

## Analysis of the Dualism in Cryptocurrency Regulation in Indonesia

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### Abstract

When discussing the existence of cryptocurrency in Indonesia, the Indonesian government does not recognize cryptocurrency as an official currency of the country. The government classifies cryptocurrency as a tradable commodity. The legal framework for the use of cryptocurrency in economic activities is regulated by two institutions: the Ministry of Trade of the Republic of Indonesia and the Commodity Futures Trading Regulatory Agency (BAPPEBTI), which automatically governs cryptocurrency trading activities. Over time, as cryptocurrency trading activities have increased and even surpassed stock market activities, the government enacted Law No. 4 of 2023 on the Strengthening and Development of the Financial Sector, which grants the Financial Services Authority (OJK) supervisory powers similar to BAPPEBTI. This article will discuss the dualism of supervisory authority over cryptocurrency as a commodity, between BAPPEBTI and OJK. The research is conducted using a normative legal research method with a regulatory approach. The result of this study is that the government should ideally create derivative regulations from Law No. 4 of 2023 on the Strengthening and Development of the Financial Sector to clarify the roles and functions of OJK to avoid overlapping authority with BAPPEBTI. Additionally, a specialized unit should be established to oversee cryptocurrency activities with a structure that involves both BAPPEBTI and OJK in a balanced manner, where both institutions have a proportional share in carrying out their duties.

**Keywords:** Dualism, Cryptocurrency, Regulation



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### INTRODUCTION

Rapid and sustainable economic growth is a key factor in ensuring the continuity of a country's economic development. One important step that can be taken to achieve this is through investment. Investment plays a crucial role as it has a positive relationship with the increase in national income. The easier the investment process is, the more investment activities can be carried out, which in turn will generate higher income for the country (Kamal & Apriani, 2022). The advent of the Fourth Industrial Revolution marks a new chapter in growth and digital development. In this era, almost everyone worldwide can easily invest using devices such as computers, laptops, or smartphones, unlike in the past when investments were made offline. Investment types have become increasingly diverse over time. Long-term and short-term investments like deposits, gold, property, stocks, and mutual funds have become common choices for Indonesians. With a relatively young population and a rapid adoption of digital technology, Indonesia has quickly embraced these global trends, accelerating the penetration of digital assets, which were once only developing abroad but are now becoming a social phenomenon in Indonesia.

Among the various types of investments sought by investors, a new paradigm has emerged with the rise of cryptocurrency. Cryptocurrencies have gained popularity and are seen as both a digital currency and an attractive investment instrument. As an innovation in the financial world, cryptocurrencies offer a new alternative, distinct from traditional investments, enticing many investors to explore the potential profits they can generate (Siregar et al., 2024). Cryptocurrency refers to a system that enables the secure and widespread exchange of digital

currency. In simple terms, it is a form of virtual currency that functions similarly to traditional money, allowing users to make virtual payments in various business transactions (Raya, 2022). Cryptocurrency was first introduced by Satoshi Nakamoto in 2009. Bitcoin, as the first form of cryptocurrency, was launched in the online market and quickly had a significant global impact. All Bitcoin transactions are conducted using hash cryptography, which includes various schemes to ensure the security and validity of each transaction. This cryptographic method is used to confirm that every transaction is legitimate. With a decentralized system not tied to any organization's rules, Bitcoin has become the digital currency with the largest market share (Ilyasa, 2019). In addition to Bitcoin, various other cryptocurrencies have emerged, such as Ripple, Altcoins, Litecoin, Ethereum, Dash, Dogecoin, Stellar, Peercoin, Bitshares, NXT, and many more. Each of these has unique characteristics and features that set them apart, offering a wider range of options for investors and users in the digital world.

Essentially, cryptocurrency serves two main functions. On one hand, it functions as a digital currency or means of payment, which was its original purpose. On the other hand, cryptocurrency can also be used as a commodity or digital asset, often referred to as crypto assets. The technology underlying these crypto assets is cryptography and a distributed ledger system, commonly known as blockchain (Puspasari, 2020). Each country around the world has a different perspective on accepting cryptocurrency. In Asia, for example, India is one of the countries that prohibits banks and financial institutions from conducting transactions with virtual currencies through the Reserve Bank of India (RBI). However, the use of cryptocurrency in India is still allowed as a commodity, not as a means of payment or official currency (Kim, 2016). As a developing country, the Philippines, through the Bangko Sentral ng Pilipinas (BSP), its central bank, has issued regulations regarding the exchange between virtual currencies and fiat currencies, both for purchase and sale transactions (Haji, 2022). Unlike India and the Philippines, China takes a firmer stance on cryptocurrency or crypto assets, viewing them as potentially causing dualism in the country's economic activities. Through the People's Bank of China (PBOC), the Chinese government has established clear regulations by banning all activities related to cryptocurrency or crypto assets in the country (Budiman, 2023).

In Indonesia, cryptocurrency is not recognized as legal tender, in accordance with Bank Indonesia regulations that prohibit the use of payment systems involving cryptocurrencies. Several related regulations, such as PBI 11/12/PBI/2009 on Electronic Money, PBI 18/40/PBI/2016 on Payment Transaction Processing, and PBI 19/12/PBI/2017 on Financial Technology Implementation, regulate the prohibition of using virtual currencies issued by entities other than monetary authorities, obtained through mining, purchasing, or reward transfers. Additionally, under Law No. 7 of 2011 on Currency and Bank Indonesia Regulation No. 17/3/PBI/2015 on the Obligation to Use Rupiah, it is specified that the only legal currency recognized for payment transactions in Indonesia is the Rupiah. Therefore, it can be concluded that the Rupiah is the sole currency recognized for payment transactions in Indonesia. The Indonesian government recognizes cryptocurrency or digital currency not as money, but as a commodity. In this regard, cryptocurrencies are considered crypto assets that can be traded. Regulations regarding crypto assets categorized as commodities in Indonesia are governed by several rules, including Regulation of the Minister of Trade of the Republic of Indonesia No. 99 of 2018, which outlines the general policy for the organization of cryptocurrency futures trading; BAPPEBTI Regulation No. 5 of 2019, which establishes technical provisions regarding the physical crypto asset market in futures exchanges; and BAPPEBTI Regulation No. 13 of 2022, which amends BAPPEBTI Regulation No. 8 of 2021 concerning the guidelines for organizing the physical crypto asset market in futures exchanges (Ramadhan et al., 2021). The designation of crypto assets as commodities that can be traded through futures contracts on

futures exchanges has increased public interest in investing in them in Indonesia. This is evident from the growing number of investors switching to crypto assets, with their numbers now far exceeding the number of stock investors (Arbina & F Putuhena, 2022).

The Commodity Futures Trading Regulatory Agency (Bappebti) recorded that the number of registered crypto asset customers reached 18.25 million as of November 2023. On average, the customer base has grown by 437,900 customers per month since February 2021 (Kementerian Perdagangan RI, 2023). The data shows that the number of crypto asset investors has been increasing year by year. Along with the rapid growth of crypto assets in Indonesia, various issues have emerged related to the organization, regulation, and oversight of these assets. One of the challenges faced after the enactment of Law No. 4 of 2023 on the Strengthening and Development of the Financial Sector (UUPPSK) is the need for regulatory adjustments to address these challenges. To tackle this, the government, along with the People's Representative Council (DPR), introduced the Financial Sector Development and Strengthening Law (UUPPSK) with the aim of improving public welfare and reforming Indonesia's financial sector. This law aims to make the financial sector more inclusive and stable, while also accelerating the growth of the national economy (Bil Barkah & Zakiran, 2023).

In the UUPPSK, the scope of Financial Sector Technology Innovation (ITSK) also includes crypto assets. Article 213 letter H of this law regulates activities related to digital financial assets, including crypto assets. With the inclusion of crypto assets within the ITSK scope, the management, regulation, and supervision of crypto assets, which were previously under the Commodity Futures Trading Regulatory Agency (BAPPEBTI) in the Ministry of Trade, have now been transferred to the Financial Services Authority (OJK). This transfer of responsibility is outlined in Article 217 of the UUPPSK, which states that Bank Indonesia and OJK can coordinate regarding the regulation, supervision, and implementation of ITSK. This change has led to confusion regarding the management, regulation, and supervision of crypto assets, considering that these were previously governed by BAPPEBTI under the Ministry of Trade. As a result of the transfer of authority, BAPPEBTI, which previously served as the regulatory authority overseeing crypto asset trading, has now lost its functional role in monitoring crypto activities. This has led to a mismatch with existing regulations, which had positioned BAPPEBTI as the institution responsible for regulating and supervising crypto asset trading in Indonesia. The appointment of Bank Indonesia (BI) and the Financial Services Authority (OJK) as new authorities to regulate crypto activities has also raised questions. This is because BI and OJK have not had the duties, functions, or infrastructure needed to regulate commodity trading, a responsibility that was previously under BAPPEBTI's jurisdiction.

Based on the explanation, it can be concluded that there are issues with the regulation of crypto assets in Indonesia. The implementation of the UUPPSK has caused a mismatch between the existing regulations regarding crypto asset activities, creating dualism in management, regulation, and oversight. Previously, this was overseen by BAPPEBTI under the Ministry of Trade, but now it has shifted to OJK and BI. The loss of BAPPEBTI's role as the authority regulating and overseeing crypto assets has led to uncertainty regarding the legal status of crypto assets, particularly whether they should still be considered a commodity, as outlined in the Indonesian Minister of Trade Regulation No. 99 of 2018 regarding the General Policy on Crypto Asset Futures Trading. From the existing issues, it can be concluded that there is a mismatch in the regulations concerning crypto assets, which impacts the management, regulation, and supervision of crypto assets as commodities in the digital era in Indonesia. Therefore, this research is of high urgency to achieve an ideal regulation regarding crypto assets as commodities in the digital context in Indonesia. This research is also expected to contribute to the advancement of the national economy and the development of legal studies,

particularly in the field of business law. This is because the research aims to provide a better understanding of crypto asset regulations, which can ultimately serve as a reference for the government in formulating appropriate policies related to crypto assets. Additionally, this research will contribute to the development of legal studies, especially in business law, by providing deeper insights into the ideal regulations for crypto assets as commodities in Indonesia's digital era.

## **RESEARCH METHODS**

This paper employs a normative legal research method, focusing on discussing the dualism in the regulation of crypto as an investment instrument. The approach used in this research is a legislative approach. The legal materials utilized include primary and secondary legal sources. The technique for collecting legal materials is through library research, while the analysis of these materials is conducted using a deductive analysis approach.

## **RESEARCH RESULTS AND DISCUSSION**

Currently, regulations and supervision of financial products and services are under several authorities. The Financial Services Authority (OJK) is responsible for overseeing stock market instruments, bonds, and their derivatives. Bank Indonesia supervises money market instruments, foreign exchange, and related derivatives. Meanwhile, the Commodity Futures Trading Regulatory Agency, under the Ministry of Trade, oversees the commodity market and its derivatives, including cryptocurrency. The differences in types and providers of fintech have led to varying regulators overseeing them. Currently, in Indonesia, there are three institutions responsible for supervising the fintech industry:

1. Financial Services Authority (OJK). OJK was established with the aim of ensuring that all activities in the financial services sector are conducted in an orderly, fair, transparent, and accountable manner. OJK also aims to create a sustainable and stable financial system while protecting the interests of consumers and the public. OJK plays a key role in overseeing all activities related to the financial services sector in Indonesia.
2. Commodity Futures Trading Regulatory Agency (BAPPEBTI). BAPPEBTI is a supporting agency under the Ministry of Trade of the Republic of Indonesia. BAPPEBTI regulations for cryptocurrency have been issued and have been in effect since December 17, 2020. There are four written regulations that legalize the trade of digital commodities such as cryptocurrency, including:
  - a. BAPPEBTI Regulation No. 2 of 2019 on the Implementation of Physical Commodity Markets on Futures Exchanges.
  - b. BAPPEBTI Regulation No. 3 of 2019 on Commodities that Can Be Subject to Futures Contracts, Sharia Derivatives Contracts, and/or Other Derivatives Contracts Traded on Futures Exchanges.
  - c. BAPPEBTI Regulation No. 4 of 2019 on Technical Provisions for the Implementation of Digital Gold Physical Markets on Futures Exchanges.
  - d. BAPPEBTI Regulation No. 5 of 2019 on Technical Provisions for the Implementation of Physical Crypto Asset Markets on Futures Exchanges.
3. Bank Indonesia. Bank Indonesia is an independent institution, free from government or external interference. Its main objective is to achieve and maintain the stability of the rupiah. To accomplish this goal, Bank Indonesia relies on three main pillars: prudent monetary policy, an efficient and accurate payment system, and a sound banking and financial system. To achieve these objectives, Bank Indonesia is responsible for setting and implementing monetary policy, regulating and ensuring the smooth functioning of the payment system, and supervising and regulating the banking sector.

Bank Indonesia emphasizes that virtual currencies, including Bitcoin, are not recognized as legal tender in Indonesia and are therefore prohibited from being used for payment transactions in the country. This aligns with the provisions outlined in Law No. 7 of 2011 on Currency, which states that the legal currency is the money issued by the Republic of Indonesia. Any transaction intended for payment or the fulfillment of other obligations, as well as financial transactions within Indonesia, must be conducted in Rupiah. Bank Indonesia asserts that as the authority responsible for the payment system, it prohibits all payment system service providers (such as principals, switching operators, clearing operators, settlement finality operators, issuers, acquirers, payment gateways, electronic wallet providers, and fund transfer service providers) as well as financial technology service providers in Indonesia, both banks and non-bank institutions, from processing payment transactions involving virtual currencies. This is regulated in PBI 18/40/PBI/2016 on the Implementation of Payment Transaction Processing and PBI 19/12/PBI/2017 on the Implementation of Financial Technology. As the authority overseeing the fields of monetary policy, financial system stability, and payment systems, Bank Indonesia remains committed to maintaining the stability of the financial system, protecting consumers, and preventing money laundering and terrorism financing practices.

In contrast to Bank Indonesia's view, Law Number 4 of 2023 on the Strengthening and Development of the Financial Sector (UUPPSK) accommodates and recognizes the existence of digital assets, including cryptocurrency. Article 213 of the UUPPSK acknowledges activities related to digital financial assets, including cryptocurrencies, as part of Financial Sector Technology Innovation (ITSK). Article 1, number 34 of the UUPPSK explains that ITSK refers to technology-based innovations that impact products, activities, services, and business models within the digital financial ecosystem. The scope of ITSK also includes payment systems, securities transaction settlement, capital raising, investment management, and more, all under the supervision of the Financial Services Authority (OJK). Article 6 grants full authority to OJK to regulate and supervise digital assets, including cryptocurrencies. Previously, the Ministry of Trade of the Republic of Indonesia issued Minister of Trade Regulation Number 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading (hereinafter referred to as Permendag Number 99 of 2018). Article 1 of Permendag Number 99 of 2018 states that "Crypto Assets are designated as commodities that can be subjects of futures contracts traded on futures exchanges." Furthermore, Article 2 of Permendag Number 99 of 2018 provides more detailed regulations on the designation of Crypto Assets as commodities that can be the subject of futures contracts traded on futures exchanges, as well as the guidance, supervision, and development of these assets, which will be determined by the Head of the Commodity Futures Trading Supervisory Agency.

In these two articles, it is clearly and firmly stated that Crypto Assets are classified as commodities that can be subjects of futures contracts and traded on futures exchanges. The Head of Bappebti has issued several regulations related to cryptocurrency trading, one of which is Regulation Bappebti Number 13 of 2022, which amends Regulation Bappebti Number 8 of 2021 on the Guidelines for the Implementation of Physical Crypto Asset Trading on Futures Exchanges. According to this regulation, the supervision of cryptocurrency transactions is carried out by the futures exchange. However, with the enactment of the UUPPSK, the regulation and supervision of cryptocurrency trading has now shifted to the OJK. Therefore, synchronization between regulations and synergy between institutions is needed to prevent overlaps in existing regulations and provisions. Based on the issue at hand and referring to the theory of "Stufenbau des Recht" or "legal hierarchy" proposed by Hans Kelsen, the legal system can be viewed as a tiered structure, where lower legal norms must depend on higher norms, and the highest legal norms must be based on the most fundamental principles. The enactment

of the UUPPSK in relation to the regulations previously established by the Ministry of Trade and the implementing regulations by BAPPEBTI, within the context of the hierarchy of laws, does not conflict and is in line with the principle of *\*lex superior derogat legi inferiori\**, meaning that higher regulations in the hierarchy can override lower regulations. Therefore, the existing regulations regarding cryptocurrency in Indonesia are no longer valid after the UUPPSK was passed in 2023 and will take effect in January 2025.

The enactment of the UUPPSK has led to the transfer of responsibilities for regulating, administering, and supervising cryptocurrency activities as a commodity in Indonesia. Previously, these tasks were under the authority of BAPPEBTI, but after the UUPPSK, the role has shifted to OJK and BI. However, functionally, these two institutions do not yet have the necessary tasks, functions, and infrastructure to handle cryptocurrency the way BAPPEBTI did. Therefore, this transfer of authority must be carried out carefully, given the existing infrastructure and regulations. Inter-agency synergy is crucial during this transition period, where each agency must be willing to cooperate and set aside sectoral egos. The success of this transition heavily depends on attention to the key factors outlined in the UUPPSK, which aims to provide clear orientation for the public and financial sector actors. Additionally, the UUPPSK needs to establish clear norms regarding what is allowed and what is prohibited in the financial sector, to ensure the creation of legal order that can serve as a reference for society in the future. It is also expected that the UUPPSK will bring legal transparency, avoid normative confusion among the public, prevent inconsistency in law enforcement, and protect the interests of all relevant parties.

## **CONCLUSION**

The regulation, administration, and supervision of cryptocurrency assets in Indonesia have experienced dualism due to discrepancies in the existing regulations governing these activities. Previously, the regulation and oversight of cryptocurrency assets were managed by the Ministry of Trade of the Republic of Indonesia through Regulation No. 99 of 2018 on the General Policy for Cryptocurrency Futures Trading, which was organized and supervised by the Commodity Futures Trading Regulatory Agency (BAPPEBTI). BAPPEBTI regulated this through Regulation No. 5 of 2019 on the Technical Provisions for the Organization of Physical Crypto Asset Markets on Futures Exchanges, as well as Regulation No. 13 of 2022 amending Regulation No. 8 of 2021 concerning Guidelines for Organizing the Physical Crypto Asset Market on Futures Exchanges. However, following the enactment of Law No. 4 of 2023 on the Strengthening and Development of the Financial Sector (UUPPSK), the authority to regulate and supervise cryptocurrency activities, which was previously under BAPPEBTI, has now shifted to the Financial Services Authority (OJK) and Bank Indonesia (BI). Given this dualism, synchronization between these agencies is necessary to ensure that the oversight of cryptocurrency activities does not overlap or cause conflicts between different institutions.

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