratman, *Hukum Investasi*.

reason of investment activity is many, they are to fill the liquidity needs, saving in order to receive the bigger reversion, pension plan, to speculating, and others. But, in Islamic concept, investment is not only limited on secular matters. It is also related to the hereafter matters. Basically, sharia investment concept gives the limitations especially in returning of capital from investment activity. Investment return in Islamic concept must relevant with the number of capitals or resources sacrifices. In brief, investment in Islamic views is an activity of capital expand to receive the profit in future directly or indirectly based on sharia principles comprehensively.³¹

2. Bitcoin Currency

a. Overview

The appearance of digital currency is an impact of e-commerce development with digital technology utilizing, especially in utilizing of information and network technology, so it appears the new commodity in virtual sector. The existence of it impacted to the increasing of needs of modern human life, especially in virtual sector, so, it gives the place towards new

³¹ Muhammad Nafik HR, *Bursa Efek dan Investasi Syariah*, Cet. Ke-1, (Jakarta: PT Serambi Ilmu Semesta, 2009), p. 67-70.

innovation which support the needs. Bitcoin is one of the implementations of it in digital currency.

Bitcoin as digital currency is a virtual currency created by a series of cryptography codes formed in such a way in order to save in computer devices, transferable as like as electronic document, and have a possibility to use as payment tool.³² In non-technical means, Bitcoin is a digital asset which the transaction could be work without need any credit cards or central bank help. Bitcoin designed in such a way to facilitate the user in trading transaction faster, simpler, and more efficient by using internet network.³³

As like as another virtual currency, Bitcoin is a digital currency that only exists in virtual world and it differed with electronic money (e-money). The most different between them is the publication of it. Electronic money published and legitimated by authority monetary institution of country (in Indonesia called by Bank of Indonesia as a central bank of nation). In contrast, virtual currency (as like as Bitcoin) created by private corporation and developer that did not included to the authority monetary

³² "Bitcoin", <https://id.wikipedia.org/wiki/Bitcoin>, accessed on March 14, 2018.

³³ "Apa Itu Bitcoin?", <https://help.indodax.com/apa-itu-bitcoin/>, accessed on May 29, 2018.

institution, and it just avowed in specific virtual community/society as an alternative payment tool.³⁴

Based on the form of it, there are three schemes in virtual currency, they are:³⁵

- 1) Scheme of secured virtual currency, is a valid form inside specific community or specific system and invalid outside of community or system. For an example is a gaming money on computer or smartphone. Player would pay some money to game developer to get the exchange in gaming money and the gaming money could be used to buy or exchange some items of the game.
- 2) Scheme of one direction of virtual currency, is a virtual currency obtained by the exchange between legitimate or real money (as like as Rupiah) to the form of virtual currency which could be used for buying some virtual products and in some conditions could be used for buying a real-life product. For an example, Facebook credits could be used for online shopping by user.
- 3) Scheme of two directions of virtual currency, is a currency could be traded based on validated exchange value. The users might to use for buying or selling the virtual products or real-

³⁴ “Virtual Currency”, https://en.wikipedia.org/wiki/Virtual_currency, accessed on April 9, 2018.

³⁵ <http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf>, accessed on May 30, 2018.

life products. For an example is `Liberty Reserve (LR). The user of LR might be sold or bought it for buying specific product.

Looked to the three of scheme, Bitcoin is included into the third scheme.

The appearance of cryptocurrency as like as Bitcoin makes a new alternative as a payment tool and an investment instrument. The cryptocurrency popularity has been demanded on a row of Bitcoin creation, even though there are many cryptocurrencies appeared after. In fact, the first concept of cryptocurrency is started on 1998 by Wei Dai, and just been implemented on 2009 in Bitcoin form.³⁶

On 2009, the basic scheme of Bitcoin system and protocol is designed and developed by Satoshi Nakamoto, a pseudonym who unknown the real identity. But, Nakamoto allegedly form Japan, in other way it is a camouflage of corporation or an individual people with the brilliant skill. On that time, the idea of virtual currency alleged as a complex scheme, but still give the good prospect in future. In order to use the internet technology, Bitcoin started to get the place in several communities as a virtual commodity worked by independent system.³⁷ Because of the

³⁶ "Bitcoin", <https://id.wikipedia.org/wiki/Bitcoin>, accessed on May 30, 2018.

³⁷ Dimaz dan Oscar, *Blockchain*, p. 31.

independent system, Bitcoin gets a superiority, it is an absolute privacy. Bitcoin is not depended to banking system, because the owner absolutely arranges and manages personally with the private domain. It is a private scheme without any other institutions intervene so it makes the privacy security of Bitcoin users is guaranteed.³⁸

On the first program creation, Bitcoin is only used for trading of goods activity. On that time, the first user as transaction payment tool is dark web community or the internet user who did the goods trading through dark network which identical with illegal transaction (as like as drugs trading, illegal weapons, and others), so Bitcoin is known as illegal transaction payment at the beginning.³⁹ But, as long as the development, Bitcoin is became an alternative medium of virtual investment.

Basic concept of Bitcoin is a computer program based on cryptography code by utilizing of peer-to-peer (P2P) networks as a transferring method, and by utilizing of blockchain network in working a transaction which gave an extra security in working the transaction.⁴⁰ The utilizing of P2P network in Bitcoin transaction system is different with a general transaction/transfer by other platform which using the real money. Peer-to-peer network allow

³⁸ Ibrahim Nubika, *BITCOIN; Mengenal Cara Baru Berinvestasi Generasi Milenial*, Cet. I, (Yogyakarta: Genesis Learning, 2018), p. 81-82.

³⁹ Dimaz dan Oscar, *Blockchain*, p. 32.

⁴⁰ "Bitcoin", <https://id.wikipedia.org/wiki/Bitcoin>, accessed on March 14, 2018.

to send directly to the receiver without any central network (network centralization) that applied in banking system as a rule of legitimate currency. In brief, this system gives many efficiencies in time, method, security much better than the general currency.

In virtual currency context, especially in Bitcoin, decentralization of Bitcoin gives the different system with the general currency, as like as the absences of central bank which manage the circulation of Bitcoin. In addition, Bitcoin did not publish by nation or any other party in the world.⁴¹ The absences of dominant party who manage its circulations gives significant benefits. Because, Bitcoin management did not influence by any polices include central bank. Moreover, the utilizing of P2P system makes every transaction faster and more efficient.

Although just at the moment, in every Bitcoin transaction are supported by Blockchain network. It is an entry or database system distributed on the wide network (distributed ledger).⁴² In brief, blockchain system is a wide network which records every activity inside it transparently (accessible by everyone who inside the network) and encrypted (protected by security codes), so it is

⁴¹ Dimaz dan Oscar, *Blockchain*, p. 35.

⁴² “Apa Itu *Blockchain* dan *Cryptocurrency*?”, <https://www.andryo.com/id/blockchain/>, accessed on May 30, 2018.

not easy to hack.⁴³ Blockchain is a big book accessible by public. It shows all transaction data which did happen inside it accessible by everyone⁴⁴

b. Specification and Price

In general, there is one form of Bitcoin in the world. But, the development of cryptocurrency technology made the appearance of many virtual currencies, even being developing as Bitcoin as well. Based on Google, at least there are seven of the most often virtual currencies searched in Google Search, or at least there are 15 forms of the most popular cryptocurrency from 1.400 forms of circulate coin (based on <https://coinmarketcap.com/>), there are Bitcoin, Ethereum, NXT, Ripple, Litecoin, Dogecoin, and Stellar.⁴⁵ Bitcoin is the most popular cryptocurrency in the world than other because the high price or value of it, especially in digital investment sector.

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),⁴⁶ even though it has been decreased on April in 94 to 105 million rupiah

⁴³ Dimaz dan Oscar, *Blockchain*, p. 19.

⁴⁴ “Apa Yang Dimaksud Dengan Blockchain?,” <https://help.bitcoin.co.id/apa-yang-dimaksud-dengan-blockchain/>, accessed on April 20, 2018.

⁴⁵ <https://coinmarketcap.com/>, accessed on June 26, 2018.

⁴⁶ <https://indodax.com/>, accessed on March 14 and 19, 2018.

or about \$6.000 US dollars for 1 BTC.⁴⁷ The system of Bitcoin investment uses trading 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 is 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.⁴⁸ 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.⁴⁹ Moreover, the other factors which influence the value of Bitcoin regulation and policy towards cryptocurrency, especially 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.

Besides, there are several forms of circulated Bitcoin they are Bitcoin, Bitcoin Diamond, Bitcoin Cash, and Bitcoin Gold.

The differences between them are in capacity and value. In

⁴⁷ <https://indodax.com/>, accessed on June 26, 2018.

⁴⁸ "Faktor-Faktor Yang Mempengaruhi Harga Bitcoin," <http://forexindonesia.org/Bitcoin/faktor-faktor-yang-mempengaruhi-harga-Bitcoin.html>, accessed on April 11, 2018.

⁴⁹ "Apakah Jumlah Bitcoin Terbatas?," <https://help.Bitcoin.co.id/apakah-jumlah-Bitcoin-itu-terbatas/>, accessed on April 11, 2018.

general, Bitcoin is 1 BTC with the value in the range of 90 million rupiah, so Bitcoin Diamond, Bitcoin Cash, and Bitcoin Gold is the smaller piece of bitcoin with the lower value or price.⁵⁰

c. Bitcoin Regulation

The specific regulation of Bitcoin is not existed until now day. But, 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.⁵¹ Also, in 2016, Bank of Indonesia treats utilizing of virtual currency in Section 34 of Bank of Indonesia Regulation Number 18/40/PBI/2016 on The Execution of Payment Transaction Process (*Penyelenggaraan Pemrosesan Transaksi Pembayaran*) which the main role is to rule industry of financial technology, that The Service Provider of Payment System (*Penyelenggara Jasa Sistem Pembayaran/PJPS*) is forbidden to process the

⁵⁰ “Bitcoin Forum,” <https://bitcointalk.org/index.php?topic=2266988.0>, accessed on October 31, 2018.

⁵¹ 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.

payment transaction which uses virtual currency.⁵² The detailed explanation of the statement above is explained in Questions and Answers document of it that Bank of Indonesia does not prohibit virtual currency utilizing, but does prohibit the official PJPS to process payment transaction with virtual currency utilizing. Because, virtual currency is not a legitimate payment tool in Indonesia and Bank of Indonesia does not responsible for the risk of its utilizing in society.⁵³

The statement of Bank of Indonesia supports the provision of Law Number 7 Year 2011 of Currency that virtual currency utilizing (including Bitcoin) as a payment tool in electronic transaction is invalid considered, because the only avowed currency as a legitimate payment tool in Indonesia is Rupiah.⁵⁴ Clearly, virtual currency utilizing (included Bitcoin) is not allowed. Although, the arrangement of Bitcoin as investment medium still unclear. Because, it has not been explained yet in detail about the arrangement of the Bitcoin investment mechanism in Indonesia. In the other, the government also did not forbid towards virtual currency utilizing absolutely, in summary, it makes the legitimate of virtual currency is unknown.

⁵² Chapter 34, Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction.

⁵³ “Mengapa BI Peringatkan Seluruh Pihak Akan Risiko *Virtual Currency*”, FAQ Press Releases of Bank of Indonesia Number 20/4/DKom about Virtual Currency.

⁵⁴ Anastasya Lilin Yuliana, Herry Prasetyi, “Gemerincing Bitcoin,” Kontan Mingguan, (February 10 – 16, 2014), p. 13.

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 The State of 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).⁵⁵

Moreover, Indonesian Ulema Council (Indonesian: *Majelis Ulama Indonesia – MUI*) also does not publish fatwa about Bitcoin. MUI mentions, Bitcoin as a medium of investment is forbidden to do on a national electronic newspaper. In contrast, if Bitcoin as a medium of exchange, it is be permitted to use.⁵⁶ So, this thing is being contradictive to the statement of Bank of Indonesia. But, in addition, the statement of MUI is not in fatwa form, so it still did not say as a role yet.

⁵⁵ Dimaz dan Oscar, *Blockchain*, p. 119 - 120.

⁵⁶ “11 Poin MUI tentang Bitcoin yang Diharamkan Sebagai Investasi,” <https://kumparan.com/@kumparannews/11-poin-mui-tentang-Bitcoin-yang-diharamkan-sebagai-investasi>, accessed on April 13, 2018.



CHAPTER III

RESEARCH METHOD

A. Type of Research

This research is empirical juridical research. Generally, empirical juridical research is included in field research, which means researching into the direct location to obtain the necessary data. 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.⁵⁷

B. Research Approach

This juridical empirical research uses a socio legal approach, because the review research based on empirical views.⁵⁸ Sociological approach (in non-law research known as qualitative approach) is a research uses approach that sees to the reality of law in society. 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.⁵⁹ 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.⁶⁰

C. Research Location

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 user.

⁵⁷ Zainuddin Ali, *Metode Penelitian Hukum*, Ed. 1, (Cet. Ke-8; Jakarta: Sinar Grafika, 2016), p. 18.

⁵⁸ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Cet. Ke-1; Bandung: CV. Mandar Maju, 2008), p. 127.

⁵⁹ Zainuddin, *Metodologi Penelitian*.

⁶⁰ Burhan Ashshofa, *Metode Penelitian Hukum*, (Cet. Ke-4; Jakarta: PT Rineka Cipta, 2014), p. 20-21.

D. Data Types and Sources

The type and source of data in a research study in character divided to two forms, namely qualitative and quantitative data. Qualitative data is a data form in descriptive sentences sourced from the legal symptoms in the community without indicate any numeral or its percentage. Whereas, quantitative data is the data form in numerals and not in descriptive sentences.⁶¹

This qualitative empirical juridical research uses qualitative data types. The data sources that used in this study are from:

1. Primary data, which mean data obtained and collected directly from respondents. Source of data obtained through interviews or observations directly to them.⁶²
2. Secondary data, which obtained from official documentation, the related books to the research objects, research results in research report, thesis, dissertations and legislation.⁶³
3. Tertiary data, which obtained from other sources than the primary and secondary data, such as dictionary, encyclopedia, magazines,

⁶¹ Muslan Abdurrahman, *Sosiologi dan Metode Penelitian Hukum*, (Cet. Ke-1; Malang, UMM Press, 2009), p. 112.

⁶² Zainuddin, *Metode Penelitian*, p. 106.

⁶³ Zainuddin, *Metode Penelitian*.

newspapers, and so on as guide reference or explanatory as well as a complement of primary and secondary data.⁶⁴

E. Data Collecting Method

This research is used several methods of data collection or legal material, they are interviews, the study of documentation and observations.

1. Study of Documentation

Study of documentation in legal research is a form of library data, obtained from research libraries, sourced from legislation, books, official documents, publications documentations and research results.⁶⁵ 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 it.⁶⁶

2. Interviews

The interview is a process of interaction and communication orally addressed to look for a certain data.⁶⁷ The interview will be executed only to a particular person, which in this part was planned to

⁶⁴ Zainuddin, *Metode Penelitian*.

⁶⁵ Zainuddin, *Metode Penelitian*, p. 107.

⁶⁶ Amiruddin, and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Ed. 1, (Jakarta: PT RajaGrafindo Persada, 2006), p. 84-86

⁶⁷ Muslan, *Sosiologi dan Metode*, p. 114.

some of legal academics (conventional and Islamic) in State Islamic University Maulana Malik Ibrahim of Malang.

The type of interview is 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.⁶⁸

The respondent in this research is determined by purposive technique. The purposive technique is technique to determine a respondent on a research activity. This technique is a source sampling technique with the specific consideration in order to get the representative data with the problems.⁶⁹ Basically, this technique worked as an intentional technique which took a specific sample related and comply with a needed requisite, included specific characteristics, feature, and criteria.⁷⁰

⁶⁸ Amiruddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Ed. 1, (Jakarta: PT RajaGrafindo Persada, 2006), p. 84-86.

⁶⁹ Zainuddin, *Metode Penelitian*, p. 107.

⁷⁰ "Pengertian Teknik Purposive Sampling Menurut Para Ahli," <http://www.pengertianmenurutparaahli.net/pengertian-teknik-purposive-sampling-menurut-para-ahli/>, accessed on June 26, 2018.

3. Observation

Observation in legal research is an observation method did against legal and social symptoms that exist within the community. Observation in the study of law is a form of observation in scientific research. So, in addition, observations were done against the observation results of others too that never performed on the same objects in the same circumstances and at the same way.⁷¹

F. Data Analysis Technique

Data analysis technique in this research is analysis descriptive. It is data explanation by descriptive sentence in a paragraph. The analysis data utilizing is qualitative approach towards primary data and secondary data and completed by tertiary data. The descriptive, included contents and the structure of positive law, is an activity did by author to determine contents or meaning of the role as the reference in completing the research object as legal problem.⁷²

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

⁷¹ Amiruddin, dan Zainal, *Pengantar Metode Penelitian*, p. 72-73

⁷² Zainuddin, *Metode Penelitian*, p. 107.

legal expert towards law of Bitcoin investment. After that, 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.⁷³

⁷³ Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: PT Rajagrafindo Persada, 2010), p. 125.



CHAPTER IV

FINDINGS AND DISCUSSION

A. Data Explanation

1. Bitcoin Investment mechanism in Society

Bitcoin is known in the general public as an alternative means of payment and a digital asset. However, there are some elements that support the Bitcoin transaction in society. The item is in technical elements or non-technical elements. Technical elements related to things that relate to the Bitcoin directly, as like as network system, e-

wallet, programming, etc. The technical elements can support transactions in the community both in the realm of Exchange or digital investment.

To see the Bitcoin investment mechanism in society, the author focused to research three different Bitcoin closed group in Facebook platform (Bitcoin Indonesia with 136,724 members, Indonesia with 88,770 members, and Bitcoin Indonesia Club with 57,427 members), one Bitcoin facilitator platform in Indonesia, namely PT. Indodax Nasional Indonesia (<https://www.indodax.com>), which has over 50,000 active users trading in indodax.com and has the biggest digital asset forum in Indonesia which the members can exchange information, suggestions and tutorials about digital asset on forumbitcoin.co.id⁷⁴ and bitcointalk.org forum, and a global cryptocurrency facilitator platform (included in Bitcoin), namely [luno.com](https://www.luno.com) (<https://www.luno.com> function) which is not much different with indodax.com.

On the Facebook platform, the three groups discuss about the method to get Bitcoin with capital as low as possible (up to without capital). The method is the way to obtain Bitcoin with mining, trading, even though the free Bitcoin provider platform in the form of a hash or a form of raw programs (that need to be processed mathematically

⁷⁴ “Apa kelebihan Indodax.com dibandingkan Digital Asset Exchange yang lain?,” <https://help.indodax.com/apa-kelebihan-bitcoin-co-id-dibandingkan-bitcoin-exchange-yang-lain/>, accessed on August 20, 2018.

so that become a Bitcoin program), sourced from a wide range of provider platforms, facilitators, exchangers, and associated with Bitcoin.

The primary focus in getting Bitcoin is through the process of mining. Mining is a process to get pieces of the Bitcoin using mathematical solving by engaging a number of algorithms and software. Mining process is a fundamental thing to get and make Bitcoin. In addition to the activity of mining by the miner to get Bitcoin, there is a more practical way, namely through the free Bitcoin provider site in a certain time, depending on the policy of the site owner. It is better known as the faucet. The two ways are the basic method to get the Bitcoin from scratch. However, there is a third way which is more commonly known as trading, i.e. get Bitcoin through Bitcoin trading.

One of the trading in Bitcoin worked through exchangers sites, one being is indodax.com. The site provides a variety of digital assets trading in the form of virtual currency. Bitcoin users can register themselves on these sites as a personal or a corporation. Once registered, users will have a virtual savings in the form of e-wallet in the indodax.com server, so all digital asset transactions (including Bitcoin) will go into the e-wallet. The transactions can use the digital asset payment or with the Rupiah. However, if using rupiah, then the user must make a deposit (term used in cryptocurrency are

withdraw/WD) the value of the Rupiah into account balance, so that the transaction can be done later. Based on the official description on indodax.com, all costs for digital asset trading (including Bitcoin) or the withdrawal happened on indodax.com are subjected to a value added tax or VAT (in Bahasa Indonesia: *Pajak Pertambahan Nilai/PPN*) of 10%.⁷⁵

On that site, there are two methods offered. The first method is Limit, i.e., the process of digital asset trading did by a price are determined by the user. In the first method, this user does not incur additional charges. The second method is Market Instant, i.e., the process of digital asset trading did in Flash with the best price from the Order Book.⁷⁶ In contrast, in the second method users incur an additional fee called a transaction fee of 0.3%.⁷⁷

Trading in indodax.com with the official currency can only be done using the Rupiah. The policy is adapted to existing regulatory policy in Indonesia. However, a Bitcoin can be converted into other digital asset form that available at indodax.com for free, such as Litecoin, Dogecoin, Ripple, Steller, and others.

⁷⁵ “Apakah Perdagangan Aset Digital di Indodax.com Dikenakan Pajak Pertambahan Nilai,” <https://help.indodax.com/apakah-perdagangan-bitcoin-di-indodax-com-dikenakan-pajak/>, accessed on September 3, 2018.

⁷⁶ Order Book is a list of the selling price and the purchase price available on the market today. The users can buy or sell Bitcoin using the price on the Order Book. Order Book is divided into two parts, the first is Market Purchase (Bitcoin purchase requisition list with number of Bitcoin and the offered price), and the second is the Market Sell (the sold Bitcoin list with a number of Bitcoin and the asked price).

⁷⁷ “Apakah Perbedaan Limit dan Market Instan,” <https://help.indodax.com/apa-perbedaan-limit-dan-market-instan/>, accessed on September 3, 2018.

Regarded to the price of the Bitcoin, on the website of indodax.com, the Bitcoin price is determined purely by the supply and demand of the seller and the buyer in the market for Indonesia only. If there are many users (member) in Indonesia who bought the Bitcoin at the same time, the price in Indodax.com will increase dramatically. In contrast, if there are many users (member) in Indonesia who sold Bitcoin at the same time, the price of the Bitcoin will decrease. While the outside market rates impacted by Bitcoin buyers and sellers in the international scope or on a particular country only. Nevertheless, the Bitcoin price on worldwide is almost identical in outline.

While on luno.com platforms have fundamental differences, particularly in the determination of Bitcoin price. Because Luno.com is a global wide exchanger site, so the price is the offered Bitcoin price is a global market price. Apart from that, with regard to the mechanism of investment is not much different from indodax.com. Even in indodax.com or luno.com, the user may work the Bitcoin trading directly. Although on indodax.com is available for option pricing (price limit and the price through order book), but technically, the two platforms are not much different.

2. The Opinion of Legal Academician Expert Towards Bitcoin Investment

The implementation of interviews to some of respondents was conducted based on the purposive sampling technique, which considered the specific aspects relating to the object of research. Based on these techniques, the author suggested several things to become a reference in determining the respondent. It is an expert respondent in the field of academia with regard to both conventional or Sharia investment law. Related to this, the respondents are a permanent lecturer in the field of investment law and *Fiqh Mu'âmalah* existing in the Faculty of Sharia, The State Islamic University, Maulana Malik Ibrahim was unfortunate. So, the author decided to determine the four respondents, as follows:

- a. Iffaty Nasyi'ah, M.H., is an academician expert in Investment Law and taught the courses of Investment Law, Criminal Law, Criminal Law of Economic and Employment Law, hereinafter called as The A Respondent.
- b. Dr. Burhanuddin Susanto, S.H.I., M.Hum., is an academician expert in Investment Law and taught the courses of Capital Market Law, The Law of Financial Institutions (Banks and Non-Bank), Consumer Protection Law, The Trade Competition Law, and Securities Law, hereinafter called as The B Respondent.

- c. Dr. Fakhruddin, M.H.I., is an academician expert in *Fiqh Mu'âmalah* and taught the courses of *Fiqh Muamalah* and *Fiqh Zakat* and Zakat Management in Indonesia, hereinafter called as The C Respondent.
- d. Dr. H. Mohamad Nur Yasin, S.H., M.Ag., is an academician expert in *Fiqh Mu'âmalah* and taught the courses of *Fiqh Muamalah* and Juridical Research Methodological, hereinafter called as The D Respondent.

The interview has been done to the respondent with reference to the four main questions and a few additional questions that corresponded to the flow of the interview. Because the interviews are based on the assortment interview techniques. Based on the foregoing, the author grouped the data results of the interviews into several points, in accordance with the main question in the interview.

a. The Position of Bitcoin

Regarded to the position of Bitcoin, the author asked the same question but with a different submission to each respondent. These questions refer to the position and status of the Bitcoin. The position and the status of that question is the similarity of the Bitcoin with existing currency and electronic money, either in the characteristics or functions, also its position and status in the

legislation. Regarded to the question, respondents answered with opinion of their selves.

The A Respondent answered that Bitcoin is something that is still unclear. Bitcoin is a virtual thing and still cannot be determined the position of it. In addition, Bitcoin can \not be equated with the currency, though to the language of the Bitcoin is a virtual currency. Because, the currency is official money of The State, it has the exchange value rate against foreign currencies (Forex) and based on the gold ownership and socio-political conditions of country, per capita income of its population, as well as other factors. Whereas, the Bitcoin has the obscure status, unknown owners, and the way of the exchange value rate determination. So, in legal Bitcoin still have not the place and cannot be equated with currencies, and have not the clear legal standing in positive law.

Next, The B Respondent replied that Bitcoin is something that has not been regulated in the legislation. Bitcoin is a kind of new transaction did in electronical, included the others cryptocurrencies that similar with Bitcoin. Though, it (could be said) same as the official currency in function, but due to the newness of the Bitcoin objectively requires that it has to be regulated specifically in separate legislation with currency legislation. Because of these similarities also applies to the whole

nature of the currency, including value (purchase price and selling price) and its circulation.

Bitcoin is more leaning to new transactions conducted in electronical. So, it would be more appropriate if the transaction is based on the Law of Information and Electronic Transactions (known as UU ITE or The Law of ITE), even in relate to instruments used, the parties involved, electronic evidence, the existence of any fraud indication, and other so on. If it does not violate what is defined by the regulations, then it is legitimate only. However, if it does not match with the substance of The Law of ITE, then would apply sanctions to offenders based on the provisions of The Law of ITE.

Although, there is no specific regulation governing about Bitcoin, the Civil Code (*Burgerlijk Wetboek*) can law as a common regulation in the context of transactions in General. The transactions may be through conventional media or electronic media, as long as it meets all the conditions that exist in Civil Code and legally by the provision. Therefore, the basis of the transactions (regulated in the Civil Code) is the covenant either through any media (including electronic media).

The same questions were also posed to respondents in the field of Islamic law with different delivery. The C Respondent

replied by a common explanation based on aspects of the *Fiqh Mu'âmalah*, Bitcoin is a currency in virtual shapes, if seen in the function (in society) can be likened to the currency. Because, in practice Bitcoin can be used as a means of Exchange, but it is in electronic shapes.

While, the D Respondents responded with more detailed discussion that Bitcoin is generally visible to the three principles. The first principle is a kind of new technology in the mechanism of money transference. Looked from the aspect of technology, Bitcoin could be said to be similar to the financial technology, and it is still neutral and could be done. Because, the good or bad coming back to the use of the technology. The second, Bitcoin has the similarity with gold money. Looked to the second principle, its originality is be questioned especially if related to *riba*. Because, in principle, *riba* is a meaningful *ziyadah* (which means there are any additional value added) and it is a meaningful *ad'afan mudha'afah* too (which means extra doubled unnatural additional). Then, there is no element of *maysir* which means there are elements associated with gambling, such as chancy in its speculations, and so on.

Riba and *maysir* can also enter into a provided market for Bitcoin. So, the factors that affect to the price must be clear. In addition, other factors such as *dzalim* and *gharar* also should not

exist. So, if there are forbidden elements in Bitcoin principle, then it can be unlawful. Indeed, the Bitcoin in function is like as currencies in General. But it has not to be identified yet with the money, because it still has not been ascertained in general of its law status as a thing.

Furthermore, the third is Bitcoin as a facility that uses the internet. So, it has unlimited range and uncontrolled. Then, this potentially gave a legal uncertainty. So, it has a high potential to tort and the appearance of injustice next if there is no legal certainty. Because, the absences of legal protection cannot protect consumers or users of the Bitcoin, so there are parties who sacrificed and problems could not be resolved.

On 2016, Chairman of MUI banned Bitcoin transactions with reasons based on the verse which states to be obedient to Allah, Rasul, and *ulil al-amri*. Because of Bank of Indonesia does not recognize and prohibit the use of Bitcoin (based on statements about banning the use of Bitcoin as a legitimate Exchange in Indonesia), so, if wayward and engage with Bitcoin then we are not obedient to the Government. While an Islamic person must

adhere to the Government (*ulil al-amri*) in seven ways, one of it related to financial matters of the State.⁷⁸

b. The Form of Bitcoin Investment

Next, the author summarized the responses of the respondents regarding their opinions about the form of Bitcoin investment. The investment form in question means the form and the procedure of investment activities using Bitcoin as digital assets occurred in the community, and associate it with an existing investment, even organized in particular or in general in the regulations. So, if associated with an existing regulation, it can be known whether Bitcoin investment can be done or indeed cannot be done because of the lack of regulation which can cover it.

The A Respondent response, based on the practices in the community and theory of investment law, investment using Bitcoin could not be included to direct investment and indirect investment category. If related to direct investment, it means form of investment must be based on investment legislation, in particular Law No. 25/2007 about Investment, whereas the form of indirect investment is an investment related to capital market included monetary market, commodity market, and the stock

⁷⁸ “MUI Haramkan Bitcoin,” Radar Malang, Tuesday, 10 May 2016; “MUI Malang Haramkan Bitcoin,” <https://www.edukasibitcoin.com/mui-malang-haramkan-bitcoin/>, accessed on August 7, 2018.

market. So, the investment form by Bitcoin could not be put in the form of direct investment, because in direct investment there are elements which must be present, as like as the parties, house country, foreign or local investors, and the other which role in Investment Law. However, Bitcoin more appropriate placed into indirect investment category, especially into monetary market (foreign exchange/forex) or commodity market.

However, Bitcoin is still not be equated with the currency, which has been described in the previous question (the position of the Bitcoin according to the A Respondent), so, it could not be named as a foreign exchange and it is something beyond Forex. Therefore, the concept of ownership (*tamlik*) of the Bitcoin is unclear whether ruled by State or private entities or other parties, while in the foreign currency transactions, ownership of the currency is already clear. In addition, the factors caused the ups and downs of the price is not known yet for sure. Moreover, there is a Regulation of BI stated that Bitcoin is not a legitimate means of payment. So, the form of Bitcoin investment is a new form which has not been included in the existing legislation, including in the form of indirect investment (either in stock market, monetary market, and commodity market). However, it could be put in the category of investment through commodity market if it has a relationship with gold.

Then, the B respondent responses that Bitcoin is not included into the investment regulated in Law No. 25/2007 of Capital Investment. Because, if looking at the characteristics of the Bitcoin, it cannot be classified to the form of investments regulated in the regulation.

Regarded to the form of direct and indirect investment, Bitcoin still cannot put into one of the categories. Because, in the form of direct and indirect investment, Bitcoin still do not comply the certainty of the regulation. On direct investment, this form of investing is certainly related to the company, and in indirect investment is certainly related to the market which should be through official financial institutions (the third-party laws as an any intermediary institution). Whereas, Bitcoin is leaning to personal proprietary, and Bitcoin trading activity is not through recognized financial institutions of the country.

Although in Indonesia there is a company which laws as a trading intermediary media (and generally functioned as mediation) and seems as like as a form of indirect investment, the company is not a recognized company yet as the intermediary institution which is valid in law for sure. Because, by the formal validity, Bitcoin is still not regulated. However, if seen that the company is the techno-entrepreneur company (a company using

the technology services) that use the Bitcoin as a means of business, then the company could be said to be legitimated. Because the legality of its efforts is a form of business in the fields of technology, and the Bitcoin is part of technology. However, apart from that, the respondent still strengthen that Bitcoin investment is part of the vacuum of norm. Because, until now, there has been no specific rules governing the Bitcoin investment.

In addition, Bitcoin also cannot be compared to Forex. Because, the forex's object is foreign currency and regulated in the regulations of Bank of Indonesia about Foreign Exchange Transactions, while the Bitcoin is not a foreign exchange. Bitcoin is not a legitimate currency of country and it is probable to speculation practice. As well as the existing trade of Bitcoin is liked monetary trades only. Bitcoin as the program used for buying and selling currencies that take advantage of the difference in price movements. However, it is not an investment, because investment is a product of the dividend.

Besides, there are several business entities which make the Bitcoin as a business point. They had legality as a business entity and Bitcoin is only a business in technology sector and such a legitimate thing to do, as long as it does not harm the other

people. However, the problem is still a vacuum of norm. Because, there are no specific rules that govern it.

Continuously, a similar question which was put to the C Respondents. He responses that Bitcoin investments can be done in basic, because there is no element that prohibit it. Based on *mu'âmalah*, there are two elements can affect the ability of an investment, i.e., substances and processes. The substance element is Bitcoin and the process elements is the process of contract and *rukun* as well as the terms of the investment process.

Basically, Bitcoin is a new technology product related to the *mu'âmalah* activity. So, there is no element which again outlaw (during in it is indeed not found elements that forbid the substance). Then, regard to the process, investment is one product of modernization trades contract in *mu'âmalah*, which in fundamental has the *rukun* and terms. As long as no provision of the *rukun* and the terms are breached, then there is no problem in doing a contract. So that the investment could be done.

A form of Bitcoin investment (referred) is similar and also differ with the forex. The object and function of Bitcoin is the same as money in General, it is a foreign currency. However, if Bitcoin is not a money but commodity, then it became an absolute trade. Rupiah as the currency of Republic of Indonesia is valued

based on its function as a means of Exchange, and not the physical. Whereas, Bitcoin could have been valued based on its function as a means of Exchange and also based on its objectivity. Because, it is a new technology that has certain advantages.

The similar question was also expressed to the D respondent, and he has a similar respond. But he responded more detailing to the position of the Bitcoin utilization. A response of this question is a follow-up of his responses related to the previous question (the position of the Bitcoin and its transactions based on the Chairman of the MUI statement).

Based on the foregoing, Bitcoin is a form of modern money. However, this innovation makes the Bitcoin have not a legal certainty. Legally, the currency which recognized in a country is money created by the relevant authority institution. In the legislation mentioned that the money should not be made by self. Furthermore, Government through a statement of BI states that has acknowledged the Bitcoin yet. Therefore, MUI claimed that Bitcoin is unlawful by reason of Muslims should obey a Government (as an authority) based on the verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ.....

“O you who have believed, obey Allah and obey the Messenger and those in authority among you”.....⁷⁹

Muslims should obey the leaders in seven ways which one of them is state finance terms. However, the ban is not based on the suitability of the Bitcoin through Sharia principles.

There is another reason why MUI prohibits Bitcoin, namely financial transactions should be based on right source. Meanwhile, Bitcoin is considered within vague source. This clarity becomes crucial in order not to become a *gharar*. In addition, it is not recognized the existence by country. So, it would be concerned latter to brings a tyrannical against the user.

The second aspect relates to the similarities of Bitcoin with the gold has a tendency to usury. The third aspect is utilization of internet facilities so that it becomes unlimited, which can lead to the principles in the agreement in worked. Essentially, the Bitcoin investment is an agreement between the parties, either in the trade form or in other form. The '*adalah* (fair) and *tawazun* (balanced) principle in Sharia agreement should be implemented. The principles in the agreement law might be implemented, such as the freedom of contract principle and the *pacta sunt servanda* principle. However, the principle of

⁷⁹ QS. al-Nisa' (4): 59.

good will might be not implemented. Because there is a possibility to fraud, money-laundering criminal law, and others caused to the third aspect.

Bitcoin as facilities with legal certainty, it will not be any problem, whether used as a medium of Exchange or investment. However, the main problem is the legal certainty of transactions till this day is still not convincing. The price speculation is too high and BI still has not admitted and it shows that the impending potential in loss is very high. Even trigger an economic crime. Because there has not been positive value seen, then the existence of the Bitcoin investment seems selling money only and depends on the speculation of prices without effort. Whereas, in the Islamic principle states that any additions that money must be part of a transaction process, and if there are additions in the absence of activity, it is considered usury.

Furthermore, in association Forex and Bitcoin are similar based on certain aspects. However, as like as explained earlier that BI is not admitted it, the liability of the company is also vague. In addition, the foreign exchange that comply with Sharia principles there are only four of kinds and only one related to sharia principle. Moreover, Bitcoin is something more severe than

Forex, because it is not clear. So, existing practice in the community are speculative.

c. The Protection of The Law Towards Bitcoin Users

The next question put to respondents regarded to legal protection of Bitcoin users. With the vagueness of the law containing the Bitcoin, it is becoming important to know a Bitcoin user position in spectacles Law and form of legal protection obtained by them. However, because of the main opinions of the C and D respondents based on Sharia certainty, then related questions are not mentioned against the C and D respondent, and focused to the realm of the conventional law articulated by the A and B respondents.

The A Respondent response that the existing laws and Indonesia regulation has not able to provide protection against Bitcoin users, because it is not specifically regulated Bitcoin on legislation in Indonesia. The basic law does not exist the legal protection cannot be granted to users.

The same question posed to the B respondent and he response that in General it could be covered by Consumer Protection Law. General regulations could be done, namely The Civil Code. Because, both in terms of investment or Bitcoin trades, it is a transaction agreement. As explained earlier, the

Bitcoin transaction is a modern transaction uses internet facilities. Clearly, UU ITE and Civil Code can be used as a common regulation. Then, if there are any rights and obligations are breached, then the three regulation might to cover it.

The nature of agreement in essential is an agreement of the parties. In the basis of a written agreement, there should be a description of party identities, the rights and obligations, and other rules pertaining to the agreement. Based on the website of Bitcoin market provider, it fulfilled the elements above, so that the agreement could be legitimate in law (though packaged in modern facilities and using of the internet). When it is done, then the contract is to be a mutual contract to the parties. So, it is become the legal basis for the parties. However, there are still some shortcomings, such as the contents of its clause is not detail, and so on, which then can bring harm to users.

d. Bitcoin Potential and The Solution in Future

The last question is about the potential of the Bitcoin in the future, both in the perspective of positive law and Islamic law and the solution of the problem of vacuum of norm against Bitcoin by respondent. The potential is meant to cover the whole possibility potential, even in positive (good) or in negative (not good). While the solution is related to the actions that should be

undertaken for addressing the phenomenon of Bitcoin in society in present and in future.

Regarded to these questions, The A respondents responds that Bitcoin is a new innovation opportunity in the history of human life. The existence of the Bitcoin made possible provides to the enormous convenience, especially in the realm of Exchange. The efficiency of the Bitcoin can provide enormous benefits. In fact, the entire of world will likely use the Bitcoin as world currency the worldwide can use Bitcoin as payment tool. Bitcoin will be sharia terms, to the presence of *musyarokah* in the Bitcoin. Bitcoin can unite the world markets in a currency recognized by worldwide. Nonetheless, as it indeed has not been received and legalized, especially in State's law.

However, the certain potential faced is the readiness of the community to go to there. Because, if you see an example of *Gojek*, an innovation of public transport based on Mobile Application in online network, many people who have not been able to accept it until now. That is because the society and regulations are not equipped to the deal with such modern innovations. So, here is what really be the Government's homework in determining the policy against the emergence of new innovations latter.

With the great potential, the A respondent argues that the future of Bitcoin can provide such great impact against progress, simplicity, and efficiency of future economic transactions which affected by modernization mainly in the field of information technology. Therefore, the A respondent argues that course of action that should be taken to confront the phenomenon of Bitcoin is by law construction. The first step for the construction of the law begins by making a fatwa by DSN MUI. Because Indonesia is the larger Muslim country, then the legal certainty of Bitcoin investment phenomenon laden with speculation should be given a fatwa in advance, whether the Bitcoin investment activity brings *maslahah* or *syubhat*. In addition, another element that can be used as a reference source is foreign policy, especially Islamic countries, in addressing the phenomenon of Bitcoin.

The B respondent responses that future potential of Bitcoin can cause the existence of crime, in particular crime of fraud and money laundering. In addition, the potential for allowed can still not be Bitcoin estimated. Bitcoin is a program that is vague. The Government also does not yet have the benefit against the existence of the Bitcoin, so the Government has not legalized Bitcoin. Although the Government still think positive for not banning the Bitcoin can give because it is considered an advantage.

The B respondent also argues that the solution should be completed against the legal void Bitcoin in the phenomenon of the Bitcoin can be covered. Therefore, good potential posed Bitcoin impact well or bad, there should be regulation in order the absence of a vacuum of norm.

With regard to the potential of the Bitcoin in spectacles of Islamic law, The C respondent argues that the nature of the Bitcoin is the development of technology, so it is good if the development implies to *mu'âmalah* aspect. Banning appears when there are elements which are banned. So, in the future Bitcoin, potentially used as a substitute for money. Not even close, there is a possibility the existence of Sharia Bitcoin, such as Islamic banking which is constantly evolving. However, the implication of the newness is a void law, including the absence of the fatwa in Indonesia.

The legal vacuum could be addressed by making new rules. In the context of fatwas, one way that can be done by the DSN MUI to make the fatwa is to receive reports from the community pertaining to existing problems, although the DSN MUI can make fatwas without any report from the community.

The D respondent is responded that the potential is capable that Bitcoin Company is subject to the law in each

country. It means that they want to pay the taxes, there is a transparency with financial policy holder, there is a service of the claim in case of problems and transparency to consumers, so that it is able to guarantee the legal certainty and protection against consumers and the possibility could also become Sharia increasingly later.

The development trend and Bitcoin potential in future is estimated to be two models, namely conventional and sharia. It is analogous to the practice of banking. Banking is already ingrained in Indonesia, in fact it thrived in the form of conventional and sharia until present day, as well as Bitcoin. So, it will produce the investment form complied to Sharia principles.

Those explanation give the sense that the law is a revolutionary, especially in the field of *mu'âmalah*. There are rules in *fiqh mu'âmalah*:

الأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلُّ دَلِيلٌ عَلَى تَحْرِيمِهَا.

Principally, *mu'âmalah* is be permitted. The unlawful is consist because of the existence of evidence process which break the law. Something which originally *mubah* deviated from the provisions of Sharia, will become *harâm*. It is called as revolution of the law where the law changes can occur rapidly, which in *mu'âmalah*

influenced by "*illâ an yadullu dalîlun ' alâ tahrîmihâ*." So, the swerved practice has the position as *dalîl*, as evidence and as a consideration which then makes illegitimate of Bitcoin.

If the Bitcoin desired to be Sharia in Indonesia, it should be submitted to BI, registered, disburses the taxes, submitted the administrator list, and so on, so there is an explicit of legal protection and become lawful, as well as with any new food product have to obtain *halâl* certification from MUI agree with regulated procedure in the regulation.

B. Data Analysis

1. Bitcoin Investment Mechanism in Society

Bitcoin investment in the community, particularly in the State of Republic of Indonesia is something new. 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 used as an alternative investment and a common payment method.

Looking to the investment concept in general, investment is an activity undertaken by investor in an effort to improve and/or maintain

the value of the capital, either in the form of cash money, equipment, non-removable asset, intellectual property, or in the form of expertise.⁸⁰ 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.

The term mining is known in the world of cryptocurrency, particularly the Bitcoin, as the term that defines the activity "mining" Bitcoin. That is to say, "mine" is an activity to get the Bitcoin, same as well as the mining of natural resources. However, in mining activity, all forms of Bitcoin (procedures and how to do it) done digitally by leveraging information technology.

Basically, Bitcoin is a system. Definitely, it is a unitary system consisting of components or elements are linked together to facilitate the flow of information, material or energy to accomplish a goal.⁸¹ According to the opinion of some experts inferred that the system is a collection of sections or sub systems-sub systems made a

⁸⁰ Rokhmatussa'dyah, Suratman, *Hukum Investasi*, p. 3.

⁸¹ Zakky, "Pengertian Sistem Menurut Para Ahli dan Secara Umum,"

<https://www.zonareferensi.com/pengertian-sistem/>, accessed on September 11, 2018.

unity and are designed to achieve a goal.⁸² So, as a system, an integrated system is Bitcoin with separate components that work each, to then integrate run Bitcoin system intact.

Bitcoin is a program cryptocurrency, where the base of the program in the form of cryptography and a variety of complex code algorithms. Cryptography is a method to hide the information, which is closely associated with mathematics. The basic concept of the cryptographic methods in a program or system information is to transform the message into a random mathematical code form, which is then technically this in the modern world known as encryption.⁸³ Cryptography is a programming language that serves to bind a virtual program with specific security standards.⁸⁴ So, the form of the Bitcoin is a virtual currency that is already assured of security to be used as means of payment even digital investment vehicle.

Process mining is a process to get (System/program) Bitcoin intact. Process mining is done using the 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

⁸² <http://elib.unikom.ac.id/download.php?id=252404>, accessed on September 11, 2018.

⁸³ Dimaz dan Oscar, *Blockchain*, p. 8-9.

⁸⁴ Nubika, *BITCOIN*, p. 106.

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 (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 as well as the cost is not a little. 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)⁸⁵ to expect the benefit in the form of Bitcoin. So, this activity can be said as part of the investment activity.

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 money in General, then a Bitcoin can also be sent directly from the first 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

⁸⁵ *Miner* is a term to mention the person who did bitcoin mining activity to get Bitcoin. (Nubika, *BITCOIN*, p. 91.)

currencies (particularly the Bitcoin) enables the delivery directly to the recipient without any centralized networks is applied to the banking system.⁸⁶

However, in every financial transaction there are certainly bookkeeping as a record of the transaction documentation, as well as in the transaction cryptocurrency (especially the Bitcoin). However, there is a difference in the process as well as the media used. Because 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.⁸⁷ 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.⁸⁸

The uniqueness of this as well as the security of the encryption system on the program cryptocurrency which was later named as one of the causes of the value of Bitcoin so high, to be bought and sold dollars. Buy sell Bitcoin known with Bitcoin Trading.

⁸⁶ "Bitcoin," <https://en.wikipedia.org/wiki/Bitcoin>, accessed on September 12, 2018.

⁸⁷ Dimaz dan Oscar, *Blockchain*, p. 19.

⁸⁸ "Apa Yang Dimaksud Dengan Blockchain?," <https://help.bitcoin.co.id/apa-yang-dimaksud-dengan-blockchain/>, accessed on April 20, 2018.

Trading scheme Bitcoin more to money exchanger who not much different with Forex trading, namely the exchange of currencies of a country's currency to the currency of the Bitcoin. However, it still has the difference against the determination of prices, because given the Bitcoin is not a currency of a 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),⁸⁹ in April the value down on the range of numbers 94 million to 105 million per 1 BTC.⁹⁰ 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.⁹¹ Whereas at the beginning of September, the value of the fluctuation back to 94 million figure strengthened rupiah per 1 BTC.⁹² However, the peak value of Bitcoin happened in 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

⁸⁹ <https://indodax.com/>, accessed on March 14 and 19, 2018.

⁹⁰ <https://indodax.com/>, accessed on April 18, 2018.

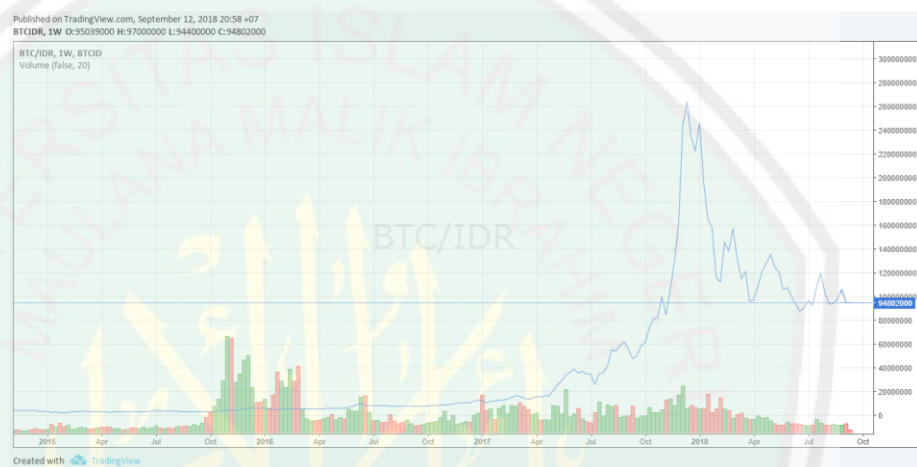
⁹¹ <https://indodax.com/>, accessed on June 26, 2018.

⁹² <https://indodax.com/>, accessed on September 12, 2018.

community towards enthusiasm Bitcoin Trading and make the Bitcoin as virtual currency number one in the world.

Picture 4.1

**The Graph of Value of Bitcoin Fluctuations Against Rupiah
Year 2015-2018**



Source: TradingView.com

Due to the nature of the Bitcoin and other cryptocurrency, then any good deals result mining and trading will be entered into an electronic wallet (e-wallet). For Bitcoin it brings through mining, then users must register their e-wallet via the <https://blockchain.info> platform. So, the results of the process of mining Bitcoin later will go to the e-wallet.⁹³ However, if acquired through trading Bitcoin, users need to register an account on the trading platform provider Bitcoin,

⁹³ Nubika, *BITCOIN*, p. 92.

which in this study focused on <https://indodax.com> and <https://www.luno.com>.

And the most fundamental difference is seen between the two platforms is, if on the <https://indodax.com> platform, all costs for digital asset trading done (including the Bitcoin) nor the withdrawal conducted subject to value added tax value (VAT) of 10%, while on the platform <https://www.luno.com> no description that explains about the tax. Because of platforms, <https://indodax.com> is the official company named PT Indodax Nasional Indonesia provides trading facilities and other cryptocurrency in the Bitcoin Indonesia with more than 50,000 active users who conduct transactions. While <https://www.luno.com> is a global company that has a physical office in the three major cities of the world, namely, Singapore, London and Cape Town.⁹⁴

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

⁹⁴ <https://www.luno.com/id/about>, accessed on September 12, 2018.

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).

2. The Opinion of Legal Academician Expert Towards Bitcoin Investment

a. The Position of Bitcoin

Bitcoin is a virtual currency based on products of modern technology that leverages the internet and Cryptography. As a new product, Bitcoin offers a variety of features that make it easier for the user functions in transaction. This feature was later made the Bitcoin as one form of a new currency which favored by the world community.

Basically, the making, circulation, settings, as well as other matters related to the currency that is managed by the authoritarian institutions should be regulated by the State. Because, money is an important human need, and need to be arranged in an order so there is no lame overlap of interests and disorder in society to meet its needs. Such is the case with Bitcoin. As a new currency, certainly should be regulated further

in the regulations so that the absence of legal uncertainty and became the community's guidelines for addressing Bitcoin.⁹⁵

Seen in terms of transactions, at the beginning of the creation of the Bitcoin is used as an alternative medium of Exchange. So, fundamentally Bitcoin is an object of a transaction that is now evolving into a form of investment or trading Bitcoin. If it refers to a form of transactions, trading is the trading of a commodity. The trade is generally provided for in CHAPTER V, the Third Book of Civil Code or *Burgerlijk Wetboek* (BW).⁹⁶ In chapter V of the book when the BW are arranged on trade in General, including the subject, as well as mechanisms and other things related to the Alliance. These rules are common. This means that BW can include all forms of activity. However, with the development of the times, these activities also experienced the development, so as to change the substance of the activity, both in terms of the media, to the object of sale and purchase.

Investment is an activity undertaken to gain an advantage in the future of the capital issued.⁹⁷ Buy sell becomes one of the ways I do. Along with the development of the times, the investment mechanism also began to vary. Especially the relation

⁹⁵ Muhammad Bakri, *Pengantar Hukum Indonesia (Sistem Hukum Indonesia Pada Era Reformasi)*, Cet. Kedua, (Malang: UB Press, 2013), p. 1-4.

⁹⁶ CHAPTER V Selling Buying, The 3rd Book-The Alliance, The Civil Code or *Burgerlijk Wetboek* (BAB V Jual Beli, Buku Ketiga-Perikatan, Kitab Undang-Undang Hukum Perdata).

⁹⁷ Rokhmatussa'dyah, Suratman, *Hukum Investasi*, p. 3.

to corporations where there are many new things that cannot be covered by BW, so need new rules. Therefore, it appears the Statute capital investment.

As a form of development of information technology, trade also went into the sectors of the digital world, which means that the trade is done through a virtual world based digital information networks. Because of the newness of the media in carrying out trade (including other activities outside of the trade), it needs to be more specific rules to regulate such activities. So that made the law on information and electronic transactions (UU ITE) that has experienced one times changes.

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.⁹⁸

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.⁹⁹ 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. Because, according to one of the respondents, a currency can be

⁹⁸ Chapter 1 Law Number 19 Year 2016 of The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

⁹⁹ Chapter 1 verse (4) Law Number 19 Year 2016 of The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

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.¹⁰⁰ 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 market mechanism.¹⁰¹ 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:¹⁰²

- 1) Fundamental Factors, consists of two interrelated factors, namely; (a) political factor refers to the political stability of the country in terms of the maintenance of the situation as well as the existence of a transition of power and protection, as well as the stability of the economy in which the capacity of financial institutions and markets to mobilize funds from the surplus spending units (generally defined as Government, community, or business entity that is smaller than its

¹⁰⁰ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018).

¹⁰¹ Wiene Sandyawati, *VALUTA ASING; Jurus Ampuh Dalam Memenuhi Kebutuhan Dana Jangka Pendek Investor*, Ed. 1, (Cet. I; Yogyakarta: Graha Ilmu, 2011), p. 26

¹⁰² Sandyawati, *VALUTA ASING*, p. 26-27.

expenditure of income received)¹⁰³ efficiently and to provide liquidity and investment without problems in allocating fiscal; (b) economic factors, among which is interest rates, inflation, economic growth, balance of payments, monetary policy, fiscal policy, and foreign exchange reserves.

- 2) Technical Factors are mathematically, where analysis using graph (based on the science of mathematics), which are often used to approximate the price by investors, thereby affecting the investor to do supply and demand.
- 3) Market Sentiment/Psychological, namely trade currencies with the aspect of market speculation is based on anticipating the development of the exchange rate in the future.
- 4) Potential factors, influenced by the market potential and competitors in the business environment with based on the needs.

If 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

¹⁰³ “*Surplus Spending Unit*,” https://www.investopedia.com/terms/s/surplus_spending_unit.asp, accessed on September 20, 2018.

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.¹⁰⁴

In addition, viewed in terms of functions and transactions carried out in conventional currencies, generally serves as the unit value and as a standard of exchange/payment (medium of exchange) in a transaction. Other functions of the conventional currency is as a storage value (store of value), as the standard of value (standard of value/unit of account), and as a standard payment in the future (the standard of deferred payment).¹⁰⁵ Of course, to support the functions of a currency, there are requirements that must be met so that the money can be used and recognized as appropriate, among which is the money should be easy to carry (portability), durable (long-term durability), can be broken down into smaller units (divisibility), standardized products (standardizability), recognized and accepted (recognizability and acceptability), its value is stable (stability of value), and the numbers are sufficient (elasticity of supply).¹⁰⁶

¹⁰⁴ “Faktor-Faktor Yang Mempengaruhi Harga Bitcoin”, <http://forexindonesia.org/Bitcoin/faktor-faktor-yang-mempengaruhi-harga-Bitcoin.html>, accessed on April 11, 2018.

¹⁰⁵ Mandala Manurung dan Pratama Rahardja, *Uang, Perbankan, dan Ekonomi Moneter (Kajian Kontekstual Indonesia)*, (Jakarta: Penerbitan Fakultas Ekonomi Universitas Indonesia, 2004), p. 11-12

¹⁰⁶ Manurung dan Pratama, *Uang, Perbankan, dan Ekonomi Moneter*, p. 9-10.

However, in contrast to the conventional currency which must be balanced with the country's monetary policy (a policy to regulate the distribution of money must be balanced with the needs of economic development and society),¹⁰⁷ Bitcoin since the beginning of its creation programmed in order of creation and its release is limited to the amount of 21 million Bitcoin. So, it is then that made different currency Bitcoin conventional.

It is reinforced by the existence of Law No. 7 of the year 2011 about the currency (the currency LAW). The legislation is an assertion against the Rupiah as the official currency of the country, as well as how the management of the circulation of and relation to the monetary policy of the country. As an official currency, surely there should be a regulation which sets out the case so that created legal certainty.¹⁰⁸ However, the rules haven't been able to encompass the realm of Bitcoin. Because of the Bitcoin is not included into a currency and rules are simply set on managing the rupiah. In fact, in the rules (law of currency) explain that the Rupiah exchange rate as a tool used in transactions with the purpose of payment in the Republic of Indonesia, so the Bitcoin prohibited as a means of Exchange.¹⁰⁹

¹⁰⁷ "Pengertian Mekanisme Penciptaan Uang Kartal Girai Bank," <https://ardra.biz/ekonomi/ekonomi-perbankan-lembaga-keuangan/pengertian-mekanisme-penciptaan-uang-kartal-giral-bank/>, accessed on September 20, 2018; "Kebijakan Moneter," https://id.wikipedia.org/wiki/Kebijakan_moneter, accessed on September 20, 2018.

¹⁰⁸ Bakri, *Pengantar Hukum Indonesia*, p. 7.

¹⁰⁹ Chapter 21 Law Number 7 Year 2011 about Currency.

Therefore, the need for special rules for addressing the issue of the Bitcoin.

Up to now, there are some responses and policies for addressing the issue of the Bitcoin. Among them was the press release number 16/6/Dkom issued by Bank Indonesia on 6 February 2014 States that virtual currency and other Bitcoin is not a currency or means of payment which are legal in Indonesia, and for community be wary of Bitcoin and virtual currency, as well as any other associated risks of ownership and its use are covered by the owner and the user.¹¹⁰

Also, in 2016, Bank of Indonesia treats utilizing of virtual currency in Section 34 of Bank of Indonesia Regulation Number 18/40/PBI/2016 on The Execution of Payment Transaction Process (*Penyelenggaraan Pemrosesan Transaksi Pembayaran*) which the main role is to rule industry of financial technology, that The Service Provider of Payment System (*Penyelenggara Jasa Sistem Pembayaran/PJPS*) is forbidden to process the payment transaction which uses virtual currency.¹¹¹ The detailed explanation of the statement above is explained in Questions and Answers document of it that Bank of Indonesia does not prohibit

¹¹⁰ 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.

¹¹¹ Chapter 34, Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction Process.

virtual currency utilizing, but does prohibit the official PJPS to process payment transaction with virtual currency utilizing. Because, virtual currency is not a legitimate payment tool in Indonesia and Bank of Indonesia does not responsible for the risk of its utilizing in society.¹¹²

Apart from some of the rules mentioned before, until now there has been no regulation governing on Bitcoin specifically. Because, other than because of the uniqueness of the Bitcoin itself, the value of Bitcoin is very high in the trade sector. Even being the highest among others cryptocurrency. So, it is still not having the assurance of the position and status of the Bitcoin himself, especially given its function as a currency and a similar investment instruments denominated in General and so on.

Therefore, 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 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.

¹¹² “Mengapa BI Peringatkan Seluruh Pihak Akan Risiko *Virtual Currency*”, FAQ Press Releases of Bank of Indonesia Number 20/4/DKom about Virtual Currency.

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, namely: ¹¹³

- 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. As a form of technological developments, it is allowed as long as there is no element that forbid it. Good poor depending on developments by its users. So, based on the principle of the first skill, originality is still guaranteed;
- 2) Bitcoin has in common with gold money. As something that has similarities with the gold money, then start his originality is questionable, especially with regards to usury, *gharah*, *dzalim*, and *maysir*. Because, in the practice of trading Bitcoin, factors that affect the price should be obvious. If there is an element that is *haram*, then becomes haram Bitcoin; and
- 3) 3) Bitcoin as a facility that uses the internet. As a facility that uses the internet, it has an unlimited range and uncontrolled.

¹¹³ Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

So, it potentially tort and injustice to happen later in the day. Especially if there is no legal certainty. Chairman of the MUI Malang stated prohibition Bitcoin with based on no acknowledgment that Bitcoin by country, and as a Muslim should obey God, the Apostles, and *ulil al-amri* (leader) for in terms of goodness.¹¹⁴

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.¹¹⁵

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 previously. Other elements are related to the

¹¹⁴ "MUI Haramkan Bitcoin," Radar Malang, Tuesday, May 10, 2016; "MUI Malang Haramkan Bitcoin," <https://www.edukasibitcoin.com/mui-malang-haramkan-bitcoin/>, accessed on August 7, 2018.

¹¹⁵ Suhendi, *Fiqh Muamalah*, p. 72-73.

transaction itself. That is, a transaction or contract being performed should not contain elements of usury, *gharah*, *dzalim*, even *maysir*.

As the object of the contract, Bitcoin is a form of technological developments in digital form. In *syara'*, Bitcoin not included in objects that are prohibited. It is not something unclean. Physically he is a digital program. However, elements of bastard appear when it is used for things that are prohibited by *syara'*, as it is used which then contain elements of usury, *maysir*, to have an impact to the despotism against the user.

b. The Form of Bitcoin Investment

As explained earlier, investment Bitcoin generally consists of two activities, namely trading and mining. Trading currency trading is Bitcoin itself based on market prices by using the capital money, while mining is the mining activity of the Bitcoin using a set of computer tools that are qualified with the supported capabilities computer engineering and networks are adequate.

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.

Mining activity is essentially a sport activity programs and code, using computer-based technologies and networks. To perform these activities, one must understand and master of science in information technology and networks. If seen, then the activity is an activity that is already common and can be a job in the era of modern technology. However, with the development of cryptocurrency mining activities, in particular became popular as an alternative investment to become the new investment activity in the modern world.

As one cryptocurrency, Bitcoin is a technology development in information technology and network sector. In function, the cryptocurrency program includes Bitcoin was created as a program with similar to currency, i.e. it can be used as a means of Exchange. When viewed that way, trading Forex trading similar to Bitcoin enters into the category of indirect investment. Forex trading itself is set specifically in the Bank Indonesia Regulation number 18/18/PBI/2016 about foreign

exchange transactions Against the Rupiah between banks with Domestic Parties.¹¹⁶ On the rules mentioned that the transaction currency is a currency trading a currency with any other country that is recognized and accepted in the international economic system on an ongoing basis.¹¹⁷

Technically, the trading mechanism of the Bitcoin specifically have similarities and differences with foreign currency. On the explanation has been previously explained that the currency trading, both 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

¹¹⁶ The State Gazette of Republic of Indonesia Year 2016 Number 183, The Additional State Gazette of Republic of Indonesia Number 5926.

¹¹⁷ Chapter 1 verse (3) The Regulation of Bank of Indonesia Number 18/18/PBI/2016 about Foreign Exchange Transaction Towards Rupiah between Bank and Domestic Parties; "Definisi Valuta Asing," <https://www.finansialku.com/definisi-valuta-asing-adalah/>, accessed on October 10, 2018; "Pasar Valuta Asing," https://id.wikipedia.org/wiki/Pasar_valuta_asing, accessed on October 10, 2018.

then affect the financial and monetary policy, to finally become the factors that affect a country's macroeconomic development.¹¹⁸

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 three important factors, namely:¹¹⁹

- 1) *Volume and spread of the Bitcoin.* The concept of cryptocurrency that are new, especially the Bitcoin, making volume a Bitcoin has created relatively little compared with other investment assets. because of the lack of volume as well as the uneven results in all movement range of the supply and demand of its users become very sensitive, making the price of the Bitcoin highly speculative.
- 2) *Trader Speculation.* The use of the Bitcoin as Exchange in the environment the user is actually less than the use of the Bitcoin as assets of investment or trading. It is because of the relevance of the Bitcoin is still not widely known in the community, even the absence of means of support as well as support payments using Bitcoin. Thus, the activity of the Bitcoin as assets globally influenced by a country's regulatory policy against Bitcoin. Because of regulatory policy, will

¹¹⁸ Sandyawati, *VALUTA ASING*, p. 26-27.

¹¹⁹ "Faktor-Faktor yang Mempengaruhi Harga Bitcoin," <http://forexindonesia.org/bitcoin/faktor-faktor-yang-mempengaruhi-harga-bitcoin.html>, accessed on October 13, 2018.

greatly affect the activity of traders in trading. If there is a denial and other negative response against Bitcoin in a country, then the trader will most likely respond by opening a sell order. Whereas if instead, if there is a positive response toward the Bitcoin, the trader will respond by buying a large amount of Bitcoin.

- 3) *The Scams involving Bitcoin.* As has been mentioned earlier, especially cryptocurrency innovation provides extra amenities Bitcoin against system security as well as convenience in using Bitcoin. Therefore, many parties are not responsible for utilizing Bitcoin as a means of crime, such as illegal commodities trading,¹²⁰ to money laundering.

Based on the description, it can be concluded that trading Forex trading similar to Bitcoin, but for the moment the two are different. The most visible difference is in terms of the objectivity of the transaction. As a virtual currency that is still new, still unknown Bitcoin widely among the public. Therefore, the spread of the Bitcoin is still not evenly distributed and not to banned its use as a means of Exchange in several countries, including Indonesia. In addition, the difference of the creation and management of systems, volumes, and the spread of the Bitcoin is different to conventional currencies. If the currency of the Bitcoin

¹²⁰ Dimaz dan Oscar, *Blockchain*, p. 32.

system with open source based (which means do not use the centralization of certain institutions through) in the setting and management of manufacture as well as the spread, on the conventional currency system centralization through institutions like the central bank and the central banks in each country to do management and settings management currency.

As has been expressed by respondents, because the system is centralized and is closely related to the currency between countries in the exchange of value, then the factors social, economic, and political State will greatly affect the value of a currency. It does not exist on other cryptocurrency and in the Bitcoin making Bitcoin cannot be equated with the conventional currency. As was the case in Indonesia, BI released a statement that Bitcoin should not be used as a tool of exchange/payment and encourage all financial institutions to not process the transaction using the virtual currency/cryptocurrency as a means of payment, as a legitimate means of payment in Indonesia only Rupiah.¹²¹

Another factor that distinguishes the Bitcoin with conventional currency is related to the concept of ownership. The conventional currency is officially owned by a State, thus creating

¹²¹ 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; Chapter 34, The Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction Process; "Mengapa BI Peringatkan Seluruh Pihak Akan Risiko *Virtual Currency*", FAQ Press Releases of Bank of Indonesia Number 20/4/DKom about Virtual Currency.

a system of foreign exchange to exchange the currency of a country with the currency of other countries for the specific needs of value based on factors that have mentioned above. The currency of the Bitcoin is an open source system does not have the concept of ownership is obvious. Forex system requires that a currency is a country's official money. While the Bitcoin is something very new and very different from the concept of conventional currency, the more it looks like the practice of speculation (which is obtained from the difference between the selling price and buy Bitcoin), and with the concept of private ownership. So, we can say that Bitcoin is different to conventional currencies. Included in the investment mechanism that also gave birth to the concept of new investments. It is supported with all things related to Bitcoin has not met and there is no provision in the regulation.¹²²

On the foreign exchange system, the mechanism of trading conducted through an intermediary a legitimate institution in the Law by lawing as a provider of infrastructure for trading. According to the concept of foreign currency transactions on

¹²² Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018); Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018).

Forex trading, there are a few types of transactions that occur, namely:¹²³

- 1) Spot Transactions, namely foreign currency transactions with the submission and payment at the time (at the same time), which is the practice of payment can be completed with three ways, namely cash (on the days and dates that regards the holding of transaction/contract, tom/tomorrow (delivery of funds made on the next business day after the transaction), and spot (delivery of funds done two working days after the transaction).
- 2) Forward Transaction, the transaction of foreign exchange with the submission and payment at some future time when the contract matures based on the value of the exchange rate that is specified in the initial transaction. Typically, this transaction is used for the purpose of risk hedged (transactions made solely in order to avoid the risk of loss due to the occurrence of change of exchange rate) and speculation.
- 3) Swap Transaction, the transaction with foreign currency spot price combined with the purchase of foreign currency sales between the same forward.

¹²³ Muhammad Sulhan, "Transaksi Valuta Asing (*al-Sharf*) Dalam Perspektif Islam," *Fakultas Ekonomi Universitas Islam Negeri (UIN) Malang*, p. 3-6.

- 4) Option Transaction, the transaction to acquire the rights in order to buy the right to sell or not should be made up of a number of units of the foreign currency on the price and length of time or a specific end date.

On a trading system that has been mentioned, the transactions on the Forex market are divided into two classes, namely inter-bank (wholesale market) and the customer (retail market). The difference is in the number of transactions carried out, where the number of transactions on the wholesale market is greater than on the retail market. Both the market is usually done by five categories of participants, namely foreign exchange dealer banks and non-banks, companies and individuals, speculators and arbitrage, the central bank, and foreign exchange brokers.¹²⁴

Whereas in practice, the provider of the Bitcoin trading infrastructure and selling is a privately held company that is leaning more to the company technopreneur with Bitcoin as a means of business. If so, then the legality of the company is as businessmen in the field of technology, and technology is part of the Bitcoin. However, the nature of the Bitcoin can be used as a

¹²⁴ Muhammad Sulhan, "Transaksi Valuta Asing (*al-Sharf*) Dalam Perspektif Islam," *Fakultas Ekonomi Universitas Islam Negeri (UIN) Malang*, p. 6-7.

tool of Exchange as part of the vacuum of norm. Due to the need to specifically set which until now did not exist.¹²⁵

Whereas in an 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/Accad). In this case, Bitcoin is a substance whereas investment (contract, as well as the tenets and terms) is the process.¹²⁶

In terms of nutritional, Bitcoin is a product development technology that is utilized for activities *mu'âmalah*. On the previous points have been described that substance or objectivity of the Bitcoin can be said to be not something illegitimate as long as there is no element which again outlaw. While the mechanism of contract/transactions, one of the respondents argued that the investment was a modernization of the contract selling in *mu'almalah*, which has pillars and terms. Particularly to trading Bitcoin, if in fact the objects and functions of the Bitcoin just like conventional currency, then he can be said to be foreign currency.

¹²⁵ Burhanuddin Susamto, *The Interviews*, (Lowokwaru, May 21, 2018).

¹²⁶ Fakhruddin, *The Interviews*, (Lowokwaru, May 21, 2018); Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

However, if it is not money but rather includes categories of goods, then he became absolute, and buy and sell Bitcoin is regarded as a commodity.¹²⁷

Based on the description, it can be said that the validity of the form of investment or trading Bitcoin depends on the position of the Bitcoin itself. If he is considered a commodity trade, then it becomes selling absolute. In fact, the absolute sale is allowed as long as there are no proscribed items, such as usury, *gharah*, *dzalim*, *maysir*. Then, trading or investment made is not incompatible with the principles of the Sharia. Based on a literature explained that MUI itself up to now is still examining the issue from the perspective of Bitcoin Islam. However, MUI has been conducting studies that can be used as a basic guideline in considering Bitcoin though issuing a fatwa.¹²⁸

The study discusses that based on the opinions of scholars; Bitcoin can be distinguished into two types. First, Bitcoin is money, because in function it can be used as a means of Exchange, a standard has a certain value, and can be saved. Second, Bitcoin is not money, because there are still many circles that do not want to receive, such as some countries legalize Bitcoin as means of Exchange. Both of these statements can be

¹²⁷ Fakhruddin, *The Interviews*, (Lowokwaru, May 21, 2018).

¹²⁸ Nubika, *BITCOIN*, p. 194.

said to be balanced if it is based on the book of the *Buhuts fi al-Iqtishad al-Islami*, on the definition of money which reads:¹²⁹

“Uang adalah semua yang dapat dijadikan alat pertukaran dan dapat diterima oleh semua pihak (secara umum), di luar bentuk dan kondisinya seperti apa pun.”

In addition, the MUI also uses standard reference from a DSN stating that money as a means of transaction must have special provisions in the form of cash, it must have the same value, do not aim to speculation (*maysir*), there is a need, and in accordance with the exchange rate at the time of a transaction if a different currency.¹³⁰ Thus, in general the Bitcoin can be said to be a permissible reason if it meets the conditions that have been set to serve as a valid means of payment. However, still waiting for the Government's decision as *ulil amri* to decide whether Bitcoin is legitimate or not used as a means of payment.

In conclusion, is also reinforced by the opinion of one respondent who explains that if looking at current conditions, the capacity of the Bitcoin Sharia in the country Indonesia is dependent on the conditions of its Government. Until now, the Government banned the use of Bitcoin as a legitimate means of payment. Because of these restrictions by the Government, then

¹²⁹ Nubika, *BITCOIN*.

¹³⁰ Nubika, *BITCOIN*, p. 195.

the Chairman of MUI Malang argues that Bitcoin is unlawful for use in accordance with the quote the verse that States that Muslims should obey Government.¹³¹ In addition, there is another reason underlying the opinion of the Chairman of the MUI Malang prohibits Bitcoin, namely financial transactions should be based on clear information from the source. Meanwhile, Bitcoin is considered unclear source. This clarity becomes crucial in order not to become a *gharar*, and if *gharar* already then later will happen of terrors. In addition, it is also not yet recognized its existence Bitcoin by country. So, concerned about later on will bring terrors against the user.¹³²

While the practice of trading Bitcoin has done in the community is a return to the basic concept of *mu'âmalah*. If we compare with the Forex trading system in perspective of Islam, based on the fatwas of DSN MUI there is only one type of transaction that is allowed, i.e. a Spot Transaction. Such transactions are allowed because the buying and selling of currencies is considered cash at the time of the occurrence of the transaction. While two days is considered the completion of the process is inevitable and is international transactions.¹³³ If the

¹³¹ Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018); QS. al-Nisa' (4): 59.

¹³² Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

¹³³ Fatwa of National Sharia Board (DSN-MUI) Number: 28/DSN-MUI/III/2002 about Currencies Trading (*Jual Beli Mata Uang or Al-Sharf*).

Bitcoin is considered as a currency, then the model is considered a permissible reason by the Sharia is Spot Transaction.

In practice in the community, as explained in the previous Chapter that the trading sub Bitcoin is happening in Indonesia is facilitated by a private company-based website which provides a means of trading for the user or users of the Bitcoin (in this study only focused on <https://indodax.com/> and <https://www.luno.com/>). Two of these sites require users to register their virtual accounts on the website server to perform transactions using e-wallet provided. While the transactions are conducted directly by buying or selling the Bitcoin in accordance with prices that have occurred. If so, then there are no proscribed items, and is similar to Spot Transaction at Forex trading system. So, basically any form of contract or transaction is to be performed during *mu'âmalah* avoid things again outlaw as explained earlier.

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.¹³⁴

c. The Protection of The Law Towards Bitcoin Users

Fundamentally, Bitcoin does not yet have a specific and definite regulation in the law in Indonesia. Because the existence of a legal basis which is overshadowing the Bitcoin, then automatically there is no legal protection for people who invest Bitcoin, as has been expressed by the respondents. However, the mechanism of the Bitcoin investment occurred in the community so complex. That is, a form of investment not only in the form of Bitcoin trading as Forex, however there are also mining the technically has been described in the previous chapter of the sub.

Look at the mechanism, 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

¹³⁴ Fatwa of Dar al-Ifta Number: 4205 Date: 28/12/2017 about *Tadâwulu 'umlati al-bîtkuwin 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.

of Exchange.¹³⁵ 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.¹³⁶ 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 about 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.¹³⁷

If looking at the shape of the Bitcoin physically, he resembles even belong in the category of digital documents. ITE law expressly clarify the definition of electronic documents, namely:¹³⁸

¹³⁵ 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.

¹³⁶ Chapter 34, The Regulation of Bank of Indonesia Number 18/40/PBI/2016 about The Execution of Payment Transaction Process.

¹³⁷ Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018).

¹³⁸ Chapter 1 verse (4) Law Number 19 Year 2016 about The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

Dokumen Elektronik adalah setiap Informasi Elektronik yang dibuat, diteruskan, dikirimkan, diterima, atau disimpan dalam bentuk analog, digital, elektromagnetik, optikal, atau sejenisnya, yang dapat dilihat, ditampilkan, dan/atau didengar melalui Komputer atau Sistem Elektronik, termasuk tetapi tidak terbatas pada tulisan, suara, gambar, peta, rancangan, foto atau sejenisnya, huruf, tanda, angka, Kode Akses, simbol atau perforasi yang memiliki makna atau arti atau dapat dipahami oleh orang yang mampu memahaminya.

While electronic information is as follows:¹³⁹

Informasi Elektronik adalah satu atau sekumpulan data elektronik, termasuk tapi tidak terbatas pada tulisan, suara, gambar, peta, rancangan, foto, electronic data interchange (EDI), surat elektronik (electronic mail), telegram, teleks, telecopy atau sejenisnya, huruf, tanda, angka, Kode Akses, simbol, atau perforasi yang telah diolah yang memiliki arti atau dapat dipahami oleh orang yang mampu memahaminya.

Based on the definitions described in the LAW ITE, can say that Bitcoin is an electronic document objectively. Therefore, the ground of a Bitcoin is a program in a computer system with a database of numbers and letters that form the mechanisms of a cryptographic system.¹⁴⁰ Thus, we can say that Bitcoin trading is a trading 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.

¹³⁹ Chapter 1 verse (1) Law Number 19 Year 2016 about The Change Form of Law Number 11 Year 2008 about Electronic Information and Transaction.

¹⁴⁰ Nubika, *Bitcoin*, p. 82; "Bitcoin", <https://id.wikipedia.org/wiki/Bitcoin>, accessed on March 14, 2018.

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.¹⁴¹ 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.¹⁴²

Based on the principle of natural law, the agreement has fulfilled the principle of *pacta sunt servanda* (legal certainty), where an agreement has been made of the parties became legal for their agreement.¹⁴³ The deal that had been made by the user and Indodax.com are considered legitimate and can law as a law for the parties because of the items meet the validity of a contract,

¹⁴¹ “Ketentuan dan Persyaratan Indodax.com,” <https://help.indodax.com/ketentuan-dan-persyaratan-indodaxcom/>, accessed on October 31, 2018.

¹⁴² Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018).

¹⁴³ Chapter 1338 verse (1) The Civil Code or *Burgerlijk Wetboek* (BW); Salim HS, Abdullah, Wiwiek Wahyuningsih, *Perancangan Kontrak & Memorandum of Understanding (MoU)*, Ed. I, (Cet. I; Jakarta: Sinar Grafika, 2014), p. 2-3.

that agreement has taken place (in this case delivered with language perfect written and digitally), the parties in a legal law capable of (doing the law), the object of the Covenant (Bitcoin Trading facilities), as well as the presence of halal (causa Bitcoin is not prohibited to be traded, and only forbidden If used as a means of Exchange).¹⁴⁴

Based on this, then in accordance with the statement of the respondent, it can give you the guarantee of legal protection in the event of unwanted situations. However, in the contract, what is agreed upon between the user and Indodax.com only as the use of facilities provided by the Indodax.com and the Indodax.com will not reimburse any losses incurred due to user's negligence in performing transactions (trading Bitcoin). So, in case of losses in trading Bitcoin, in large amounts or small, are borne by the user.¹⁴⁵

In contrast, although technically there are similarities between the Indodax.com and Luno.com facilities, are not listed on the portal Luno.com links that lead to the terms and conditions of a contract as raw as listed on portal Indodax.com. So, it makes the form of agreement between the user and the Luno.com as raw without a contract. However, at the portal of the Luno.com

¹⁴⁴ Salim, Abdullah, Wahyuningsih, *Perancangan Kontrak*, p. 9-11.

¹⁴⁵ BAB 10 Pernyataan dan Jaminan "Ketentuan dan Persyaratan Indodax.com," <https://help.indodax.com/ketentuan-dan-persyaratan-indodaxcom/>, accessed on October 31, 2018.

remains included a link that leads to the Guide to using the facilities provided.

d. Bitcoin Potential and The Solution in Future

The existence of Bitcoin on the modern era gives a new concept in the human economic circle. New needs in virtual realm makes technology as the primary consumption for some circles. In fact, some people invest and make the virtual realm as a primary medium for earning. As a new virtual concept, the existence of Bitcoin provides an alternative means in investing and as a new virtual payment method.

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. According to some respondents, 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.¹⁴⁶ In addition, there will be a possibility of Bitcoin on the basis of Sharia in future, which means the mechanism of Bitcoin (both in terms of operational, technical, up to the market) should be based on sharia principle.¹⁴⁷

- 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. Government efforts in response to a State policy against the existence of the Bitcoin will greatly affect the readiness of the social society. For an example which happened in

¹⁴⁶ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018); Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018).

¹⁴⁷ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018); Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018).

Indonesia is the legitimate of online innovation in expedition still be the pros and cons of community for several years. This is due less to the completion of the community in the face of technological developments. In addition, to date the Government has yet to have an interest towards Bitcoin, as well as the complexity of the Bitcoin is so complicated and the concept of ownership has not yet been clearly made it difficult to be accepted and legalized as a means of Exchange in Indonesia. So, the readiness of the socio-economic community will greatly affect the Government's policy in the face of technological innovation in the realm of economics.¹⁴⁸

- 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

¹⁴⁸ Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018); Mohamad Nur Yasin, *The Interviews*, (Lowokwaru, May 23, 2018); Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018).

detected on the network blockchain. Because, recorded only the movement of the Bitcoin transactions, while the identity of the transaction can be hidden.¹⁴⁹

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.¹⁵⁰ So, created order and justice in society, which is the purpose of the law.¹⁵¹

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 *maslahah* or *syubhat*. In addition to views through conformity with Islamic law, another

¹⁴⁹ Burhanuddin Susanto, *The Interviews*, (Lowokwaru, May 21, 2018); "Bitcoin," <https://en.wikipedia.org/wiki/Bitcoin>, accessed on November 1, 2018.

¹⁵⁰ Burhanuddin Susanto, *The Interviews*, (Lowokwaru, November 6, 2018)

¹⁵¹ Muhammad Bakri, *Pengantar Hukum Indonesia*, p. 1-10.

element that can be used as a reference source is foreign policy, especially Islamic countries, in addressing the phenomenon of Bitcoin.¹⁵² 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 the agreement of then will be issued in the form of a written fatwa.¹⁵³ So, already published a fatwa which was one of the sources of law for the construction of the law.

¹⁵² Iffaty Nasyi'ah, *The Interviews*, (Lowokwaru, May 19, 2018)

¹⁵³ Fakhruddin, *The Interviews*, (Lowokwaru, November 27, 2018).



CHAPTER V

CLOSING

A. 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.

B. Suggestions

The Bitcoin investment activity in Community should not been conflicted with the existing regulation and should be based on principle of Justice. Although, has no definite law, hopefully, the community should be policing and does not use it for the prohibited things by law. As well, the Government is expected to be more active in addressing the phenomenon of Bitcoin so there will not be a vague of norm, either in the form of positive law nor in the form of a fatwa. Thus, the community has a certainty for addressing the phenomenon of Bitcoin.

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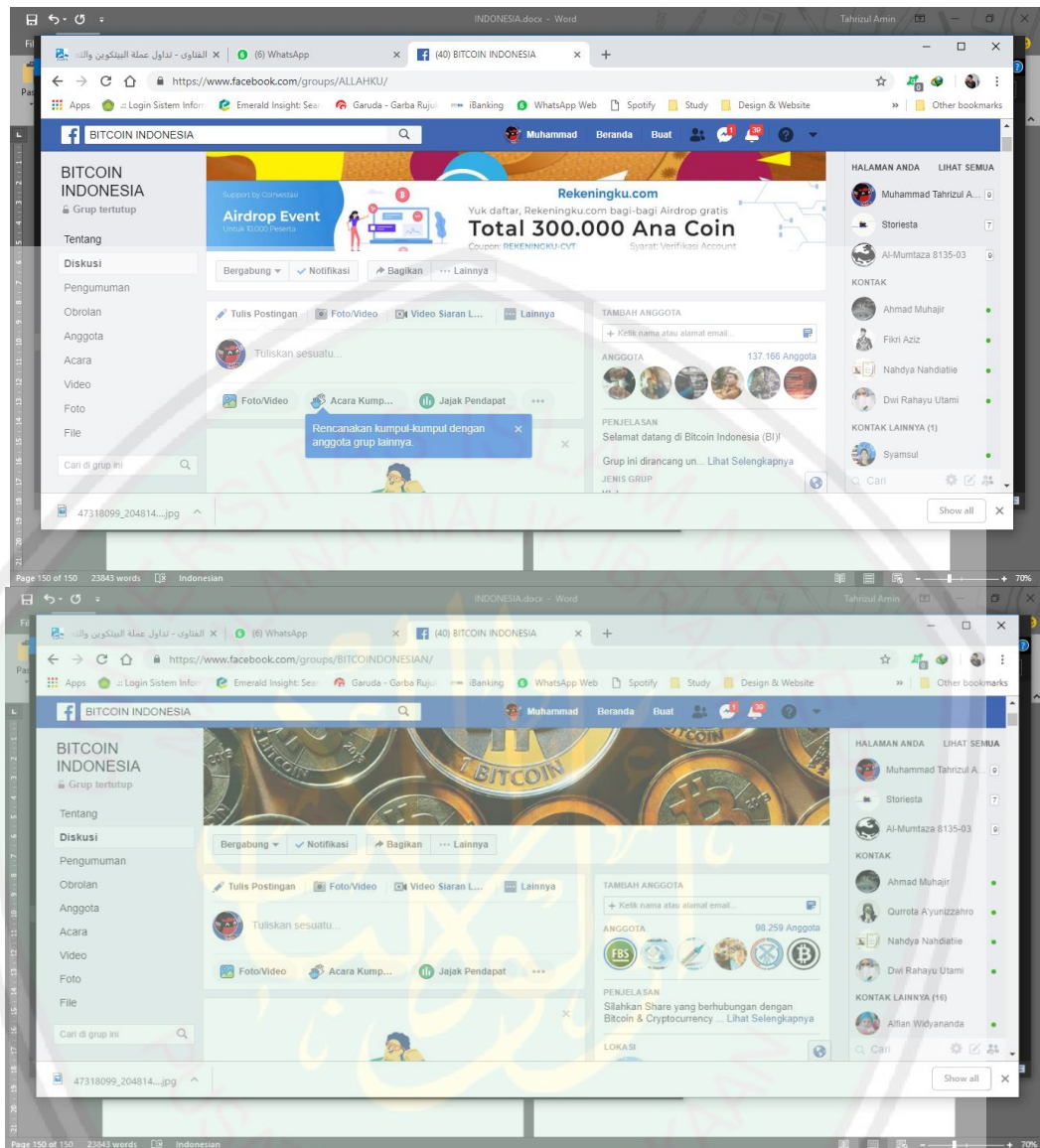
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APPENDIX

Picture documentation when do the interview to The Legal Experts



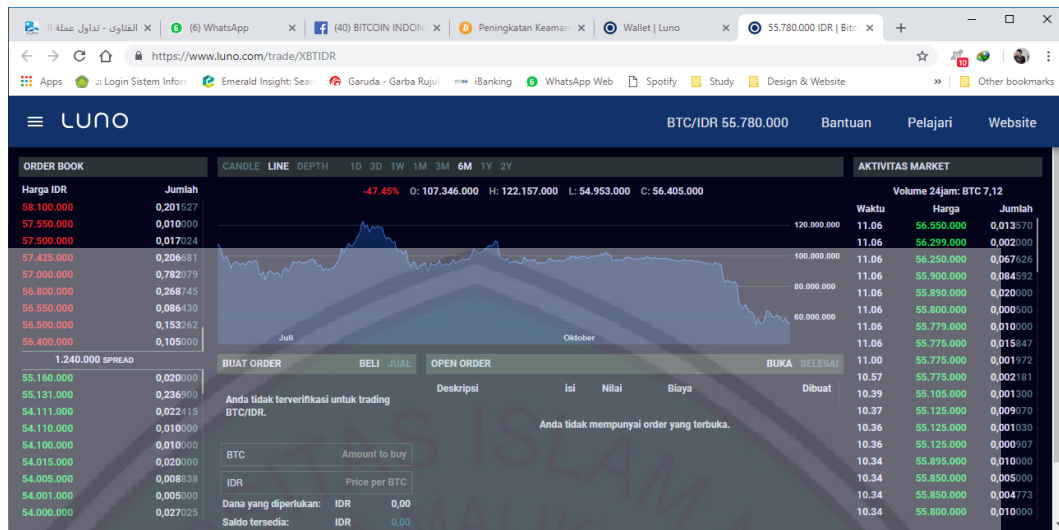
Screenshot documentations of Bitcoin Indonesia on Facebook



Screenshot documentation of Bitcoin Indonesia Club on Facebook



Screenshot documentation of Bitcoin Indonesia activity



Screenshot documentation of *Bitcoin Market* activity among last six months on Luno.com

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