

Juridical Analysis of Legal Updates on Crypto Assets in Indonesia (Comparative Study of Indonesian Law with Singapore and Islamic Law Views)

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ABSTRACT

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The progress of the financial industry marked by the emergence of crypto assets at the global level is a result of the development of technological advances, through Regulation No. 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Trading and followed up with regulation of the Commodity Futures Trading Supervisory Agency No. 8/2021 making crypto assets recognized as commodities, meaning that crypto assets in Indonesia are only recognized as commodity assets not as means of payment, related to the development plan of crypto asset exchanges in Indonesia, the need for legal updates related to regulations, human resources and governance. Besides, given its fluctuating nature and tending to give discontent, its use as a transaction is forbidden in Islam, but is lawful as long as it is used as a commodity asset with clear underlying assets and fulfills the *sil'ah*.

This type of research is normative juridical and is analyzed using qualitative data analysis, using legal comparisons from countries that already have crypto asset regulation first, then the Singapore state deserves to be used as a parameter to conceptualize legal updates in Indonesia in the governance and regulation of crypto assets in Indonesia.

Keywords: Crypto Assets, Legal Framework, Legal Updates, Islamic Law.

INTRODUCTION

In Indonesia, crypto assets have been recognized as commodities through Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning General Policies for the Implementation of Crypto Asset Trading and Regulation of the Commodity Futures Trading Supervisory Agency Number 8 of 2021 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on Futures Exchanges, that crypto assets are commodities that can be used as the subject of futures contracts traded on futures exchanges. And make the regulation, protection and supervision under the Commodity Futures Trading Supervisory Agency (BAPPEBTI), with protection in the form of providing

legal certainty to business actors and crypto asset customers and preventing the use of crypto assets for illegal purposes. The regulation then has a significant impact on the development of the crypto asset market in Indonesia, because now crypto asset trading is increasingly in demand by the public. It can be seen from the increasing number of investors who invest in crypto assets, even today there are more than twice as many as stock investors (Tambun, 2022), which reached 4.2 million accounts.

Some countries have even taken advantage of this advantage to grow the level of crypto asset transactions in their countries. One of them is Singapore, which continues to update existing regulations to accommodate the rapid development of crypto assets, because so far, the development of crypto assets in Singapore has been able to support the development of the country's start-up industry. Singapore through the Monetary Authority of Singapore (MAS) has legalized the use of crypto assets as securities as stipulated in the Securities and Futures Act and the use of crypto assets as payment tokens through the Payment Service Act. Then on the pattern of supervision and control of crypto assets, especially security tokens, which are carried out by the Monetary Authority of Singapore (MAS) which is a digital representation of traditional securities such as stocks and bonds.

Besides all the recognition and advantages, it has, crypto assets have also generated debate regarding its halalness. Some opinions state that crypto assets are halal, but there are also those who forbid them. Considering most Indonesian people are Muslim, it is important to know more about the halalness of these crypto assets. The Indonesian Ulema Council (MUI) as the highest religious authority in Indonesia itself recognizes that the use of crypto assets in business transactions according to Islamic law is still reaping the pros and cons among scholars and economists, where the Indonesian Ulema Council forbids the use of cryptocurrency as a buying and selling transaction, but legalizes it for investment because it qualifies as *sil'ah*. Meanwhile, according to the Tarjih and Tajdid Assembly of the Muhammadiyah Central Board (PP), it is forbidden to use crypto both as an investment and as a buying and selling transaction. Islam has also outlined the types of transactions that are prohibited such as transactions that contain elements of usury, as Q.S. Al-Baqarah verse 275 that "Allah has justified buying and selling and forbidden usury". Also, according to Islamic fiqh, the main requirement for transactions is the clear form of the exchange rate being exchanged, while crypto itself is still difficult to account for its form and existence.

Therefore, when reflecting on Singapore, the attitude of the Indonesian government in responding to the existence of crypto assets is important and regulations are needed that can accommodate all series related to crypto assets in Indonesia as well as the importance of

providing information on the halalness of crypto assets to the public given the majority of Indonesian people who are Muslims. So, in this case the author will juridically analyze the legalization of crypto assets in Indonesia and then compare it with the legal arrangements in Singapore and how halal it is from an Islamic perspective.

RESEARCH METHOD

The type of research used by the author is normative legal research by conceptualizing law as a norm, including values and positive law, and there are 2 (two) approaches used. *First*, using a legislative approach related to examining provisions related to the regulation and supervision of Crypto Assets. *Second*, a conceptual approach by studying doctrinal views related to the regulation and supervision of Crypto Assets, Legal Materials used consist of : *a. Primary Legal Materials*, namely materials that have juridically binding force such as related laws and regulations, *b. Secondary Legal Materials* in this study, namely materials that do not have juridically binding force in the form of books, journals, research related to crypto assets, and using *c. Tertiary legal materials*, namely legal materials that provide an explanation of primary legal materials and secondary legal materials in the form of the Big Indonesian Dictionary (KBBI), General Dutch-Indonesian Dictionary, and Indonesian-English Dictionary. The method of collecting legal materials in this research is carried out by means of literature study, namely by reviewing journals, legal research results, and literature related to research problems and by using document studies, namely by reviewing various official institutional documents in the form of laws and regulations related to research problems. Data analysis used by the author is qualitative data analysis including data classification activities, editing, presenting results in narrative form, and drawing conclusions.

DISCUSSION

CRYPTO ACCORDING TO INDONESIAN POSITIVE LAW

The growth of crypto assets in Indonesia is relatively rapid so that now Indonesia is considered one of the largest countries in Southeast Asia in the perspective of crypto assets, even earning the nickname “*the crypto sleeping giant in Asia*”, the nickname emerged after Finder Crypto Adoption in August 2022 conducted a survey of 217,947 people in 26 countries and obtained the results of the ownership of crypto assets in Indonesian society reaching 29.8 million with the percentage of ownership levels in Indonesia reaching 16% or higher than the global average of 15% percent, especially the Indonesian population which is the fourth largest

in the world has influenced the large percentage of Indonesians regarding the use of crypto assets. In addition, the regulations that Indonesia has regarding crypto assets are more advanced compared to other countries that are too strict with high taxation and even prohibit crypto activities, regulations in Indonesia are still relatively friendly and provide convenience and security to its people in conducting crypto asset transactions (Antara, 2022).

Before discussing further related to its regulation, it is necessary to know that crypto assets are intangible commodities in the form of digital assets, using cryptography, peer-to-peer networks and distributed ledgers, to organize the creation of new units, verify transactions, and secure transactions without interference from other parties. Crypto assets themselves are created through cryptographic encryption with complex algorithms that are interconnected on a block chain called a *block chain*, where the existence of crypto assets is in line with global needs related to a borderless world that wants the world to be more efficient if there are no restrictions, especially in terms of using currency (Rohman, 2021).

Although the global community recognizes crypto as a currency, regulations in Indonesia do not, because Article 2 paragraph (3) of Law Number 23 Year 1999 concerning Bank Indonesia requires that every act and obligation that uses money or with the aim of making payments must be carried out using rupiah money, while regulations in Indonesia distinguish the classification of crypto from rupiah currency. It can be seen that currency according to Law Number 7 Year 2011 concerning Currency, is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as Rupiah. Where then in the Currency Act divides the rupiah into Paper Rupiah and Metal Rupiah. In addition, Indonesia also recognizes the existence of electronic money, where this electronic money is a payment instrument that fulfills the elements: (1) (2) the value of money is stored electronically in a media server or chip; and (3) the value of electronic money managed by the issuer is not a deposit as referred to in the Law governing banking. So it can be concluded that electronic money is the value of money stored electronically in a media server or chip that can be moved for the benefit of payment transactions and / or fund transfers.

However, although both are digital, crypto assets are not the same as digital money. This is because there is a fundamental difference that crypto assets are not issued by the monetary authority Bank Indonesia. Crypto assets themselves are included in virtual, which is digital money issued by parties other than monetary authorities. So on that basis, virtual currency does not include electronic money that can be used for transactions like rupiah currency. In addition to not including crypto as a currency that can be used for payment transactions, regulations in

Indonesia through Article 34 of the Bank Indonesia Regulation strictly prohibit Payment System Service Providers from processing payment transactions using virtual currency. As well as in the Coordinating Minister for Economic Affairs Letter Number S-302/M.EKON/09/2018, also emphasized the same thing that crypto assets are prohibited from being used as a means of payment, but can be used as an investment tool included in commodities that can be traded on futures exchanges.

For this reason, Indonesia legalized crypto assets as commodities traded on the Futures Exchange, with the consideration that economically, crypto assets have great investment potential and if prohibited, it will have an impact on a lot of investment outflows (capital outflow) because consumers will look for markets that legalize crypto transactions (Bappebti, 2020). So in order to accommodate this, then the Indonesian government classifies it into tradable assets or commodities. Based on Law Number 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading, Commodities are all goods, services, rights and other interests and any derivatives of tradable commodities and are the subject of futures contracts, sharia derivative contracts, and / or other derivative contracts. Apart from economic interests, the entry of crypto assets as commodities is also influenced by: (1) The price of crypto assets (coins or tokens) is highly volatile over time and trading is highly liquid; (2) Crypto assets arising from block chain technology are traded freely without government intervention, thus the market structure is perfect; (3) The market is very large (demand and supply) both nationally and globally; the supply of Crypto Assets is available and Crypto Asset trading (exchanges) has grown rapidly in the world. In Indonesia, Crypto Asset Trading has emerged with many customers transacting; (4) As a digital commodity, Crypto Assets have standards like other commodities, which include the use of technology, have a price/value, can be traded and have a use as a means of payment in a particular community/project.

In order to maintain the health of the crypto asset trading ecosystem, the Government of Indonesia through Regulation of the Minister of Trade Number 99 of 2018 concerning General Policies for the Implementation of Crypto Asset Futures Trading (Crypto Asset) legalizes crypto assets as commodities traded on the Futures Exchange in order to prevent the use of crypto assets for illegal purposes such as money laundering and terrorism financing and the development of weapons of mass destruction, to provide protection to Crypto Asset Customers from possible crypto asset trading losses, to provide legal certainty to crypto asset trading business actors in Indonesia, and to facilitate innovation, growth, and development of crypto

asset physical trading business activities in Indonesia.

Regarding the types of crypto assets that can be traded in Indonesia, when referring to Perba Number 11 of 2022 concerning the Determination of the List of Crypto Assets that can be traded on the Crypto Physical Market, there are 383 crypto assets, including *Bitcoin, Ethereum, Tether, Xrp/ripple, Bitcoin cash, Binance coin, Polkadot, Chainlink, Lightcoin, Bitcoin SV, Litecoin, Crypto.com coin, Usd coin, Eos, Tron, Cardano, TEzos, Stellar, Neo, Nem, Cosmos, Wrapped bitcoin, Iota, Vechain, Dash, Ethereum classic, Yearn.finance, Theta, Binance usd, Omg network*, and others. As for the mechanism, it can be conducted by: (1) Prospective Customers open an account with a Crypto Asset Physical Trader. After passing the Know Your Customer (KYC) procedure, the prospective Customer can be approved as a Customer, given an account and start transacting. Customers make transactions through Crypto Asset Commodity Traders (Exchangers), which can be in the form of purchases or sales using fiat money (IDR / Rupiah); (2) To initiate a transaction, the Customer must deposit funds into the Separate Account of the Crypto Asset Physical Trader, to purchase Crypto Assets. 70% of the funds will be deposited with the Clearing House and 30% will be deposited with the Crypto Asset Physical Trader; (3) Crypto assets that have been transacted, will be stored by the Crypto Asset Commodity Trader in the depository both in the nature of “Hot Wallet” and “Cold Wallet” at the Depository Manager; (4) The Futures Clearing House verifies the financial amount with crypto assets contained in the Storage Manager; and (5) Crypto Asset Physical Traders, Futures Clearing House and Storage Manager submit periodic transaction data reporting to the Commodity Futures Trading Supervisory Agency and the Futures Exchange as a price reference and market supervision.

The Futures Exchange itself, based on the Regulation of the Commodity Futures Trading Supervisory Agency, is a business entity that organizes and provides systems and / or facilities for buying and selling commodities based on futures contracts, sharia derivative contracts, and / or other derivative contracts. Currently, Indonesia has two actively operating futures exchanges, namely PT. Jakarta Futures Exchange (BBJ) or Jakarta Futures Exchange (JFX) which has been operating in Indonesia since late 2000, and PT. Bursa Komoditi Derivatif Indonesia (BKDI) or Indonesia Commodity and Derivatives Exchange (ICDX) which has been operating in Indonesia since 2009 (Fauzia, 2021). Thus, the entry of crypto assets into the commodity Futures Exchange makes regulation, guidance, development and supervision carried out by Comodity Futures Tranding Supervisory Agency with protection in the form of providing legal certainty to business actors and crypto asset customers and preventing the use of

crypto assets for illegal purposes such as money laundering and terrorism financing and the development of weapons of mass destruction.

In addition to accommodating the means of trade, Indonesia has also provided its own institution in charge of overseeing the crypto asset trading traffic along with other commodities traded on the Futures Exchange, through the Commodity Futures Trading Supervisory Agency Regulation No. 8 of 2021, the Commodity Futures Trading Supervisory Agency, hereinafter referred to as *Bappebti*, is a government agency whose main task is to provide guidance, regulation, development and supervision of Futures Trading. Which in its implementation, Commodity Futures Trading Supervisory Agency has functions and duties in the form of: (Listyowati, 2021) (1) Formulation, implementation, safeguarding the implementation of technical policies and evaluation in the field of guidance, regulation and supervision of futures trading, in accordance with applicable laws and regulations; (2) Formulation, implementation, safeguarding the implementation of technical policies, and evaluation in the field of guidance, regulation and supervision of physical markets and services; (3) Formulation of standards, norms, guidelines, criteria, and procedures as well as providing technical guidance and evaluation in the field of guidance, regulation and supervision in the field of physical markets and services; (4) Implementation of Agency administration; and (5) Carry out guidance, regulation and supervision of futures trading activities as well as physical markets and services. Thus, on this basis, it then makes the regulation, guidance, development and supervision (realtime single supervision) related to crypto assets under the Commodity Futures Trading Supervisor (*Bappebti*).

Regarding the supervision of crypto assets, one of which is realized from the form of trading, crypto asset trading can only be facilitated by a Futures Exchange that has obtained approval from the head of the Commodity Futures Trading Supervisor. Which then to be able to obtain approval to facilitate the trading of Crypto Assets which regulates the Implementation of the Commodity Physical Market on the Futures Exchange must meet the requirements: having a paid-up capital of at least Rp1,500,000,000,000.00 (one trillion five hundred billion rupiah); maintaining a final capital balance of at least Rp1,200,000,000,000.00 (one trillion two hundred billion rupiah); and having at least 3 (three) employees who are Certified Information Systems Security Professional (CISSP) certified. In addition, the Commodity Futures Trading Supervisor also regulates the types of crypto assets that can be traded must meet the following criteria at least base by *distributed ledger technology*; in the form of utility crypto assets or crypto backed assets; and has an assessment result using the analytical hierarchy process (AHP)

method determined by the Commodity Futures Trading Supervisor.

The strict supervision carried out by by the Commodity Futures Trading Supervisor.is carried out to provide legal certainty so that people who will invest get clear and legal information on every crypto asset being traded. In accordance with the statement of the Acting Head of by the Commodity Futures Trading Supervisor, Indrasari Wisnu Wardhana, who stated that every crypto product must be registered with Bappebti and every type of crypto asset that is not in accordance with by the Commodity Futures Trading Supervisor regulations cannot be traded in Indonesia.

CRYPTO ASSET TRANSACTIONS ACCORDING TO ISLAMIC LAW

Crypto assets are actually a new technological breakthrough in the digital world, but it should be noted that their properties are unstable and fluctuating, resulting in prices that can rise and fall in a short time. This kind of thing makes crypto contain uncertainty or *gharar*. HR. Muslim explains that “speculative nature and *gharar* are forbidden by Islamic law”. The determination of whether crypto is halal or not is still a matter of debate among scholars in Indonesia, while religious fatwa authorities such as *Majma’al Buhuts al Islamiyah Al Azhat* and *Dar al Ifta Egypt* prohibit muamalah using cryptocurrencies, as well as the Tarjih and Tajdid Assembly of the Muhammadiyah Central Board (PP) also issued a haram fatwa for the use of cryptocurrencies both as an investment and as a means of payment exchange due to the speculative and volatile nature of crypto. Meanwhile, the Indonesian Ulema Council (MUI) as the highest religious authority in Indonesia forbids the use of cryptocurrencies for buying and selling transactions, but legalizes its use as an investment because it still fulfills the sharia as *sil’ah* which is used to meet human needs and has benefits. In the 7th (seventh) meeting of the *Ijtima Ulama* Commission of the Indonesian Ulema Council on November 9-11, it was agreed that:

- 1) The use of crypto as a currency is haram, this is because it contains elements of *gharar* (uncertainty), *dharar* (can cause losses), and is contrary to Law Number 7 of 2011 concerning Currencies, as well as Bank Indonesia Regulation Number 17 of 2015. Where the use of crypto as currency is not legal because Indonesia only recognizes the rupiah currency as a means of payment;
- 2) The use of crypto as a commodity is invalid because it contains elements of *gharar*, *dharar*, *qimar* (gambling), and is not classified as meeting the requirements of *sil’ah*, namely the existence of a physical form, clear value, certainty of ownership rights and can be delivered

to the buyer;

- 3) As for crypto that fulfills *sil'ah*, crypto is a commodity that has underlying assets and clear benefits so that it is legal to trade.

Then Nahdatul Ulama (NU) also gave several conclusions regarding this crypto, that:

- 1) That crypto assets are wealth or *mal* in fiqh, so if they are stolen, the thief must be sanctioned and if they are damaged, they must be replaced;
- 2) That crypto is wealthy, so it is valid to be exchanged as long as there is no *gharar*, considering that there are different opinions stating that crypto is not included in the element of *gharar*.

Regarding the halalness of this crypto asset, it does not mean that Islam rejects technological advances, but precisely because of its volatile nature and tends to be unaccountable, it has the potential to cause problems in the future for its owners. As gambling in gambling, because both crypto and gambling are equally unclear regarding profits and losses depending on the trend at the time of use, so Islam here plays a role in protecting from the possible negative effects that exist from the use of crypto. *Mudharat* in the form of losses from crypto transactions is highly likely to occur when the owner misreads trends and price movements. The Indonesian Ulema Council then strictly prohibits crypto transactions as business transactions because of the gambling speculation. In addition, the Indonesian government through the Currency Law and Bank Indonesia Regulations is also concerned about the worst possibility that in the future this crypto could replace the existing rupiah currency in Indonesia, so its use as a buying and selling transaction like currency is also prohibited in positive law in Indonesia. However, there is also a bright spot in the use of crypto as a commodity asset, where the Indonesian Ulema Council and Indonesian positive law legalize as long as the crypto asset has a clear underlying asset so that it fulfills *sil'ah* and provides clear benefits and does not cause harm to either party, then when the crypto asset has a clear physical form and can be proven proof of ownership.

REGULATING CRYPTO ASSETS IN SINGAPORE

Singapore's rapid economic development has made crypto assets, one of which is bitcoin, legally recognized as a commodity. For this reason, Singapore has then issued regulations to protect crypto asset users and also to provide benefits to the state because it is able to prevent possible criminal acts committed by crypto asset users. The regulation related to crypto assets was established by the Singapore government as an investment to make the economy in Singapore more advanced by setting taxes on crypto assets in the form of bitcoin,

so that the regulation becomes clear for users and also the government as a supervisor. Therefore, both users and the government have legal standing regarding these crypto assets and make Singaporeans not feel worried because they have obtained legal protection (Pudjastuti, 2022).

The supervision and control of crypto assets is carried out by the Monetary Authority of Singapore (MAS), which is Singapore's central bank and integrated financial regulator. In Singapore itself, the exchange and trading of crypto assets is legal, but still the Singapore tax authority treats bitcoin crypto assets as "goods" just like Indonesia which classifies them as commodities. So that the goods and services tax is applied to these crypto assets (Advantage, 2022). Not only that, Crypto Assets are financial activities that fall under the regulatory purview of the Monetary Authority of Singapore (MAS). On August 1, 2017, MAS has declared that crypto assets are securities and therefore subject to the Securities and Futures Act which aims to protect the interests of investors (Hui, 2017).

In regulating and supervising cryptocurrency products, the Monetary Authority of Singapore (MAS) states that recognized cryptocurrencies are those listed and traded only on approved Exchanges, which are subject to regulatory and supervisory requirements (Supaat, 2020). The Monetary Authority of Singapore has also divided recognized crypto assets into two types. First, Crypto Assets such as Bitcoin, which can be used for payment purposes and are subject to the Payment Services Act. Second, security tokens, which are digital representations of traditional securities such as stocks and bonds and are subject to the Securities and Futures Act.

Furthermore, with respect to Exchange Facilities that offer cryptocurrency trading are regulated as digital payment token service providers under the Payment Services Act. Given their limited scale, these entities are regulated primarily for money laundering and terrorism financing risks. Secondly, the Monetary Authority of Singapore has increased its oversight of the crypto-asset sector, to identify suspicious networks and higher-risk activities for further supervisory scrutiny. However, the Act gives the Monetary Authority of Singapore the power to impose additional measures on digital payment token service providers as needed (Choo, 2021). Despite legalizing cryptocurrencies as a means of payment, Monetary Authority of Singapore has consistently warned that trading cryptocurrencies is extremely risky and not suitable for the general public (Redaktur, 2022). The Monetary Authority of Singapore continues to oversee developments in crypto asset exchanges and regularly reviews or monitors their compliance with applicable regulations. The Monetary Authority of Singapore also said

that if there are consumers who suspect that there is a crypto asset scheme that is falsified or misused for unlawful activities, they can immediately report it to the police, so here the Monetary Authority of Singapore also involves supervision of the public to participate in monitoring existing crypto assets (Pereira, 2021).

In another form of protection and supervision, Monetary Authority of Singapore also issued guidelines regarding digital payment token (DPT or better known as crypto assets) service providers, that it is not allowed to promote their Digital Payment Token services to the general public in Singapore. Digital Payment Token service providers can only market or advertise on their own company websites, mobile apps or official social media accounts. Under the Payment Services Act, it specifically provides for protection from money laundering and terrorism financing risks, as well as technology risks that Customers of regulated entities must be informed of the risks of Digital Payment Token trading in accordance with the Guidelines on Disclosure and Communication. Monetary Authority of Singapore Assistant Managing Director for Policy, Payments and Financial Crime, Loo Siew Yee, said “Monetary Authority of Singapore strongly encourages the development of blockchain technology and innovative applications of crypto tokens in value-added use cases. But cryptoasset trading is extremely risky and not suitable for the general public. Therefore, Digital Payment Token service providers should not portray Digital Payment Token trading in a way that downplays the high risk of Digital Payment Token trading or engage in marketing activities that target the general public” (Redaktur, 2022).

Therefore, it can be concluded that in Singapore the legality of crypto assets is other than digital representation and is subject to the Securities and Futures Act, while in Indonesia, crypto assets cannot yet be used as a means of payment, but only as commodity assets traded on futures exchanges. So that if someone uses it as payment, they must exchange it in rupiah. Considering that crypto assets can be very volatile, and the government does not intervene in the development of their value, therefore, it is very risky as an investment product, it is necessary to establish a mechanism in addition to providing legal certainty in providing a form of legal protection, it is necessary to pay more attention to investors in the form of substantive protection which can cover the risks they experience.

CONCEPT OF LEGAL REFORM OF CRYPTO ASSETS IN INDONESIA

Given the large amount of demand and supply, both at the national and global levels, the rapid trading of Crypto Assets in market share. in Indonesia involved in crypto asset

commodity trading based on the data mentioned in the previous discussion can be said to be quite large. The issuance of a Regulation of the Minister of Trade No. 99 of 2018 concerning General Policies for the Implementation of Crypto Asset Futures Trading, and several regulation of the Commodity Futures Trading Supervisory Agency mentioned in the previous discussion is a milestone in the legalization of crypto assets in Indonesia.

In connection with the planning for the development of the Crypto Asset Exchange in Indonesia, the issue is that PT Kliring Berjangka Indonesia (KBI) is ready to become a crypto asset exchange clearing house both in terms of capital and infrastructure. Then an observation should really be made in advance in terms of standardization of regulations, capital, equity, infrastructure, technical and security (Fadillah, 2012). In Article 31 of Government Regulation No. 49 of 2014 concerning the Implementation of Commodity Futures Trading. Or hereinafter referred to as (PP No.49/2014), it is stated that the Commodity Futures Trading Supervisory Agency can grant a business license for the *Bappebti* Futures Clearing House by taking into account, *first*, checking the completeness of the required documents as referred to in Article 30 paragraph (1), *second*, assessing the 3 (three) year activity plan, *third*, to assess and approve the draft rules and regulations, *fourth*, to conduct a fit and proper test of candidates for commissioners and directors, *fifth*, to examine physical facilities and infrastructure, safe and efficient clearing, guarantee and settlement systems.

As is known, Indonesia currently has two futures exchanges that are actively operating, namely PT. Bursa Berjangka Jakarta (BBJ) or Jakarta Futures Exchange (JFX) which has been operating in Indonesia since the end of 2000. then, there is also PT. Bursa Komoditi Derivatif Indonesia (BKDI) or Indonesia Commodity and Derivatives Exchange (ICDX) which has been operating in Indonesia since 2009. If the government wants to separate investment institutions for crypto assets into a separate crypto asset exchange, things that must be considered include:

First, the need for comprehensive legal regulations, which can accommodate the parties involved including crypto physical traders, investors, and crypto asset exchanges. Given the reality of law in Indonesia in responding to the development of the technological revolution, it can be said that it has not been responsive, the Indonesian rule of law in responding to the technological revolution has not been able to accommodate the backwardness of its regulations with the development of this era, with regard to crypto asset trading, the government only legalized crypto transactions in Indonesia for the first time in February 2019. This is stated in regulation of the Commodity Futures Trading Supervisory Agency No. 5 of

2019 regarding the technical implementation of the crypto asset market. Therefore, law is not only understood as a norm that can provide certainty and justice but can also provide benefits (Hoesein, 2012).

Second, good governance includes human resources that can respond to the development of information systems and technology, considering that crypto asset trading is virtual trading, it is very necessary to be supported with sufficient compatibility, and considering that crypto asset trading is commodity trading, governance related to regulation and supervision should remain with the institution according to its main and functional duties to oversee commodity trading, in this case the Commodity Futures Trading Supervisory Agency.

Third, technological infrastructure that is able to accommodate investor protection from cyberattacks, considering that crypto asset trading is an intangible commodity in the form of digital assets, using cryptography, peer-to-peer networks and distributed ledgers, and realities such as cases of illegal physical traders of crypto assets that have a detrimental impact on investors are not uncommon, then it is better to require supervisory cooperation with related institutions, in this case the National Cyber and Crypto Agency (BSSN) in accordance with its main duties and functions to carry out supervision and security in the cyber field, besides that innovative applications are needed to be able to keep abreast of global developments related to crypto assets, because in reality the regulation and supervision of crypto assets in Indonesia can be said to be new. In connection with these three things, it is in line with Anthony Allot's view that the legal system consists not only of norms but also institutions including facilities and processes.

Furthermore, it is also necessary not only to update the law from the aspects of legal regulations, governance, technological infrastructure, but also legal protection efforts for investors in crypto asset trading traffic, according to Philipus M. Hadjon, that there are two types of legal protection means, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent problems or disputes from occurring. Repressive legal protection aims to resolve problems or disputes that arise (Habiburrahman & dkk, 2022). Regarding the form of legal protection provided by the government for crypto asset investors in Indonesia, among others, there are several regulations governing crypto assets, namely, Regulation of the Minister of Trade No. 99 of 2018 concerning *General Policies for the Implementation of Crypto Asset Futures Trading*, Regulation of the Commodity Futures Trading Supervisory Agency No. 8 of 2021 concerning *Guidelines for the Implementation of Crypto Asset Physical Market Trading on Futures Exchanges*, Regulation of the Commodity

Futures Trading Supervisory Agency No. 11 of 2022 concerning *the Determination of the List of Crypto Assets Traded on the Crypto Asset Physical Market*, Minister of Finance Regulation No. 68 /PMK.03/2022 of 2022 concerning *Value Added Tax and Income Tax on Crypto Asset Trading Transactions*. Some of these regulations are a form of legal protection given to crypto asset investors by the government.

Considering that futures trading is a complex business activity, not only collecting and managing public funds as a form of investment but has an obligation to protect the public from harmful trading practices and provide legal certainty for business continuity for the parties involved. In this regard, to attract investors, one of the indicators is related to the state of political stability of a country that is able to provide legal certainty and security.

Explicitly, the regulation and supervision related to crypto assets by the Commodity Futures Trading Supervisory Agency is quite comprehensive, considering the many positive impacts of crypto asset trading, the negative impacts that are part of crypto asset trading deserve to be studied, considering that many illegal crypto fraud cases have occurred, in Indonesia such as the losses experienced by the public from these investments, which reached Rp117.5 trillion (Azizah, 2022).

Currently the Indonesian government is discussing the Draft Law on Financial Sector Development and Strengthening or hereinafter can be referred to as the Draft Law on Financial Sector Development and Strengthening (RUU PPSK), The emergence of the discussion of the Draft Law 2022 on Financial Sector Development and Strengthening Financial Sector Technology Innovation (Draft Law on Financial Sector Development and Strengthening) is a representation of the government's plans regarding the development of a Crypto Asset Exchange in Indonesia. In the draft of the Financial Sector Development and Strengthening Bill, Article 202 paragraph (1) discusses the strengthening of crypto assets which stipulates that the scope of technological innovation in the financial sector (ITSK) includes: payment systems, securities transaction settlements, investment management, risk management, collection and / or distribution of funds, market support, other digital financial services determined by the authorities in the financial sector in accordance with their authority, activities related to crypto assets, and other financial service activities.

In Paragraph (2) The regulation and supervision of the implementation of financial sector technological innovation as referred to in paragraph (1) shall be carried out by each authority in accordance with its duties and authorities. However, the government's efforts to improve and strengthen the financial sector in terms of relating to crypto assets in Indonesia, if

the legalization of crypto assets in Indonesia is only recognized as a commodity not as a currency, then according to the institutional duties and functions of regulation and supervision, the authority should fully be the authority of the Commodity Futures Trading Supervisory Agency, not Bank Indonesia or the Financial Services Authority (OJK), so the existence of Article 202 paragraph (2) can potentially overlap between institutions that will become regulators as well as supervisors between the Financial Services Authority, Bank Indonesia and the Commodity Futures Trading Supervisory Agency, it is possible that it will also return to disclosure, When looking at the authority of the Financial Services Authority delegated by Article 6 of Law Number 21 of 2011 concerning the Financial Services Authority, the Financial Services Authority carries out the task of regulating and supervising: (i) financial services activities in the Banking sector; (ii) financial services activities in the Capital Market sector; and (iii) financial services activities in the Insurance sector, Pension Funds, Financing Institutions, and Institutions; and (iv) Other Financial Services.

The position of crypto assets in Indonesia until now is only recognized as a commodity not a currency, so if it is related to the main tasks and functions of institutions related to regulation and supervision, crypto assets should not be under the supervision of the Financial Services Authority and Bank Indonesia. In order to avoid dualism of supervision, the authority to regulate and supervise crypto asset trading in Indonesia should be supervised by the Commodity Futures Trading Supervisory Agency, in accordance with its institutional duties and functions, as stipulated in legislation no. 32 of 1997.

CONCLUSION

Crypto assets have been recognized as commodities through Regulation of the Minister of Trade of the Republic of Indonesia Number 99 of 2018 concerning General Policies for the Implementation of Crypto Asset Trading and Regulation of the Commodity Futures Trading Supervisory Agency Number 8 of 2021 concerning Technical Provisions for the Implementation of the Crypto Asset Physical Market on the Futures Exchange, that crypto assets are commodities that can be used as the subject of futures contracts traded on futures exchanges. In line with Islamic law and the fatwa of the Indonesian Ulema Council, which forbids crypto as a means of buying and selling transactions given its fluctuating nature and its uncertainty, thus containing elements of *gharar*, *dharar*, and *qimar*. However, crypto then becomes halal if it is used as a commodity asset with clear underlying assets and fulfills *sil'ah*. Currently, the regulations and supervision carried out by the Commodity Futures

Trading Supervisory Agency are quite good, although not yet responsive, the government in strengthening the investment sector against crypto assets in Indonesia is seen with the discussion of the Draft Law on Financial Sector Development and Strengthening, so it is better if the drafting process is participatory, namely involving related stake holders, community participation, academics so that the government's strategy in expanding the crypto asset trading market is able to provide comprehensive regulation and supervision that can accommodate the interests of investors, the Singapore government in responding to the development of crypto assets takes a pragmatic, and practical approach.

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