

**BITCOIN TAXATION IN INDONESIA**

**PUBLICATION MANUSCRIPT**



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# BITCOIN TAXATION IN INDONESIA

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## ABSTRACT

Indonesia only achieved 79,82% tax revenue from what was targeted in the 2018 State Budget. Bitcoin can be used as a new source of tax, but unfortunately, the law governing bitcoin taxation still does not exist. There are two issues discussed in this research, first is the urgency and the possibility of bitcoin taxation in Indonesia, and second is how the law should regulate imposition of the tax on the ownership of bitcoin. The issues are solved using normative legal research through library research. The result of the discussion shows the following findings: first, bitcoin can be used in online black market, have threat to the data security, and it can be used in tax evasion. So, it is very urgent to make regulation on the taxation of bitcoin. Second, Indonesia should regulate the taxation of bitcoin with some addition on the prevention of illicit use of bitcoin, consumer protection, and obligation to make report and supervision on the activity of bitcoin. So, the best things that Indonesia can do is not only to create the regulation but also to make a cooperation with the registered bitcoin company and ban other illegal bitcoin sites.

**Key Words:** *bitcoin, taxation, tax evasion.*

## I. Introduction

In 2018 Indonesia targets to obtain tax revenues of 1,424 trillion Rupiah, but unfortunately, Indonesia only achieves 1.136,66 trillion Rupiah or 79,82% from the goal that has been stated in the State Budget.<sup>1</sup> It means that tax revenue in Indonesia is

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<sup>1</sup> Hendra Kusuma, Detik Finance, 2019, "Penerimaan Pajak 2018 Masih Kurang" taken from <https://finance.detik.com/berita-ekonomi-bisnis/d-4368099/penerimaan-pajak-2018-masih-kurang> accessed on January 3<sup>rd</sup>, 2019 at 08.21 AM.

categorized as a shortfall. Because the technological advancement, the object of tax is more variable, there are so many things that can be classified as a new object of tax, one of them is bitcoin.

Bitcoin is an online correspondence convention that encourages the utilization of virtual money, including electronic installments.<sup>2</sup> Bitcoin exists entirely as lines of computer code.<sup>3</sup> Unlike the Rupiah, bitcoin is not backed by the government.<sup>4</sup> The value of bitcoin has vacillated drastically through the years, numerous clients buy bitcoins for speculative purposes.<sup>5</sup> On the first release in 2009, the value of a single bitcoin was only 1.300 Rupiah, but in 2013 its value has dramatically increased from 1.300 Rupiah to 15.8 million Rupiah, in 2018 its value reached 385 million Rupiah, while in May 2019 its value is 80 million Rupiah, and now the value of one bitcoin is around 171 million Rupiah<sup>6</sup>, since the value of bitcoin is growing drastically, it makes the users of bitcoin also increase dramatically. According to CEO of bitcoin Indonesia, Oscar Darmawan, the active user of bitcoin in Indonesia reaches 1,1 million users<sup>7</sup>,

On the other hand, Central Bank of the Republic of Indonesia (BI) has banned the use of bitcoin in Indonesia accordingly with the Law No 7 of 2011 on Currency that stated 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 other financial transactions carried out in the territory of the Republic of

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<sup>2</sup> Rainer Böhme et al, 2015, "Bitcoin: Economics, Technology, and Governance." *The Journal of Economic Perspectives*, vol. 29 no. 2, p. 213

<sup>3</sup> Nikolei M. Kaplanov, 2012, "Nerdy Money: Bitcoin, the Private Digital Currency, and the Case Against Its Regulation", *Loyola Consumer Law Review*, V.25, p. 116.

<sup>4</sup> Misha Tsukerman, "The Block is Hot: A Survey of the State of Bitcoin Regulation and Suggestions for the Future" *Berkeley Technology Law Journal*, Vol. 30, No. 4, Annual Review, 2015, p. 1127

<sup>5</sup> Craig K. Elwell et al, 2014, "Bitcoin: Questions, Answers, and Analysis of Legal Issues", *Congressional Research Service*, p. 1

<sup>6</sup> Exchange rate of bitcoin in May 5, 2019

<sup>7</sup> Sylke Febrina Laucereno, detikFinance, 2018, "Transaksi Bitcoin di Indonesia Tembus 1T/Hari" taken from <https://finance.detik.com/moneter/d-3895202/transaksi-bitcoin-di-indonesia-tembus-rp-1-thari> accessed on March 6th, 2019 at 08.10 PM

Indonesia must use Rupiah.<sup>8</sup> It is meant that the only legal currency that can be used in Indonesia is Rupiah, and every use of bitcoin in Indonesia is illegal.

The banning of bitcoin in Indonesia because BI assumes that bitcoin is a virtual currency so is not allowed to be used in Indonesia. If we compared between exchange-traded of bitcoin and total transaction volume in some bitcoin network, we can conclude that most users of bitcoin treat their bitcoin as an investment rather than a tool of payment.<sup>9</sup> As a digital asset, of course, BI Indonesia cannot ban the existence of bitcoin, so Indonesian people are still allowed to have bitcoin.

Due to the fact that bitcoin in Indonesia is not banned by the BI, the transaction of bitcoin in Indonesia can reach 1 Trillion Rupiah every day<sup>10</sup>. It is very potential to be an object of tax to increase the tax revenue in Indonesia.

Although it seems to be full of potential, it is not easy to impose tax on the ownership of bitcoin in Indonesia. Indonesia does not have specific regulation regarding tax of bitcoin, Indonesia only has 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 tax on luxury goods. According to the income tax regulation, the object of tax is income or every additional economic capability received or obtained by taxpayers, both from Indonesia and from outside Indonesia, which can be used for consumption or to increase the taxpayer's wealth in question, in whatever name and form.<sup>11</sup>

Although bitcoin has already met the requirements to be the object of tax, those regulation is not sufficient to impose a tax on the ownership of bitcoin because of some reasons, namely: First, because bitcoin is only a virtual asset or computer program.<sup>12</sup>

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<sup>8</sup>Law No 7 of 2011 on Currency

<sup>9</sup> Rainer Böhme, et al, *Loc.cit.*

<sup>10</sup> Sylke Febrina Laucereno, *Loc.cit.*

<sup>11</sup> Article 4 Law No 36 of 2008 on Tax Income

<sup>12</sup> Nikolei M. Kaplanov, *Loc.cit.*

Bitcoin can be held on online wallets, not on particular jurisdiction and not an object of taxation at all.<sup>13</sup> Second, the users of bitcoin are pseudonymous, and they can have bitcoin wallets as much as they want, conceivably without giving any recognizing data.<sup>14</sup> Those things make it easy enough for the user of bitcoin to avoid tax. Even more, Indonesia uses the self-assessment system in tax.

To catch up on the development of technology especially bitcoin, 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 tax on luxury goods should change, since it is not enough to face challenges of the digitalization era. The phenomenon of bitcoin should be utilized as well as possible, and the potential of tax avoidance in bitcoin should be reduced by providing better regulation on taxation of bitcoin. Therefore the author will discuss the tax imposition on the ownership of bitcoin in Indonesia. In this study author focus more on the urgency to regulate bitcoin taxation, the possibility of bitcoin taxation and the author will also explain how bitcoin taxation should be regulated.

## **II. Statement of Problem**

- A. How is the urgency of bitcoin taxation in Indonesia?
- B. How should the law regulate on the tax imposition on the ownership of bitcoin in Indonesia?

## **III. Research Method**

The research will be conducted normative legal research<sup>15</sup> primarily related to the issue of tax imposition on the ownership of bitcoin in Indonesia. Normative legal research is often called as legal studies in the books. The research uses statute approach and case

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<sup>13</sup> Omri Y. Marian, 2013, "Are Cryptocurrencies Super Tax Havens?", *Michigan Law Review First Impressions*, vol. 112, pp. 38-39.

<sup>14</sup> *Ibid*

<sup>15</sup> Soerjono Soekanto & Sri Mamudji, 2007, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta, Rajawali, p.12.

approach. The statute approach is conducted by highlighting some regulations that related to the issues while the case approach is conducted by reviewing the case that related to the issues.<sup>16</sup>

#### **IV. Finding and Analysis**

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

Bitcoin is not a new thing in Indonesia, bitcoin has been existing in Indonesia since 2009, but unfortunately, Indonesia has no clear regulations regarding the status of bitcoin itself. As the state of law,<sup>17</sup> all actions taken by the government must be based on the existing law.<sup>18</sup> Without the law that covers regarding bitcoin, the government of Indonesia cannot utilize the potential of bitcoin as the object of tax.

The value of single bitcoin is 80 million Rupiah and the transaction of bitcoin in Indonesia can reach 1 Trillion Rupiah every day.<sup>19</sup> It indicate that bitcoin taxation is very potential. If the current law applied on the bitcoin activity right now, Indonesia might get 100 Million every day from only value-added tax<sup>20</sup> not yet from income tax. It can fulfill the target of tax revenue quickly, but unfortunately, current legislation is not enough to face this challenge because in the significant potential of bitcoin hides a big threat.<sup>21</sup>

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 about bitcoin, some threats can arise due to the existence of bitcoin in Indonesia. Those threats are:

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<sup>16</sup> Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, p. 24.

<sup>17</sup> Article 1 Paragraph 3 1945 Constitution of Republic Indonesia

<sup>18</sup> Bambang Satriya, 2016, "Membangun Negara Hukum di Era Pemerintahan Presiden Joko Widodo", *Jurnal Panorama Hukum*, vol. 1 no. 2, p 45

<sup>19</sup> Sylke Febrina Laucereno, *Loc.cit.*

<sup>20</sup> Based on value-added tax rate in Indonesia

<sup>21</sup> 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



## 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)<sup>22</sup> black market website in task from February 2011 to October 2013<sup>23</sup>. Through the anonymizing system TOR<sup>24</sup>, 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).<sup>25</sup> 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 accessible for buy with installment utilizing other administration including Paypal.<sup>26</sup>

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.<sup>27</sup> 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.

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<sup>22</sup> Michael K. Bergman, 2011, "The Deep Web: Surfacing Hidden Value", *Journal of Electronic Publishing*, no. 7, p. 2.

<sup>23</sup> Brito, Jerry & Castillo, 2013, "Bitcoin: A Primer for Policymakers", *Mercatus Center Publications*, p. 22

<sup>24</sup> 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.

<sup>25</sup> Rainer Böhme, et al, *Op.cit* p. 222

<sup>26</sup> 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

<sup>27</sup> 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

On October 1, 2013, Federal Bureau of Investigation ("FBI") specialists and government investigators in New York caught the Silk Road's driving force Ross Ulbricht, otherwise called the Dread Pirate Roberts, in a San Francisco library with his workstation open.<sup>28</sup> 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, most successfully replace of Silk Road.<sup>29</sup> Like Silk Road, business in Agora also conducted in bitcoin and Agora not only sales drugs but also semi-auto firearms.<sup>30</sup> 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 can be used to in criminal things on the online black market like Silk Road and Agora rather than utilized as an object of tax. Although such online black market website will be shut down by an official agent, kind of that website 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 hacker.<sup>31</sup> Digital security can be defined as privacy. The concept of privacy has developed in recent year.

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<sup>28</sup> 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 20<sup>th</sup>, 2019 at 17.13 PM

<sup>29</sup> 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 1<sup>st</sup>, 2019 at 07.01 AM

<sup>30</sup> *ibid*

<sup>31</sup> Rajesh Kumar Goutam, 2015, "Importance of Cyber Security", *International Journal of Computer Applications*, v. 111, no. 7, p. 14

In the present day, society wants security, yet in the meantime, we readily share individual data to get administrations.<sup>32</sup>

Digital security is including the primary concern of bitcoin users, bitcoin clients may experience having their bitcoins stolen by programmers because of lacking security by bitcoin trades 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 fight off programmers that bigger and increasingly settled establishments.<sup>33</sup>

Not only the bitcoin that 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 their self when doing bitcoin transaction, the hacker can use a little effort with sophisticated technique to de-anonymize their privacy.<sup>34</sup>

Those case ever happened on 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.<sup>35</sup> On February 25, 2014, Mt. Gox failed after programmers stole around 850,000 Bitcoins.<sup>36</sup> Although Mt. Gox was recovered 200,000 of the stolen Bitcoins, its still significant amount of bitcoin

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<sup>32</sup> 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

<sup>33</sup> Misha Tsukerman, *Op.Cit* p 1150

<sup>34</sup> Joshua Baron et all, 2015, *National Security Implications of Virtual Currency*, Santa Monica, RAND Corporation, p. 43

<sup>35</sup> 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

<sup>36</sup> 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

was 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 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 propose that tax evader who have customarily sidestepped expenses through seaward ledgers in tax-haven jurisdiction, will instead utilize cryptocurrencies to encourage their avoidance.<sup>37</sup> The first factor is the increasing well-known of bitcoin that function with their free-floating exchanges. The second, many governments favored anti-tax evasion system has changed from focusing on tax havens that host financial intermediaries to the financial intermediaries themselves.<sup>38</sup>

Bitcoin possesses some advantages to a traditional tax haven. The first bitcoin is saved in 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.<sup>39</sup> Second, the coin wallets are pseudonymous, and the users can have as many wallets as they want, without giving legit personal identity.<sup>40</sup> This is possible due to the transfer characteristic of bitcoin. The transaction of bitcoin does not involve the third party, such as PayPal that will record every activity of

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<sup>37</sup> Omri Y. Marian, 2013, "Are Cryptocurrencies Super Tax Havens?", *Michigan Law Review First Impressions*, vol. 112, pp. 38-39

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid* 41

<sup>40</sup> *Ibid*

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.<sup>41</sup> 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.<sup>42</sup>

Those advantages for traditional tax haven is risk for Indonesia, because those advantages can make the evasion of tax easier rather than 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. Future Regulation on the Bitcoin Taxation in Indonesia

In order to make a regulation that fulfills the objective of the law, Indonesia must look 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)

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 assessment and announcing rules that oversee property exchanges to those exchanges including virtual monetary standards.<sup>43</sup> This regulation of IRS's is contradicted with the first introduced of bitcoin as a currency. The IRS's

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<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid* 42

<sup>43</sup> 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>.

regulation indicates that the inventor of bitcoin is treated as a stock investor, and ready to exploit lower capital increases charges, and certain tax benefits, inaccessible with common property.<sup>44</sup> In the notice defined that 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 525<sup>45</sup>, 544<sup>46</sup>, and 551.<sup>47</sup>

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.<sup>48</sup> Since bitcoin categorized as property, a trade involving bitcoin would be considered as barter.

As a tool of Investment, there will be a profit or loss that may be got by the users of bitcoin. In the calculating profit or loss, the USA has no different method from other property or asset.<sup>49</sup> This regulation is stated in the article 6 of IRS Code, which stated that if the fair market 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.<sup>50</sup>

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<sup>44</sup> 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>.

<sup>45</sup> IRS Publication 525 is about Taxable and Non Taxable Income, taken from <https://www.irs.gov/forms-pubs/about-publication-525>

<sup>46</sup> IRS Publication 544 is about Sales and Other Dispositions of Assets, <https://www.irs.gov/forms-pubs/about-publication-544>

<sup>47</sup> IRS Publication 551 is about Basis of Assets, taken from <https://www.irs.gov/forms-pubs/about-publication-551>

<sup>48</sup> *Ibid*

<sup>49</sup> I.R.S. Notice 2014-21, Section 4 Article 7

<sup>50</sup> *Ibid* Article 6

Beside the notice, the USA also have 2 supporting instruments in imposing tax on bitcoin. First is FinCEN, Due to the potential use of bitcoin in money laundering, FinCEN on March 18, 2013 issued guidance about Application of FinCEN's Regulations to Person, Administrating, Exchanging, or Using Virtual Currencies.<sup>51</sup> In the FinCEN's guidance bitcoin is treated as a medium to exchange that works like currency in some conditions but does not have all the attributes like the real currency. Such as bitcoin are not accepted as legal tender in any jurisdiction.<sup>52</sup> FinCEN presumed that bitcoin has an identical incentive in genuine cash or can go about as a substitute for actual money.<sup>53</sup> 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.<sup>54</sup>

As a bureau housed within 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 excluded Bitcoin miners and organizations obtaining and selling virtual money as a venture solely for the organization's profit by the BSA.<sup>55</sup> In FinCEN regulation FIN-2014-R011, FinCEN determines that the organization that handles the trading of bitcoin must be a money services business that would facilitate the bitcoin users to convert the bitcoin in real currency and vice versa.<sup>56</sup> This regulation would make the transaction of bitcoin is not directly user to user or peer to peer, but the transaction will occur between three party, user, another user,

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<sup>51</sup> Fin-2013-G001 on Application Of Fincen's Regulations To Persons Administering, Exchanging, Or Using Virtual Currencies

<sup>52</sup> *Ibid* Article 1

<sup>53</sup> *ibid*

<sup>54</sup> 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

<sup>55</sup> FinCEN, 2014, "FinCEN Publishes Two Rulings on Virtual Currency Miners and Investors", taken from [http://www.fincen.gov/news\\_room/nr/pdf/20140130.pdf](http://www.fincen.gov/news_room/nr/pdf/20140130.pdf).

<sup>56</sup> FIN-2014-R011 article 4

and bitcoin trading company. This condition will make the collecting data on 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 BSA and forwarded to IRS on the purpose of tax.

Second is The Federal Bureau of Investigation, The FBI is useful for supporting the legalization of bitcoin in the USA, 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 seize 1.2 billion US Dollar.

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 illicit potential 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

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.<sup>57</sup> 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

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<sup>57</sup> *Ibid* 5-7



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.”<sup>58</sup> Furthermore, RBA stated that “would evaluate whether the current regulatory framework system could suit elective mechanisms of exchange of bitcoin.”<sup>59</sup>

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.<sup>60</sup> 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.

Finally, the government of Australia has the regulatory framework on bitcoin taxation. As the ATO was finalized various rulings on the application of tax laws to bitcoins, it was published a comprehensive document on the tax treatment of bitcoin subsequently.<sup>61</sup>

According to the regulatory framework that published by ATO, a transaction with bitcoin is similar to a barter arrangement, with similar tax consequences. This is because, in perspective on the ATO, such monetary forms are neither cash nor a foreign currency.<sup>62</sup> Individuals who take part in bitcoin exchanges are

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<sup>58</sup> *Ibid* 8

<sup>59</sup> *Ibid*

<sup>60</sup> Australian Government, Backing Australian Fintech, 2016 p. 22 & 27 taken from <http://fintech.treasury.gov.au/files/2016/03/Fintech-March-2016-v3.pdf>

<sup>61</sup> 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/>

<sup>62</sup> *Ibid*

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 another 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) gave the expense of the bitcoin is \$10,000 or less.<sup>63</sup> The ATO direction expresses that the Australian dollar estimation of bitcoins (being the equitable esteem) got for products and enterprises must be recorded as a component of typical salary, similarly as accepting non-money thought under a bargain transaction.<sup>64</sup> 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 of the merchandise or administrations, which is normally equivalent to the precise estimation of the bitcoin at the season of the transaction.<sup>65</sup>

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

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<sup>63</sup> *Ibid*

<sup>64</sup> *Ibid*

<sup>65</sup> *Ibid*

a trade administration, any pay determined must be incorporated into its assessable pay, and any costs acquired might be deducted.<sup>66</sup>

The ATO has likewise distributed separate direction on the utilization of GST as for exchanges including bitcoin.<sup>67</sup> 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.<sup>68</sup> 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 consequences. The progressions were gone for evacuating "twofold tax assessment" of bitcoin under the GST framework, as prescribed by the Senate Committee.<sup>69</sup>

The ATO also obligated for the bitcoin users to make the report of their activity regarding bitcoin, the report must consist:<sup>70</sup>

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

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<sup>66</sup> *Ibid*

<sup>67</sup> 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/>

<sup>68</sup> 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>

<sup>69</sup> 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/>

<sup>70</sup> Tax Treatment of Crypto-Currencies in Australia, *Loc.cit*

The sorts of records should keep by the users of bitcoin include:

- 1) Receipts of purchase or transfer of bitcoin
- 2) Exchange records
- 3) Records of agent, accountant, and legal costs
- 4) Digital wallet records and keys
- 5) 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 assessment specialists to enable it to recognize and follow bitcoin exchanges and guarantee all expenses are being paid.<sup>71</sup> This counseling is to make sure that the guidance that provided by ATO can increase the tax compliance by the taxpayer. Besides the tax compliance, ATO also notices on the consumer protection, ATO is a guarantee to replace the bitcoin if the bitcoin is proven to be lost due to hacking or lost accessed to the wallet of bitcoin with some evidence that must be provided by the users.<sup>72</sup> 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, this is 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 waste away. So this is very importance to amend the law regarding taxation on bitcoin.

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<sup>71</sup> 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-taxevasion-20180109-h0fyaz> accessed on May 8<sup>th</sup>, 2019 at 08.12 AM

<sup>72</sup> Tax Treatment of Crypto-Currencies in Australia, *Loc.cit*

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

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 created in Indonesia. As the state that follows the codification concept, it is better if Indonesia has specific regulation rather than separated guidance like was the USA did. It is better if Indonesia has specific regulation, and the regulation must cover both income tax and VAT because from 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 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. This things should be regulated in Indonesia in the vaulting of bitcoin and can be done through Indonesia 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 about 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, 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 can be significantly utilized and the potential crime of bitcoin can be reduced significantly. The regulation on bitcoin should be issued as soon as possible since bitcoin in Indonesia develops faster every day.

## **V. Conclusions and Suggestions**

### **A. Conclusions**

Based on the description in the finding and analysis, then the author can conclude as follow:

- a. The online form of bitcoin makes the Indonesia regulation on taxation is not enough to impose a tax on bitcoin. It is very urgent to make a new regulation that can cover the bitcoin activity, it is not only because its very potential to be the object of tax, but also because of the danger lies behind the great potential itself. Bitcoin can be used as payment in the online black market to buy illegal things, it also has risk in data security of the user, and the most dangerous things is bitcoin can be used as a tool for tax evasion due to the so many bitcoin wallets around the world. This problem is very urgent to be solved by creating a new regulation on the taxation of bitcoin. Based on the current legislation on taxation, bitcoin is possible to be imposed with both income tax and VAT. Bitcoin can be defined as one of the object of tax in Income Tax Law and VAT Law that have been regulated by Indonesia. Bitcoin has recently had their it legality after BAPPEBTI enacted regulation on Regulation No 5/2019 on the technical provisions for the implementation of the crypto asset physical market on the futures exchange. This regulation clearly stated that Indonesia now recognize a company which have

served in bitcoin trading market, so Indonesia also recognizes the existence of bitcoin as long as the bitcoin is treated like property, not a currency.

- b. From the urgency and the possibility of bitcoin taxation is enough to be a foundation to create a regulation on bitcoin taxation. To create a perfect regulation, Indonesia may learn from the states that have been dealing with bitcoin taxation early than Indonesia, they are the USA and Australia. From both states it can be concluded that in the taxation law of bitcoin there must exist some elements into it. Taxation on bitcoin can simply use the Income-tax Law and VAT Law as the basis of the regulation, but in the regulation there must be a provision on how to prevent illicit use of bitcoin such as tax evasion and terrorism funding. There also must be a provision on the consumer protection or the users of bitcoin, in exchange the user of bitcoin is obligated to record every transaction regarding bitcoin. The last element is the existence of state agency to supervise on bitcoin activity in Indonesia.

## B. Suggestions

In order to impose a tax on the ownership of bitcoin in Indonesia, the author suggests:

1. The Government of Indonesia should formulate a new regulation on taxation, especially on bitcoin taxation in order to impose the tax on bitcoin ownership. The regulation must cover provision on the prevention of illicit use of bitcoin, consumer protection, obligation to make a report, and supervision on the activity of bitcoin. The government should also make a cooperation with bitcoin trading companies in order to prevent the tax evasion that may arise due to the legalization of bitcoin. For the prevention of tax evasion, the government should ban the other bitcoin trading company which has not been registered.



2. The bitcoin trading company should follow the regulation from the government, fulfill the requirement of bitcoin trading company and the company should give a clear report to the new agency that will be created with the bitcoin taxation law. The owner of bitcoin must avoid the transaction of bitcoin outside the company that has been registered in Bapppebti because it has risk from hacking and scam that will bring loss to the owner of bitcoin

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