Universiti Kebangsaan Malaysia
The National University of Malaysia

NARATIF BAHARU UKM
UNIVERSITI WATAN KITA

UKM FAKULTI UNDANG-UNDANG
faculty of law

TJC
TUANKU JAAFAR
CONFERENCE & WORKSHOP
2021

e-PROCEEDING

TUANKU JA'AFAR CONFERENCE AND WORKSHOP 2021 (TJC 2021)

Access to Justice : Substantive & Procedural Issues Virtual Conference

13 - 14 DECEMBER 2021

Bangi Resort Hotel, Bangi

Scan to Enter Virtual Conference

https://bit.ly/tjc2021virtual

Editors :

Mohamad Rizal Abd Rahman
Muhamad Sayuti Hassan
Ahmad Azam Mohd. Shariff
Ramalinggam Rajamanickam
Haniwarda Yaakob
Mohamad Azhan Yahya
Rozlinda Mohamed Fadzil
Aminurasyed Mahpop
Nazirah Kamaruzaman

TUANKU JA'AFAR CONFERENCE AND WORKSHOP 2021 (TJC 2021)

13-14 DECEMBER 2021

PROCEEDING

EDITORS:

MOHAMAD RIZAL BIN ABD RAHMAN
MUHAMAD SAYUTI BIN HASSAN
AHMAD AZAM MOHD. SHARIFF
RAMALINGGAM RAJAMANICKAM
HANIWARDA YAAKOB
MOHAMAD AZHAN YAHYA
ROZLINDA MOHAMED FADZIL
AMINURASYED MAHPOP
NAZIRAH KAMARUZAMAN

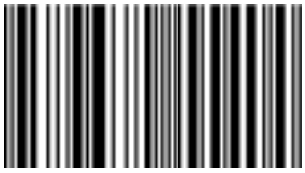
FAKULTI UNDANG-UNDANG
UNIVERSITI KEBANGSAAN MALAYSIA

2021

Tuanku Ja'afar Conference and Workshop 2021 (TJC 2021)

Cetakan Pertama 2021

e ISBN 978-967-26554-0-4



9789672655404

Muka Tapi Saiz: News Time Roman
Saiz Taip Teks:10/11/12

Diterbitkan oleh:

Fakulti Undang-undang
Universiti Kebangsaan Malaysia
43600 Bangi, Selangor
Tel: 03-8921-6355
Faks: 03-8925-3217

The Use of Gold Dinar and Silver Dirham Coins in Indonesian Criminal Law

AHMAD SOFIAN
Business Law Department, Faculty of Humanities
Bina Nusantara University
Indonesia

MAQDIR ISMAIL
Magdir Ismail & Partners
Indonesia

ERLANGGA KURNIAWAN
ERCo Law Office

ZAIM SAIDI
Dinar Dirham activist Jakarta, Indonesia,

ABSTRACT

The use of dinar dirham coins as a means of exchange and payment was used before Indonesia was colonised by the foreign nations that entered Indonesia. This coin was very effective and became a trusted means of exchange. Likewise, when entering the colonial era, dinar and dirham coins were also used as means of exchange or payment method which was practiced in numerous social economic fields. When Indonesia was independent, there were various currencies prevailing because the government did not yet possess a special currency, the Dutch and the Japanese currencies were still prevailing. Only in October 1946 ORI (Oeang Republik Indonesia/Money of the Republic of Indonesia) was then issued was subsequently designated as the Rupiah currency (IDR). Also in the same year, Law No. 1 of 1946 on Criminal Law was issued. Articles 9-13 of the law provided a threat of punishment for the use of any currency other than Rupiah or similar to Rupiah. However, after this law, the use of dinar and dirham coins were still continuing, and the use of dinar and dirham was not a crime as stipulated in Articles 9-13 of Law no. 1/1946. Then in 2011, Law no. 7 of 2011 was ratified, this law provided a threat for the use of any currency other than the Rupiah currency. In 2013, the muamalah market emerged and introduced dinar and dirham coins as the means of payment, and in 2021 the use of dinar and dirham coins were banned by the Indonesian police because they were considered contrary to Law No. 1 of 1946 and Law No. 7/2011. This paper will thoroughly examine the dinar and dirham coins in the context of Indonesian criminal law, and whether or not it is true that both of the laws ban the use of dinar and dirham as means of payment.

Key words: dinar and dirham coins, currency, criminal law, means of payment

INTRODUCTION

There are very limited discussions ever carried out regarding the use of gold dinar coins and silver dirham coins in the context of criminal law in Indonesia. This is because gold dinar coins and silver dirham coins are not regarded as a currency. Therefore, when it used as a medium of exchange or payment instrument it is difficult to analyse whether

violations can be equated as a currency crime pursuant to Law no. 1 of 1946, the Criminal Code (KUHP), or Law No. 7 of 2011 concerning Currency.

In literature reviews there are various views related to gold dinar coins and silver dirham coins. There are certain people who view them as currency, but there are also those who do not consider them as currency but as precious metals that can be used as a means of payment or transaction. Gold dinar coins and silver dirham coins in historical contexts in Indonesia were used as a medium of exchange for necessities, therefore these coins were easy to carry, store and exchange with other items. This short paper does not debate the two views, but focuses on a criminal law study on gold dinar coins and silver dirham coins related to a case that is currently in court in Indonesia.

The long use of gold dinar coins and silver dirham coins in the Muamalah market has actually caused legal problems. The Muamalah market is an economic social activity in the form of a bazaar or pop-up market. The Muamalah market is located in Depok City, West Java Province and has existed since 2014. The market was at first held once a month and was then expanded to twice a month. There are about 10-15 economic actors who participate in this Muamalah market activity. In the Muamalah market, there are economic transactions in the form of buying and selling and bartering. The buying and selling transactions use the Indonesian Rupiah as currency, while bartering uses dinar and dirham coins and other items to be bartered.

LITERATURE REVIEW

THE CONCEPT OF CURRENCY

Before explaining the concept of currency, it is necessary to have a brief explanation of money itself. Money has a strategic position in the economic system and is difficult to replace with other variables. Some even say that money is an integrated part of the economic system. Money is a standard medium of exchange, a valid means of measuring value, issued by the government of a country in the form of paper money, gold, silver or other metals that are formed with certain images.

Currency is a unit of value set and approved by the government in a country and issued by the central bank in that country. In the Black Law Dictionary it is stated that national currency is the currency authorised by the national government and circulated as a medium of exchange (national currency: currency approved by the national government and placed in circulation as a medium of exchange). It is also specifically stated that currency is an item (such as a coin, government note, or banknote) that is circulated as a medium of exchange.

Each country has its own currency, although there are several countries that have currencies with the same name, such as America, Singapore, Australia and Canada who use dollars. Likewise, Iraq and Bahrian use the name Dinar for their currency. Morocco and the United Arab Emirates use Dirham. While Indonesia's currency is called Rupiah and Japan's is Yen.

The Law on the Currency of the Republic of Indonesia, namely in Article 1 of Law no. 7 of 2011, stipulates that "Currency is the money issued by the Republic of Indonesia, hereinafter referred to as Rupiah." In Article 2 it is stated that "money is a legal medium of exchange."

Conceptually, such legal currency is in the form of a debt note (promoissor note) issued by a central bank, including when a country issues Government Securities (SUN) in the form of debt, with an additional burden of interest on the principal. Valid currencies, therefore, play a major role as a means of settling debts and other financial payment obligations. And as a valid currency, the debt note must be accepted in every transaction by every citizen, or person who transacts in the region. In today's times the legal currency can be in the form of a certain metal coin, a piece of paper, or an electric or digital field. What makes it a legal currency is its issuance by the central bank and the existence of a nominal value whose amount and application is determined by the government. This nominal value is not related to the real value of the object making it. (Amwaalina et al, 2020).

Up until now the legal status of currency, or also referred to as fiat money, because its value exists only on the basis of trust, is in the form of debt notes or promissory notes, but this debt will never be paid. The debt promise is a lie. In result, the value of the fiat currency will continue to depreciate. Thus, in this modern era, promissory notes have turned into bank notes that are no longer guaranteed by real assets, whether in the form of gold, silver or any other valuable commodities. (Garner, 1990)

DINAR AND DIRHAM

Linguistically, the word dinar originates from the Eastern Roman language which comes from the word *Denarius* and dirham comes from the Persian language, namely from the word *Drachma* (Garner, 1990) The dinar and dirham are not the single currency or official currency of Muslims or in Islamic countries. The dinar and dirham were the currencies used by the Romans and Persians. The Roman dinar has been widely circulated among the people of Mecca, as well as the Persian dirham. The Arabs called gold coins at that time as *al-Ain*, while silver coins were called *al-Warig*. At the time of the Prophet Muhammad, the Arabs never printed their own dinars and dirhams. Even throughout his life the Prophet Muhammad never recommended any changes to this currency, meaning that the Prophet Muhammad and his companions who became caliphs actually confirmed this practice. In the year 79 AD during the Caliph Abdul Malik bin Marwan, special dinars and dirhams were printed with distinctive Islamic writing (Muhaimin Iqbal, 2009).

Different from the concept of currency as a medium of exchange, as explained above, the gold dinar and silver dirham coins used in the Muamalah Market are as follows:

The Dinar is a gold coin weighing 4.25 grams, while the Dirham is a silver coin weighing 2.975 grams. These two terms do not refer to its name or designation as a currency but indicate units of weight. If the weight is not equal to the weight stipulated above, then the coin is not a dinar or dirham coin.

The first party to print and issue the gold dinar and silver dirham in Indonesia was PT. Aneka Tambang in the early 2000's. PT. Aneka Tambang is a State-Owned Enterprise that specialises in printing precious metals. Shortly thereafter this practice was followed by PT. Percetakan Uang Republik Indonesia (Peruri). After the two State-Owned Enterprises, initiatives emerged from various parties in the wider community to participate in printing and issuing gold dinar coins and silver dirhams. This includes the Dinar Outlets, the Sultanate of Kasepuhan Cirebon, the Sultanate of Ternate, the Sultanate of Bintan, Mengkuegeri Tanjungpura, Dinar First, the Salawat Dirham of Solo, the Malang Dirham, the Tamasia Dinar, the Khoirur Roziqin Dinar, the Ottoman Dirham, the Baitulmal Dirham Nurmadhiyyah, the Sunnah (Istiqlal) Dirham and others.

In addition to the various types of gold dinars and silver dirhams mentioned above, there are many similar gold and silver dirhams for sale in the market. For example, the silver Kijang Dirham, the silver Dirham of the Election Series and the 2019 Election Parties Series, which even display a picture of the symbol of the Republic of Indonesia, the Garuda Bird. There also exists the Dirham of the Archipelago Mosque series, the Turkish Mosque, the Chinese Mosque, the Hajj Dirham, the Eid Al-Fitr Dirham, and many others. These silver dirham coins are sold at various prices, between IDR 55,000 and IDR 200,000. Some even sell it at a price of IDR 1,850,000. For gold dinars, there are Kelantan Dinars, Kijang dinars, and so on. These are also traded at different prices.

In later developments, while most of these parties still maintained the specifications of their respective coins, the Amirat Nusantara community led by Zaim Saidi changed it by naming the coins according to their base materials, namely gold and silver. The coins printed by Zaim Saidi can be identified more clearly. So as not to cause misunderstanding because the terms dinar and dirham have also been used as the name for the paper currency in some countries as mentioned above, the coins are printed with, respectively, the words "silver" and "gold" in large letters according to their respective base materials. The words "dinar" and "dirham" are written in small Arabic letters and the words are returned to their original meaning referring to a unit of weight.

There is also the inclusion of the name of the issuer, as part of various other coin specification information. This is to act as a substitute for the certificate which is usually attached to jewelry coins as a guarantor of the validity of the measurements and scales. The specification of the coin shall be in accordance to the information printed on the surface of the coin. The rest of the printed design is just for decoration of the coin.

THE USE OF GOLD AND SILVER COINS IN INDONESIAN POSITIVE LAW

The use of gold dinar coins and silver dirham coins in Indonesia, especially to pay *zakat*, is completely legal and has a very strong legal basis. As objects, or commodities, gold coins and silver coins are no different from other legal and lawful objects. It's just that gold coins and silver coins have a high economic value. Both fall into the category of "valuable items" or jewelry.

The use of gold and silver in the context of zakat has been regulated in Law no. 23 of 2011 concerning Zakat Management. Article 1 paragraph (2) of this law stipulates:

> "*Zakat* is property that must be issued by a Muslim or business entity to be given to those who are entitled to receive it in accordance with Islamic law".

Then, Article 2 paragraph (4) letter a stipulates:

> "*Zakat mal* as referred to in paragraph (1) includes: a. gold, silver and other precious metals."

Furthermore, Article 4 paragraph (4) stipulates:

> "The conditions and procedures for calculating *zakat mal* and *zakat fitrah* are carried out in accordance with Islamic law".

It is clear that Law No. 23 of 2011 provides a very solid legal basis for the circulation and reutilisation of gold dinar coins and silver dirham coins. Without these two coins, the Zakat Law cannot be executed.

CRIMINAL ACTIONS REGARDING CURRENCY IN INDONESIAN POSITIVE LAW

Criminal actions regarding currency are different from money laundering crimes. In Indonesia's positive law literature, discussion on currency crimes are still very limited, even theses and dissertations discussing this issue are very rare. There are also not many online journals that discuss this issue. Much of the literature written is about the criminal act of money laundering. In fact, with the development of electronic currency, it is not enough to just rely on the existing laws, including the law on electronic information and transactions.

Law No. 7 of 2011 does not provide a definition for criminal actions on currency. However, in the General Explanation of Law No. 7/2011 on Currency, it is stipulated that crimes regarding Currency are increasingly rampant on a large scale and are very worrying, especially in terms of the impact it can have on the monetary and national economy.

In this paper, the author describes three types of currency crimes regulated in Articles 9-13 of Law no. 1 of 1946, Articles 244-252 of the Criminal Code, and Articles 33-41 of Law 7/2011 on Currency.

CRIMINAL ACTIONS REGARDING CURRENCY IN LAW NO. 1 OF 1946

In understanding Law No. 1 of 1946 on Criminal Law, the law cannot be separated from the political situation at the time. Law No. 1 of 1946 was issued in order to protect the sovereignty of the Republic of Indonesia from division, to raise the spirit of nationalism and to protect the spilled blood of Indonesia. There are three main topics regulated in this law, namely the issue of currency, the issue of flags and the issue of false news/uncertain news that causes chaos or riots. In addition, the birth of this law was to instill an adaptation to the Dutch Criminal Code and to fill the void of such Code.

In the consideration of the Law No. 1 of 1946, it is stipulated that "...the criminal law regulation needs to be adjusted to the current situation". In addition, Article 5 states that "The regulation of criminal law, which are wholly or partly now unenforceable, or contrary to the position of the Republic of Indonesia as an urgent state, or have no meaning anymore, must be considered wholly or partially temporarily invalid." (Muhaimin Iqbal, 2009) From the above provisions it can be understood that the existence of Law No. 1 of 1946 was promulgated to deal with the emergencies that arose at that time. In addition, the promulgation of Law No. 1 of 1946 was in response to the need for a newly independent country which was facing the threat of the arrival of the Dutch Army and allies. Therefore, several provisions of Law No. 1 of 1946 have been regulated more specifically in the laws following it.

In summary, the contents of the provisions of Law No. 1 of 1946 on Criminal Law are as follows:

TABLE 1. The Contents of the Provisions of Law No. 1/1946

No.	Articles	Subject	Explanation
1.	1-8	Changes in a number of phrases contained in the *Wetboek van Strafrecht voor Nederlandsh-Indie*, in addition to confirming that a number of articles in the *wetboek* which are inconsistent with an independent country must be declared invalid, either partially or completely.	*Wetboek van Strafrecht voor Nederlands-Indie* has been changed to *Wetboek van Strafrecht* or the Criminal Code (KUHP). A number of phrases have been replaced and a number of articles have been revoked or declared invalid. A number of special laws have also been issued so that several articles in the Criminal Code do not have binding force or are not valid. In addition, through the decision of the Constitutional Court, several articles were declared invalid, and some of the articles were partially amended.
2.	9-13	Regulation of criminal actions regarding currency	The criminal actions regarding currency regulated in Articles 9-13 actually are similar to Chapter X concerning Counterfeiting Currency and Banknotes. There are 8 articles starting from Articles 244-252. More specifically, the provisions regarding currency crimes are regulated in Article 33-41 of Law No. 7/2011 on Currency. Article 33-41 of Law No. 7/2011 emphasises on on not using Rupiah as a means of payment or rejecting Rupiah as a means of transaction. However, the counterfeiting of the Rupiah currency is also regulated in the above provisions, including damaging or destroying Rupiah.
3.	14-15	Regulation on the broadcasting of false news, or uncertain or excessive news that (can) cause chaos	This provision actually has similarities with Article 28 (2) of Law No. 11/2008 on Electronic Information and Transactions ("EIT Law") in conjunction with Article 45 a (1) of Law No. 19/2016 on the Amendment to Law No. 11/2008. However, the EIT Law and its amendments sets limits on whether the information is disseminated through electronic means in the form of electronic documents and/or electronic information.
4	16	Insulting the national flag	The flag is regulated in Law No. 24 of 2009 on the National Flag, Language Emblem and National Anthem of Indonesia. In Article 24, various forms of prohibited acts related to the flag have been regulated, therefore Article 16 of Law No. 1 of 1946 is regarded as a *lex generalis* provision.
5	17	Stipulation that the law applies on the islands of Java and Madura.	This law only applies to the islands of Java and Madura. Law No. 1 of 1946 was ratified for the entire territory of the Republic of Indonesia through Law No. 73 of 1958.

From the description above, currency crimes are regulated in Articles 9-13. This means that there are only 4 articles that regulate currency crimes in Law No. 1 of 1946. The following are the contents of Articles 9-13 and the interpretation of each of these articles.

Article 9 states:

> "Any person who manufactures an object such as currency or paper money with the intention of using it or ordering it to be used as an instrument of payment, shall be punished by a maximum imprisonment of fifteen years."

It should be noted that in reading Article 9, it cannot be separated by Article 10, Article 11, Article 12 and Article 13 because these articles also regulate currency crimes. Articles 9-13 are articles that are in the same scope so they must be read in their entirety when applying the article. The essence of this article is to protect the Indonesian Rupiah from various prohibited acts, namely the acts of:

- Making any other currency other than Rupiah (Article 9)
- Using paper currency other than Rupiah (Article 10)
- Using paper currency or currency that is not issued by the Government of Indonesia (Article 11)
- Accepting payment of currency or paper money (Article 12)
- currency crimes or paper money crime (Article 13)

In summary, the following is the interpretation of each article:

TABLE 2. The Interpretation of Some Articles Law No. 1/1946

Article	Subjective Element	Objective Element	Interpretation
Article 9	Whoever, with intent	(1) Creates a kind of currency or paper money, (2) to execute or order to pay, (3) as a means of payment, the maximum penalty is 15 years	This refers to the creation of a kind of currency or paper money, in which such currency is interpreted as (1) similar to the Rupiah currency or has the same characteristics as currency, there is a country that issues it, is intended to be used as currency (2) another currency, so there is a currency issued/created/printed. Therefore, what is being made is a currency or paper money. If what is made is not currency or paper money, it does not meet the elements of this article. It must be proven that what is made acts as a currency. If this article is to be associated with dinars/dirhams, then does this constitute currency? Aren't dinars/dirhams a form of gold/silver and is therefore not meant to be currency, but as something that has a value equivalent to the price of gold/silver? Meanwhile, currencies, especially paper money, do not have a nominal value that is equivalent to the actual value of the raw materials for which it is made. Currencies are of course issued by a certain country (2) to be executed, meaning that after the currency is created it is then used or someone else uses it (3) then it is used as a means of payment. Payment instruments are interpreted as instruments to buy goods/services or obtain something as a means of transaction.
Article 10	Whoever, with intent	(1) Uses a valid paper currency as a medium of	This Article refers to the act of circulating paper money other than Rupiah. It is

		payment (2) even though he/she knows or reasonably suspects that the paper money is not a payment instrument recognised by the government as a legal medium of payment or with the intention of using or ordering it to be used (3) shall be punished by a maximum of 15 years imprisonment	clearly stated that the this article regulates the circulation of paper currency that is not recognised by the government. Therefore, the evidence for this act is the paper money which is circulated as a means of payment. Is the dinar/dirham in the form of paper currency? If not, then it does not meet the elements of this article.
Article 11	Whoever, with intent	(1) Using a medium of payment of currency or paper currency which is not recognised by the Government (2) shall be punished to a maximum of 15 years	This Article prohibits the use of a currency from another (country) as a valid medium of payment, if such currency is not recognised or is prohibited from being used as a payment instrument. Therefore, this article regulates a currency that is used as a means of payment, while the currency is prohibited by the Indonesian government. So, it must be proven first whether the dinar/dirham is a currency? In addition, has the Indonesian government ever banned this currency from being used?
Article 12	Whoever, knowingly	1) The use of currency or paper money (2) as a medium of exchange, or to receive, or gift, or store, or transport(3) not as a payment instrument recognised by the government	This article also regulates the prohibition of making currency or paper money that is not recognised by the government either as a medium of exchange, as a gift, to store or transportit. Is dinar dirham a currency or paper money?
Article 13	Whoever, intentionally (on purpose)	Affirming the actions stipulated in Articles 9, 10, 11 and 12	Affirming the stipulated actions as currency crimes, and that the currency or paper money shall be confiscated

In general, the articles mentioned above emphasise the issue of the use of objects such as currency or paper money as valid payment instuments. Thus this crime is different from the counterfeit crimes which will be discussed next. Wirjono Prodjodikoro gave an example of the application of this article, namely when the Straits Dollar was circulated in the Riau Islands and the circulation of the Special Rupiah in West Irian. These currencies are not recognised by the Government of Indonesia as regulated and prohibited by Law No. 1 of 1946 (Wirjono Prodjodikoro, 2012).

CRIMINAL ACTION REGARDING CURRENCY IN ARTICLE 244-252 OF THE CRIMINAL CODE

In criminal law, all forms of forgery are classified as fraudulent offenses with the intention of benefiting oneself. The territorial principle is applied to this, therefore counterfeit crimes are treated with the universal principle, meaning that for counterfeit crimes carried out in any place, by any person and towards any country's money, the Indonesian criminal law applies. The following will briefly describe the conditions for the criminal act of counterfeiting pursuant to Article 244-252 of the Criminal Code.

Article 244 regulates anyone who imitates or counterfeits paper currency issued by the State or Bank with the intention of circulating or ordering circulation of the currency or paper currency as genuine and not counterfeit. Therefore, when someone collects foreign currency and duplicates or reproduces it (for example, photocopies) and then circulates it, the elements of this article have been fulfilled. However, if such person only copies a sheet of foreign currency, and intends to keep it and not circulate it, then the elements of this article have not been fulfilled.

Article 245 stipulates two kinds of offenses that are regulated, namely the act of deliberately circulating currency or paper money issued by the state or bank as genuine and not counterfeit currency or paper money which he/she himself forged or when he/she received it was known to be not genuine or counterfeit. Second, the act of storing or importing counterfeit currency or paper money into Indonesia.

Articles 246 and 247 are not very relevant today because the current coins are in the form of aluminum which is of no value. In the past, during the Dutch East Indies era, the value of one Suku, one Rupiah and one Ringgit was made from real silver, so it had a material value. Article 248 is abolished based on stbld 1938 No. 593.

Article 249 regulates the act of deliberately circulating non-authentic or counterfeit money. For example, a person receives counterfeit money from another person in which he/she knows is fake, then circulates the money or spends the money. However, if the person does not know the money is counterfeit money and circulates it or spends it, the person cannot be punished under this article.

Article 250 of the Criminal Code specifically regulates a person who owns or has a supply of materials or goods to counterfeit money. What is prohibited here is having a stock of materials or goods to counterfeit money. It is prohibited to have supplies to counterfeit, imitate or reduce the value of the currency. In other words, it can also be said that this regulates the offense of preparing to commit counterfeiting.

Article 250 does not specifically regulate the types of currency counterfeiting crimes, but regulates additional penalties in the form of confiscation, both forged currency and materials for making counterfeit money. Article 251 aims to protect the recipient from being deceived into thinking the pieces are valid money. This article is less important nowadays because today's currency (coins) are not made of precious metals. Article 252 does not regulate offenses that are prohibited in currency crimes, but regulates additional punishment for perpetrators of criminal acts as regulated in Article 244-247 in the form of revocation of certain positions, the right to vote in elections regulated in certain regulations, the right to become legal advisors, or guardians or guardian supervisors (*wali pengawas*).

CRIMINAL ACTIONS REGARDING CURRENCY IN LAW NO. 7/2011

Criminal actions regarding currency are regulated in Article 33-41 of Law No. 7 of 2011 as offenses that prohibit several acts which will be briefly described below.

Article 33 regulates actions that do not use Rupiah as a means of payment or other obligations, such as banking transactions, payment of debts and others. Likewise, any person who refuses to accept Rupiah as a means of payment or other obligations related to financial transactions shall subject to criminal sanctions.

Article 34-37 has similarities with the counterfeiting crimes, which includes the act of destroying and possessing materials to make Rupiah. For example, Article 34 regulates the act of imitating Rupiah and/or circulating counterfeit Rupiah. Article 35 prohibits damaging and or using damaged Rupiah. Article 36 regulates the offense of counterfeiting Rupiah, storing it or circulating it/spending it. Article 37 in addition to prohibiting the possession of materials to make Rupiah, also prohibits the act of storing, buying, and so forth of machines, equipment and printing equipment used to make counterfeit Rupiah.

Article 38 regulates the sentencing of crimes according to the legal subject, namely Bank Indonesia Employees or Rupiah Printing Employees. Besides threatening punishment if the act is carried out in an organized manner, the article also regulates the punishment according to the crime of terrorism or damaging the national economy. Article 39 has included corporate crimes in currency crimes. This covers the weakness of the previous laws which did not include corporations as a legal subject. Then, Article 40 also stipulates a reduced penalty as a substitute for a fine with a more measurable arrangement, namely that each criminal fine of 100 million is accompanied by a prison sentence of 2 months. Article 41 regulates the types of criminal acts, where Articles 33 and 34 are classified as offenses violations while Articles 35-37 are classified as crimes.

LEX SPECIALIS DEROGAT LEGI GENERALI

The principle of *lex specialis derogat legi generali* is defined as a law (norm/rule of law) which specifically nullifies the validity of laws (norms/rules of law) that are general in nature. This principle has been known since the time of the Roman Empire as a concept borne from Aemilius Papinianus, a Syrian-born Roman law expert. According to him, the specificity

of a norm takes precedence over the general norm. According to Papinianus, special regulations are more relevant and compatible and more in line with the legal needs and the needs of the legal subjects who are unable or less able to be reached by general provisions. Therefore, when there are actions that are regulated in general provisions as well as special provisions, there is a conflict of norms that must be resolved immediately.

According to Hans Kelsen, the conflict of norms (*allgemeine der normen*) or in English known as the conflict rules, occurs when what is ordered in the provisions of a norm and what is ordered in another norm is incompatible/not suitable so that the compliance or carrying out of one of the norms will undoubtedly or may cause a violation of the other norm. Thus, a conflict of norms occurs when the objects that are regulated contradict each other, because only one of them must be applied, so the other norm must be set aside.

In the context of criminal law, a conflict of norms also occurs when the two norms regulate the same prohibited act but have different sanctions, or regulate the same prohibited acts and the same sanctions but one norm is more specific than the other. Therefore, the principle of *lex specialis derogat lex generali* is used to resolve this conflict.

According to Hart, this principle regulates the limitation of the authority of law enforcement officers in determining which laws are applicable and applied. In other words, it provides limits on repressive acts by state officials on the suspicion of criminal acts. Ancel added that in the application stage, the principle of *lex specialis derogat legi generali* is a principle that regulates authority, not related to the formulation of offenses. He added that this principle acts according to the *game-rules* in the application of law. This principle is important for law enforcers, in applying which legal rules are applied to certain concrete events, namely special regulations.

According to doctrine, there are two points of views in determining this particular provision, namely the logical point of view (*logische beschouwing*) and the juridicial point of view (*jurisdische beschouwing*). According to Enschede in his writing entitled "*Lex specialis derogat legi generali*" (1963), the logical view states that a criminal provision is special, if the criminal provision includes other elements, also contains all elements of a criminal provision of a general nature. This view is also referred to as a *logische specialiteit* or as a logical specificity.

Meanwhile, in a juridicial view, it is stated that although a criminal provision does not contain all elements of a general provision, it is still considered as a special criminal provision, that is, if it is clearly known that the legislators did intend to enforce these crime provisions as a special criminal provision. This view is also called a *jurisdische specialiteit* or *systematische specialiteit*, which means juridicial or systematic specificity.

Bagir Manan, former Chief Justice of the Supreme Court, stated that there are several things that can be considered and guidelines in applying this principle, namely:

First, the provisions found in the general legal rules still apply, except those specifically regulated in the special legal regulations. Second, the provisions of the *lex specialis* must be equal to the provisions of the *lex generali*. Third, the provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generali*. For the third part, Bagir gives an example, in which these *specialis* and *generalis* provisions have the same genus, for example, in civil provisions with civil provisions, criminal provisions with criminal provisions.

The principle of *lex specialis derogat legi generali* is also regulated in Article 63 paragraph (2) of the Criminal Code which states that if an act, which is included in a general criminal regulation, is also regulated in a special criminal regulation, then only the specific one will be imposed. This article is used as a filter in determining the validity of a regulation when a criminal act or alleged criminal act is regulated in two different laws with different levels of rules or perhaps different levels of sanctions, then the special rule is chosen as the applicable rule. In other words, general rules no longer have validity to be applied.

REGULATION ON CRIMINAL ACTIONS REGARDING CURRENCY

Based on my description of criminal actions regarding currency, the regulation on currency crimes is regulated in Articles 9-13 of Law No. 1 of 1946 on Criminal Law, Articles 244-252 of the Criminal Code and Articles 33-43 of Law No. 7 of 2011 on Currency. If referring to the principle of *lex specialis deregot legi generali*, it can be analysed as follows:

Articles 9-13 of Law No. 1 of 1946 stipulates that prohibited acts or the object of the norm are currency crimes which include making, carrying out, ordering to pay or operating as a means of payment, receiving, or storing, transporting currency other than the Rupiah currency. Meanwhile, in Article 244-252 of the Criminal Code, the object of the norm that is prohibited is counterfeiting currency and/or circulating it.

In addition, Article 33 of Law No. 7 of 2011 also stipulates the prohibition of currency crimes including using, conducting transactions and completing other obligations in currencies other than Rupiah.

Therefore, the two norms have similarities to prohibited acts, and can be interpreted as the same norm or in Bagir Manan's language as norms of the same *regime*, namely regarding currency crimes. Thus, the principle of *lex specialis derogat legi generali* applies or can be imposed. There is a conflict of norms between Articles 9-13 of Law No. 1 of 1946 on Criminal Law, Articles 244-252 of the Criminal Code and Articles 33-41 of Law No. 7 of 2011 on Currency.

Articles 9-13 of Law No. 1 of 1946 and Articles 244-252 of the Criminal Code according their nature are general provisions, because they regulate general crimes, not specific (*specilis*) regulations towards criminal acts in the currency sector. Therefore, Articles 9-13 of Law No. 1 of 1946, Articles 244-252 of the Criminal Code are incompatible/not suitable for use in criminal acts whose objects of norms are similar to the objects of norms regulated in Articles 33-41 of Law No. 7/2011.

CONCLUSION

The conclusion that can be drawn from this paper is that criminal actions regarding currency which are regulated in Indonesian positive law have their own uniqueness because they are regulated in three different laws. Articles 9-13 of Law No. 1 of 1946 prohibits and regulates the punishment for a person or group of people who "rebels" against the existence of the Rupiah currency, and creates a "kind" of currency or paper money to compete with the Rupiah as a means of payment. In other words, anyone who disobeys the currency or paper money as a means of payment other than Rupiah, shall be subject to this law.

Article 244-252 of the Criminal Code, regulates currency counterfeiting. In the context of currency counterfeiting, counterfeiting does not refer to the money issued by the Indonesian government but also the currency of any other country which is counterfeited in Indonesia or the currency of another country which is counterfeited and then circulated in Indonesia.

Meanwhile, the currency crimes stipulated in Articles 33-41 of Law No. 7/2011 on Currency are prohibit the use of currency other than the Indonesian Rupiah in transactions for the purpose of payment or other obligations. This law also threatens anyone who refuses Rupiah as a means of payment. Other provisions have similarities with the articles in Article 244-252 of the Criminal Code such as counterfeiting Rupiah, imitating or destroying Rupiah.

Of the three laws that regulate currency crimes, the use of gold dinar coins and silver dirham coins does not meet the qualifications for tort as stipulated in the three laws. The manufacture of gold dinar and silver dirham coins is not intended as currency, or a kind of currency, so that it does not constitute a disobedience to the Rupiah as intended in Articles 9-13 of Law No. 1 of 1946. Gold dinar coins and silver dirhams are precious metals and used as a unit of weight to be exchanged for goods that have the same material value as the two precious metals, if there is a difference in material value, it will be returned in Rupiah.

Likewise, the use of gold dinars and silver dirhams is not intended as a counterfeit to the Rupiah currency as regulated in Article 244-252 of the Criminal Code, because these two precious metals are not currencies. In addition, the circulation of gold dinar coins and silver dirham coins does not fulfill the elements of Article 33-41 of Law No. 7/2011 because it does not meet the currency elements as regulated in this law.

ACKNOWLEDGMENT

We would like to thank Bina Nusantara University for supporting this research, as well as those who have helped carry out the research.

REFERENCES

Ahmad Sofian, Maqdir Ismail, Erlanggfa Kurniawan, Zaim Saidi. 2021. *Koin EMas & Perak dalam Bingka Hukum di Indonesia*. Yogyakarta: Delokomotif.

Amwaalina At-Thaahirah, Asatidzah Al-Munawar, Ustadz Muhammad Noor Bin Muhammad Deros, Ustad Amiruddin Bin Muhammad Zain, Ustadz Muhammad Faisal Bin Muhammad Ayub, Bahasa Indonesia editor Zaim Saidi. 2020.*Hukum Mata Uang Fiat.*Jakarta:Pustaka Adina.

Garner, B. A. 1990. *Black's Law Dictionary*.USA. 8th Edition.Thomson.
Hiariej, Eddy O.S. 2016. *Prinsip-Prinsip Hukum Pidana.*Yogyakarta: Cahaya Atma Pustaka.
Law No. 1 of 1946 on Criminal Law.
Ministry of Education and Culture of the Republic of Indonesia. 2001. *The Indonesian Dictionary*.Jakarta.Balai Pusataka.
Muhaimin Iqbal. 2009. *Dinar The Real Money: Dinar Emas, Uang dan Investasiku.* Jakarta: Gema Insani Press.
Nabila, Diah Arini. 2015. Dinar Dirham Vs Fiat Money: Kajian Teoritis Penggunaan Dinar Dirham dalam Perdagangan antara Negara Islam. *Jurnal Syariah* 3.
Salmy Edawati Yaacob. 2012. Study of Implementation Gold Dinar as Currency. *World Applied Sciences* 20(7): 1014-1023
Wirjono Prodjodikoro. 2012. *Tindak Pidana Tertentu di Indonesia*. Bandung: Refika Aditama.