

Legal Aspects of Crypto Assets on Indonesian Digital Investment Development

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Submitted: October 10, 2023

Revised: December 09, 2023

Published: December 30, 2023

Abstract

This study aims to understand the legal aspect of digital investment in crypto assets in Indonesia which is linked to the theories of legal certainty, justice and benefit. Currently, Indonesian people are very fond of the cryptocurrency digital investment trend. The Indonesian government has provided several regulations regarding the physical crypto market mechanism. However, the rules regarding cryptocurrencies cannot guarantee that problems will not arise in the future. Moreover, cryptocurrency and its rules are still very new. There is still a lot of confusion in society about whether crypto investment is safe or not. This study is normative juridical study using a statutory and conceptual approach which is summarized by examining statutory regulations and related legal doctrine. The results of this study explain that the Indonesian government is opening up opportunities by legalizing digital crypto investment activities to strengthen the economic sector. Crypto in Indonesia can only be used as an investment instrument, not currency. The implementation of crypto asset trading is regulated in the Commodity Futures Trading Supervisory Agency (Bappebti) Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of Physical Crypto Asset Markets. This regulation regulates the use of Good Corporate Governance principles in the context of carrying out buying and selling of crypto assets on the Crypto Futures Exchange (CFX). Bappebti's regulations were then changed with the enactment of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (UU P2SK) which expanded the authority and responsibility of the Financial Services Authority (OJK) to include digital financial assets, crypto assets and Financial Technological Innovation Sector. (ITSK).

Keywords: *Digital Investment; Crypto Assets; Cryptocurrency; Futures Exchange.*



Introduction

Indonesia is one of the developing countries that is exploring the 5.0 era. In this era, technological developments are growing rapidly. These technological developments greatly affect social, cultural, economic, and governmental aspects. The development of technology in the digital era as it is today has made more and more new discoveries created by experts in their respective fields. Technological progress is something we cannot deny anymore. Therefore, Indonesia, through the Government must always be open to changes that occur on a global and local scale.

The COVID-19 pandemic has halted economic activity around the world. During the pandemic, many people lost their jobs. It makes people think about shortcuts and how to keep earning money even in very difficult circumstances. It is the reason why Cryptocurrency is going up. Apart from these problems, recently, there has been a phenomenon regarding cryptocurrency digital investment in which Cryptocurrency provides huge profits. Cryptocurrency is a virtual currency used to pay for something digitally, and its existence functions as currency as usual.¹ The presence of Cryptocurrency begins with discoveries such as gold mining (mining) but through digital schemes. Then, the mined or gold results can be exchanged in the form of conventional currency according to the place or country where this Cryptocurrency is exchanged. The results of this crypto mining can even be used for investment instruments such as gold or stocks on futures exchanges. This Cryptocurrency is a name that is applied to a system that exists in cryptography. The system is used in the secure data release process as well as to deploy the digital token exchange process.²

Based on that description, crypto has a dualism of functions. The first is a function as a medium of exchange (currency). The second is the function as an investment tool. Investment is generally defined as a transaction by a person or legal entity to obtain a certain margin or profit to maintain the value of capital in the form of equipment, cash, tools, and assets.³ Cryptocurrency offers very high profits that make people in Indonesia enthusiastic about investing in crypto. So, to avoid illegal investment activities, the role of the government is needed to regulate the implementation of investment or buying and selling of crypto assets on the futures exchange market.

¹ Syamsiah, N.O., "Study on Cryptocurrency as a Payment Tool in Indonesia", Indonesia Journal of Networking And Security: p. 54. DOI: <http://dx.doi.org/10.2311/ijns.v6i1.1449.2017>.

² Dourado, E., & Brito, J, "Cryptocurrency: The New Palgrave Dictionary of Economics", (Online Edition 2014): p. 7. DOI: <http://doi.org/10.1057/10.1057/9780230226203.3924>.

³ Rahman, A. and Suratman, *Law of Investment and Capital Market*, (Jakarta: Sinar Grafika, 2019), p. 3.

A study conducted by the Bank of International Settlement in 2022 showed that 73-81 percent of people who invested in crypto turned out to lose money. The data was collected from 2015-2020 by studying crypto market applications using a new database on daily use of crypto exchange applications in 95 countries.⁴

However many of them lose, in many countries and especially Indonesia Cryptocurrency investors always increases. Based on data from the Commodity Futures Trading Supervisory Agency (Bappebti), the total number of crypto investors in Indonesia reached 17.91 million people as of September 2023. This number increased by 12,000 people or an increase of 0.67% month-to-month (mtm) compared to August 2023 which was 17.79 million people. On an annual basis, the number of crypto investors has increased by around 1.64 million people or a growth of 10.1% year-on-year (yoy). Previously, the number of crypto investors was 16.27 million people in September 2022.⁵

The Minister of Trade of the Republic of Indonesia, through the Commodity Futures Trading Supervisory Agency (Bappebti) provides regulations regarding the physical crypto market mechanism on futures exchanges. It is The Regulation of Commodity Futures Trading Supervisory Agency Number 5 of 2019 concerning Technical Provisions for Organizing the Physical Market for Crypto Assets on Futures Exchanges, which is based on the Regulation of Minister of Trade of Republic Indonesia Number 99 of 2018 concerning General Policy for Organizing Crypto Asset Futures Trading. The issuance of this regulation aims to provide space for investors or consumers to develop the economic sector in renewal in this digital era, especially digital investment. Not only that, the passage of Act of the Republic of Indonesia Number 4 of 2023 Concerning the Development and Strengthening of the Financial Sector will provide significant changes, especially regarding the supervision of crypto asset trading, which was originally the responsibility of Bappebti under the Ministry of Trade, now supervised by the Financial Services Authority. So, there needs to be more intense efforts to guarantee legal certainty.

Issuing rules regarding cryptocurrencies does not guarantee that problems will not arise in the future. However, the rules regarding cryptocurrencies cannot guarantee that problems will not arise in the future.

⁴ Studi: Mayoritas Orang yang Investasi Kripto Ternyata Rugi, Ini Penyebabnya <https://www.kompas.tv/ekonomi/432473/studi-mayoritas-orang-yang-investasi-kripto-ternyata-rugi-ini-penyebabnya> accessed December 10, 2023

⁵ Jumlah Investor Kripto Melonjak, Simak Tips Investasi Kripto dari Upbit <https://market.bisnis.com/read/20231104/94/1711000/jumlah-investor-kripto-melonjak-simak-tips-investasi-kripto-dari-upbit> accessed December 10, 2023

Moreover, cryptocurrency and its rules are still very new. There is still a lot of confusion in society about whether crypto investment is safe or not.⁶ Discussing crypto investment can be an interesting issue if it relates to aspects of legal objectives. As the opinion of Gustav Radbruch that the purpose of Law has three basic elements: justice, legal certainty and expediency.⁷

In terms of fairness, it can be seen how far the Regulation of Bappebti Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange can create a balance between the crypto marketplace and investors or consumers and also fulfill the principle of justice. Then, in terms of legal certainty, it can be reviewed in relation to how legal certainty regarding cryptocurrencies is used as investment objects in Indonesia based on applicable laws and regulations. Meanwhile, from the benefit side, namely how this crypto can provide broad benefits and positively impact economic progress in Indonesia. So the synergy between the three aspects of legal objectives certainly provides an understanding that legality regarding crypto investment is really needed.

Based on the description above, the following is the problem formulation that will be discussed. First, how is the existence of Cryptocurrency according to Bappebti Regulation 5 of 2019 concerning Technical Provisions for Organizing the Physical Market for Crypto Assets on Futures Exchanges when viewed from three legal purposes: justice, legal certainty, and benefit? Then, the second question is, how is the legal protection of consumers related to cryptocurrency investment through the physical crypto asset market in Indonesia?

This study method is a form of juridical-normative law study that makes Law a building system of norms.⁸ The material studied in normative legal study is legal material which contains normative rules. Besides that, it also examines materials related to literature and secondary materials that have been collected.⁹ The study is qualitative. That approach puts forward general principles in accordance with describing the reality or event under study.¹⁰ Then, the method used is a descriptive normative method, namely by recording the documents that are the source of data. Besides that, descriptive

⁶ Banyak Makan Korban, Sebenarnya Aman Enggak Sih Berinvestasi di Kripto? <https://finance.detik.com/fintech/d-6862968/banyak-makan-korban-sebenarnya-aman-enggak-sih-berinvestasi-di-kripto>. accessed December 10, 2023

⁷ Satjipto Rahardjo, *Law Science*, (Bandung: Citra Aditya Bakti, 2012), p. 9.

⁸ Fajar Mukti and Yulianto Achmad, *The Dualism of Normative & Empirical Legal Study*, (Yogyakarta: Pustaka Pelajar, 2015), p. 23.

⁹ Peter Mahmud Marzuki, *Legal Study*, (Jakarta: Kencana, 2008), p. 29.

¹⁰ Aji Damanuri, *Methodology of Library Study*, (Ponorogo: STAIN Po PRESS, 2010), p. 9.

analysis is study by analyzing existing events and then describing them into narratives that are easy to understand. Of the various study approaches above, the authors use statutory and conceptual approaches.¹¹

Discussion

Legal Aspects of Crypto Assets as a Futures Exchanges in Indonesia Investment Law in Indonesia

Indonesia is a country that is heading for modern industrialization. Inadequate investment growth will impact economic growth in Indonesia, which has a less significant impact on welfare and employment. The government's task is to solve the problem of investment stagnation so that economic growth moves higher, economic sectors can accelerate, and employment opportunities are opened more widely. Opportunities to develop investment must come from two directions, namely domestic investment and foreign investment. Domestic investment for developing or industrial countries is insufficient because of inadequate capital formation. The number of entrepreneurs and investors is still limited. Therefore, the strategy of attracting foreign investment must be the main policy in the economy, supported by conducive laws and regulations

The investment factors are very important in economic modernization. In economic theory, the investment factor is very important to increase economic growth. According to Paul M. Johnson, investment is all income from companies or government agencies for capital goods used in productive activities. Another definition of the notion of investment, according to Reilly and Brown, is a commitment to tie up assets in several periods into the future to obtain income that can compensate for the sacrifice of investors.¹²

The history of investment or investment policy in Indonesia is represented by the Act of the Republic of Indonesia Number 1 of 1967 concerning Foreign Investment (UU PMA) and Act of the Republic of Indonesia Number 6 of 1967 concerning Domestic Investment (UU PMDN). In 2007, the two laws were changed to the Act of the Republic of Indonesia Number 25 2007 concerning Investment (UUPM). Act Number 25 of 2007 clarifies and emphasizes investment regulatory policies in Indonesia. Therefore, this Law has the principle of legal certainty because of its position as the basis for the rules of the game for investment and economic activities in Indonesia. The Government, the private sector and the community must

¹¹ Marzuki, *Legal Study*, p. 93-95.

¹² Didik J. Rachbono, *Law Architecture of Investment in Indonesia*, (Jakarta: Indeks, 2008), p. 11.

base investment mechanisms and activities based on investment law, which in this case is the Investment Law.

Along with the development of technology, investment is not only in the form of stocks, businesses and property. Currently, digital currency or Cryptocurrency is also a form of investment. The public enthusiastically welcomes the presence of digital currency or cryptocurrency in Indonesia. At the end of 2020, the Indonesian Central Securities Depository reported a surge in the total number of stock, bond and mutual fund investors, reaching 3,871,248. This figure shows an increase of up to 56% from 2019.¹³

The development of investment in blockchain startup companies in Asia has shown significant trends. To date, investors actively allocate funds to support startups that focus on developing blockchain technology. Several factors influencing this investment growth include market expectations for the long-term potential of blockchain technology, increased interest from industry players, and encouragement from governments recognizing the strategic value of blockchain development. Investing in blockchain startups reflects the market's anticipation for the long-term development of blockchain. As of March 31, 2019, there were 333 technology unicorns worldwide from 2010 to 2019. Over a third (124) of them originated from Asia, with China contributing 89 unicorns. Additionally, there were 15 other unicorns from India, eight from South Korea, five from Indonesia, two from Hong Kong SAR (Special Administrative Region) of China, and one from Japan and Singapore. Notably, nine of these unicorns were blockchain-based and operated in Financial Technology (Fintech) and Cryptocurrency.¹⁴

Fintech provides innovation in financial services through technology. Blockchain experiments, which are the fundamental technology behind cryptocurrencies like Bitcoin, can provide security, transparency, and decentralization in financial processes. Together, both contribute to changing how we interact with the financial system and open up new opportunities for accessing global financial services.¹⁵

With the presence of this phenomenon, the Government needs to provide security guarantees and ease of investment in the form of regulations for crypto investors. In 2019, the Government established The Regulation of Commodity Futures Trading Regulatory Agency Number 5 2019 concerning Technical Provisions for Organizing the Physical Market for Crypto Assets

¹³ Rizal Boy Oktavian. "Millennials, Digital Transactions and Investment, and National Economy", <https://www.pajak.com/pwf/milenial-transaksi-dan-investasi-digital-dan-ekonomi-nasional/>

¹⁴ Yu Wang, Jing Ren, Caroline Lim, Swee-Won Lo. "A Review Of fast-growing Blockchain Hubs in Asia", *Journal of The JBB A*, Vol. 2, No. 2, (August, 2019), p.2.

¹⁵ Olivier Jutel. "Blockchain financialization ne-colonialism, and Binance", *Journal of Frontiers*, Vo. 6 (July 2023), p.4.

on the Futures Exchange. Then, the Regulation of Bappebti Number 5 2019 was changed to Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector.

Legal Aspects of The Digital Investment of Crypto Asset in Indonesia

The circulation of digital money, such as bitcoin and Cryptocurrency in Indonesia, has received public scrutiny, which has raised many pros and cons from several groups. However, referring to the explanation of Article 202 The Regulation of Bank Indonesia Number 23/6/PBI/2021 concerning Payment Service Providers (PBI 23/2021) that Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven is an example of a virtual currency. Bank Indonesia also prohibits Payment Service Providers, such as banks or non-bank financial institutions that provide services to facilitate payment transactions, from receiving, processing, and linking virtual currency with payment transactions. Payment Service Provider (PJP) is also prohibited from facilitating virtual currency trading as a commodity unless regulated in accordance with the provisions of laws and regulations.¹⁶

According to Bank Indonesia, “Cryptocurrency is a digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units, and verify asset transfers. The most well-known crypto currency is Bitcoin, apart from bitcoin there are still thousands of cryptocurrencies, including Ethereum, Litecoin, Ripple, Stellar, Dogecoin, Cardano, Eos, Tron”.¹⁷ Popular cryptocurrencies have not consistently shown a stable purchasing power or at least something close to it. Even the most famous and widely accepted Cryptocurrency as a payment method, Bitcoin experiences significant fluctuations in its value.¹⁸ As stated in Act of the Republic of Indonesia Number 7 of 2011 concerning currency, crypto cannot currently be used as a medium of exchange in Indonesia.

However, the Ministry of Trade through the Commodity Futures Trading Supervisory Agency explains that Cryptocurrency can be traded on the physical market for crypto assets, as stipulated in Article 1 Paragraph 1 of The Regulation of Bappebti Number 7 of 2020 concerning Determination of

¹⁶ Article 1 Paragraph 4, Article 202, and Article 203 of Bank Indonesia Regulation Number 23/6/PBI/2021 on Payment Service Providers.

¹⁷ M. Agus Yozami. “Here’s the Legality of Bitcoin in Indonesia”, <https://www.hukumonline.com/berita/a/begini-legalitas-bitcoin-di-indonesia-lt6039d578c081e?r=6&p=1&q=legalitas%20bitcoin%20menurut%20hukum%20indonesia&rs=1847&rc=2023>

¹⁸ Michael R. Mainelli, Matthew Leitch, Dionysios Demetis. “*Economic Simulation of Cryptocurrencies and Their Control Mechanisms*”, *Journal of Ledger*, Vol. 4 (2019), p. 49.

Lists of Crypto Assets that Can be Traded on the Physical Market for Crypto Assets explain that "Prospective Crypto Asset Physical Traders and/or Crypto Asset Physical Traders can only trade Crypto Assets on the Crypto Asset Physical Market which the Head of Bappebti has determined in the List of Crypto Assets that can be traded on the Crypto Asset Physical Market".¹⁹ So, Crypto Asset is the mention of Cryptocurrency traded on the Indonesian physical market. The crypto asset trading mechanism is regulated in The Regulation of Bappebti Number 5 of 2019 concerning Technical Provisions for Organizing the Physical Crypto Asset Market on the Futures Exchange, which is based on The Regulation of the Minister of Trade Number 99 of 2018 concerning General Policy for Organizing Crypto Asset Futures Trading.

When talking about investing in crypto assets, this is still related to the constitutional mandate in Article 33 of the Constitution of the Republic of Indonesia 1945, which states that the state must manage the economy in Indonesia for the welfare and prosperity of the people, one of which is through investment. Basically, investment is investing capital in one or more assets that are owned, usually for a certain period, with the hope of getting profits in the future.²⁰ That means that Investment has an income function as well as an interest rate. In essence, investment is the first step regarding economic development. The dynamics of investment affect the level of development and economic growth. Therefore, each country must develop a climate that can develop the world of investment. One type of investment that is being favored by the public today is crypto asset investment. This investment is still very new in Indonesia, so the Government's readiness to respond to crypto-related issues is needed when legalizing the investment.

The investment in crypto assets is included in futures trading. According to Article 1 Point 1 of Act of the Republic of Indonesia Number 10 of 2011 concerning Amendments to Act of the Republic of Indonesia Number 32 of 1997 Concerning Commodity Futures Trading explains that "Commodity Futures Trading is everything related to buying and selling Commodities with withdrawal of Margin and with later settlement based on Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts.". Then proceed to Point 2, "Commodities are all goods, services, rights and other interests, and any derivatives of Commodities, which can be traded and become the subject of Futures Contracts, Sharia Derivative Contracts, and/or other Derivative Contracts". This explanation is basically

¹⁹ Commodity Futures Trading Regulatory Agency Regulation Number 7 of 2020 on Determination of List of Cryptocurrency Assets that Can be Traded in the Physical Cryptocurrency Asset Market.

²⁰ Chandra Kurniawan, "The Impact of Investment on the Indonesian Economy", *Journal of Media Wahana Ekonomika*, Vol. 12, No.4, (August, 2016), p. 2.

in accordance with the characteristics of crypto assets, which have the characteristics of having a fluctuating value and can be traded as a commodity with a certain margin.

Implementing crypto asset investment provisions must be based on the principles of good corporate governance or Good Corporate Governance. Apart from that, the interests of members of futures exchanges, physical traders of crypto assets, and consumers of crypto assets must also be prioritized. To achieve price transparency and enforce these regulations, Bappebti may form a crypto asset committee to assist Bappebti's performance in developing crypto asset trading activities on futures exchanges or physical markets²¹ because crypto assets must be traded according to the mechanism regulated in this Bappebti regulation. However, The Regulation of Bappebti Number 5 of 2019 does not regulate consumer protection for investors who are harmed by the sale of crypto assets caused by things outside the will or authority of the marketplace. Because in truth, marketplaces or crypto asset traders only sell international types of crypto coins. Marketplace is not a crypto coin's provider. So that if a scam occurs, it is risky or has an impact on investors and even all stakeholders in the crypto market in Indonesia. So, the confirmation regarding the substance of crypto transactions on the physical futures market must be explained that when a scam or cyber crime occurs which is not caused by crypto asset traders, Bappebti must accommodate these problems based on justice and kinship. In the opinion of Emile Durkheim, the life of modern society puts forward "laws that restore".²² The legal relationship between investors and exchangers or marketplaces is based on or in accordance with the provisions of Contract Law in Indonesia, namely Article 1320 of the Civil Code. In addition, this is also supported by the principles contained in Article 1338 of the Civil Code.

Related to crypto asset traders (marketplaces) in Bappebti's regulation, it plays the role of a party facilitating crypto asset transactions by customers. Customers are crypto asset customers who use services from the marketplace or exchangers in crypto asset transaction activities in the physical futures market. To guarantee legal protection for crypto asset investors, a form of legal protection for investors must be realized through the legality of the marketplace as stipulated in the regulations. All marketplaces must meet all the requirements set out in Bappebti rules. Then the marketplace or crypto asset traders must get approval from Bappebtis. To obtain this approval, the

²¹ Article 2 of Commodity Futures Trading Regulatory Agency Regulation Number 5 of 2019 on Technical Provisions for the Implementation of Physical Asset Crypto Market in Futures Exchange.

²² Satjipto, *Law Theory: Ordering Strategy Across Space and Generations of Humans*, p. 41-43.

marketplace or exchanger must meet the standards or requirements stipulated in Article 8 of The Regulation of Bappebti Number 5 of 2019 concerning Technical Provisions for Organizing the Physical Market for Crypto Assets on the Futures Exchange.

To obtain such approval, the market or exchange must meet the standards or requirements stipulated in Article 8 of Bappebti Regulation Number 5 of 2019 concerning Technical Provisions for implementing the Physical Market of Crypto Asset Futures on Commodity Exchanges. Physical Traders of Crypto Assets must fulfill the following requirements: (1) having a minimum paid up capital of at least IDR 1.000.000.000.000,00 (one trillion Indonesian Rupiah); (2) maintaining a minimum end of period capital balance of at least IDR 800.000.000.000,00 (eight hundred billion Indonesian Rupiah); (3) having a minimum organizational structure including the divisions of Information Technology, Audit, Legal, Crypto Asset Customer Complaints, Client Support, Accounting, and Finance; (4) having an online trading system and/or facilities used to facilitate the implementation of the Physical Market of Crypto Asset connected to Commodity Exchanges and Futures Clearing Institutions; (5) Having a minimum set of operational procedures (SOP) governing the marketing and acceptance of Crypto Asset Customers, transaction execution, internal control and supervision, resolution of Crypto Asset Customer disputes, and the implementation of anti-money laundering, counter-terrorism financing, and mass destruction weapons proliferation programs; and (6) Having at least 1 (one) employee certified as a Certified Information Systems Security Professional (CISSP).

With the existence of legality regarding investment in crypto assets, it does not mean that this will not cause disputes or disputes of interest between parties. In Bappebti regulations, dispute resolution is prioritized by way of deliberation. This matter is based on Act of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. If on the way it does not get results for peace, then the parties to the dispute can resolve it through the Commodity Futures Trading Arbitration Board (BAKTI). BAKTI is a body that specifically resolves disputes related to Commodity Futures Trading, Warehouse Receipt Systems and/or other transactions regulated by Bappebti, as for the legal protection of investors who suffer losses in crypto asset transactions which contain elements of fraud, investors or consumers can file a lawsuit with the Consumer Dispute Settlement Agency. As stipulated in Article 52 of Act of the Republic of Indonesia Number 8 of 1999 concerning Consumer

Protection, BPSK has the authority to handle consumer dispute resolution through mediation, arbitration or conciliation.²³

Crypto Assets After Promulgation of Act of Republic of Indonesia Number 4 of 2023 Concerning The Development and Strengthen of The Financial Sector

One of the problems in the financial sector in Indonesia is reflected by the low market capitalization of national stocks and bonds compared to other countries, as well as the limited financial instruments for investment and risk management (hedging), especially for complex and high-risk financial products. On the other hand, the Indonesian financial sector is also facing challenges from the emergence of complex and high-risk financial instruments such as Cryptocurrency. In December 2022, the Government authorized the Law concerning the Development and Strengthening of the Financial Sector which was promulgated in January 2023 to become Act Number 4 of 2023.

In this Law, crypto assets enter the financial sector ecosystem, namely the Financial Sector Technology Innovation. In addition, there have been policy changes regarding Indonesia's mechanism and supervision of crypto asset trading. Namely, the supervision has shifted to become the responsibility of the Financial Services Authority from what was previously supervised by Bappebti. This is contained in Article 8 Paragraph (7) of Act Number 4 of 2023 namely the additional position of the Board of Commissioners in the form of Chief Executive Supervising Financial Sector Technology Innovation, Digital Financial Assets and Crypto Assets whose task is to lead supervisory duties on financial service activities in Financial Sector Technology Innovation sector and digital financial assets including crypto assets. As was the case in the previous Bappebti Regulation, crypto assets are still considered assets and are not considered as means of payment in Indonesia. Because the legal currency to be used as a means of payment is only Rupiah. Sri Mulyani, Minister of Finance of the Republic of Indonesia explained that Act of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthen of the Financial Sector aims to strengthen the legal basis for capital market reform, money market, foreign exchange and crypto assets. Therefore, this is expected to encourage a variety of financial market instruments.²⁴

²³ Shabrina Puspasari, "Legal Protection for Investors in Cryptocurrency Asset Transactions in Commodity Futures Exchange", *Jurist Diction*, Vol. 3 Number 1, (January, 2020): p. 324. DOI: <https://doi.org/10.20473/jd.v3i1.17638>

²⁴ Dina Mirayanti Hutauruk. "Crypto Assets Now Monitored by OJK, This Is the Response of Industry Players".

The promulgation of Act Number 4 of 2023 showed that the Government of Indonesia opened up the widest possible opportunities related to crypto commodities to strengthen the financial sector. The transition of Bappebti's authority to the Financial Services Authority will provide a positive side regarding the legality of crypto assets in Indonesia. It is because the mechanism regarding crypto asset trading is already under higher regulations than before, which will then be further regulated through Government Regulations and regulations from the Financial Services Authority itself. For now, the transfer of supervision to the Financial Services Authority is still in transition. So, normatively, there are still no regulations to implement the supervision and mechanism of crypto trading in Indonesia based on the Act of the Republic of Indonesia Number 4 of 2023 concerning the development and strengthening of the financial sector.

To realize consumer protection, especially for crypto investors, this is regulated in Article 233-237 of the Act of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthen of the Financial Sector. The financial sector authority can monitor market behavior to ensure the compliance of financial sector business actors in stipulating consumer and public protection provisions directly and indirectly according to the functions, duties and powers of the financial sector authorities provided by Law. It is done to reduce potential violations in the crypto asset trading sector or within the scope of Financial Sector Technology Innovation. It differs from the Bappebti regulation in that there is no specific mechanism related to consumer protection, especially regarding crypto asset trading in Indonesia. So, the settlement related to consumer protection still refers to the Act of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. Therefore, changes to the mechanism regarding crypto assets as outlined in the Act of the Republic of Indonesia Number 4 of 2023 Concerning Development and Strengthen of the Financial Sector can provide specific legal certainty, especially regarding legal consequences to regulating the rights and obligations of financial sector business operators and consumers themselves.

Last July 2023, the Government of the Republic of Indonesia, through the Ministry of Trade, inaugurated PT Bursa Komoditi Nusantara or Commodity Future Exchange (CFX) as the Indonesian crypto asset exchange manager. So currently, Indonesia has its crypto exchange, which aims to accommodate crypto futures trading. One of the aims of the crypto exchange concept is to protect the public while increasing the effectiveness of trading in the physical crypto asset market. After the issuance of the P2SK Law,

<https://investasi.kontan.co.id/news/aset-kripto-kini-diawasi-ojk-ini-tanggapan-pelaku-industri>.

supervision of crypto asset trading will shift to the Financial Services Authority. However, this supervision will be effective in 2025.

In terms of organizing crypto asset trading, it is currently still being offered by the Ministry of Trade through the Commodity Futures Trading Supervisory Agency (Bappebti). Examining Bappebti Regulation Number 13 of 2022 concerning Amendments to Bappebti Regulation Number 8 of 2021 concerning Guidelines for Organizing Physical Market Trading for Crypto Assets on the Futures Exchange, this regulation is the main background behind the existence of the Crypto Exchange in Indonesia. In looking at the development and growth of crypto asset trading, there are several mechanisms that have been changed in these regulations. One of them is the existence of the Futures Guarantee and Guarantee Clearing House or Futures Clearing House.

The crypto asset Futures Clearing House, managed by PT Kliring Berjangka Indonesia, is vital in protecting consumer interests. One of them is as a guarantor of crypto assets traded on the exchange. The concept of the Futures Clearing House is the same as the Indonesian Securities Clearing and Guarantee on the Indonesian Stock Exchange (IDX) related to stock trading. Crypto asset collateral is very important because it is a preventive step to avoid potential fraud committed by companies or physical traders of crypto assets. It is as explained in Article 31, Paragraphs 10 and 11, namely:

- 10) Physical Crypto Asset Traders are required to place funds as intended in paragraph (1) with the Futures Clearing Institution in the amount of 100% (one hundred percent) or all of the total managed Crypto Asset Customer funds.
- 11) Funds as referred to in paragraph (10) must be placed by the Futures Clearing House in an account specifically used to facilitate guarantees and settlement of Crypto Asset Physical Market trading transactions

Based on this explanation, it can be concluded that when a crypto asset transaction occurs, the physical crypto asset trader at that time is also obliged to place 100% of the customer's funds with the Futures Clearing House. It avoids the potential for fraud, conceptualization or mismanagement by traders. So, this aims to protect the interests of crypto asset customers related to trade settlement on crypto exchanges.

Not only that, there are several things that the Financial Services Authority (OJK) and Commodity Futures Trading Supervisory Agency must pay attention in regulating and supervising crypto asset trading in Indonesia. At the end of 2022, a crypto coin provider company, namely the FTX exchange from the United States, went bankrupt. The crypto world was shocked by this phenomenon because FTX went bankrupt due to the company's mismanagement. So that investors who put crypto assets on the

exchanger cannot withdraw their assets. The management error was because the FTX company used customer or investor funds for trading without investors' knowledge. Using customer funds for trading until they run out is a fatal mistake FTX made. It is detrimental to the exchange itself and investors who use it for crypto asset transactions. Apart from that, the FTX company also has a crypto coin called FTT. The bankruptcy of the FTX exchange also impacted the FTT coin. At that time, the FTT coin experienced a significant price drop, a.k.a. it was no longer sold on the crypto exchange.²⁵ It is also very detrimental to investors who own FTT coins because they cannot sell these coins through any exchanger, including in Indonesia.

What needs to be underlined is that if a problem occurs caused by one of the crypto coin providers or the exchanger itself, then preventive measures must be taken by the Bappebti and Financial Services Authority. In this preventive effort, the Bappebti and Financial Services Authority can carry out a massive analysis regarding the circulation of crypto assets on an international scale, strengthen regulations, and provide strict legal consequences regarding marketplaces or exchanges in Indonesia. So that if there are issues that potentially harm domestic crypto asset trading, the Bappebti and Financial Services Authority can immediately take preventive steps to protect all stakeholders or crypto asset investment activists in Indonesia.

Conclusion

The trading of crypto assets is regulated under the Regulation of the Commodity Futures Trading Regulatory Agency Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Asset Futures on Commodity Exchanges (Bappebti), which is a government institution under the Ministry of Trade of the Republic Indonesia. Bappebti functions to regulate, nurture, develop, and supervise futures trading. Therefore, it is evident that Bappebti plays a crucial role in Indonesia. Through these regulations, the existence of Cryptocurrency in Indonesia is only allowed as an investment instrument or investment asset. The Bappebti rules emphasize that crypto used in the Indonesian context is considered a crypto asset, not a cryptocurrency. Crypto cannot be used as a currency, as the official currency in Indonesia is the Indonesian Rupiah.

The Presence of the Republic of Indonesia Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (UU P2SK) grants the Financial Service Authority (OJK) the authority to regulate and

²⁵ Nathan Reiff. "The Collapse of FTX: What Went Wrong With the Crypto Exchange", Investopedia, January 4, 2023, <https://www.investopedia.com/what-went-wrong-with-ftx-6828447>.

oversee the mechanisms of crypto asset trading by the year 2025. Additionally, the Financial Services Authority (OJK) has the power to regulate and oversee the mechanisms of crypto asset trading in 2025 to promote the financial sector's contribution to sustainable economic growth, enhance competitiveness and efficiency in the economic sector, and improve productive portfolios. With the enactment of UU P2SK, Indonesia now has its own crypto exchange designed to accommodate crypto futures trading. The Crypto Asset Futures Clearing Institution, managed by PT Kliring Berjangka Indonesia as the guarantor, plays a crucial role in protecting consumer interests. Collateral for crypto assets is essential as a preventive measure to avoid potential fraud by companies or physical traders of crypto assets.

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