



## Liability for Crypto Asset Transactions *Ethereum* in Indonesia

Mahesa Dharma Adji<sup>1</sup>, Hervina Puspitosari<sup>2</sup>

<sup>1</sup>Fakultas Hukum, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Surabaya, Email: [mahesadji@gmail.com](mailto:mahesadji@gmail.com)

<sup>2</sup>Fakultas Hukum, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Surabaya, Email: [hervina.ih@upnjatim.ac.id](mailto:hervina.ih@upnjatim.ac.id)

### **Abstrak**

*Ethereum* adalah mata uang digital terdesentralisasi dan *platform blockchain* yang telah mendapatkan popularitas di Indonesia. Aset kripto memiliki risiko yang melekat, seperti volatilitas harga dan potensi penipuan atau peretasan yang tentu sangat merugikan penggunanya. Berdasarkan hal tersebut, perlu digali tanggung gugat pihak yang menggunakan aset kripto *Ethereum* sebagai objek perdagangan. Jenis penelitian yang digunakan ialah yuridis normatif dengan pendekatan dilakukan terhadap peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa tanggung gugat dapat terjadi atas wanprestasi, perbuatan melanggar hukum, dan perbuatan melawan hukum. Bentuk tanggung gugat yang dilakukan ialah dapat berupa pembatalan perjanjian hingga tuntutan ganti rugi oleh pihak yang dirugikan. Pemerintah dalam hal ini perlu membelikan sosialisasi edukasi terhadap masyarakat atas penggunaan aset kripto dengan bijak.

**Kata kunci:** *Ethereum*, Aset Kripto, Tanggung Gugat.

### **Abstract**

*Ethereum* is a decentralized digital currency and *platform blockchain* which has gained popularity in Indonesia. Crypto assets have inherent risks, such as price volatility and the potential for fraud or hacking which is of course very detrimental to their users. Based on this, it is necessary to explore the accountability of parties using crypto assets *Ethereum* as an object of trade. The type of research used is normative juridical with an approach taken to statutory regulations. The results of the research show that liability can occur for default, unlawful acts, and unlawful acts. The form of liability that can be taken is in the form of cancellation of the agreement to claims for compensation by the aggrieved party. The government, in this case, needs to buy educational outreach to the public on the wise use of crypto assets.

**Keywords:** *Ethereum*, Crypto Assets, Liability.

## A. Introduction

Since the introduction of money in buying and selling transactions and other transactions, the exchange of goods which is commonly called the barter system is rarely or even no longer carried out.<sup>1</sup> Money is something that is generally accepted in payment for the purchase of goods and services and for payment of debts. In addition, money is also often seen as wealth that can be used to pay a certain amount of debt with certainty and without delay. The use or function of money as a means of payment makes goods and services transactions more measurable in terms of quantity and quality, thus providing fairness and satisfaction for both sellers and buyers of goods and services. With money as a means of payment, buyers can correctly choose the quality and quantity of goods they want.<sup>2</sup>

Legally, the creation of money as a means of payment has changed the construction of the parties in goods and services exchange transactions, which were originally only 2 (two) parties, namely the seller of goods or services and the buyer of goods or services on the other,

changed to 3 (three) parties. ) parties with the participation of some third party money printers. The relationship between third parties as money printers is because in every money in circulation there is a specified value and there is a guarantee (*Underlying Asset*) for any money used in the transaction. This means that it is the third party who guarantees that the transaction that takes place remains valuable as a transaction which in the end can be realized in the form of assets, even though the seller does not hold/control the Collateral (gold, silver) as a form of wealth and only holds paper called money. As with the history of its birth, money printing was finally delegated to the highest authority or ruler in a region, namely the State. This causes a process that is different from the barter system where transactions are only between the seller and the buyer in question, but now because it involves money, the state. That is what determines the quality and quantity, or what is called currency.<sup>3</sup>

The involvement of the state in every trade transaction will be clearly manifested, if during the implementation of the transaction a dispute arises which

<sup>1</sup> Septi Wulan Sari, "Perkembangan dan Pemikiran Uang dari Masa ke Masa", *An-Nisbah*, Vol. 03, No. 01, Oktober 2016, h. 40.

<sup>2</sup> Josef Papilaya, Fransisca, R. Sinay, *Dasar-Dasar Ilmu Ekonomi*, CV. Azka Pustaka: Pasaman Barat, 2022, h. 115.

<sup>3</sup> James S. Coleman, *Dasar-Dasar Teori Sosial: Referensi bagi Reformasi, Restorasi, dan Revolusi*, Penerbit Nusa Media: Bandung, 2017, h. 162.

cannot be resolved by the disputing parties. The state will appear as an intermediary party through the judiciary set up by the state for this purpose. Not only to carry out public order but also to decide the value of the loss suffered by one party and must be paid by the other party, including forced efforts (confiscation) on the property of the party who is obliged to pay the loss.<sup>4</sup> As technology advances, especially since the discovery of internet technology, virtual money is also used as a medium of exchange in trade transactions. Virtual Money is money earned by completing the decryption of digital codes in a system *Blockchain*. One of the most common forms known to society today is *Bitcoin*, *Ethereum*, *Ripple* etc. The definition of virtual currency itself is interpreted differently by observers.<sup>5</sup> quoting from journals published by staff *International Monetary Fund*: “*Virtual currencies are digital representations of value, issued by private developers and denominated in their own unit of account. Virtual currencies can be obtained, stored, accessed, and transacted electronically, and can be used for a variety of purposes, as long as the transacting parties agree*

*to use them. The concept of Virtual currencies covers a wider array of “currencies,” ranging from simple IOUs of issuers (such as Internet or mobile coupons and airline miles), Virtual currencies backed by assets such as gold and “Cryptocurrency currencies” such as Bitcoin.”*<sup>6</sup>

Virtual currency is a digital representation of a value issued by private developers and denominated by a value determined by them. Virtual currency can be obtained, stored, accessed, and used for transactions electronically, and can be used for various other purposes, as long as the parties have an agreement. The concept of virtual currency covers the concept of “currency” broadly, ranging from simple bonds (for example: online coupons or flight points), virtual currencies that are “protected” with assets in the form of gold, and “cryptocurrencies” such as *Bitcoin*). Virtual money was originally invented by Satoshi Nakamoto. Satoshi released a piece of software *Bitcoin* on the internet in January and named it *Bitcoin*. Currently there are several ways to obtain cryptocurrency, namely through *trading* and *mining*. While mining is the process of spending computing power to process computing

<sup>4</sup> John Kenedi, “Urgensi Penegakan Hukum dalam Hidup Berbangsa dan Bernegara”, *El-Afkar*, Vol. 5, No. 11, Juli-Desember 2016, h. 51.

<sup>5</sup> Decky Hendarsyah, “Penggunaan Uang Elektronik dan Uang Virtual sebagai Pengganti

Uang Tunai di Indonesia”, *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita*, Juni 2016, h. 2-3.

<sup>6</sup>Dong He, dkk., *Virtual Currencies and Beyond: Initial Considerations*, International Monetary Fund Staff Team, 2016, h. 11.

power spending to process transactions, secure the network, and load everyone in a synchronized system, for transactions that are successfully completed by all forms of computational processes, miners will be rewarded in the form of *Bitcoin*. About *Ethereum*, as well as *Bitcoin*. Trading is a method of buying and selling cryptocurrencies through the application of buying and selling cryptocurrencies.<sup>7</sup>

*Ethereum own have Cryptocurrency named separately Ether. Broadly equivalent to Bitcoin about how transactional between owners Bitcoin with the others, the difference Ethereum with Bitcoin is basic software with different processes that produce Ether.*<sup>8</sup> The presence of virtual money which has no physical form, is also not produced by certain authorities, its value is also not certain but is actually used as a means of payment which is worth assets alongside conventional currencies making it appear as if the role of the state is being reduced or at least has the potential to be reduced substantially. fundamentals.<sup>9</sup> The existence of virtual money is still gray for most people in Indonesia, so Bank

Indonesia issued a statement number 20/4/DKCom, which contained: "Bank Indonesia confirms that *Virtual Currency* including *Bitcoin* are not recognized as legal tender, so they are prohibited from being used as payment instruments in Indonesia". This is in accordance with the provisions in Law Number 7 of 2011 concerning Currency which states that currency is money issued by the Unitary State of the Republic of Indonesia and every transaction that has the purpose of payment, or other obligations that must be fulfilled with money, or financial transactions other activities carried out in the territory of the Unitary State of the Republic of Indonesia must use Rupiah.

Ownership *Virtual Currency* very risky and full of speculation because there is no responsible authority, there is no official administrator, there is no underlying asset that underlies the price *Virtual Currency* and the trading value is very volatile so that it is vulnerable to inflation risks (*bubble*) and prone to being used as a means of money laundering and financing of terrorism, so that it can affect

---

<sup>7</sup> Hardi Hermawan, Yasmirah Mandasari Saragih dan Henry Aspan, "Penggunaan Mata Uang Virtual Bitcoin sebagai Alat Pembayaran Ditinjau dari Aspek Perlindungan Hukum Konsumen", *Jurnal Rectum*, Vol. 4, No. 2, Juli 2022, h. 453.

<sup>8</sup> Muhammad Naufal Hasani, "Analisis *Cryptocurrency* sebagai Alat Alternatif dalam

Berinvestasi di Indonesia pada Mata Uang Digital *Bitcoin*", *JIEB*, Vol. 8, No. 2, Juli 2022, h. 330-331.

<sup>9</sup> Rafika Divi Julfianti, "Penggunaan Mata Uang Virtual Bitcoin sebagai Alat Pembayaran Ditinjau dari Aspek Perlindungan Hukum Konsumen", *Jurnal Ilmiah Mahasiswa Hukum (JIMHUM)*, Vol. 2, No. 5, Mei 2022, h. 256.

the stability of the financial system and harm the public.<sup>10</sup> Bank Indonesia warns all parties not to use it *Virtual Currency* as a means of payment. Bank Indonesia emphasizes that as the payment system authority, Bank Indonesia prohibits all payment system service providers (principals, switching providers, clearing providers, final settlement providers, issuers, acquirers, payment gateways, electronic wallet providers, fund transfer providers) and Financial Technology operators in Indonesia both Banks and Non-Bank Institutions to process payment transactions with *Virtual Currency*, as regulated in PBI 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing and in PBI 19/12/PBI/2017 concerning Implementation of Financial Technology. Bank Indonesia as the authority in the field of Monetary, Financial System Stability and Payment System is always committed to maintaining financial system stability, consumer protection and preventing money laundering and terrorism financing practices. Provisions of Article 33 paragraph (1), Law of the Republic of Indonesia Number 7 of 2011 concerning

Currency stipulates that every person who does not use rupiah in every transaction that has the purpose of payment, settlement of other obligations that must be fulfilled with money; and/or other financial transactions as referred to in Article 21 Paragraph (1) of the said law may be subject to imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Based on the provisions above, then according to law, anyone who uses crypto assets as a means of payment, as well as as a settlement of obligations that must be fulfilled with money and/or other financial transactions, can be categorized as having committed a crime.

Civil use of crypto assets as an achievement or a direct counter-performance can be categorized as a transaction whose cause is not lawful and becomes null and void. Even though there are threats of becoming a crime and/or becoming null and void, in reality, the use of crypto assets in business transactions in Indonesia is still rife. Especially transactions that occur privately (*Peer-to-Peer*).<sup>11</sup>

---

<sup>10</sup> Sindi Ayu Anggraeni dan Adi Sulistiyono, "Problematisa Hukum Peredaran *Virtual Currency* dan Penggunaannya sebagai Alat Pembayaran Transaksi Komersial Elektronik dalam Sistem Hukum di Indonesia", *Jurnal*

*Privat Law*, Vol. 8, No. 1, Januari-Juni 2020, h. 138.

<sup>11</sup> Anak Agung Ngurah W. dan Ni Ketut Supasti D., "Legalitas Investasi Aset Kripto di Indonesia sebagai Komoditas Digital dan Alat

The case recorded in the case register Number: 278/Pid.B/2021/PN.Tng, is a case between the defendant and the victim, having entered into an investment cooperation agreement to manage an amount of money, which later turned out to be not implemented properly, so that the money managed not returned as promised. The victim then reported to the police and the Defendant was then charged with criminal provisions. Even though the above case is a case in the criminal register, based on the case file, there are legal facts which provide an overview of the direct use of crypto assets in a civil agreement, as follows: "In the Investment Agreement Contract dated December 18, 2018, the value was IDR 1,200,000. 000.00 (one billion two hundred million rupiah), witness SYANIE FELICIA transferred on December 19 2018 in the amount of 2 x transfers worth in the agreement of IDR 500,000,000.00 (five hundred million rupiah) and on October 15 2018 using an indodax account of 130,005 ETH if 200,000,000.00 (two hundred million rupiah) in rupiahs. The Panel of Judges who later acquitted the Defendant from charges, in their legal considerations stated the following:

"Considering, even though the Defendant has been proven not to have paid the money belonging to the witness Syanie Felicia according to what had been promised, according to the Panel of Judges this was not is a criminal act because no intentional element was found in the Defendant and this is a form of legal action in the civil environment, namely default, thus the Defendant must be released from all lawsuits (*immunity from prosecution*)". The decisions and considerations of the Panel of Judges in a quo case have shown several important matters legally, namely:

1. The use of crypto assets in private agreements is legal, at least acknowledged and not illegal.
2. Transactions/agreements that occur, even though some of them use crypto assets directly as settlement of obligations that are worth money, are legal agreements and are legal actions in the civil environment, with the possibility of claims for default in the event of a breach of contract.

As another example *the savior* being the first country in the world to take one of the forms of crypto coins viz *Bitcoin* as legal tender side by side with *Dollar AS*. This makes it possible for Crypto coins to

---

Pembayaran", *Jurnal Kertha Wicara*, Vol. 11, No. 1, 2021, h. 68.

be used in a variety of transactions, from simple things like buying coffee to paying taxes.<sup>12</sup> As with Canada, reported from the Canada.ca page, Canada allows the use of crypto currency, including *bitcoin* based on FCA Canada's digital page which states "you can use digital currency to buy goods and services on the internet and shops that accept payments with digital currency. And you can also buy and sell cryptocurrencies on open exchanges known as *Exchanger* digital currency or crypto currency."<sup>13</sup>

Based on this fact, it is clearly enough to show that the use of crypto assets (*Ethereum*) in society in Indonesia is still rife and the provisions prohibiting the use of crypto assets as a means of payment have not fully implemented in society. Because the use of crypto assets in society continues to occur, the possibility of disputes due to the use of crypto assets as a means of payment will also continue to be possible. It is a well-known fact that this virtual money has become one of the phenomena that are being loved in Indonesia. In certain communities, both the business community and especially

internet network users, transactions using virtual money are increasingly prevalent. This is evident from the increasing value of 1 virtual currency coin.<sup>14</sup>

The Government of Indonesia through the Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning the General Policy for Organizing Crypto Asset Futures Trading (*Crypto Asse*), then regulates that the use of crypto assets in Indonesia can only be made as a commodity. Crypto assets that are traded by the public are regulated only through institutions appointed by the government as stipulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning the General Policy for Organizing Crypto Asset Futures Trading (*Crypto Asse*). Based on this, it becomes an urgency to explore the accountability of parties using crypto asset transactions *Ethereum* in Indonesia as an object of trade.

## B. Research Methods

The type of research used is normative juridical, with the approach

---

<sup>12</sup> Aditya Rafi Fauzan dan Rianda Dirkareshza, "Lex Crypto: Perbandingan Landasan Hukum terhadap Dampak Keberadaan Bitcoin antara Indonesia dengan El Salvador", *Pandecta*, Vol. 16, No. 2, Desember 2021, h. 320.

<sup>13</sup> Gagas Yoga Pratomo <https://m.liputan6.com/crypto/read/5004946/ban>

[k-sentral-kanada-perlu-regulasi-kripto-imbangi-pertumbuhan-pasar](https://www.kemendag.go.id/berita/kemendag-keputusan-regulasi-kripto-imbangi-pertumbuhan-pasar), Diakses pada 7 Januari 2023.

<sup>14</sup> Kadek Gitari Pudjastuti dan I Ketut Westra, "Legalitas Mata Uang Virtual Bitcoin dalam Transaksi Online di Indonesia", *Jurnal Kertha Wicara*, Vol. 9, No. 11, h. 3.

taken to statutory regulations (*statute approach*). The legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials have authority, which includes laws and regulations, official records, and judge's decisions.<sup>15</sup> The primary legal materials used in this research are sourced from laws and regulations, including the Civil Code (KUHPerdata), Law of the Republic of Indonesia Number 7 of 2011 concerning Currency, Law of the Republic of Indonesia Number 16 of 2016 concerning Information and Electronic Transactions, and Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning the General Policy for Organizing Crypto Asset Futures Trading (*Crypto Asset*). Secondary legal material itself includes legal opinions, doctrines, theories in legal literature, which are then used as sources in this study. Sources of legal materials in this study also include tertiary legal materials which provide meaningful instructions or explanations of primary legal materials and secondary legal materials, such as internet media.

The method of collecting legal materials used in this research is library research, namely by studying books, journals, papers, articles, the internet,

research results and laws and regulations related to the problems studied. All of these are used as guidelines and foundation in this research. The analysis of the legal materials used in this study is analytical descriptive, by presenting legal materials without testing hypotheses and only comparing laws and regulations. The method of analysis is qualitative in nature.

### C. Discussion

The birth of liability is basically the existence of someone who does not carry out the obligations of his engagement, so that the other party demands compensation. Theoretically, there are two terms that refer to liability in the legal dictionary, *viz liability* and *responsibility*. *Liability* is a broad legal term that refers to all the characteristics of risk or responsibility, which are certain, which depend on or which may include all the actual or potential character of rights and obligations such as losses, threats, crimes, costs or conditions that create the duty to implement the law. -law. The distinction between the terms responsibility and liability is strongly influenced by the distinction between the terms responsibility and liability in the

---

<sup>15</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi*

*Teori Hukum*, Prenada Media Group: Jakarta, 2017, h. 156-165.



English language literature. Responsibilities matched with *responsibility* while liability is equivalent *liability*. there are also those who equate the notion of accountability with accountability which implies: a willingness to sue for responsibilities that have been given to people who accept and are willing to carry out certain tasks. According to Peter Mahmud Marzuki, the notion of responsibility is in meaning *liability* interpreted as accountability which is the translation of *liability/liability*, a specific form of responsibility. According to him, the notion of liability refers to the position of a person or legal entity who is deemed to have to pay some form of compensation or compensation after a legal event or legal action. *Responsibility* means things that can be accounted for for an obligation, and includes decisions, skills, abilities and abilities which also include the obligation to be responsible for the law that is implemented.<sup>16</sup>

According to Peter Mahmud Marzuki, accountability is not much different from the opinion of civil law experts at the beginning of the 20th century, namely J.H. *Next door*, that

accountability is an obligation to bear compensation as a result of violating norms. Acts violating these norms can occur due to acts against the law or default. Further *Nieuwenhuis* explained that accountability rests on two pillars, namely violation of law and error. Liability in this case can occur because of the law, meaning that a certain party is declared liable not because of the mistakes he made, but because of the provisions of the law. In addition, it can also occur due to errors that occur due to an agreement between the parties that harms one of the parties.<sup>17</sup> his is in accordance with Article 1365 of the Civil Code (unlawful act). This kind of liability is known as liability based on the element of guilt and in its development it is also due to the fact that evidence becomes liability on the basis of presumption of guilt.

The emergence of liability for losses suffered by Crypto Asset trading actors both within the scope of the Commodity Futures Trading Institution and outside the Commodity Futures Trading Institution, can be viewed from three things, namely:<sup>18</sup>

a. Liability due to default

The existence of an agreement creates an obligation for the debtor to

<sup>16</sup> Peter Mahmud Marzuki, *Prinsip-prinsip Hukum*, Kencana Prenada Media Group: Jakarta, 2016, h. 11.

<sup>17</sup> Titin Rohayatin, *Birokrasi Pemerintahan*, Deepublish: Yogyakarta, 2021, h. 130.

<sup>18</sup> Yudi Sudiyatna, "Perlindungan Hukum bagi Investor pada Transaksi Aset Kripto (*Crypto Asset*) pada Bursa Berjangka Komoditi", *Jatiswara*, Vol. 37, No. 2, 2022, h. 216-217.

carry out an agreed performance. An achievement is not carried out by the debtor for two reasons, namely due to the debtor's mistake due to intent or negligence/omission, and due to force majeure (*force majeure/force majeure*). Based on the Civil Code, Default is regulated in Article 1243 of the Civil Code which explains that compensation for costs, losses and interest is not fulfilled by saying a word, then it begins to be obligatory, if the debtor after being declared negligent fulfills his agreement, but neglects it, or if what must be given or made is only given or made within the stipulated time.

The conditions that must be met to be considered in default are as follows:

- 1) Material requirements, namely in the form of errors and/or omissions.
- 2) Formal requirements, namely in the form of a warning (*summons*) which contains a message from the creditor so that the debtor immediately or at the stated time fulfills his achievements.

Defaults bring detrimental consequences for the debtor, because since then the debtor is obliged to compensate for losses incurred as a result of the default. There are 4 types of consequences received by a negligent debtor, namely:

- 1) Pay for losses suffered by creditors or briefly with compensation;
- 2) Cancellation of the Agreement or also called breaking the agreement;
- 3) risk transfer; and
- 4) Pay the court fee, if it comes before the judge.

In the first case, compensation occurs because the debtor does not fulfill the performance at all. This compensation can be a substitute for the main achievement, but can also be in addition to the main achievement.

Crypto Asset Transactions *Ethereum* in the commodity futures exchange listed in the Mandate Granting Agreement. The form of the agreement between the futures broker and the customer is standard and cannot be changed. Every making of a trust agreement must be guided by or in accordance with the standard contract standard, because of its standard form, each article reflects justice or there is a balance regarding the rights and obligations between the customer as the owner of the funds and the futures broker. as executor of commodity futures trading so that it can be interpreted as a sale-purchase agreement of Crypto Assets *Ethereum* use the services of futures brokers through electronics in the form of computers or electronic media, as Article

17 Paragraph 1 of the ITE Law that the implementation of electronic transactions can be carried out in the public or private sphere.. Crypto assets *Ethereum* in this case included in the transaction *online* which was ratified based on the law, so that the agreement has a relationship and legal consequences for those who make it.

Based on the provisions of Article 1313 of the Civil Code *because* Article 17 Paragraph 1 of the ITE Law, trading in crypto assets can still occur both within and outside the scope of commodity futures trading institutions. In trading crypto assets outside the scope of commodity futures trading institutions, the parties who may be liable are only the parties who made the agreement themselves without any other specific parties who can also be co-defendants. The parties personally (*private*) is responsible for all risks that occur in the implementation of the transaction. Crypto asset transactions that occur outside the scope of the Commodity Futures Trading Institution are still binding on the parties who agree on the transaction. Thus in the event of default and/or unlawful acts in the implementation of the agreement/agreement, then the parties who commit acts of default and/or commit acts that violate the law are still liable for their actions. Other parties as

creditors who are harmed can still sue the party who made the default and/or unlawful act.

Liability caused by a breach of contract, the claim can be in the form of cancellation of the agreement accompanied or not with compensation, and/or fulfillment of the agreement, either in part or in whole of the contents of the agreement, with or without compensation. And if with additional claims for compensation, then the compensation demanded can be in the form of claims for material losses only and or with additional immaterial losses.

Claims caused by unlawful acts, the form of the claim is the demand for cancellation of the agreement or for the agreement to be declared invalid and null and void, accompanied by demands for compensation, both material and immaterial.

Claims resulting from a criminal incident (*unlawfulness*) carried out with the stages of criminal prosecution first, through reports to the police and after it is proven according to law that a criminal incident occurred based on a court decision, then based on the decision of the criminal court, the aggrieved party (creditor) can then file a civil suit to ask for compensation for the loss suffered. Basically, all claims must be submitted to

the court, unless the parties have specified another forum agreed upon in the agreement (*choice of forum*). The domicile of the court that has the authority to adjudicate is the Court at the residence/residence of the Defendant or another domicile/domicile that has been chosen and agreed upon by the parties to resolve the dispute.

In contrast to crypto asset transactions that occur outside the scope of commodity futures trading institutions, which allows for 3 causes of events that cause the failure of agreements (transactions), namely: default, unlawful acts (*unlawful act*), and illegal acts (*illegality*). In crypto asset transactions that occur within the scope of commodity futures trading institutions, it is very unlikely that a default will occur. Various terms, procedures and trade mechanisms have been arranged in such a way as to make it impossible for the transacting parties not to fulfill the achievements as agreed. One of the conditions for being able to transact crypto assets within the scope of the Commodity Futures Trading Institution is that the parties wishing to transact must deposit sufficient funds (deposit) first before making transactions, both in the form of rupiah and in the form of crypto assets. The customer's funds (seller/buyer) are stored in a separate

account specifically used to conduct transactions within the scope of commodity futures trading institutions. With the small possibility of the occurrence of the default situation mentioned above, it is possible that the failure of crypto asset transactions within the scope of commodity futures trading institutions is due to illegal acts (*unlawful act*) and/or there is an act against the law (*illegality*).

Crypto asset transaction failures that result in losses in crypto asset transactions within the scope of commodity futures trading institutions, can be included in the category of unlawful acts or unlawful acts. To find out, it is very necessary to be identified carefully. Which actions fulfill the elements of breaking the law and which actions fulfill the elements against the law. Therefore it is necessary to clarify the elements of unlawful acts and the elements of unlawful acts. Theory *liability* or what in Indonesian is called the theory of liability is a theory to determine who should receive a lawsuit because of an unlawful act. In general, it is not always the party that must be sued or accept responsibility, it is the party that must be sued in court and it is he who must pay compensation according to the court's decision.

Based on the explanation above, the failure of crypto asset transactions within the scope of commodity futures trading institutions can be identified by checking whether the parties involved directly or indirectly in the transaction have carried out their legal obligations properly or not, and have not made mistakes in carrying out their duties. in accordance with the provisions of the Commodity Futures Trading Regulatory Agency Regulation Number 8 of 2021 concerning Guidelines for Organizing Crypto Asset Physical Market Trading (*Crypto Asset*) on the Futures Exchange. Parties directly involved in transactions are customers, futures traders, depository institutions and clearing houses. The party that is not directly involved is Bappeti as a supervisory agency. However, if it is proven that there has been cooperation in the occurrence of the unlawful act, then all parties will likely be in the same position as those who should be responsible or become the party being sued.

Liability to sue on the basis of an act against the law is that the act fulfills the elements of an act that violates the law which can also fall into an act against the law (criminal) if it fulfills the elements of a criminal act. Article 1321 of the Civil Code regulates that there is no valid agreement

if the agreement is given due to a mistake, or obtained by coercion or fraud.

*Fraud* or fraud is a situation, where a person deliberately with will and knowledge causes misguidance in others, may fall into a criminal act, or only has civil consequences if the error only covers elements of misuse of circumstances (*Abuse Circumstances*), so that the legal consequence of the existence of defects of will in the transaction of crypto assets is that the agreement can be canceled (*destructible*). According to Subekti, fraud occurs when one party deliberately provides false or untrue information accompanied by trickery to persuade the other party to give its license, and the deceptive party acts actively to mislead the other party. Therefore, if there are parties in crypto transactions on futures exchanges that are known in the agreement to contain elements of fraud, then the party who feels aggrieved can make efforts to cancel (*voidable*), and does not cancel itself (*null and void*).

#### **D. Closing**

The emergence of liability for losses suffered by Crypto Asset trading actors both within the scope of the Commodity Futures Trading Institution and outside the Commodity Futures Trading Institution, can be viewed from

three aspects, namely default, unlawful acts, and unlawful acts. Liability due to default is that the claim can be in the form of cancellation of the agreement accompanied or not with compensation, and/or fulfillment of the agreement, either in part or in whole of the contents of the agreement, with or not with compensation. If with additional claims for compensation, then the compensation demanded can be in the form of claims for material losses only and/or with additional immaterial losses. Liability for unlawful acts is a form of claim in which the demand for cancellation of the agreement or for the agreement to be declared invalid and null and void and is usually always accompanied by demands for compensation, both material and immaterial. Liability due to unlawful acts is the claim resulting from a criminal event (illegality), which is carried out with the stages of criminal prosecution first through a report to the police. After it is proven according to law that a criminal incident occurred based on a court decision, the injured party (creditor) can then file a civil claim to ask for compensation for the loss he suffered.

Crypto assets have inherent risks, such as price volatility and the potential for fraud or hacking. Governments can consider measures to educate the public

about the risks of crypto-assets and encourage their use Ethereum and other crypto assets responsibly. The main objective of any regulatory framework should be to protect consumers. Governments can consider measures to ensure that consumers are educated about the risks and potential benefits of crypto assets, while also having access to adequate protection and assistance in the event of a problem. For the public it is very important to stay up to date with the latest developments in regulation Ethereum in Indonesia. This can help the public understand their rights and responsibilities as users of Crypto Assets Ethereum and other crypto assets, and ensure that you comply with applicable legal regulations. When buying or selling Ethereum or other crypto assets, it is important to use reputable exchanges and custodians that are registered and regulated according to Indonesian laws and regulations.

## BIBLIOGRAPHY

- Anggraeni, Sindi Ayu dan Sulistiyono, Adi. "Problematika Hukum Peredaran *Virtual Currency* dan Penggunaannya sebagai Alat Pembayaran Transaksi Komersial Elektronik dalam Sistem Hukum di Indonesia". *Jurnal Privat Law*. Vol. 8, No. 1, Januari-Juni 2020. DOI: <https://doi.org/10.20961/privat.v8i1.40387>

- Coleman, James S. 2017. *Dasar-Dasar Teori Sosial: Referensi bagi Reformasi, Restorasi, dan Revolusi*, Bandung: Penerbit Nusa Media.
- Diantha, I Made Pasek. 2017. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group.
- Fauzan, Aditya Rafi dan Rianda Dirkareshza. "Lex Crypto: Perbandingan Landasan Hukum terhadap Dampak Keberadaan Bitcoin antara Indonesia dengan El Salvador". *Pandecta*, Vol. 16, No. 2, Desember 2021. DOI: <https://doi.org/10.15294/pandecta.v16i2.31838>
- Hasani, Muhammad Naufal. "Analisis Cryptocurrency sebagai Alat Alternatif dalam Berinvestasi di Indonesia pada Mata Uang Digital Bitcoin". *JIEB*, Vol. 8, No. 2, Juli 2022. DOI: <https://doi.org/10.35972/jieb.v8i2.762>
- Hendarsyah, Decky. "Penggunaan Uang Elektronik dan Uang Virtual sebagai Pengganti Uang Tunai di Indonesia". *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita*. Vol. 5, No. 1, Juni 2016. DOI: <https://doi.org/10.46367/iqtishaduna.v5i1.74>
- Hermawan, Hardi.; Yasmirah Mandasari Saragih dan Henry Aspan. "Penggunaan Mata Uang Virtual Bitcoin sebagai Alat Pembayaran Ditinjau dari Aspek Perlindungan Hukum Konsumen". *Jurnal Rectum*. Vol. 4, No. 2. Juli 2022. DOI: [http://dx.doi.org/10.46930/jurnal\\_rectum.v4i2.1998](http://dx.doi.org/10.46930/jurnal_rectum.v4i2.1998)
- He, Dong., dkk. 2016. *Virtual Currencies and Beyond: Initial Considerations*, International Monetary Fund Staff Team.
- Julfianti, Rafika Divi. "Penggunaan Mata Uang Virtual Bitcoin sebagai Alat Pembayaran Ditinjau dari Aspek Perlindungan Hukum Konsumen". *Jurnal Ilmiah Mahasiswa Hukum (JIMHUM)*. Vol. 2, No. 5, Mei 2022.
- Kenedi, John. "Urgensi Penegakan Hukum dalam Hidup Berbangsa dan Bernegara". *El-Afkar*, Vol. 5, No. 11. Juli-Desember 2016. DOI: <http://dx.doi.org/10.29300/jpkth.v5i2.1132>
- Marzuki, Peter Mahmud. 2016. *Prinsip-prinsip Hukum*. Jakarta: Kencana Prenada Media Group.
- Papilaya, Josef; Fransisca; Sinay, R. 2022. *Dasar-Dasar Ilmu Ekonomi*, Pasaman Barat. CV. Azka Pustaka: Pasaman Barat.
- Pratomo, Gagas Yoga. <https://m.liputan6.com/crypto/read/5004946/bank-sentral-kanada-perlu-regulasi-kripto-imbangi-pertumbuhan-pasar>, Diakses pada 7 Januari 2023.
- Pudjastuti, Kadek Gitari dan I Ketut Westra. "Legalitas Mata Uang Virtual Bitcoin dalam Transaksi Online di Indonesia". *Jurnal Kertha Wicara*, Vol. 9, No. 11. 2022.
- Rohayatin, Titin. 2021. *Birokrasi Pemerintahan*. Yogyakarta: Deepublish.
- Sari, Septi Wulan. "Perkembangan dan Pemikiran Uang dari Masa ke Masa". *An-Nisbah*, Vol. 03, No. 01. Oktober 2016. h. 40. DOI:

<https://doi.org/10.21274/an.2016.3.1.39-58>.

Sudiyatna, Yudi. “Perlindungan Hukum bagi Investor pada Transaksi Aset Kripto (*Crypto Asset*) pada Bursa Berjangka Komoditi”. *Jatiswara*. Vol. 37, No. 2, 2022. <https://doi.org/10.29303/jtsw.v37i2.410>

W., Anak Agung Ngurah dan Ni Ketut Supasti D. “Legalitas Investasi Aset Kripto di Indonesia sebagai Komoditas Digital dan Alat Pembayaran”. *Jurnal Kertha Wicara*. Vol. 11, No. 1, 2021.