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Regulation of Crypto Currency in World Trade Organization

Rakhma Putri Sholihah[1,2,*] Arie Afriansyah[1]

[1]Master's Student at Faculty of Law Universitas Indonesia, Jakarta, Indonesia
[2]Researcher and Lecturer at Faculty of Law Universitas Indonesia, Jakarta, Indonesia
*Corresponding Author. Email: rakhma.p.sholihah@gmail.com

ABSTRACT
A study provides data on domestic regulations of several countries in the world about crypto currency. These countries include Japan, The United States, Australia, China, India, including one of them Indonesia. Domestic regulations vary according to the respective government policies. However, policies relating to trade can be categorized into 2 types, namely crypto as a means of payment and crypto as a commodity. The World Trade Organization (WTO) as the world's largest trade organization has not responded to this crypto currency phenomenon. However, crypto is now one of the most popular investment vehicles in most countries in the world.
Keywords: *crypto currency, World Trade Organization, GATT, blockchain, digital currency, domestic regulations*

1. INTRODUCTION

In a journal entitled Crypto currency's Legal Regulations, published by Irina Cvetkova, describes several agreements on cryptocurrency in various countries.[1]
Japan is a world leader in innovation and the digital currency industry. Japan has a Digital Asset Authority. In 2016, a law was enacted to carry out crypto currency activities. Crypto currency transactions in Japan in accordance with the regulations of the Financial Services Agency, which can carry out an examination of the business and implement appropriate administrative steps. In Japan, each crypto currency transaction is taxed, and supervised by the tax office.[2]
In Australia it does not provide digital currency as a digital currency or financial product. Under Australian tax rules, crypto currencies are commodities that can be taxed.[3] At the Australian Taxation Office explain the crypto currency transactions, among others, for the exchange of crypto currencies, crypto investments, personal assets, money loans or crypto currencies, and crypto currency data connections. In addition, it also concerns the use of crypto currencies in the business world, such as in commercial transactions or payments in the form of crypto currencies.[3]
Besides Japan and Australia, the United States also has regulations on crypto currency. United States Regarding crypto currency transactions as a means of exchange or payment for currency or mining products. Companies conducting crypto currency exchange transactions must obtain a license from the government.[4]
Some countries that have not yet made a domestic budget related to crypto currencies, consider that crypto currencies are not part of a country's monetary instruments, regulating the country cannot make arrangements for crypto currencies.[1]
In the first quarter of 2014, the National Bank held a monetary valuation, discussing the monetary policy of the European Banking Authority (EBA), which discussed consumers about virtual currencies, including bitcoin. The Danish financial authority supports this agreement.[5]
Related to the legality of this crypto currency then gives ideas to several countries to make crypto currencies as a trade commodity and make regulations.[6]
Indonesia became one of the countries that gave special attention to the development of the cryptocurrency. It was proven in February 2019, the Commodity Futures Trading Supervisory Agency (Bappebti) issued a decision contained in Bappebti Regulation No. 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Asset (crypto assets) on the Futures Exchange. The regulation is an implementing regulation of Minister of Trade Regulation Number 99 of 2018 concerning General Policy for Conducting Crypto Asset Futures Trading (crypto assets).
With the existence of steps from the member countries of the World Trade Organization (WTO) to overcome this technological progress, up to now the WTO has not paid special attention to the legality of this crypto currency. In addition, the blockchain system which is the circulation of crypto currencies is closely related to the problem of the spread and protection of virtual data. The author hopes that with the WTO's concern about the legality of crypto currencies, it will automatically lead to virtual data protection.

1.1 Related Work

Several countries have made regulations regarding the crypto currency, even though currently only the United States and Japan are regulating the crypto currency as a means of payment, and other countries regulate the crypto currency as a commodity.

1.2. Our Contribution

The research aims to provide advice and criticism to the World Trade Organization, WTO, to quickly follow up on the presence of crypto currency as a security effort in trading transactions in cyberspace.

2. BACKGROUND

2.1. Crypto Currency at a Glance

The international trade world does not escape the influence of world currency turnover. Each superpower competed for its own country's currency to be the international currency. As explained by Seetharaman, in his Journal titled *The Impact of Bitcoin As A World Currency*, for several decades US Dollar (USD) has dominated the exchange rate of the world's currencies. Then followed by China's Yuan (CNY), which lately has been dominating the currency turnover in Asia and has started to shift the existence of Japanese Yen.[7]

In the middle of the currency war, the first *Bitcoin* was discovered in 2009 by Satoshi Nakamoto. *Bitcoin* is one of the cryptocurrencies that has begun to grow and rapidly increased in 2013, as a matter of fact, within that year, the exchange rate for one bitcoin in USD has rose up to five times. When it began to be traded in 2010, its value was less than five cents per US dollar, subsequently in 2013, *Bitcoin* has exceeded USD 1,200.00 *(U.S. Senate Committee on Homeland Security and Governmental Affairs 2013)*.[7]

The initial reason for Satoshi to create *Bitcoins* is due to a dissatisfaction with the existing currency, and the difficulty in conducting digital financial transactions that must be executed through the Bank as a third party.[8]

Meanwhile, through crypto currency as a peer-to-peer (P2P) currency, financial transactions can be made anytime, anywhere and without involving any third parties. There is no surveillance system in this currency. The crypto can move from one wallet to another wallet in one Blockchain system or by executing a share ledger.[8]

The crypto can be a means of payment for goods and services. The United States law specifically establishes that crypto can be a wage payment unit. In the United States, crypto currency has become a transaction settlement unit recognized and accepted by various subjects within the domestic market. The U.S. Financial Crimes Enforcement Network (FinCEN) believes that the transactions involving the exchanges of crypto currency into banknotes (fiat money) must be regulated in the same manner as any other operation that is involving a fiat money exchange alone. Legal entities involved in the flow of funds with crypto currency are required to obtain a license.[1]

Japan has acknowledged that the Bitcoin as a crypto currency has the same functionality as fiat money. Therefore, the Japanese government decided to develop a framework to regulate the full integration of crypto currency into the Japanese banking system. The national regulator for crypto currency is the Japanese Financial Institution, which regulates the issues in relations to the national currency emissions.[1]

2.2. Crypto currency in Indonesia

The Commodity Futures Trading Regulatory Agency (*Badan Pengawas Perdagangan Berjangka Komoditi* - Bappebti) is one of the institutions that concurs to crypto currency as the futures commodity in the futures trading exchanges, such as stock exchanges and foreign currency exchanges (forex).

The resolution of Bappebti has been reaping the negative responses from the Financial Services Authority (*Otoritas Jasa Keuangan* - OJK). According to the Chairman of the Board of Commissioners of OJK, Wimboh Santoso, determining the crypto currency as a commodity is not in line with the Law no. 7 of 2011 on Currency. Wimboh adds that crypto currency is a means of payment, not commodities.[9]

Following the resolution of Bappebti to establish crypto currency as a commodity futures in Indonesia, Bappebti issued the regulation of Bappebti no. 5 of 2019 on the Technical Provisions of Physical Market Implementation of Crypto Assets in the Futures Exchange. The regulation is the implementing regulation from the Rules of Trade Ministry No. 99 of 2018 on the General Policy of the Implementation of Crypto-Asset Futures Trading.

Commodities are material or non-material objects that can be used economically. State provisions establishes that crypto currency should be treated as a property or commodity in order to be taxed. The Indonesian legal system qualifies cryptocurrencies as an endless non-material commodity, and it has a fixed value.[1]

Another country that has provided the regulations on crypto currency as an asset is Australia. The tax services in Australia does not consider crypto currency as foreign currency or money. They require any transaction of any crypto currency must be converted into Australian Dollar before being exchanged into other cryptocurrencies.[3]

Bappebti regulation mentions that crypto is one of the future commodity,[10] just as precious metals and stocks.

In Indonesia, crypto currency is considered as a form of investment. Indonesian domestic regulation that governs crypto currency as a commodity could assist the government in collecting tax on each transaction of crypto currency.

2.3. Crypto in WTO

When discussing the international trade, the majority of the world's trades are under the *World Trade Organization* (WTO). Regardless of there are several countries that are not yet incorporated into the WTO.[11]

In the beginning, several countries established GATT in 1947 to overcome tariff barriers in inter-state trade, which later revised as GATT 1994. Then in the year 1995, since the Second World War, the WTO was formed. The GATT previously only set the tariff barriers on the trade of goods, meanwhile the WTO covers an extensive field including anti-discrimination, anti-dumping not only on the trade of goods, but also on the trade of services and intellectual property rights.[12]

There are 3 (three) types of trade regulated in the WTO agreement, including trade in goods, trade in services and investment.

In the trade of goods there are several factors that affect the country's domestic policies related to trade in goods, including the classification of goods and the import duty of goods. Classification of goods is often associated with provisions such as products (similar products) and Most-Favored Nations (MFN).

Provisions for a product can be referred to as a product as mentioned in Article 2.6 Anti-Dumping Agreement, including:

a) Identical, the size or the scales are the same,
b) Has the same characteristics,
c) The absence of these products can be replaced by other products.

To avoid discrimination against a product, the WTO applies the MFN in its agreement which includes the imposition of tariffs, assistance, special privileges or immunity to the traffic of goods into a country.

Article I.1 GATT 1994 establishes a level of consistency with MFN obligations. There are four questions that must be answered to determine whether actions affecting the trade in goods are consistent with the obligation of MFN treatment Article I: 1, namely:[13]

1) whether the action in question is the action referred to in Article I.1,
2) To what extent can an action be categorized as providing "benefits",
3) whether the product concerned is like product; and
4) whether the profit in question is provided 'immediately and without conditions' for all similar products, regardless of their origin or destination.

During the investigation process, each of the four points above will be tested.

Regarding the import duty of goods, there are 2 (two) things that form the basis of this research theory, including anti-dumping and provisions regarding tariff barriers. Basically there are no provisions regarding tariffs in GATT 1994 that bind crypto currency as a commodity. However, this is because the WTO has not yet taken action to categorize the crypto currency into goods trading. Although the purpose of countries to make crypto currencies as a commodity is to obtain income from tax of crypto's transactions.

In the case of crypto currency as a means of payment can be categorized in trade in services. The General Agreement on Trade in Services (GATS) has three elements, namely the main agreement that contains obligations and general provisions, attachments (Annexes) relating to rules for specific sectors, and special commitments (Special Commitments) of each country to provide access to their markets, including indications that countries have not applied the MFN principle for the time being.[14]

Instability in the banking system affects the entire economy. The Annex gives the government enormous freedom to take precautionary measures, such as protecting investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. This Annex also excludes the agreements of trade in services that are provided when the government exercises its authority over the financial system, for example the central bank.[14]

Article 1 of the Agreement on Trade-Related Investment Measures (TRIMs) states that this agreement only applies to matters relating to investment only on goods only.[15]

2.1.1. GATT 1994

There is no provision regarding the tariffs in GATT 1994 that binds crypto as a commodity. If the countries have agreed to consider that crypto currency is the door to the industrial revolution, then now is the time for the WTO to discuss putting the crypto commodity into a treaty. Crypto currency, both as the means for exchange/payment as well as a commodity, indicates that crypto currency cannot be constrained. The countries that firmly reject the presence of cryptocurrencies gradually will continue to deny that rapid technological advancement is the strong basis for the creation of cryptocurrencies. In my opinion, it is a wise approach for these countries to construct an entrance for making crypto currency as a commodity equipped with certain specification, rather than merely turning away its growing presence.

Article 1 *Agreement on Trade-related investment Measures* (TRIMs) mentions that this agreement applies only to the matters related to investments on goods.[15]

The establishment of any regulation on crypto currency as a commodity would cause crypto currency becomes an investment object. In this case, these countries should be making a warning regarding the security of the crypto currency transactions. In any case, nowadays, there are many companies in Indonesia that serve the crypto currency exchange.[16] These companies will then be responsible for crypto currency transactions. To ensure the security of the transaction, the Government has provided strict requirements to the crypto currency exchange companies. Some of the requirements are regarding the company's terms of establishment, the amount of the initial capital of the company with the intention that if a transaction error occurs, the company is able to pay the damages to its consumer.

2.1.2. Cross-Country Trade Related to Crypto-Commodities Based on the Terms of the Modes of Supply in GATS

There are 12 sectors that are regulated in Annex 1B or also called as the General Agreement on Trade In Services (GATS), such as:[17]

(1) Services (including professionals and technologists)
(2) Telecommunication services
(3) Construction services and technician related services
(4) Distribution services (such as cargo)
(5) Education services
(6) Environment-related services
(7) Financial services (including insurance and banking)
(8) Health and social related services
(9) Travel and tourist related services
(10) Culture, tourism and sports related services
(11) Transportation services (such as airline companies)
(12) Other services that are not included in the above categories

Article 1.2 GATS explains the various *Modes of Supply* which aims to classify the types of services based on the *territorial presence* of suppliers and consumers when a transaction occurs. GATS divided it into 4 different *Modes of Supply*.[17]

The first *Modes of Supply* (Mode 1), the presence of commodities in a region of the country, without the presence of suppliers in that region of the country.[17] The crypto domain is anonymous, the country of origin and its creators are unknown. The crypto itself is a series of codes within the blockchain that are connected to one another and is anonymous. The presence of this crypto currency automatically has met the requirement of Mode 1. With the consent from the local government for the activities of the crypto currency exchange companies, these national-scale companies is the ones that bring in crypto currencies into a country.

The second *Modes of Supply* (Mode 2) is *consumption abroad* where the commodity buyers make the purchases by visiting the region where the commodity is located.[17] The crypto currency Exchange process takes place entirely in cyberspace, causing buyers to not have to switch places to make the transaction, so this Mode 2 does not need to be done.

The third *Modes of Supply* (Mode 3) is the *commercial presence* where the suppliers from foreign countries are present in the country.[17] In each country, there are crypto currency exchange companies. These companies are legitimate and registered under the laws of their respective countries. Even though the crypto currency domain is anonymous, the existence of these companies is not. They are responsible for the security of transactions occurring within the country. However, these companies are in a national scale, only the citizens of that country can exchange crypto currency through these companies. Thus Mode 3 cannot be performed in this exchange process.

The fourth *Modes of Supply* (Mode 4) is *the movement of natural person.* This Mode 4 can be done by presenting the individuals who provide the services supply to a country. Or it can also be done by bring an expert to a domestic company.[17] This can also be done in a Crypto Exchange company, though many experts in the field of technology came from within the country who have the same capabilities in the Blockchain system.[8] The presence of the crypto's association in a country will not close the possibility of this Mode 4.

2) Domestic Regulations

Article VI GATS governs the domestic regulations of the WTO member countries, these countries are obliged to apply the general provisions related to the services trading where each trade transaction must be managed reasonably, objectively and impartial.[18]

The Working Party on Domestic Regulations (WDPR), one of the bodies in the WTO that conducts studies on domestic regulations of member countries so as not to deviate from WTO provisions, states that in principle domestic regulations must meet the following criteria:[17]

a) Not too burdensome and provide reasonable limits in accordance with needs, with clear and specific goals.
b) Transparent and easily accessible.
c) The same qualifications.
d) Following international standards.

Technological innovations should be accompanied by precise regulation. Regulation on ledger or application technology is indispensable. Several countries have made regulations to govern crypto as a commodity.[1]

2.2.1. The countries equipped with regulations on crypto

Australia, does not regulate cryptocurrencies as digital currencies or financial products. The Australian tax provisions stipulate that the crypto currency is a taxable commodity.[3]

China, just as in Australia, China is regulating the cryptocurrencies as a commodity that can be subject to value added tax, individual income tax, and corporate taxes.[19]

Japan, is the world leader in innovation and the digital currency industry. Japan has a Digital Asset Authority. In 2016, a law was imposed to regulate the crypto currency exchange activities. Crypto currency transactions in Japan are subject to the regulations of the financial services body, which can conduct inspections of the business and implement appropriate administrative measures. In Japan, every crypto currency transaction is taxed, and is supervised by the tax service.[2]

The United States, the country governs the transaction of crypto currency as a means of exchange or a means of payment just as the fiat money or mining proceeds. The crypto currency exchange companies that organize the transaction must have the license issued from the government.[20]

2.2.2. The countries that do not or do not yet have the regulation about crypto

India, has no regulation regarding crypto as both digital currency and commodity. Bank of India even states that crypto currency is a dangerous investment.[21]

Israel, Israel's Central Bank along with the Israeli Finance department issued a warning about the crypto currency risk. Israel has no regulation regarding crypto. However, the Israel Securities Authority made a recommendation on security guidelines for the crypto transactions.[22]

With or without regulation, crypto currency still develops in line with the technological innovations.

3) Doha Round

The fourth session of the Ministerial Conference has agreed on the presence of a further discussion agenda on the Doha declaration. The declaration discussed new negotiations on trade in services, agricultural products, industrial tariffs, the environment, implementation issues, intellectual property rights and dispute resolution and WTO regulations.[23]

The Doha round work program covers around 20 trading sectors. This round puts forward the issues regarding the developing world and the less developed countries. Especially in the service sector, developing countries and less developed countries ask for flexibility regarding the market access, with the reason that the economic and sector growth rates are the interests of each country as well as the priorities within their national development.[23]

Even in the Doha round, there are no discussion yet regarding the development of Blockchain and crypto currency technology. There is only a slight discussion regarding the economic growth and technology transfer that are intended for the technological equality for the developing countries.[23]

3. CONCLUSION

Many countries have made regulations regarding the crypto currency. In its regulation, crypto currency is used as a digital commodity, except for the United States and Japan that recognizes cryptocurrencies as a means of payment.

This fact signifies several things, such as:

1) Crypto currency as a commodity can enter the investment rules.
2) Crypto currency can meet the fourth criteria of *the Mode of Supply* in the GATS, later other cryptocurrencies could follow the same path.
3) The new era of industrial revolution has come to digital investment.
4) There are still pros and cons from the countries around the world regarding the crypto currency regulation.

Thus, the author advises the related parties to the following:

1. Appropriate, but does not overly incriminate, regulation is required for the crypto currency transactions, whether in relation to the security, legality of transactions and sanctions for abusing crypto currency .
2. The WTO should pay attention to the emergence of this Blockchain and crypto currency technology, as it gradually evolves as the technology progresses will also evolve.
3. The WTO can engage its member countries to discuss the digital currency issues.
4. Crypto currency regulation as a commodity is a safe step to be able to provide legality, transaction security guarantees, arrangements regarding taxes and sanctions for abusing crypto currency.
5. Crypto currency regulation as a means of payment can also be done by limiting the function of the payment.

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