

CHAPTER FOUR

FINDING AND ANALYSIS

A. The Urgency of the Regulation on Bitcoin Taxation in Indonesia

Bitcoin is not a new thing in Indonesia, bitcoin has existed in Indonesia since 2009, but unfortunately, Indonesia has no clear regulations regarding the status of bitcoin itself. As the state of law,⁴⁴ all actions taken by the government must be based on the existing law.⁴⁵ Without the law that covers bitcoin, the government of Indonesia cannot utilize the potential of bitcoin as the object of tax.

The value of single bitcoin is 171 million Rupiah and the transaction of bitcoin in Indonesia can reach 1 Trillion Rupiah every day.⁴⁶ It indicates that bitcoin taxation is very potential. If the current law is applied on the bitcoin activity right now, Indonesia might gain 100 Million every day from only value-added tax⁴⁷, not yet added with the income tax. It can fulfill the target of tax revenue quickly, but unfortunately, the current legislation is not enough to face this challenge because the significant potential of bitcoin hides a big threat.⁴⁸

⁴⁴ Article 1 Paragraph 3 1945 Constitution of Republic Indonesia

⁴⁵ Bambang Satriya, 2016, "Membangun Negara Hukum di Era Pemerintahan Presiden Joko Widodo", *Jurnal Panorama Hukum*, vol. 1 no. 2, p 45

⁴⁶ Sylke Febrina Laucereno, *Loc.cit.*

⁴⁷ Based on value-added tax rate in Indonesia

⁴⁸ Andrea O'Sullivan, 2018, "Ungoverned or Anti-Governance? How Bitcoin Threatens The Future Of Western Institutions", *Journal of International Affairs*, vol. 71, no. 2, p 100

Indonesia must immediately make regulations regarding bitcoin so that the threats from this technology can be avoided and its tax potential can be utilized as well as possible. If Indonesia does not regulate bitcoin, some threats can arise due to the existence of bitcoin in Indonesia. Those threats are:

1. Utilization of bitcoin as the Payment method in Online Black Market

Bitcoin is known as a virtual currency that can be used as an installment method. Due to the P2P characteristic of bitcoin, it has been used in the online black market such as Silk Road. Silk Road was a profound web (deep web)⁴⁹ black market website in task from February 2011 to October 2013⁵⁰. Through the anonymizing system TOR⁵¹, the pseudonymous idea of Bitcoin, in addition to "tumbling" administrations, for example, involved the online sale of narcotics including marijuana, prescription drugs, and benzodiazepines (a class of drug).⁵² Drugs had been sold online for a considerable length of time, generally on casual notice loads up and on sites, for example, "The Farmer's Market," a site that recorded different opiates

⁴⁹ Michael K. Bergman, 2011, "The Deep Web: Surfacing Hidden Value", *Journal of Electronic Publishing*, no. 7, p. 2.

⁵⁰ Brito, Jerry & Castillo, 2013, "Bitcoin: A Primer for Policymakers", *Mercatus Center Publications*, p. 22

⁵¹ The Onion Router or TOR is software that allows users to browse the Internet in complete anonymity and free from third-party tracking by constantly changing the Internet Protocol ("IP") address of a computer. With TOR, users can explore the "deepnet" and explore sites that only host anonymous users.

⁵² Rainer Böhme, et al, *Op.cit* p. 222

accessible for buy with installment utilizing other administrations, including Paypal.⁵³

At the point when Bitcoin is utilized with apparatuses to anonymize organization traffic, commercial centers could give more grounded affirmations of secrecy. Exchange volume also increased drastically.⁵⁴ It is evaluated that while operational, Silk Road's exchanges added up to \$1.2 million month to month, speaking to just 0.15% of the \$770 million in Bitcoin exchanges in a solitary month. Silk Road's classification groupings affirm the predominance of narcotics, which commanded Silk Road's top class, shown in Table below:

Table 4.1 The Nine Most Popular Product Categories on the Silk Road

No	Category	Number of Items	Percentage
1	Weed	3.338	13.7%
2	Drugs	2.193	9.0%
3	Prescription	1.784	7.3%
4	Benzodiazepines	1.193	4.9%
5	Cannabis	877	3.6%

⁵³ Victoria Kim, 2014, "Dutch national pleads guilty to running online marketplace for drugs" Los Angeles Times, taken from <https://www.latimes.com/local/la-me-online-drug-marketplace-20140904-story.html> accessed on 10 May 2019 at 10.26 PM

⁵⁴ Christin, Nicolas, 2013, "Traveling the Silk Road: A Measurement Analysis of a Large Online Anonymous Marketplace." *Proceedings of the 22nd International World Wide Web Conference*, pp. 23-24

6	Hash	820	3.4%
7	Cocaine	630	2.6%
8	Pills	473	1.9%

On October 1, 2013, Federal Bureau of Investigation ("FBI") specialists and government investigators in New York caught Silk Road's driving force Ross Ulbricht, otherwise called the Dread Pirate Roberts, in a San Francisco library with his workstation open.⁵⁵ This activity enabled the FBI to close down Silk Road and seize about 30,000 bitcoins.

After the shutdown of Silk Road, there is Agora, the most successful replacement of Silk Road.⁵⁶ Like Silk Road, business in Agora also conducted in bitcoin and Agora not only sells drugs but also semi-auto firearms.⁵⁷ Silk Road 2.0 was launched too in November 2013 by some of the administrators of the original Silk Road website and has been shut down by FBI.

If Indonesia cannot make a proper regulation on bitcoin, it will make the existence of bitcoin in Indonesia used as criminal things on the online black market like Silk Road and Agora rather than utilized as an object of

⁵⁵ David Segal, Eagle Scout, New York Times, 2014, "Idealist. Drug Trafficker?" Taken from <http://www.nytimes.com/2014/01/19/business/eagle-scout-idealist-drug-trafficker.html> accessed on April 20th, 2019 at 17.13 PM

⁵⁶ Andy Greenberg, 2014, Drug Market 'Agora' Replaces The Silk Road As King Of The Dark Net, taken from <https://www.wired.com/2014/09/agora-bigger-than-silk-road/> accessed on May 1st, 2019 at 07.01 AM

⁵⁷ *ibid*

tax. Although such online black market website will be shut down by an official agent, those types of websites will arise again.

2. Dangers of Inadequate Data Security

Data security or digital security is characterized as innovations and procedures developed to ensure a computer, computer equipment, programming, systems and information from unauthorized access, vulnerabilities provided through the Internet by digital culprits, fear monger gatherings and hackers.⁵⁸ Digital security can be defined as privacy. The concept of privacy has developed in recent year. In the present day, society wants security, yet in the meantime, we readily share individual data to get administrations.⁵⁹

Digital security includes the primary concern of bitcoin users, as bitcoin clients may experience having their bitcoins stolen by programmers because of a lack of security by bitcoin traders and other bitcoin-based organizations. Bitcoin-based organizations and trades are characteristically new organizations because of the ongoing advancement of the Bitcoin convention. Subsequently, these organizations might not have the assets to

⁵⁸ Rajesh Kumar Goutam, 2015, "Importance of Cyber Security", *International Journal of Computer Applications*, v. 111, no. 7, p. 14

⁵⁹ Marc Pelteret and Jacques Ophoff, 2016, "A Review of Information Privacy and Its Importance to Consumers and Organizations", *Informing Science: the International Journal of an Emerging Transdiscipline*, p. 279

fight off programmers who are bigger and become increasingly settled establishments.⁶⁰

Not only bitcoin can be stolen from the user, but their privacy can also be breached when the user has an activity with bitcoin. Although the user of bitcoin has been anonymizing themselves when conducting bitcoin transactions, the hacker can use a little effort with sophisticated techniques to de-anonymize their privacy.⁶¹

Those kinds of case happened to the one of the oldest bitcoin exchange website Mt. Gox. Mt. Gox was launched in 2009 and become dominant on the commercial web center for the buy and clearance of Bitcoins, taking care of 80 percent of all Bitcoin exchanging movement in 2013.⁶² On February 25, 2014, Mt. Gox failed after programmers stole around 850,000 Bitcoins.⁶³ Although Mt. Gox recovered 200,000 of the stolen Bitcoins, it was still a significant amount of bitcoin stolen by the hacker. Mt. Gox's disappointment remains as a wake-up call, not against the security of the blockchain itself, but instead against the security of the intermediaries who are not exposed to indistinguishable capital property

⁶⁰ Misha Tsukerman, *Op.Cit* p 1150

⁶¹ Joshua Baron et al, 2015, *National Security Implications of Virtual Currency*, Santa Monica, RAND Corporation, p. 43

⁶² Lawrence Trautman, 2014, "Virtual Currencies; Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?", *Richmond Journal of Law & Technology*. Vol. 20, no. 1, p. 100

⁶³ Takashi Mochizuki & Eleanor Warnock, The Wall Street Journal, 2014, "Mt. Gox Head Believes No More Bitcoins Will Be Found", taken from <http://online.wsj.com/articles/mt-gox-head-believes-no-more-bitcoin-will-be-found-1403850830> accessed on May 1st, 2019 at 07.30 AM

prerequisites from ordinary banks and stock trades. This problems of security may harm the users of bitcoin and the company which provide the exchange trade of bitcoin.

3. Bitcoin as a Tool for Tax Evasion

Cryptocurrencies such as bitcoin are an easy tool for tax evasions. There are two variables proposing that tax evader who have customarily sidestepped expenses through seaward ledgers in tax-haven jurisdiction, will instead utilize cryptocurrencies to encourage their avoidance.⁶⁴ The first factor is the increasing popularity of bitcoin that function with their free-floating exchanges. Secondly, many governments' favored anti-tax evasion system has changed from focusing on tax havens that host financial intermediaries to the financial intermediaries themselves.⁶⁵

Bitcoin possesses some advantages to a traditional tax haven. The first bitcoin is saved in the coin wallet or online wallet. The coin wallets do not operate in any jurisdiction, not like a traditional tax haven, and coin wallets are not subject to taxation.⁶⁶ Second, the coin wallets are pseudonymous, and the users can have as many wallets as they want, without giving a legitimate personal identity.⁶⁷ This is possible due to the characteristic of bitcoin. The

⁶⁴ Omri Y. Marian, 2013, "Are Cryptocurrencies Super Tax Havens?", *Michigan Law Review First Impressions*, vol. 112, pp. 38-39

⁶⁵ *Ibid*

⁶⁶ *Ibid* 41

⁶⁷ *Ibid*

transaction of bitcoin does not involve a third party, such as PayPal that will record every activity of the users. The P2P mechanism of bitcoin can provide anonymity of the users of bitcoin, and no institution record the transaction. Third, bitcoins are not dependent on any intermediaries, such as banks.⁶⁸ In the case of bitcoin, there are no financial institutions that can produce records to be used in the trial process, the prosecutor would force the parties to admit their involvement in the transaction of bitcoins.⁶⁹

Those advantages for the traditional tax haven is risk for Indonesia, because those advantages can make the evasion of tax easier rather than the traditional tax haven. Indonesia must solve the risk that arises due to the existence of bitcoin before Indonesia can utilize taxation of bitcoin. Those risks can be easily solved by Indonesia if Indonesia understands the characteristic of bitcoin and know how to prevent the potential crime of bitcoin.

B. Possibility of the Regulation on Bitcoin Taxation in Indonesia

Indonesia already provides some regulation that can be used to impose a tax on bitcoin. The regulation is stated in the Law No 36 of 2008 on Income Tax and the Law No 42 of 2009 on value-added tax on goods and services and sales

⁶⁸ *Ibid*

⁶⁹ *Ibid* 42

tax on luxury goods, but those regulations do not provide specific regulations regarding bitcoin.

The possibility of bitcoin taxation can be looked through the legality of bitcoin in Indonesia and the requirements of the object of tax both in income tax and value-added tax on goods and service and sales on tax on luxury goods.

1. Legality bitcoin in Indonesia

In the middle of digitalization era, as a state of law, Indonesia must be able to adapt to it. Bitcoin is a new thing in Indonesia, but in fact, there are 1.1 million⁷⁰ users of bitcoin in Indonesia, and there is still a lack of regulation regarding bitcoin. Let alone the regulations, the position itself is still unclear in Indonesia.

Bitcoin was introduced as virtual currency by Satoshi Nakamoto and intended to replace the conventional money in the field of e-commerce.⁷¹ However, without the regulation as a method for installment strategy in bitcoin exchanges, the position of acknowledgment of Bitcoin is unclear. It is a fundamental component of currency whereby the nonappearance of an acknowledgment as a real method for installment came about to the Bitcoin acknowledgment in broad daylight.

⁷⁰ Sylke Febrina Laucereno, *Loc.cit*

⁷¹ Joshua Davis, *Newyorker*, 2011, "The Cryptocurrency: Bitcoin and Its Mysterious Inventor", taken from <https://www.newyorker.com/magazine/2011/10/10/the-crypto-currency> accessed on May 2nd, 2019 at 10.11 AM

Digital money, which right now is in a gray path, causes just a couple of web-based business organizations to get Bitcoin as an alternative in its installment strategy inside Indonesia domain. There are around 37 organizations which utilize it, including Republik Host, Name Cheap, Cinta Bahasa Indonesia Language School, Bali Expedition, Gopala Id, UangKuno, and a few others.⁷²

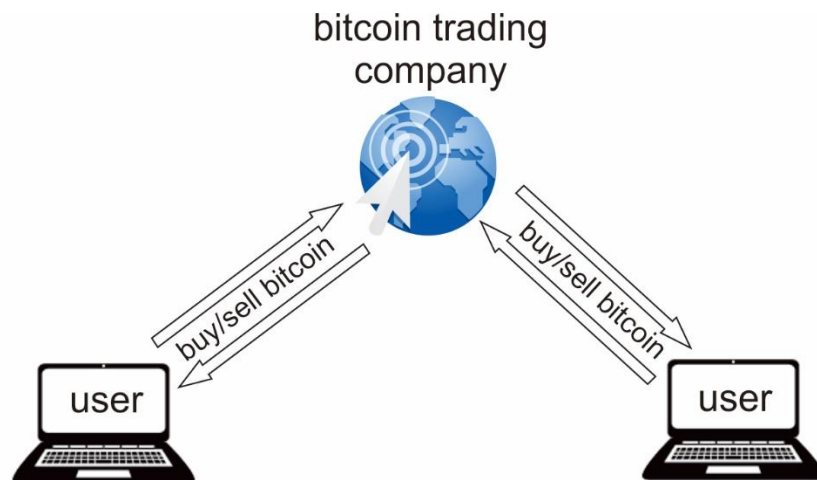
With the unclear bitcoin position, it is difficult for the Indonesian Government to control bitcoin in Indonesia. Luckily, in Indonesia there are companies founded by Oscar Darmawan in 2013, namely PT. Bitcoin Indonesia. Oscar Darmawan also established a website as a place of bitcoin transaction in Indonesia, namely bitcoin.co.id. Recently PT Bitcoin Indonesia changes its name into PT. Indodax and its website into indodax.com. This website can substitute the role of the Indonesia government in controlling bitcoin users in Indonesia. PT. Indodax play a role as bitcoin trading company. With the existence of bitcoin trading company, the transaction of bitcoin no longer P2P, but the transaction of bitcoin involved the third party.

⁷² Jodi Edmund, Luno, 2017, "Dimana Anda Dapat Menggunakan Bitcoin Anda di Indonesia", taken from <https://www.luno.com/blog/id/post/dimana-anda-dapat-menggunakan-bitcoin-anda-di-indonesia>, accessed on 2nd, 2019 at 9.15 PM

Picture 4.1 Transaction of Bitcoin before the Existence of Bitcoin Trading Company



Picture. 4.2 Transaction of Bitcoin after the Existence of Bitcoin Trading Company



In the journey of bitcoin in Indonesia, Bitcoin receives changing responses. At the first development of bitcoin in Indonesia, The Central Bank of Republic Indonesia (BI) acknowledge bitcoin as illegal currency and BI issue press release No: 16/6/Dkom which stated that that Bitcoin and other virtual currencies are not legal currencies or payment instruments in Indonesia and BI tell the society to be careful of Bitcoin and other virtual currencies. All risks related to the ownership/use of Bitcoin are borne by the

owner/user of Bitcoin and other virtual currencies.⁷³ This statement is based on the Law No 7 of 2011 on Currency, which stated that the only legal currency in Indonesia are Rupiah, so the other currency beside Rupiah is not acknowledged in Indonesia.

After some years, it is clear that the users of bitcoin in Indonesia treat their bitcoin as an investment rather than a tool of payment.⁷⁴ Because of this, BI issue another Press Release No: 20/4/Dkom which stated that BI bans all activities regarding bitcoin including selling, buying or trading virtual currencies.⁷⁵

BI issue those press release because Virtual currency ownership is very risky and full of speculation as there is no responsible authority, there are no official administrators, there are no underlying assets that underlie the price of virtual currency and trade values that are very volatile so that they are vulnerable to the risk of bubbles and are vulnerable to money laundering and funding of terrorism, so that it can affect the stability of the financial system and harm society. Therefore, Bank Indonesia warns all parties not to sell, buy or trade virtual currencies.⁷⁶

⁷³ The Central Bank of Republic Indonesia, “Pernyataan Bank Indonesia Terkait Bitcoin dan Virtual Currency Lainnya”, taken from https://www.bi.go.id/id/ruang-media/siaran-pers/pages/sp_160614.aspx accessed on May 3rd, 2019 at 09.15 PM

⁷⁴ Rainer Böhme et al, *Op.cit* 213

⁷⁵ The Central Bank of Republic Indonesia, “Bank Indonesia Memperingatkan Kepada Seluruh Pihak Agar Tidak Menjual, Membeli atau Memperdagangkan Virtual Currency”, taken from https://www.bi.go.id/id/ruang-media/siaran-pers/Pages/sp_200418.aspx accessed on May 3rd, 2019 at 09.18 PM

⁷⁶ *Ibid*

After all activities of bitcoin has been banned by the Government of Indonesia, recently Commodity Futures Exchange Trading Supervisory Agency (Bappebti) issued regulation No. 5/2019 concerning the technical provisions for the implementation of the crypto asset physical market on the future's exchanges, this regulation officially included bitcoin as commodity which can be traded on the future's exchanges. Regarding this decision, BI through his Head of the Payment System Policy Department, Onny Widjanarko, stated that The Central Bank of Indonesia had conducted intensive discussions with stakeholders regarding the decision on bitcoin which is used as an investment tool and it is recommended to be prudent, pay attention to compliance with anti-money laundering and terrorist financing, protection of consumers and investors.⁷⁷ However, The Central Bank of Indonesia still banned the use of bitcoin as a payment tool in Indonesia.⁷⁸

Indodax as the only bitcoin trading platform in Indonesia which now focuses on fulfilling the requirements from Bappebti in order to get an official permission to hold bitcoin trading.⁷⁹ Based on the Bappebti Regulation No. 5/2019 on the technical provisions for the implementation of

⁷⁷ Chandra Gian Asmara, 2019, CNBC, "Bitcoin Cs Kini Legal di RI, Ini Tanggapan BI", taken from <https://www.cnbcindonesia.com/fintech/20190215130629-37-55738/bitcoin-cs-kini-legal-di-ri-ini-tanggapan-bi> accessed on May 4th, 2019 at 08.19 AM

⁷⁸ *Ibid*

⁷⁹ Corry Anestia, 2019, Indodax Bakal Penuhi Syarat Aturan Baru Bappebti Demi Kantongi Izin, taken from <https://dailysocial.id/post/indodax-bakal-penuhi-syarat-aturan-baru-bappebti-demi-kantongi-izin> accessed on May 4th, 2019 at 09.04 AM

the crypto asset physical market on the futures exchange, Indodax must fulfill 3 (three) requirements to get the official permission. As a future company, Indodax must have the least paid-up capital of 1.5 Trillion Rupiah⁸⁰. As a company which saves bitcoin, Indodax must have the least paid-up capital of 1.2 Trillion Rupiah⁸¹, and to become a platform which can trade bitcoin, Indodax must have the at least paid up capital 1 Trillion Rupiah.⁸²

With the status of bitcoin as legal digital assets in Indonesia, the government of Indonesia officially can impose a tax on the bitcoin activity. This is also stated in the Article 3 (2e) of Bappebti Regulation, which stated that the cryptocurrencies asset must have economic benefits, such as taxation. Unfortunately, this regulation does not regulate further on how the tax should be imposed in bitcoin.

2. Possibility of Bitcoin Taxation from the Perspective of Income Tax Law

Income Tax is an additional economic capability or total increase in one's wealth.⁸³ Income tax in Indonesia is regulated with the Law No 36 of 2008 on Income Tax. Income tax emerges from Article 23 A of 1945

⁸⁰ Article 5 (2) Bappebti Regulation No 5/2019 on The Technical Provisions for The Implementation of The Crypto Asset Physical Market on The Futures Exchange

⁸¹ Article 6 (2) Bappebti Regulation No 5/2019 on The Technical Provisions for The Implementation of The Crypto Asset Physical Market on The Futures Exchange

⁸² Article 8 (1) Bappebti Regulation No 5/2019 on The Technical Provisions for The Implementation of The Crypto Asset Physical Market on The Futures Exchange

⁸³ Candra Mustika, 2012, Pajak Penghasilan di Indonesia (Peraturan, Perhitungan dan Upaya Peningkatan Potensi Penerimaan Pajak Penghasilan) dan Kaitannya dengan Investasi di Indonesia, *Jurnal Manajemen Terapan dan Keuangan*, vol. 1, no. 3, p 229

Constitution of the Republic of Indonesia. This law can be used to look at the possibility of bitcoin taxation in Indonesia. To conclude the possibility of bitcoin taxation, it can be seen from the subject and object tax of income tax.

According to article 2 of the Law No 36 of 2008 on Income Tax which becomes the subject of tax are:

- a. Individual and an undivided inheritance as a unit replaces the rightful;
- b. Institution;
- c. Permanent Company.

The subject of bitcoin taxation already met this article, because the owner of bitcoin in Indonesia can be an individual, institution, and permanent company, but there is no case that the owner of bitcoin is from an undivided inheritance. The subject of tax can be divided to domestic tax and foreign tax⁸⁴, this distinction is not a barrier to impose a tax on bitcoin, because both domestic and foreign entities can save and trade their bitcoin in Indonesia, and due to that, Indonesia can impose tax to them.

From the perspective of tax object, income tax law defines that object of tax is income, which is any additional economic capability that is received or obtained by taxpayers, both from Indonesia and outside Indonesia, that

⁸⁴ Article 2 (3) the Law No 36 of 2008 on Income Tax

can be used for consumption or to increase the wealth of the taxpayer concerned, by name and in any form, including:⁸⁵

- a. Reimbursement or compensation relating to work or services received or obtained including salaries, wages, benefits, honorariums, commissions, bonuses, gratuities, pensions, or other forms of compensation unless otherwise specified in this Act;
- b. Prizes from sweepstakes or jobs or activities, and awards;
- c. Operating profit;
- d. Profits due to sales or due to transfer of property;
- e. Reimbursement of tax payments that have been charged as fees and additional tax refunds;
- f. Interest includes premiums, discounts, and rewards for debt repayment guarantees;
- g. Dividends, by name and in any form, including dividends from insurance companies to policyholders, and distribution of the remaining proceeds of cooperative operations;
- h. Royalties or compensation for the use of rights;
- i. Rent and other income related to the use of assets;
- j. Receipt or acquisition of periodic payments;

⁸⁵ Article 4 (1) the Law No 36 of 2008 on Income Tax

- k. Profits due to debt relief, except up to a certain amount stipulated by Government Regulation;
- l. Profit from foreign exchange differences;
- m. The excess is due to the revaluation of assets;
- n. Insurance premium;
- o. Contributions received or obtained by associations from members consisting of taxpayers who carry out business or free work;
- p. Additional net wealth from income that has not been taxed;
- q. Income from sharia-based businesses;
- r. Interest benefits as referred to in the Act governing general provisions and taxation procedures; and,
- s. Bank Indonesia surplus.

The profit that can be got from bitcoin is from sales or transfer bitcoin itself, bitcoin as a digital asset can be treated as property. The users of bitcoin will buy bitcoin when the exchange rate is low, and after that, they will sell their bitcoin after the exchange rate has been growing up. From the margin in the price of bitcoin, the users will get the profit that will increase their financial capability. This indicates that the profit that can be obtained from bitcoin trade is possible to be imposed with tax.

This is in line with the wishes from Director General of Tax, which stated that bitcoin must also include in Annual Tax Return (SPT).⁸⁶ In the interview with Katadata, Hestu Yoga Saksama Director of Counseling, Service and Public Relations, Directorate General of Tax Indonesia stated that “If there is a profit in selling/buying or investing in bitcoin, then it is income taxed (PPH). In accordance (system) self-assessment, the taxpayer reports the income in the annual tax return.”⁸⁷

Unfortunately, the wishes from the General Director of Tax is not followed with the proper regulation, which makes the taxation of bitcoin unable to be run properly. Lack of supervision makes the users of bitcoin unable to input their profit in bitcoin and can hide their profit in the bitcoin exchange trade website.

The Law No 36 of 2008 on Income Tax also regulate some things that cannot be imposed on income tax, those are:⁸⁸

- a. 1) Assistance or donations, including zakat paid to amil zakat bodies or amil zakat institutions established or authorized by the government which are received by recipients of zakat who are entitled or religious donations that are compulsory for followers of a recognized religion

⁸⁶ Desy Setyowati dan Martha Ruth Thertina, Kata Data, 2017, “Ditjen Pajak: Keuntungan Bitcoin Kena Pajak dan Dilaporkan di SPT”, taken from <https://katadata.co.id/berita/2017/12/06/ditjen-pajak-keuntungan-bitcoin-kena-pajak-dan-dilaporkan-di-spt> accessed on May 4th, 2019 at 10.34 AM

⁸⁷ *Ibid*

⁸⁸ Article 4 (3) the Law No 36 of 2008 on Income Tax

in Indonesia, which are accepted by religious institutions formed or authorized by the government and received by the recipient of the rightful donation, whose provisions are regulated by or based on Government Regulations.

2) Financial assets received by blood relatives in a straight line of one degree, religious bodies, educational bodies, social bodies including foundations, cooperatives, or individuals who run micro and small businesses, whose provisions are regulated by or based on the Minister of Finance Regulation.

b. insofar as there is no relationship with business, employment, ownership or control between the parties concerned:

- 1) Heritage;
- 2) Assets including cash deposits received by the agency as referred to in Article 2 paragraph (1) letter b instead of shares or as a substitute for capital participation;
- 3) Reimbursement or compensation in respect of work or services received or obtained in kindness and enjoyment from Taxpayers or the Government, except those given by non-taxpayers, taxpayers who are subject to final tax or taxpayers who use special calculation norms (deemed profit) as referred to in Article 15;

- 4) Payments from insurance companies to individuals in connection with health insurance, accident insurance, life insurance, dual-purpose insurance, and scholarship insurance;
- 5) Dividends or parts of profits received or obtained by limited liability companies as domestic taxpayers, cooperatives, state-owned enterprises, or regional-owned enterprises, from capital participation in business entities established and domiciled in Indonesia on the conditions:
 - a) Dividends derived from retained earnings reserves;
 - b) For limited liability companies, state-owned enterprises and regionally-owned enterprises that receive dividends, share ownership in bodies that provide dividends at least 25% (twenty-five percent) of the total paid-up capital.
- 6) Contributions received or obtained by the pension fund whose establishment has been approved by the Minister of Finance, whether paid by the employer or employee;
- 7) Income from capital invested by the pension fund as referred to in letter g, in specific fields as determined by the Decree of the Minister of Finance;
- 8) The portion of profit received or obtained by a member of a private company whose capital is not divided into shares, partnerships,

associations, firms, and partners, including the unit holders of collective investment contracts;

- 9) Income received or obtained by a venture capital company in the form of a share of profit from a business partner entity established and operating a business or activity in Indonesia, provided that the partner's business entity:
 - a) Is a micro, small, or medium company that runs activities in business sectors which are regulated by or based on the Minister of Finance Regulation;
 - b) its shares are not traded on stock exchanges in Indonesia;
- 10) Scholarships that meet specific requirements for which provisions are further regulated by or based on the Minister of Finance Regulation;
- 11) The remaining excess is received or obtained by a non-profit agency or institution engaged in the field of education and/or field of research and development, which has been registered with the institution in charge of it, reinvested in the form of facilities and infrastructure for educational activities and/or research and development, within a maximum of 4 (four) years since the acquisition of the remaining excess, the provisions of which are further regulated by or based on the Minister of Finance Regulation.

- 12) Charity or compensation paid by the Social Security Organizing Agency to individual Taxpayers, whose provisions are further regulated by or based on the Minister of Finance Regulation

In that regulation above, can be concluded that bitcoin is not included as one of those categories, so it is allowed to impose the income tax to the bitcoin profit. Income tax on bitcoin can increase tax revenue significantly because every user can profit up to 12 million every year⁸⁹

3. Possibility of Bitcoin Taxation from the Perspective of Value Added Tax

Value Added Tax or VAT is an indirect tax. VAT has played an essential role in increasing the financial capability of Indonesia. The VAT has become one of the significant tax sources of revenue in Indonesia.⁹⁰ The VAT in Indonesia has imposed on the national level, in 2017 and 2018 VAT has contributed to 41,69% and 39,83% of the Tax Revenue in Indonesia.⁹¹

In Indonesia, VAT has been regulated in the Law No 42 of 2009 on value-added tax on goods and services and sales tax on luxury goods. This law regulates the subjects of VAT, including entrepreneurship, institution,

⁸⁹ Danang Sugianto, Finance Detik, 2017, Investasi Bitcoin, Orang Ini Untung Rp 12 Juta Tiap Bulan, taken from <https://finance.detik.com/moneter/d-3634498/investasi-bitcoin-orang-ini-untung-rp-12-juta-tiap-bulan> accessed on May 4th, 2019 at 11.13 AM

⁹⁰ Heru Iswahyudi, 2018, "Where has the money gone?: The case of Value Added Tax revenue performance in Indonesia", *Munich Personal RePEc Archive*, p. 3

⁹¹ Agung Jatmiko, Online Pajak, 2019, Penerimaan Pajak: Porsi PPN dalam Penerimaan Pajak, taken from <https://www.online-pajak.com/penerimaan-pajak> accessed on June 3rd, 2019 at 02.24 AM

taxable employers, small businessman, buyer, recipient of services.⁹² Because VAT is an indirect tax, the imposing of tax on bitcoin will be carried on by Indodax, and Indodax will pay the tax from the consumer to the tax office.⁹³

From the object of tax, the Law No 42 of 2009 on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods stated that that objects that can be imposed with VAT are:⁹⁴

- a. Delivery of taxable goods in the customs area carried out by the entrepreneur;
- b. Import of taxable goods;
- c. Delivery of taxable services in the customs area are carried out by employers;
- d. Utilization of intangible taxable goods from outside the customs area within the customs Area;
- e. Utilization of taxable services from outside the customs area within the customs Area;
- f. Export of tangible taxable goods by taxable entrepreneurs;
- g. Export of intangible taxable goods by taxable entrepreneurs;

⁹² Article 1 the Law No 46 of 2009 on Value-Added Tax on Goods and Services and Sales Tax on Luxury Goods

⁹³ Vincent A. Mahler, 2018, "Indirect Taxes And Government In Equality Reduction: A Cross-National Analysis Of The Developed World, *Journal of Income Distribution*, p. 2

⁹⁴ Article 4(1) the Law No 46 of 2009 on Value-Added Tax on goods and services and sales tax on luxury goods

- h. Export of taxable services by taxable entrepreneurs.

Based on those article, bitcoin can be categorized as the delivery of taxable goods in the customs area. What is meant by the delivery of taxable goods are:⁹⁵

- a. Surrender of rights to taxable goods due to an agreement;
- b. Transfer of taxable goods due to a lease agreement and leasing agreement;
- c. Submission of taxable goods to an intermediary trader or through an auctioneer;
- d. Own use and free provision of taxable goods;
- e. Taxable goods in the form of inventories and assets which according to their original purpose are not for sale, which is remaining at the time of dissolution of the company;
- f. Delivery of taxable goods from the center to the branch or vice versa and delivery of taxable goods between branches;
- g. Submission of taxable goods by consignment;
- h. Surrender of taxable goods by a taxable person for VAT purposes in the context of a financing agreement carried out based on sharia principles, the delivery of which is directly deemed from a Taxable Entrepreneur to the party who needs Taxable Goods.

⁹⁵ Article 1A the Law No 46 of 2009 on Value-Added Tax on Goods and Services and Sales Tax on Luxury Goods

VAT law also stated some goods that cannot be imposed with VAT, those are:⁹⁶

- a. Mining products or drilling results which are taken directly from the source;
- b. Necessities that are needed by many people;
- c. Food and beverages served in hotels, restaurants, stalls, and the like, including food and beverages whether consumed locally or not, including food and beverages delivered by catering or catering businesses;
- d. Money, gold bars, and securities

In the perspective of VAT law, bitcoin can be imposed by VAT due to the fact that bitcoin trading is categorized as the surrender of right to taxable goods due to an agreement. In bitcoin, the agreements are a sale and purchase agreement. More than that, bitcoin is not included in goods that cannot be imposed with VAT, so is possible to be imposed with tax. The VAT can be imposed when a user of bitcoin buy bitcoin from another user, this transaction can thus be imposed with VAT.

⁹⁶ Article 4A (2) the Law No 46 of 2009 on Value-Added Tax on Goods and Services and Sales Tax on Luxury Goods

C. Future Regulation on the Bitcoin Taxation in Indonesia

To fully utilize the potential of bitcoin, Indonesia should have a specific regulation of bitcoin. Actually, with current law it is possible to impose tax on bitcoin but is very urgent to have specific regulation on bitcoin taxation because behind the enormous potential of bitcoin, it lays a great danger to the user who invest in bitcoin, to the company of bitcoin, even to the state, due to the possibility of tax evasion using bitcoin.

Law making process must be in accordance with the objectives of the law that has been stated by Gustav Radbruch. In the lawmaking process, Gustav stated that law must have 3 (three) elements, justice, legal certainty, and expediency.⁹⁷ Justice means that the law should treat people equally while legal certainty emphasizes law enforcement based on formal verification, meaning that the government must have a written regulation in order to take action on the people act, and the last element is that the law should give benefits for the all citizens. So, if Indonesia wants to make specific regulations regarding bitcoin, Indonesia must fulfill those 3 (three) elements. Justice, in which the element of justice in bitcoin taxation regulation means that the user of bitcoin is same with another citizen of Indonesia, so in imposing a tax on bitcoin, it must also be same with the other citizens, either in income tax or VAT. Legal certainty, in which in the element of legal certainty Indonesia must make clear on how bitcoin should

⁹⁷ Brian H. Bix, 2006, "Robert Alexy, Radbruch's Formula, and the Nature of Legal Theory", *Rechtstheorie* Vol 139, No 37, p. 142

be taxed and the essential aspects about the security of bitcoin, Indonesia must make sure that the transaction of bitcoin is safe and bitcoin cannot be used for criminal acts. The last element is expediency, in that the regulation must be useful for all aspects of Indonesia, including for the citizens, for companies, and for the state.

In order to make a regulation that fulfills the objective of the law, Indonesia must look at the other states that already deal with bitcoin earlier than Indonesia, such as:

1. Regulation of Bitcoin Taxation in the United State of America (USA)

In the USA, bitcoin is not directly categorized as a property that can be imposed with tax. At first, the USA believes that the Stamp Payment act of 1862 may be the right act to regulate bitcoin. The Stamp Payment Act was issued when the expansion caused the metal in low group coins to be more significant than the assumed worth of the coins themselves, making individuals collected the coins and making a shortage.⁹⁸ In request to make a change for clients without these coins, organizations secretly issued little divisions of monetary standards in notes or tokens.⁹⁹ Economists and politicians from the USA expected that these private monetary standards were adding to the expansion and authorized the Stamp Payments Act.¹⁰⁰

⁹⁸ Reuben Grinberg, 2012, "Bitcoin: An Innovative Alternative Digital Currency", *Hastings Science & Technology Law Journal*, vol. 4, no. 1, p. 183

⁹⁹ *Ibid*

¹⁰⁰ *Ibid*

After the use of bitcoin as an investment tool in the USA, USA through the Securities and Exchange Commission (SEC) under the Securities Act 1933 has an interest in the possibility of an investment scheme of bitcoin. Bitcoin could be viewed as a security or an investment, the same number of buyers of Bitcoin purchase the advanced cash to estimate on its esteem, instead of to utilize it for the buy of products and enterprises.¹⁰¹

However, the SEC has not classified the purchase of bitcoins as purchasing a security or venture contract. Instead, the office has sought after individuals for working Ponzi schemes¹⁰² and selling unregistered securities¹⁰³ including bitcoin, not for the straightforward buy of bitcoin itself. In both these activities, the SEC was not saying that the buy of a bitcoin on a trade considered a security or speculation contract, instead of that plots that included bitcoin in lieu of dollars were not absolved from the SEC's implementation expert.

After the obscurity that ends, finally, the USA defined bitcoin as property rather than currency. This happened when Internal Revenue Services (IRS) on March 25, 2014, issued a notice 2014-2021 that for the purpose of federal tax bitcoin will be treated as property and will apply general

¹⁰¹ Paul H. Farmer Jr., 2014, "Speculative Tech: The Bitcoin Legal Quagmire & the Need for Legal Innovation", 9 *Journal of Business and Technology Law*, vol. 9 no. 85, pp. 98–104

¹⁰² US Security and Exchange Commission, 2013, "SEC Charges Texas Man With Running Bitcoin-Denominated Ponzi Scheme", taken from <https://www.sec.gov/news/press-release/2013-132>

¹⁰³ US Security and Exchange Commission, 2014, "SEC Charges Bitcoin Entrepreneur With Offering Unregistered Securities", taken from <https://www.sec.gov/news/press-release/2014-111>

assessment and announcing rules that oversee property exchanges to those exchanges including virtual monetary standards.¹⁰⁴ This regulation of IRS's is contradicted with the first introduced of bitcoin as a currency. The IRS's regulation indicates that the inventor of bitcoin is treated as a stock investor, and ready to exploit lower capital increase charges, and certain tax benefits, inaccessible with common property.¹⁰⁵

In Notice 2014-2021, IRS classified some categorizes to defined taxation of bitcoin, they are:

a. Tax on Transaction with bitcoin.

With the characterization of digital currencies as property, various assets must be inspected to decide how to appropriately report exchanges including bitcoin on the tax return and other salary or exchange revealing structures. Those assets incorporate IRS Notice 2014-21 and Publications 525¹⁰⁶, 544¹⁰⁷, and 551.¹⁰⁸

The purchase a unit or partial unit of bitcoin does not lead to a reportable transaction. Because at the point of purchase bitcoin, the

¹⁰⁴ Internal Revenue Service, 2014, "IRS Virtual Currency Guidance: Virtual Currency is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply", accessed from <http://www.irs.gov/uac/Newsroom/IRS-Virtual-CurrencyGuidance>.

¹⁰⁵ Richard Rubin & Carter Dougherty, Bloomberg, 2014, "Bitcoin Is Property, Not Currency, In Tax System: IRS" taken from <http://www.bloomberg.com/news/2014-03-25/bitcoin-is-property-not-currency-in-taxsystem-irs-says.html>.

¹⁰⁶ IRS Publication 525 is about Taxable and Non Taxable Income, taken from <https://www.irs.gov/forms-pubs/about-publication-525>

¹⁰⁷ IRS Publication 544 is about Sales and Other Dispositions of Assets, <https://www.irs.gov/forms-pubs/about-publication-544>

¹⁰⁸ IRS Publication 551 is about Basis of Assets, taken from <https://www.irs.gov/forms-pubs/about-publication-551>

transaction not yet defined as “gross income” as stated in section 61 of the Internal Revenue Code.¹⁰⁹ Nevertheless, accepting bitcoin in return for items or benefits, or trading bitcoin in an exchange including the receipt of items or administrations, falls under the meaning of gross income.¹¹⁰

IRS Publication 525 on Taxable income and nontaxable income clears up when an exchange that does not include currency may occur at present outcome in assessable salary for at any rate one of the gatherings included.¹¹¹ Since bitcoin categorized as property, a trade involving bitcoin would be considered as a barter.¹¹²

b. Profit or Loss from bitcoin Transaction

As a tool of investment, there will be a profit or loss that may be received by the users of bitcoin. In the calculating profit or loss, the USA has no different method from other properties or asset.¹¹³ This regulation is stated in the article 6 of IRS Code, which stated that if the fair market

¹⁰⁹ Gross income is defined in the IRC as: (a) General definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Alimony and separate maintenance payments; (9) Annuities; (10) Income from life insurance and endowment contracts; (11) Pensions; (12) Income from discharge of indebtedness; (13) Distributive share of partnership gross income; (14) Income in respect of a decedent; and (15) Income from an interest in an estate or trust.

¹¹⁰ IRS Publication 525

¹¹¹ *Ibid*

¹¹² *Ibid* section 19

¹¹³ I.R.S. Notice 2014-21, Section 4 Article 7

value of property received in exchange for virtual currency exceeds the taxpayer's adjusted basis of the virtual currency, the taxpayer has a taxable gain. The taxpayer has a loss if the fair market value of the property received is less than the adjusted basis of the virtual currency.¹¹⁴

The profit or loss that is received by the taxpayer must be reported individually to the IRS, but the characteristic of profit or loss will depend on the purpose of the assets itself.¹¹⁵ If bitcoin is being held as a capital resource, the addition or misfortune upon attitude would be dealt with accordingly. But if bitcoin is not being held as a capital resource, the citizen would perceive a customary increase or misfortune on the disposition. When a citizen has an exchange where bitcoin is traded for something regardless of whether it is products, benefits, or once more into U.S. money that is a reportable exchange to the IRS for annual duty purposes.¹¹⁶

c. Valuing of bitcoin in the USA

Every transaction of bitcoin must be reported in the purpose of taxation, In the USA, the report must be made in US dollar because the legal currency is US dollar.¹¹⁷ Most of the transaction is usually easy to value, even its transaction involved high publicity traded stock, because

¹¹⁴ *Ibid* Article 6

¹¹⁵ *Ibid* Article 7

¹¹⁶ *Ibid*

¹¹⁷ IRS Notice 2014 – 2021 Section 4 Article 3

the stock exchange provides a guideline to calculate the value of the stock, but it is different with bitcoin, thus it may be hard to be valued.¹¹⁸

In the IRS notice 2014 – 2021, the value of bitcoin can be determined based on the value listed on the exchange rate of bitcoin.¹¹⁹ Based on this mechanism, the value of bitcoin can be determined with market supply and demand method.

Nonetheless, dissimilar to the financial exchange where the supply of a trade on an open market organization is exchanged on just one trade, bitcoin can be exchanged on a few trades site, at times many exchanges. Each bitcoin trade runs free of different trades as bitcoin is autonomous of the other exchanges. Valuation changes can be as much as 10 percent. Because of this difference, the IRS clarifies that any such valuation transformations ought to be done sensibly and reliably.¹²⁰

Valuing bitcoin is essential, the value of initial bitcoin and end of the transaction can be used to determine the profit or loss of taxpayer. The value of bitcoin can be used to determine how much the taxpayer should pay the tax on their bitcoin income.

¹¹⁸ *Ibid*

¹¹⁹ *Ibid* Article 5

¹²⁰ IRS Notice 2014 – 2021 Section 4 Article 5

From IRS Notice 2014–2021, it can be concluded that the USA in dealing with bitcoin taxation does not make specific regulation, but it generally applying the general tax on the bitcoin transaction. However, the USA in dealing bitcoin does not just let bitcoin with the dangers in it. Besides applying taxes, the USA also has some instruments that guarantee the security of using bitcoin. There are two instruments that support the taxation of bitcoin, they are:

a. Financial Crimes Enforcement Network Regulation.

The possibility of financial crimes led the USA to create the Financial Crimes Enforcement Network (FinCEN). FinCEN was established by The Department of Treasury of the USA and had a mission to safeguard the state from illicit use of money and combat money laundering, as well as advance national security through the gathering, examination, and spread of budgetary knowledge and essential utilization of money related experts.¹²¹

Due to the potential use of bitcoin in money laundering, FinCEN on March 18, 2013 issued a guidance about the Application of FinCEN's Regulations to Person, Administrating, Exchanging, or Using Virtual Currencies.¹²² In the FinCEN's guidance, bitcoin is treated as a medium

¹²¹ FINCEN, "Mission" taken from <https://www.fincen.gov/about/mission> accessed on May 6th, 2019 at 06.13 PM

¹²² Fin-2013-G001 on Application Of Fincen's Regulations To Persons Administering, Exchanging, Or Using Virtual Currencies

to exchange that works like currency in some conditions but does not have all the attributes like the real currency. The instance is that bitcoin is not accepted as a legal tender in any jurisdiction.¹²³ FinCEN presumed that bitcoin has an identical incentive in genuine cash or can go about as a substitute for actual money.¹²⁴ FinCEN discovered that virtual monetary forms are liable to the guideline if that virtual cash has a substitutive reason for encouraging trading products and services.¹²⁵

As a bureau housed within the USA Department of Treasury, FinCEN has obligations to enforce the Bank Secrecy Act (BSA) on the complete anti-money laundering and counter-terrorism financing. FinCEN later corrected the decision to exclude Bitcoin miners and organizations obtaining and selling virtual money as a venture solely for the organization's profit by the BSA.¹²⁶ In FinCEN regulation FIN-2014-R011, FinCEN determines that the organization that handles the trading of bitcoin must be a money service business that would facilitate the bitcoin users to convert the bitcoin in real currency and vice versa.¹²⁷ This regulation would make the transaction of bitcoin not directly user

¹²³ *Ibid* Article 1

¹²⁴ *ibid*

¹²⁵ Ralph E. McKinney, Jr. et al., 2015, "The Evolution of Financial Instruments and the Legal Protection against Counterfeiting: A Look at Coin, Paper, and Virtual Currencies", *Journal of Law, Technology, & Policy*, p. 273

¹²⁶ FinCEN, 2014, "FinCEN Publishes Two Rulings on Virtual Currency Miners and Investors", taken from http://www.fincen.gov/news_room/nr/pdf/20140130.pdf.

¹²⁷ FIN-2014-R011 on Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform article 4

to user or peer to peer, but the transaction will occur between three parties, namely the user, another user, and bitcoin trading company. This condition will make the collection of data on the transaction of bitcoin easier and will prevent the potential of money laundering and financing terrorism. This data will also be useful for IRS in enforcing the income tax on bitcoin because as a money services business, bitcoin trading company will work under BSA they will have an obligation to give the data to the BSA and forwarded to IRS on the purpose of tax.

b. The Federal Bureau of Investigation.

As a virtual currency, bitcoin can be used to purchase something, and this usually happens in the deep web, such as Silk Road, a website that operates using bitcoin and trades illegal things such as drugs. Fortunately, The Federal Bureau of Investigation (FBI) has successfully shut down Silk Road and arrested the mastermind behind Silk Road.¹²⁸ The work of FBI is vital to handle these kinds of cases. The FBI is useful for supporting the legalization of bitcoin in the USA, as without the FBI the federal government of the USA cannot deal with illegal use of bitcoin. If the USA just ignored the illegal use of bitcoin, it will harm the financial stability of the USA because in the case of Silk Road itself, the USA has seized 1.2 billion US Dollar.

¹²⁸ David Segal, *Loc. Cit*

FBI will ensure the security of bitcoin in the USA, and this will make the user of bitcoin feel safe. FBI will also prevent the potential illicit use of bitcoin. This is the consequences that must be taken by the USA government due to the legalization of bitcoin in the purpose of taxation.

2. Regulation of Bitcoin Taxation in Australia.

Even though bitcoin was released in 2009, the government of Australia just paid attention of bitcoin in 2015. Even though the Australian government is a little late, they pay attention to the fundamental aspects in dealing with bitcoin. In August 2015, the Australian Parliament's Senate Economic References Committee issued a report titled "*Digital Currency: Game Changing or Bit Player.*"¹²⁹ This report is the beginning of the awareness of the Australian Government towards bitcoin. The report starts with the discussion on the risk and the opportunities of bitcoin. The Committee discusses that digital currencies such as bitcoin may have a better mechanism in transaction due to lower transaction cost and the speed of transaction with digital currencies.¹³⁰ The committee also noted that bitcoin might cause noncompliance with taxation, potential risks for financial stability, and risk to

¹²⁹ Senate Economic References Committee, "Digital Currency – Game Change Or Bit Player" taken from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Digital_currency/~media/Committees/economics_ctte/Digital_currency/report.pdf

¹³⁰ *Ibid* 15–16.

the consumer due to the original price, the pseudonymous of bitcoin and the potential to be used in the criminal activities.¹³¹

Besides the report issued by the committee, the Australian Tax Office (ATO) has finalized several public regulations on the taxation on bitcoin in December 2014. These communicated the view that executing with bitcoin was similar to a trade course of action. ATO secured different potential assessment ramifications of such exchanges, including capital gains tax, goods, and service tax (GST), income tax, and fringe benefits tax.¹³² The report of the committee also come along with the discussion on financial regulation and consumer protection. With respect to financial regulation and consumer protection matters emerging from advanced monetary standards, the report expresses that the Reserve Bank of Australia (RBA) “considers digital currencies such as bitcoin are currently in limited use and do not yet raise any significant concerns with respect to competition, efficiency or risk to the financial system, and are not currently regulated by the RBA or subject to regulatory oversight.”¹³³ Furthermore, RBA stated that it “would evaluate whether the current regulatory framework system could suit elective mechanisms of exchange of bitcoin.”¹³⁴

¹³¹ *Ibid* 20 - 25.

¹³² *Ibid* 5-7

¹³³ *Ibid* 8

¹³⁴ *Ibid*

The report also brings the view from Australian Securities and Investment Commission (ASIC) that digital currency such as bitcoin cannot be defined as a financial product under the Corporation Act 2001 or the Australian Securities and Investment Commission Act 2001. The Committee noticed that ASIC's way to deal with digital monetary forms had been portrayed in a November 2014 report by its oversight board, the Parliamentary Joint Committee on Corporations and Financial Services.¹³⁵ That report expressed that ASIC was observing advancements, taking into account how enactment it directs may apply, and counseling other Australian controllers (counting budgetary controllers and law requirement organizations).

The Committee communicated that despite the fact that ASIC does not believe that bitcoin can be a form of currency for the reasons for the ASIC Act or Corporations Act, "the general purchaser security arrangements of the Competition and Consumer Act 2010 apply to computerized currencies."¹³⁶ This Act is directed by the Australian Competition and Consumer Commission (ACCC), which the Committee noted does exclude alerts about advanced monetary forms without anyone else's site managing shopper assurance. The report then talked about whether advanced cash ought to be

¹³⁵ Parliamentary Joint Committee on Corporations and Financial Services, 2014, "Statutory Oversight of the Australian Securities and Investments Commission: The Takeovers Panel And The Corporations Legislation" pp. 24–26 taken from https://www.aph.gov.au/~media/Committees/Senate/committee/corporations_ctte/asic202014/rep0144/report.pdf?la=en.

¹³⁶ Senate Economic References Committee, *Op.Cit* 10

treated as a financial product item for the motivations behind the Corporations Act and ASIC Act, just as how computerized cash installments fit inside the present installments framework guidelines.¹³⁷

ASIC exhorted the Committee that broadening the meaning of financial product to incorporate with bitcoin "would not be directed as the decentralized structure implies that the typical commitments on item guarantors can't be imposed."¹³⁸ what's more, various industry members, including abroad elements, might be required to get important Australian licenses as they would give budgetary items, which may make challenges computerized money organizations and to ASIC. ASIC noted that some advanced cash organizations offer offices, for example, non-money installment offices, that may as of now be viewed as budgetary products.¹³⁹

With the respect to law enforcement approaches to digital currencies, the committee's report also provide notice on Anti-Money Laundering and counter-terrorism financing act 2006 (AML/CTF Act) in spite of the fact that that Act recognizes "e-currency," which is characterized as being sponsored, either legitimately or in a roundabout way, by valuable metal, bullion, or a thing of a thoughtful recommended by the AML/CTF Rules.¹⁴⁰ The report stated that no regulation had been issued that would bring e-currency

¹³⁷ *Ibid* 37

¹³⁸ *Ibid* 47

¹³⁹ *Ibid* 45

¹⁴⁰ AML&CTF Act Article 5

standards under the meaning of e-currency in the AML/CTF Act. Because of that, the committee's report suggested that the government should broaden the meaning of e-currency in the AML/CTF Act so that bitcoin can be defined as e-currency under the AML/CTF Act.

After the report was issued by the committee, finally the government made a response on May 26, 2016.¹⁴¹ Before this, in a March 2016 articulation on financial innovation, Backing Australian FinTech, the legislature had focused on improving the GST treatment of advanced monetary standards to address the two-fold tax assessment issue.¹⁴² The administration likewise noticed the suggestion with respect to facilitate examination of the expense treatment of computerized monetary standards, expressing that the ATO was proceeding to screen developments.

After the response had been made by the government, the government of Australia finally has the regulatory framework on bitcoin taxation. As the ATO finalized various rulings on the application of tax laws to bitcoins, it published a comprehensive document on the tax treatment of bitcoin subsequently.¹⁴³

¹⁴¹ Australian Government Response to the Senate Economic References Committee Report: Digital Currency – Game Changer or Bit Playe, 2016, taken from

<https://www.aph.gov.au/DocumentStore.ashx?id=4f9bcf03-5867-449c85ad-b8dd01d7459c>

¹⁴² Australian Government, Backing Australian Fintech, 2016 p. 22 & 27 taken from

<http://fintech.treasury.gov.au/files/2016/03/Fintech-March-2016-v3.pdf>

¹⁴³ Australian Taxation Office, 2017, "Tax Treatment of Crypto-Currencies in Australia – Specifically Bitcoin" taken from <https://www.ato.gov.au/General/Gen/Tax-treatment-of-crypto-currencies-in-Australia---specifically-bitcoin/>

According to the regulatory framework published by ATO, a transaction with bitcoin is similar to a barter arrangement, with similar tax consequences. This is because in the perspective of ATO, such monetary forms are neither cash nor a foreign currency.¹⁴⁴ Individuals who take part in bitcoin exchanges are instructed to keep records with respect to the date of exchanges, the sum in Australian dollars (which can be taken from a legitimate online trade), what the exchange was for, and who was the other party (regardless of whether it's merely their bitcoin address).

Likewise, bitcoin might be viewed as resources for capital gains tax purpose, with the direction expressing: Where you use bitcoin to buy merchandise or administrations for individual use or utilization, any capital increase or misfortune from transfer of the bitcoin will be ignored (as an individual use resource) given the expense of the bitcoin is \$10,000 or less.¹⁴⁵ The ATO direction expresses that the Australian dollar estimation of bitcoins (being the equitable esteem) had for products and enterprises must be recorded as a component of typical salary, similarly as accepting non-money thought under a bargain transaction.¹⁴⁶ A business that buys things utilizing bitcoin is "qualified for reasoning dependent on the safe distance estimation of the thing acquired. GST is likewise payable and is determined an available estimation

¹⁴⁴ *Ibid*

¹⁴⁵ *Ibid*

¹⁴⁶ *Ibid*

of the merchandise or administrations, which is normally equivalent to the precise estimation of the bitcoin at the season of the transaction.¹⁴⁷

At the point when a business discards bitcoin, there might be capital gains tax consequences. Besides, if a business offers bitcoin to a worker, this might be considered either an incidental advantage (if there is a substantial compensation penance course of action to get the bitcoin) or average pay and wages. If a substance is in the matter of mining bitcoin, or purchasing and selling bitcoin as a trade administration, any pay determined must be incorporated into its assessable pay, and any costs acquired might be deducted.¹⁴⁸

The ATO has likewise distributed separate direction on the utilization of GST as for exchanges including bitcoin.¹⁴⁹ A past decision in regards to GST was pulled back in December 2017 after the entry of corrections to A New Tax System (Goods and Service Tax) Act 1999 and related guidelines, which apply to exchanges after July 1, 2017.¹⁵⁰ Under the revisions, deals and buys of advanced money are not expose to GST. If an individual is carrying on a business in connection to advanced cash or tolerating electronic money as an installment as a component of a business, at that point, there are GST

¹⁴⁷ *Ibid*

¹⁴⁸ *Ibid*

¹⁴⁹ Australian Taxation Office, 2017, “GST and Digital Currency” taken from <https://www.ato.gov.au/business/gst/in-detail/your-industry/financial-servicesand-insurance/gst-and-digital-currency/>

¹⁵⁰ Australian Taxation Office, 2014, “Goods and Services Tax Ruling: GSTR 2014/W”, taken from <https://www.ato.gov.au/law/view/document?DocID=\GST/GSTR20143/NAT/ATO/00001>

consequences. The progressions were gone for evacuating "twofold tax assessment" of bitcoin under the GST framework, as prescribed by the Senate Committee.¹⁵¹

The ATO also obligated for the bitcoin users to make the report of their activity regarding bitcoin, and the report must consist:¹⁵²

- a. The date of the transactions
- b. The value of the bitcoin in Australian dollars at the time of the transaction (which can be taken from a reputable online exchange)
- c. What the transaction was for and who the other party was (even if it is just their bitcoin address).

The sorts of records which should be kept by the users of bitcoin include:

- a. Receipts of purchase or transfer of bitcoin
- b. Exchange records
- c. Records of agent, accountant, and legal costs
- d. Digital wallet records and keys
- e. Software costs related to managing tax affairs

In the matter of tax compliance, the ATO still cannot decide by itself.

From the news reports in January 2018, when the ATO is counseling with

¹⁵¹ Australian Taxation Office, 2017, "GST: Removing the Double Taxation of Digital Currency" taken from <https://www.ato.gov.au/General/Newlegislation/In-detail/Indirect-taxes/GST/GST---removing-the-double-taxation-of-digital-currency/>

¹⁵² Tax Treatment of Crypto-Currencies in Australia, *Loc.cit*

assessment specialists to enable it to recognize and follow bitcoin exchanges and guarantee all expenses are being paid.¹⁵³ This counseling is to make sure that the guidance provided by ATO can increase the tax compliance by the taxpayer. Besides the tax compliance, ATO also notices on the consumer protection, ATO is guaranteed to replace the bitcoin if the bitcoin is proven to be lost due to hacking or lost access to the wallet of bitcoin, but with some evidence that must be provided by the users.¹⁵⁴ Actually, the regulation on bitcoin taxation in Australia has not been finished, the government of Australia has the intention to finish the regulation with the existing regulatory framework.

3. Future of bitcoin taxation in Indonesia

The potential of bitcoin taxation in Indonesia is very promising because of the exchange rate and the total users of bitcoin in Indonesia. The absence of specific law on taxation of bitcoin will make the potential of bitcoin wasted away. So this is very importance to amend the law regarding taxation on bitcoin.

After looking at the policy on bitcoin taxation from the USA and Australia, there are similarities and differences in how both states deal with the taxation of bitcoin. In the USA to imposing taxation on bitcoin they do not

¹⁵³ Duncan Hughes, 2018, "ATO Creates Specialist Task Force to Tackle Cryptocurrency Tax Evasion", taken from <http://www.afr.com/news/policy/tax/ato-creates-specialist-task-force-to-tackle-cryptocurrency-tax-evasion-20180109-h0fyaz> accessed on May 8th, 2019 at 08.12 AM

¹⁵⁴ Tax Treatment of Crypto-Currencies in Australia, *Loc.cit*

make a new specific regulation on bitcoin taxation, they just directly applied the general principle of taxation on bitcoin, but the imposition of tax in bitcoin is accompanied with the guidance that created by IRS namely notice 2014 – 2021. This guidance recognize bitcoin as property for the purpose of federal tax, this recognition will make the taxation on bitcoin possible. This guide also defined what activities of bitcoin can be imposed with tax. Besides the guidance on bitcoin taxation, the USA also have regulations on how to prevent the dark side of bitcoin, they come with FinCEN guidance to combat money laundering and terrorism fund of bitcoin, and they also have FBI in order to investigate the illicit use of bitcoin in cyberspace.

Different from the USA, Australia does not directly apply the general principle of tax towards the activity of bitcoin, but Australia published a regulatory framework on the tax imposition on bitcoin. Australia imposed two kinds of tax which are separately regulated (Income tax and VAT), even though the codification on bitcoin taxation has been finished yet, the taxation on bitcoin in Australia has been applied. Unfortunately, the government of Australia does not have supporting components in taxation of bitcoin like what the USA had. Actually, ASIC had stated their concern on the illicit use of bitcoin, but the government of Australia had not yet provided the related regulations.

From both states it can be learned that the perspective of both states can be applied in Indonesia, but what has been regulated in both states cannot

directly be applied in Indonesia. There must be a modification made before the law on bitcoin taxation is created in Indonesia. As the state that follows the codification concept, it is better if Indonesia has specific regulation rather than separated guidance like the USA. It is better if Indonesia has specific regulation, and the regulation must cover both the income tax and VAT because the USA and Australia also imposed an income tax and VAT on bitcoin activity. With regard to the rate that should be imposed toward bitcoin, it can follow the Law No 36 of 2008 and the Law No 42 of 2009.

The most important things that must exist in the regulation on bitcoin taxation is consumer protection. The consumer protection is already applied by ATO in Australia. The consumer protection in Australia covers the loss of bitcoin due to hacked or loss of access in the wallet of bitcoin. These things should be regulated in Indonesia in the vaulting of bitcoin and can be done through the Indonesian Deposit Insurance Corporation (LPS). To regulate the protection of the consumer of bitcoin, Indonesia must make sure that the bitcoin wallet must be registered and the company is acknowledged by Babbpebti as bitcoin Exchange Company.

In the regulation of bitcoin taxation, Indonesia should regulate the obligation to record the transaction of bitcoin like what Australian did. The record of bitcoin transaction is vital to make sure the tax compliance of bitcoin users in Indonesia is enough, but the record should not be recorded by the users only, like in Australia, but the record must also be made by bitcoin

trading company, as this measure are necessary to prevent the fake report from the users of bitcoin in Indonesia.

In addition to the regulation on bitcoin taxation in Indonesia, the regulation should create a new state organ which specialized in dealing with potential illicit use of bitcoin in cyberspace like what the USA has with the FBI. This agency will prevent the use of bitcoin in dark web, terrorism funding and help the tax officer in upholding the tax compliance and prevent tax evasion.

If bitcoin taxation in Indonesia can be regulated in such a way, it will make the tax potential of bitcoin significantly utilized and the potential crime of bitcoin reduced significantly. The regulation on bitcoin should be issued as soon as possible since bitcoin in Indonesia develops faster every day.